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THE ORDEAL IN THE NEO-ASSYRIAN LEGAL PROCEDURE

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In a letter to the Assyrian king Esarhaddon attributed to Mār-Issār, it is reported that the shepherds who refuse to deliver sacrificial animals for the Nabû Temple of Borsippa are also unwilling to comply with the accounting procedures claiming that they have never been liable to do so. Mār-Issār was a close associate of the Assyrian king and had been sent to Babylon in order to reorganize the cultic activities after the severe destruction of the main cities ordered by Sennacherib. He advises the king not to listen to the shepherds quoting a sentence ascribed to Burna-buriaš: "The (time of) accounting is the ordeal of the shepherds."[1] Since Burna-buriaš was king of Babylon more than 650 years earlier, the sentence would prove that accountings were a long-established practice. As a rule, only smaller flocks of sheep and goats were held constantly in the closer surroundings of the towns. The bigger herds had to be driven over long distances in search of suitable pasture ground, so that the urban owners—private individuals, temples, palace—did not have contact with the shepherds for long periods. They usually met only once a year, in the spring, at shearing time, to balance accounts. Therefore, the meaning of the sentence may be rendered in modern terms as follows: "For the shepherds, the time of accounting is the moment of truth".

For Babylonians as well as for Assyrians, the ordeal was the ultimate mode of ascertaining the truth. It is already attested in the Sargonic period.[2] In Assyria, the oldest attestations are found in the Middle Assyrian laws. The Assyrians of the Old Assyrian period did not make use of the ordeal, although they knew about it from the Anatolians.[3] In the present contribution I would like to present the evidence for the ordeal in Neo-Assyrian times, focusing on the judicial documents. This undertaking seems legitimate in view of the publication of some new texts not included in the pivotal studies by Tikva Frymer-Kensky and Remko Jas.[4] Moreover, a reappraisal of some documents is also possible. It is a great pleasure to dedicate

[1] The passage is, unfortunately, damaged and is rendered according to the reconstruction proposed by Parpola 1993, no. 353: 12–15: [*ina libbi tī*]*lti ša ḫursān š*[*a Burna-Bur*]*iaš šar B*[*ābi*]*li q*[*abi mā ḫ*]*ursān rā*[*'î nikkassi*] "[In a sen]tence o[f Burna-bur]iaš, king of B[aby]lon, referring to the ordeal, it is [said: 'The (time of) accounting is the or]deal of the she[pherds]'."

[2] For a general treatment of the phenomenon in Mesopotamia see esp. Frymer-Kensky 1979 and van Soldt 2003–2005.

[3] See lastly Larsen 2007.

[4] Frymer-Kensky 1979, 394–405, 415–423, Jas 1996, 73–76.

these thoughts to Gianni Lanfranchi, whose merits for Neo-Assyrian studies are so many, not only as author but also as editor and publisher.

The ordeal was a mode of proof both in private (including crimes against private interests) and public legal concerns. In the former case we have documentary evidence, in the latter our source of information consists mainly of letters. The documentary material can be classified into three groups: texts recording in one way or another the settlement of a dispute, sealed by one party and drawn up before witnesses, as well as court orders and memoranda, both unsealed and without witnesses.[5] The first group is best represented by a text from Nineveh dated to 680 BC, the accession year of Esarhaddon. It records a court decision in a criminal case based on the ordeal. A certain Hanî was accused of having stolen sheep of the crown prince (probably still Esarhaddon at the time) and murdered a shepherd (Kwasman – Parpola 1991, no. 264[6]). He was sentenced to pay a fine (*sartu*) for the sheep and blood money (*dāmē*) for the shepherd. But in lieu of this, the crown prince took possession of him, of his people and fields. The reason for this procedure is not given but it was surely due to Hanî's inability to fulfil the imposed penalty. Instead, it is stated that he can be released if his commander, captain, or any relative comes to satisfy his obligations.[7] At the end of the text and before the list of witnesses there is a brief note that looks like a statement of grounds for the verdict: Hanî "returned" from the ordeal (*ḫursān itūra*). This expression is also found in Middle Assyrian and Middle Babylonian texts, but there is no consensus as to its exact meaning. Some scholars think that the defendant refused to undergo the ordeal, but others consider that he failed or lost it.[8] In my opinion, the verb does not provide any indication as to what has happened (this has to be searched in contextual information and may vary from case to case) but rather points to the legal consequences of the procedure.[9]

Like divination the ordeal was a form of consulting the gods, in the former case about future events, in the latter about past events.[10] The divine answer was solicited by different procedures with extispicy, i. e. the examination of the entrails of sacrificial animals, as the most important form of divination. As to the ordeal, the procedure consisted in a physical test that in Mesopotamia seems to have been basically by water.[11] This is not surprising considering the importance of the Euphra-

[5] Only texts that explicitly mention an ordeal are considered here. Among those documents that do not directly refer to an ordeal, two (Dalley – Postgate 1984, no. 70 and Radner 1997, no. 2) have been repeatedly associated with it. But in my opinion, the ceremony alluded to in these texts is a purification ritual in the context of a purgatory oath (see Faist forthcoming).

[6] The exact facts of the case and the corresponding punishment have been interpreted in various ways. Previous editions are quoted by Kwasman – Parpola 1991 in a note to no. 264. To this add Jas 1996, no. 1 and Hecker 2001, 25 (no. 6).

[7] Cf. Jas 1996, no. 45, a document from Imgur-Enlil/Balawāt that records the release of a man who had stolen a slave girl of the queen and was enslaved because he could not pay the fine imposed on him.

[8] See especially Postgate 1976, 160 for the first view and Frymer-Kensky 1979, 385–387, 394–399, 521–522 for the second view. For a summary see also van Soldt 2003–2005, 126 (§ 4.4), 128 (§ 8).

[9] Similarly Jas 1996, 10 note 40.

[10] See Maul 2007, esp. for the belief sustaining these practices.

[11] The name for the ordeal was written $^{(d)}$íd "(divine) river" in the older (Sargonic to Middle Assyrian) texts (the pronunciation was *id* or *nāru* depending on the period or text type; see Lambert 1965, 11). It is still found in literary and religious texts up to the first millennium

tes and Tigris for the Mesopotamian civilization. There is only scanty evidence about the performance of the ordeal—nothing is found in the Neo-Assyrian documents and letters—and we must be cautious not to reduce the phenomenon, attested for different periods and regions, to one and the same pattern. In any case, it was thought that the outcome of the test was determined by divine agency and provided the divine answer (and therefore the irrefutable proof) with regard to the guilt or innocence of the party submitted to it. Due to the sacred character of the procedure, the knowledge about its correct performance must have lain with specialists, although the texts are not very informative in this respect. This means that the ordeal required not only a change of location, from the court to the ordeal site, but also a transfer of jurisdiction, from the secular judge to cultic personnel. Against this background, the expression "to return from the ordeal" has two main implications. The person submitted to it returns from the ordeal site to the court and he does so because he was proved guilty (it does not matter whether he or she refused or failed the test) and, as a consequence, has to be punished. While the divine verdict concerned someone's innocence or guilt, the punishment of the party declared guilty relied on the human court. In the case of Hanî, the *sartinnu*, one of the highest officials of the Neo-Assyrian empire, acted as judge and imposed the already referred penalty on him.[12] If Hanî had been innocent, no written record would have been necessary.

The reason why Hanî had to undergo the ordeal lay probably in the circumstance that there were no witnesses to the facts. Actually, the procedure was basically implemented when the offences were particularly difficult to prove, unless discovered *in flagrante*. This applies especially to criminal offences like homicide and theft.[13] Contrary to modern legal procedure, where the burden of proof lies with the accuser, it is the accused who must prove his innocence by submitting to the ordeal. Besides this method, the Neo-Assyrian legal practice also knew the purgatory oath as a means of deciding cases lacking concrete evidence.[14] But the methods differed, essentially in the way of punishment. The person who took a false oath would be punished by the invoked god sometime in the future, in a way that might or might not be specified in the oath itself. On the contrary, the individual submitted to an ordeal was judged innocent or guilty by the god(s) on the spot and, if he was found guilty, the penalty was imposed immediately by the human court.[15] It is conceivable that someone aware of his misdeed hazarded the consequences of a perjury,

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BC. In documents and letters it is replaced by *ḫuršān* since the middle of the second millennium BC. See Frymer-Kensky 1979, 481–489 and van Soldt 2003–2005, 124–125. The Neo-Assyrian form is *ḫursān*. The etymology of this term is uncertain. In general, it is supposed that the test consisted in plunging into the river and re-emerging or swimming a certain distance (Frymer-Kensky 1979, 528–534). Sinking or being otherwise "retained" by the river meant failing the test. In Mari there is evidence that this could be deadly.

[12] In the Neo-Assyrian period the judicial function was assumed by different officials (see Radner 2005, 48–60). Moreover, there are some texts where Adad acts as judge and pronounces the sentence just like a human magistrate (Jas 1996, no. 10, Faist 2007, no. 54, Mattila 2002, no. 84, Muscarella 1981, no. 84). Most of these texts come from Western, i. e. predominantly Aramaean communities (Guzāna/Tell Halaf, Kannu', Maʿallānāte) and are—at least on a formal level—distinct from the cases discussed in this paper.

[13] See Frymer-Kensky 1979, 501–507. In the law collections the trial by ordeal is applied primarily to accusations of adultery and sorcery.

[14] See Faist forthcoming.

[15] See Frymer-Kensky 1979, 43–49.

especially if a severe punishment was awaiting him. To this effect, the ordeal was the most reliable method. Nevertheless, the reasons for choosing one or the other must have depended on the specific circumstances surrounding each case. To conclude with Hanî's trial we have to enter into the question of the *raison d'être* of this record. The tablet was originally encased in a sealed envelope now lost[16] and drawn up for one of the parties, most probably for the crown prince,[17] who would have had a written proof for the possession of Hanî, his household and fields. If so, and according to Neo-Assyrian sealing practice, the envelope must have been validated by Hanî. In case of his release, the document would have been handed out to him for destruction (i. e. invalidation).[18]

The other texts that record the settlement of a dispute based on an ordeal are in a fragmentary state of preservation and, therefore, less informative. In a document found in Nineveh, the vizier (*sukkallu*) and the *sartinnu* settle a dispute concerning a field or fields between Silim-Aššur and Ahū'āia on the one hand and a man whose name is only partly preserved on the tablet, on the other (Kwasman – Parpola 1991, no. 238[19]). The grounds of the dispute are not given, but we know from other texts that Silim-Aššur, a high official in the reigns of Esarhaddon and Assurbanipal,[20] acted as a creditor in many transactions and, on some occasions, the debtors gave him fields in lieu of interest or in pledge, fields that he could cultivate for his own profit for a definite period of time and that could become his property should the debtor be unable to pay back his obligation.[21] Perhaps the dispute arose in connection with a similar transaction. In any case, the opposing party was submitted to the ordeal, "returned", and lost the trial. The document was written down before witnesses and most likely sealed by the unsuccessful party on the envelope, which is now lost and should have contained the dating missing on the inner tablet. Thus, the record was destined for the prevailing party as proof of its rights. It shows that the ordeal was used not only in criminal cases but also in disputes over properties, a function attested for other periods as well.[22]

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[16] Following Radner 1997–1998, 382 and contra Postgate 1976, 160, who speaks of an "official record rather than a legal document to be retained by one of the contestants".

[17] In accordance with Jas 1996, 10–11.

[18] In a fragmentary letter addressed to an Assyrian king (Fuchs – Parpola 2001, no. 295, where it is included in the correspondence of Sargon II, although it is noted on p. XLVIII that this is not compelling), the sender (an Assyrian official whose name is not preserved) refers to a royal message by which he was appointed to render a verdict (*dēnīšu epuš*) in the case of the (unnamed) son of Abu-ila'ī (details about the legal dispute are not given). The sender informs the king that the other party went to the ordeal (*ina ḫursān ittalak*, after Kataja 1987, 66 note 5, despite the more recent collation by Parpola, who reads *ḫu-ur-si* instead of *ḫu-ur-san* throughout the text) and in all probability "returned from the ordeal" ([*issu ḫu*]*rsān* [*ittūra*]), i. e. he was found guilty. Nevertheless, he "did not give" (*lā iddin*), that is, he failed to pay the penalty imposed on him. As a consequence, the son of Abu-ila'ī "seized his share and his people" (*ana zittīšu ṣābīšu uṣṣabbit*), in other words, he seized the inheritance share and the household of the convicted party. The sort of procedure seems to be similar to that followed in the case of Hanî.

[19] The text has also been edited by Jas 1996, no. 47 with some different readings.

[20] The present text probably dates between 680 and 670, before he was appointed great vizier (see Baker 2002, 1109b, no. 4.a.3').

[21] Kwasman – Parpola 1991, no. 223 (with duplicate no. 224) and no. 226.

[22] See Frymer-Kensky 1979, 508–509.

In a lawsuit concerning 24 minas of silver and 6 camels one party went to the ordeal (*ana ḫursān ittalak*), "returned" (*issu ḫursān ittūra*), and paid a fine (*sartu*) to the other party (Donbaz – Parpola 2001, no. 127[23]). The facts of the case are not discernible, but theft would be a reasonable assumption (24 minas of silver was a substantial sum) and would explain the use of the ordeal. The document was found with great probability in a private house in Aššur[24] and its main function was to record the payment of the judicial fine. It was probably encased in an envelope sealed by the acknowledging party and handed out to the other as a sort of receipt.[25]

The last text recording a judicial settlement comes from Guzāna/Tall Halaf, a provincial capital in the West of the Hābūr triangle (Jas 1996, no. 48). It dates from the last years of the Assyrian empire (post-canonical eponym Nabû-tappūtī-alik) and deals with a theft of 5 1/2 minas of silver from the house of a certain Ninuāiu. The name of the defendant is not preserved. Unlike the cases discussed before, the *sartinnu* imposed the ordeal on both parties, perhaps because he suspected a false accusation or because he simply used the procedure as a means of psychological pressure to compel the parties to an understanding. Be that as it may, Ninuāiu and the opposing party came to an agreement at the ordeal site and avoided the risk of the test.[26] Due to the damage of the tablet, it is not clear what their deal was like. It seems that the defendant was not directly involved in the burglary, but knew the

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[23] The text has been published only in transcription and the likeliness of any alternative reading cannot be checked. Nevertheless, it seems to me that it makes more sense to consider the two persons mentioned in the preserved text as the contending parties. I would like to propose the following reading: [1']*ina* [x x x x x x x] [2']*ina* ig[i x x x x x x] [3']*<a-na> ḫu-ru-sa-na* ⌈*i*⌉-[*ta-lak*] [4']*ina* ugu 24 ma.n[a kù.babbar] [5']*ina* ugu 6 ^{anše}[*gam-mal*^{meš}] [6']ta* *ḫur-sa-na* [*i-tu-ra*] [7']^{m}*ia-di*-dingi[r.meš ^{lú}x] [8']*ša* ^{m}15-i [^{lú}x x] [rev. 1]*sa-a*[*r-tú-šú* {x x x x}] [2]*a-d*[*u* x x x x x x] [3]*a-du* x [x x x x x] [4]*a-na* ^{m}*mar-*⌈^{d}⌉[x x x] [5]*i-te-di-ni* [*ú-sa-lim*] [6] ^{m}*ia-di*-dingir.meš [x x] [7]*ša* 24 ma.na k[ù.babbar] [8]*ša* 6 ^{anše}*gam-m*[*al*^{meš}] (rest broken away, including the date and the witnesses) "[1']... [2']befo[re (name of the official acting as judge)]. [3']He (i. e. Iadi'-ilī) [went] to the ordeal [4']on account of 24 min[as of silver] (and) [5']on account of 6 [camels]. [6'][He returned] from the ordeal. [7']Iadi'-i[lī, the ....] [8']of Issār-na'di, [the ...], [rev. 5]has paid in full [1][his] fi[ne ...] [2]togeth[er with ...] (and) [3]together with [...] [4]to Mār-[...]. [6]Iadi'-ilī [has/shall the ...] [7]of 24 minas of s[ilver] (and) [8]of 6 cam[els] [9][...]. For the reading of l. 7'ff. cf. Jas 1996, no. 13: 9 (tablet), no. 39: 4–6, Faist 2007, no. 28: 7–9 (tablet), 4–5 (envelope).

[24] See Pedersén 1986, 117–118 (archive N 25). Unfortunately, it is not possible to relate the present text to other documents of the archive. The available dates range from 755 to 640 BC.

[25] Postgate 1976, 60–61, does not consider the possibility that this kind of document was originally encased in an envelope and describes these records as "unsealed tablets" meant "for the official archives."

[26] The first lines preserved run as follow: [1']*[... ^{m}nina]*⌈^{ki}⌉*-a-a* [2']*[i]q-*⌊*ṭi-bi ma*⌋*-a* 5 1/2 ma.na kù.babbar ta* é-*ia* [3']*[n]a-ši ma-a na-aḫ-bu-tú ša* é-*ia* [4'] [lú]*sar-tin-nu ḫur-sa-na e-te-me-su-nu* [5']*[u-ma-a i-n]a ḫur-sa-na it-ta-<at>-ru-ṣu* "[1'][... Ninu]āiu [2'][s]aid: '(An amount of) 5 1/2 minas of silver has been taken from my house. [3'](It was) a robbery of my house!' [4']The *sartinnu* imposed the ordeal on them. [5'][Now, a]t the ordeal site they have come to an agreement". For the reading of l. 5' cf. Jas 1996, no. 42: 1': ⌊*ú*'⌋-*ma-a it-ta-a*[*t*]-*ru-uṣ* and for the verbal form (corresponding to Old-Babylonian *mitguru*) see CAD T, 216b: "to be mutually satisfactory". Jas 1996, 75 reads: "[(5')][...] by means of the ordeal they have reached agreement". But this would be contradictory to the procedure. In any case, the imposition of an ordeal on both parties is problematic, because in principle both contenders could fail or pass the proof.

identity of the thieves and agreed to deliver them to Ninuāiu.[27] The text is written on a horizontal tablet sealed on the obverse. The seal identification is lost. If the proposed interpretation is correct, the document was drawn up for Ninuāiu and sealed by the opposing party bound by the agreement.

Besides texts recording the settlement of a dispute, there is at least one court order related to an ordeal (Deller *et al*. 1995, no. 111). It was found in a private house in Aššur located above the ruined Middle Assyrian New Palace and dates to the post-canonical eponym Sīn-šarru-uṣur, governor of Hindānu (636 or 634 BC).[28] The tablet has a horizontal format without envelope (it is too large for assuming an envelope). It is unsealed and bears no list of witnesses. This was probably not necessary because the decision taken by the judge belongs to an interim stage of the case, namely to that of taking evidence. As interesting as the text is, it is difficult to understand and the reading proposed here is by no means conclusive.[29] There are two different sections separated from each other by a ruling. In the first section (lines 1–15) it is stated that a certain Dahinu brought a serious charge against another man, whose name I suggest be read Ilā-rahamu, accusing him under oath of having killed five persons, among them three slaves, and of having sprinkled with blood the handmaid of Arbailāiu, son of Zabbanāiu, possibly in order to make her appear as the culprit. Nergal-šarru, the vizier acting as judge, imposed the ordeal on both contending parties, who would be accompanied to the ordeal site by two officials, a guard (*ša maṣṣarte*) and a court officer (*ša pān dēnāni*), and perhaps also by witnesses.[30] In the second section (lines 16–22) we learn that Dahinu exculpated

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[27] Cf. l. 10'–13': [10']*... ma-a* [lú*]lul.m[eš] [11']*[ina]* ⌈igi⌉*-e-ka ma-a ina* šu.2 [lú*]lul.meš*-ú-a* (sic!) [12']*a-lik ba-'e-e uṭ-ur-ru* ta* igi *a-ḫe-iš šùl-mu* [13']*ina bir-tú-šú-nu* .... "[10']The defendant said to Ninuāiu:) 'The thieves [11'](will be) at your disposal'. (Ninuāiu said:) [12']'Go (and) call my thieves to account'. They are mutually quit. There is peace [13']between them." I assume a change of speaker, although this is not indicated in the text. Otherwise, we would face serious problems of interpretation.

[28] Pedersén 1986, 111–113 (archive N 21). The editors of the text noticed that it "shows tenuous—and in fact doubtful—links with the remainder of the archive" (Deller *et al*. 1995, 20). To be noticed is that two of the killed slaves belong to Sakâ-il, who in another document of N 21 acts as a witness for Mutaqqin-Aššur, one of the central persons of the archive (Deller *et al*. 1995, no. 116: rev. 3'). Moreover, Dādāia, wife of Zabbanāiu and mother of the Arbailāiu of our text, whose handmaid is also involved in the case, is attested in a loan of silver as debtor of Mutaqqin-Aššur (Deller *et al*. 1995, no. 106: 3–4).

[29] I owe thanks to Prof. Stefan Maul, who gave me the possibility of collating the text from his photo collection of Aššur tablets.

[30] Lines 1–15: [1][*de*]-⌈*e*⌉-*nu ša* [m]*da-ḫi-nu* [x x x x] [2]ta*! [m]dingir-[*r*]*a-ḫa-mu* x x x x [3] [m]*ga-la-a* [m]⌈x⌉*-za-ru-ru* ìr.meš [4]*ša* [m]*sa-ka-*[*i*]*l ta-du-ku-u-ni* [5]2 [lú*]*da-ma-*⌈x⌉-[x]-⌈*te*⌉ *ta-du-ku-u-ni* [6] [lú]ìr *ša* [m]*da-ma-nu-ri ta-du-ku-u-ni* [7] [mí]géme *šá* [m]4-*il-a-a* dumu [m]*za-ba-an-a-a* [8]*ta-za-ri-qu-u-ni ina* igi [m]u.gur-lugal sukk[al] [9]*ḫur-sa-an e-ti-mì-id*! [m]*man-n*[*u*-x x x] [10]*ša* en.nun-*te e-si-šú-nu pa-q*[*i-id*] [11] [m]dingir-*a-ḫa-ri* [lú*]*ša* igi [*de-na-ni*] [12]*e-si-šú-nu pa-q*[*i-id* [m]x x x] [13] [md]utu-*ši*-su dumu [m]⌈*ú*⌉-[x x x] [14] [uru]*kal-*<*ḫa*>*-a-a* [md]pa-⌈x⌉-[x x x] [15] [m]*li-qi-su ša* igi *de-na-*[*ni* x x] "[1][Law]suit of Dahinu [...] [2]against Ilā-rahamu [...]: [3–4]'(I swear) that you have killed Galâ (and) [...]zaruru, the slaves of Sakâ-[i]l. [5](I swear) that you have killed two ...-men. [6](I swear) that you have killed the slave of Dama-nūrī. [7](I swear) that you sprinkled (with blood) the handmaid of Arbailāiu, son of Zabbanāiu'. [8]Before Nergal-šarru, the vizi[er]. [9]He imposed the ordeal. Mann[u-...], [10]the guard, has been assig[ned] to them (by the judge). [11]Ilā-hāri, the [court] officer, [12]has been assig[ned] to them (by the judge). [PN], [13]Šamaš-erība, son of U[...], [14]from Kalhu, Nabû-[...], (and) [15]Liqīsu, the cou[rt] officer, [are the witnesses? (i. e. have

Abi-rāmu before Šamaš of having killed the afore-mentioned persons. There follows a declaration by Ilā-rahamu before the same god charging Abi-rāmu with the homicides.[31]

It has generally been understood that the second section followed the first one in time, so that it would refer to the ordeal procedure.[32] But it makes more sense to consider it as a sort of explanatory note or background story to the first section. If so, the decision of the judging official to impose a bilateral ordeal relied on the existence of contradictory oaths. Dahinu swore the innocence of Abi-rāmu, but Abi-rāmu was charged by Ilā-rahamu, who on his part was accused by Dahinu. Taking into account the gravity of the accusations, it was not possible to wait till Šamaš renders his judgement at some future time. The question is now, why Abi-rāmu did not act for himself. We may assume that he was Dahinu's (still unmarried) son and that he was represented by his father. A similar case is attested in Mari, where a young girl named Mārat-Ištar was accused of having bewitched a boy. Her mother appeared before court and swore her daughter's innocence. Nevertheless, she had to confront the ordeal substituting for her daughter—and died.[33] This means that the accused himself did not necessarily undergo the test, but could be replaced by a third person, a feature that is found in other Mari texts as well and reveals an important aspect of the procedure. In fact, the ordeal had nothing to do with physical penalties, because it was not intended to be a measure of personal punishment (even if sometimes the outcome was fatal), but a ritual to ask the gods about the guilt or innocence of a person in the frame of a legal procedure. Our text also gives valuable information in relation to the persons attending the ordeal. As already referred to, there were a guard, a court officer, and perhaps witnesses. The context clearly shows that the *ša pān dēnāni*, tentatively translated here as "court officer," was subordinated to the official acting as judge and was not the "president of the court," as is frequently claimed.[34] One of his functions seems to have been the execution of

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been designated by the parties as witnesses to the trial by ordeal?)]." An overview of the personnel attending the ordeal in the different periods of Mesopotamian history is given by van Soldt 2003–2005, 128. In Sargonic texts witnesses are sometimes mentioned. For the reading of the name Sakâ-il cf., for example, the spelling ^{m}*a-ba-il* for Abā-il (Radner 1998, 1b). The name Ilā-rahamu (read differently by the first editors of the text) is so far not attested in the Neo-Assyrian onomasticon.

[31] Lines 16–22: [16] ^{m}*da-ḫi-nu ina* igi ^{d}utu *iq-ṭí-bi* [17]*ma-a* un.meš *an-nu-ti* ^{md}ad-*ra-mu* [18]*la i-du-ku-u-ni* ^{m}dingir-*a-ra-*[*ḫa-mu*] [19]*a-na* ^{d}utu *iq-bi-ma šum-ma* ⌈*a*⌉-[*na-ku*] [20]*ina* uzu úš *šá* un.meš *an-*⌈*nu-te*⌉ [*la a-mur*] [21][*šum-ma*] x-x-*qi šá* ^{mi}g[éme *la i-za-ri-qu-u-ni*] [22][*šum-ma* uz]u.meš *a-nu-*[*te la a-mur*] "[16]Dahinu declared in front of Šamaš: [17]'(I swear) that Abi-rāmu [18]did not kill these people'. But Ilā-ra[hamu] [19]declared in front of Šamaš: 'I swear that [I myself [20]saw] the blood of these people on (his, i. e. Abi-rāmu's) body. [21][I swear that he (i. e. Abi-rāmu) sprinkled (with blood)] the [...] of the [hand]maid. [22][I swear that I saw] the[se bodi]es!'" We have to note the different forms of writing down the two oaths (main clause + subordinative vs. *šumma lā* + subordinative for affirmative statements). Did the scribe copy the declarations from two different protocols? The last three lines of the text, written on the left edge, contain the date: [23] ^{iti}še u_4.7.kam [24]*lim-mu* ^{m}30-man-pap ^{lú*}en.n[am] [25] ^{uru}*ḫi-in-dà-na* "[23]Month of Addāru, the 7th day, [24]eponymy of Sīn-šarru-uṣur, the gover[nor] of [25]Hindānu."

[32] I also held this view in a previous article (Faist 2011, 261 note 66).

[33] Durand 1988, no. 253 and commentary on pp. 518–519.

[34] See AEAD, 106b and CAD D, 156a ("president of a court of justice"). Differently Radner 2005, 61–62, who translates the term as "court clerk".

court orders. It is not by coincidence that a *ša pān dēnāti* (a variant of *ša pān dēnāni*) figures as witness to the above-mentioned last minute agreement from Guzāna, reached by the contending parties at the ordeal site (Jas 1996, no. 48: 17'). The performance of the ritual must have been in the hands of cultic personnel and it seems reasonable to assume that the court order was addressed to the responsible priest (and handed out to him by the *ša pān dēnāni* or by one of the witnesses?).

Another document from Aššur, dated to the eponymy year of Sa'īlu (620 BC), records the imposition of a bilateral ordeal as a result of contradictory oaths (Donbaz – Parpola 2001, no. 312[35]). Unfortunately, the text is badly damaged, so that many details of the case escape us. A certain Nabû-rēmanni was charged with a crime (*sartu*) and we have the transcription of two statements sworn before the god Šamaš. In the first, a person denies having anything to do with the offence imputed to Nabû-rēmanni and claims the same for another individual. In the following statement, separated from the former by a ruling, Nabû-rēmanni apparently accuses his opponent of knowing specific facts (and, we may guess, of being an accessory to the crime). Both parties have to undergo the ordeal (*ana ḫursān illuku*) on the 2nd Kanūnu, one day after the text was written down. It has no witness list and was very probably not encased in an envelope. Its nature is not clear. Since the judging official is not mentioned (at least in the preserved part of the tablet) and one of the two *verba dicendi* introducing the oaths (the other one is broken off) is in the present tense (*ana* ^{d}*Šamaš iqabbi* "he declares in front of Šamaš"), I wonder if we are facing a court memorandum (for an official archive?) rather than a court order like the one previously discussed.

The singular text recording two denunciations by Asalluhi-nādin-ahi, published by Laura Kataja (Kataja 1987), is in all probability a court memorandum. The tablet has a horizontal format and is not sealed. Furthermore, it is not dated and does not include a list of witnesses. With this document from the royal archives in Nineveh we leave the sphere of private legal matters and enter the sphere of public legal concerns, even if the boundaries between them were fluid. Asalluhi-nādin-ahi, an official in the service of Milki-nūrī, the eunuch of the queen during the reigns of Esarhaddon and Assurbanipal, charged two state employees before the king.[36] He said that Šumma-ilāni, ruler of the city Arkuhi in (the) Kašijāri (mountains), intended to name his son after Assurbanipal, at that time either the ruling king or still the crown prince, an act that was evidently considered a serious royal insult. Both parties went to the ordeal (*ḫursān ittalku*) and Šumma-ilāni "returned," i. e. he was found guilty. No punishment is recorded. The second imputation was against Ahu-erība, who was a subordinate of the chief cupbearer and intended or had intended to use the name of Sennacherib. The tablet is damaged at this point, but we can confidently assume that the two cases were more or less similar. Politics has always been a highly competitive and scheming milieu and the Neo-Assyrian empire was certainly no exception. False accusations in order to discredit or ruin political rivals or to praise one's own loyalty and gain the favour of superior authorities must have been

[35] The editors title the text "imposition of oath", but this is not the central point. The find spot of the tablet is not known. The excavation number given in the publication is faulty (see Faist 2004, 131).

[36] The expression used to refer to the royal dispensation of justice is *abat šarri zakāru* "to speak the king's word", i. e. "to appeal to the king". See Postgate 1974. For Milki-nūrī see Baker 2001, 752a.

very common. Against this background it becomes understandable why the accusing official was also sent to the ordeal, although in this case he was given right by the gods. Nevertheless, in other situations people might have discarded such a behaviour before taking the risk of being submitted to the ordeal. In this sense, it can be seen as an effective measure to promote fair play.

The remaining evidence for the ordeal in relation to public legal concerns comes from letters. It has already been discussed by Frymer-Kensky,[37] so that I can limit myself to a few comments. Most of the attested cases occurred in Babylonia during the Assyrian domination and involved Babylonians who were charged with some political offences against the Assyrian king.[38] The ordeal was an appropriate method in these situations, because the accusations must often have been difficult to prove. The most informative letter, probably from the Babylonian scholar Bēl-ušēzib to Esarhaddon, describes conspiratorial activities on the part of Hinnumu, governor of Uruk.[39] The sender reminds the monarch that Hinnumu had already been disloyal during the reign of the king's father giving ten chariots and horses to the Elamite enemy. On this occasion, he was interrogated by the king and swore that he had been taken prisoner and handed over to the king of Elam by the people of Uruk. But a high-ranking individual of the city testified against him and both parties were sent to the ordeal, whereby the Urukian "came out clear(ed)" (*izzakâ*) and Hinnumu "returned" (*ittūr*), i. e. he was found guilty. In this case, the test seems to have really taken place, although it is conceivable that Hinnumu, being a prominent and influential person, named someone to replace him. In any case, his political career was not seriously challenged, because he continued to conspire against the Assyrians. Although not explicitly mentioned, it was surely the king who imposed the ordeal. In the Neo-Assyrian legal documents there is no hint of royal participation,[40] but it stands without doubt that the king represented the supreme judicial authority and that in the normal legal processes he delegated this part of his rule to members of the administration. In these cases we have seen that the use of the ordeal was a prerogative of the vizier (*sukkallu*) and the *sartinnu*, who belong to the highest level of the state administration. The correspondence shows that also individuals could seize the initiative in going to an ordeal. In a letter by Ea-zēra-qīša, leader of Bīt-Amukāni, to his mother, he complains that he has been repeatedly accused of supporting the king of Babylon, Šamaš-šuma-ukīn, in his revolt against the Assyrian king Assurba-

[37] Frymer-Kensky 1979, 394–405.

[38] Besides the text quoted in note 18, the only other letter that refers to an ordeal in Assyria proper was sent by Akkullānu, astrologer and priest of the Aššur Temple, to king Assurbanipal (Parpola 1993, no. 95). Unfortunately, the context is destroyed, but we may assume that the ordeal was used in relation to temple affairs.

[39] Frymer-Kensky 1979, 395–398 (ABL 965). Latest edition: Reynolds 2003, no. 125.

[40] But there is a Neo-Babylonian document, where the Assyrian king acts as judge in Babylonian legal concerns. See Frymer-Kensky 1979, 406–409 (BIN II 132) and the corrections by Frame 1992, 201 with note 48. The text deals with a dispute between two Babylonian governors concerning a group of Puqudians (one of the largest Aramean tribes in Babylonia). There is reference to a previous lawsuit in the time of Esarhaddon, in which the status of these Puqudians as consecrated to Ištar of Uruk and Nanaya was contested by a certain Nabû-ušēzib. Both parties went to the ordeal. The Puqudians "came out clear(ed)" (*izkûnim*) and the Assyrian king confirmed that they belonged to the goddesses.

nipal.[41] In order to prove his innocence, he had asked the king for permission to undergo the ordeal.[42]

In conclusion, in the Neo-Assyrian period there exist both unilateral (if discernible, it always affected the defendant) and bilateral ordeals. The procedure was basically applied when other means of proof (documentary evidence, testimony of witnesses, oath) failed to reveal the truth. The possibility of consulting the gods in these circumstances excludes—at least in theory—any decision based on *non liquet*. In modern legal proceedings this expression describes a situation that lacks any clear, unequivocal evidence and that in criminal cases can bring the court to acknowledge the innocence of the accused. On the other hand, the existence of the ordeal made torture in a trial context unnecessary. In medieval Europe, where the ordeal was also used to solve legal disputes and took many different forms (e. g. trial by combat, by heat, by potion, and, less common, by immersion in water like in Mesopotamia), it was replaced by torture from the 12th century onwards. Frymer-Kensky summarized the process as follows:

> The disappearance of the ordeal in Europe, although not forcibly imposed, nevertheless also left a void which had to be filled. The purgatory oath increased in importance, and new procedures in criminal law were developed. [...] With the reception of Romano-Canonical law throughout continental Europe, the early juries there were replaced by trial by inquest. The inquest, and its variant the secret Inquisition, became the standard mode of criminal trial on the Continent. In these proceedings, judgement depends on the sworn testimony of witnesses: the determination of guilt or innocence always rests with the judge(s). When the evidence of the witnesses was not conclusive, and there was no rational basis for decision, the confession of the accused became a matter of prime importance, and in fact became the *sine qua non* of conviction. This led to the institution of torture in order to extract confessions. The extensive use of torture in legal proceedings is a fundamental equivalent of, and substitute for, ordeals. [...] In each area of Europe torture first appears as a legal process some time after the disappearance of ordeals and is clearly 'needed' to extract confessions in cases that would otherwise have been decided by ordeal.[43]

Last but not least, the decisions taken by the judges on the base of divine verdicts enjoyed a superior legitimation. This turns out to be of particular importance for the

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[41] Frymer-Kensky 1979, 402–404 (ABL 896). New translation of almost the whole text: Frame 1992, 172–173.

[42] Alternatively to the river ordeal, the sender had proposed "to lift up the *kalappu*-axe" (*kalappu matāḫu*), a form of ordeal only attested here and in another letter that shows a similar situation: Frymer-Kensky 1979, 399–401 (ABL 390).

[43] Frymer-Kensky 1979, 56–57. A more detailed description of the process is found in Peters 1985, 40–73. For Babylonia, it has been adduced that from the late Neo-Babylonian period onwards the *maš'altu*-interrogation used in some criminal trials involving theft or misappropriation of temple property could have involved torture to obtain a confession (see summing up Holtz 2009, 284–290). Significantly, the only clear attestation for an ordeal in this period is found in a literary composition known as "king Justice"(see Schaudig 2001 with previous references) and this singular text must not necessarily reflect current legal practice. This would imply a fundamental change in the law system that deserves further study.

functioning of the law system, especially if we consider that the ordeal was usually used to clear cases of serious offences that brought about severe sanctions and that the coercive power to enforce such sanctions was not as unrestricted as in modern states.

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