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BLOOD FEUD AND STATE CONTROL: DIFFERING LEGAL INSTITUTIONS FOR THE REMEDY OF HOMICIDE DURING THE SECOND AND FIRST MILLENNIA B.C.E.

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I. INTRODUCTION

SINCE the discovery of the Laws of Hammurapi in December 1901–January 1902,¹ the dependence of biblical law upon Mesopotamian law has been hotly debated. Among the most contentious issues is the adjudication of homicide, and the discussion has focused on particular odd cases in biblical law, such as an ox that gored or assault on a pregnant woman, that appear to have been borrowed from Mesopotamian law.² The more common occurrences of fatal assault and the procedures to remedy them, however, have been largely ignored. What institutions insured that homicide was punished in biblical law, and what relationship did they have to Mesopotamian legal process? I will argue that the institutions that insured that a homicide would be investigated and remedied in biblical law were vastly different from those in Mesopotamian law and that the difference originates in disparate conceptions of the organization of society. Mesopotamian texts reflect the extensive involvement of the state in the process of remedying homicide. The members of the victim's family participated in the process insofar as they had the right to make a claim on the slayer, but there does not seem to be any apprehension generated by the possibility of a blood avenger waiting to strike down the killer. By contrast, blood feud operated in biblical law, and places of sanctuary were needed to protect the killer.

The textual evidence used in this study is wide-ranging. The legal material from the Bible is found in three mutually independent legal sources, Exod. 21:12–14, Num. 38:9–34, and Deut. 19:1–13, and in narrative texts. The legal sources do not have a common literary origin and originate in diverse historical and ideological/theological circumstances during the First Temple period.³ The cuneiform material from the rest of the ancient Near

¹ The editio princeps of the Law of Hammurapi was made by V. Scheil, *Textes élamites-sémitiques*, vol. 4, deuxième série, *Memoires de la Délégation en Perse* (Paris, 1902), pp. 11–162. The standard edition of the cuneiform text is found in E. Bergmann, *Codex Hammurabi: textus primigenius*, 3d ed., *Scripta Pontificii Instituti Biblici* 51 (Rome, 1953). A translation and a broad transcription of the Laws of Hammurapi (LH) are found in Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, 2d ed., Society of Biblical

Literature, *Writings from the Ancient World*, no. 6 (Atlanta, 1997), pp. 71–142.

² See, for example, D. H. Müller, *Die Gesetze Hammurabis und ihr Verhältnis zur mosaischen Gesetzgebung sowie zu den XII Tafeln* (Vienna, 1903); G. R. Driver and John C. Miles, eds., *The Babylonian Laws*, vol. 1, *Legal Commentary* (Oxford, 1952); J. J. Finkelstein, *The Ox That Gored*, prep. Maria deJ. Ellis, *Transactions of the American Philosophical Society*, new ser., vol. 71, pt. 2 (Philadelphia, 1981).

³ Although the limitations of space do not permit a full discussion of the dating of these three sources, it is the Pentateuchal source P whose date has been most widely contested, and if it originated in the Second Temple period, that would change the nature of the case

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East includes both the legal records from the ancient Near East as well as the formal legal collections, and attention here will be paid to both, in contrast to many other modern studies. The records of actual cases reflect how the legal process was carried out and include what was deemed essential to a transcript of a case.⁴ With few exceptions, scholars have concentrated on the formal legal collections.⁵ Although this cuneiform material spans a range of 1,500 years, it exhibits a surprising consistency across genre and historical period, with a certain exception in the Assyrian material. While it might be doubted that the comparing of late third millennium (Ur III) or early second millennium (Old Babylonian) texts to much later biblical material is of any value, this earlier Mesopotamian material paints a picture similar to the later Mesopotamian material and reflects the general situation in Mesopotamia, where the most influential states of the ancient Near East were located. More than simply valuable for general comparative purposes, the earlier Mesopotamian material complements the later material from Mesopotamia: together they highlight the prevailing characteristics of Mesopotamian society.

The methodological issue involved here is whether the conclusions of this analysis tell us about actual social practices or about a social construct. Put a bit differently, do our texts allow us to draw conclusions about what actually occurred in a society or how the texts (or their writers) think it ought to be addressed? It must be noted that we will never know whether biblical law was applied in an actual court, nor will we ever know what law was applied in a court in ancient Israel until actual court records from ancient Israel are excavated. As we shall see, however, the evidence from the legal texts on homicide in the Bible fits with both the textual evidence from the rest of the Bible regarding social structure and archaeological data from ancient Israel. The cuneiform material both from the law collections and legal records exhibits a striking consistency on the legal procedures analyzed in this study. The rules for addressing homicide appear, therefore, to reflect actual social practices, rather than only distinct textual constructions in the adjudication of homicide.

II. LEGAL INSTITUTIONS INVOLVED IN REMEDYING HOMICIDE

According to the Hebrew Bible, the victim's family bore primary responsibility for initiating the remedy of a homicide.⁶ The "blood avenger," גאל הדם, a close male relative of

being made. To my mind, the most reliable method of deciding whether or not a text such as P comes from the Second Temple period is a linguistic one of determining whether P reflects the Hebrew of the First Temple period or the Second Temple period, and the linguistic evidence shows that P contains the Hebrew of the First Temple period. See Avi Hurvitz, *A Linguistic Study of the Relationship between the Priestly Source and the Book of Ezekiel: A New Approach to an Old Problem*, Cahiers de la Revue Biblique 20 (Paris, 1982); idem, "Dating the Priestly Source in Light of the Historical Study of Biblical Hebrew a Century after Wellhausen," ZAW 100 (1988): 88–99; Jacob Milgrom, *Studies in Levitical Terminology*, vol. 1, University of California Publications, Near Eastern Studies, vol. 14 (Berkeley, 1970), pp. 8–16, 60–87.

⁴ Martha T. Roth, "Reading the Mesopotamian Law Cases, PBS 5 100: A Question of Filiation," *Journal of the Economic and Social History of the Orient* 44 (2001): 252–56, 281.

⁵ Even a study as recent as Ulrich Sick's 1984 dissertation, "Die Tötung eines Menschen und ihre Ahndung in den keilschriftlichen Rechtssammlungen unter Berücksichtigung rechtsvergleichender Aspekte" (Ph.D. diss., Eberhard-Karl-Universität, 1984; printed: copyshop Kästl-Harmansa, 1984), did not make reference to any legal records even though the records were available in edited form by then, some in a number of editions.

⁶ The statute on homicide in the Covenant Code, Exod. 21:12–14, does not mention the blood avenger directly but assumes that the killer's life was in immediate and grave danger. Despite the lacuna, we can

the victim,⁷ had the right to effect a remedy by killing the slayer on sight. There were no specialized or official personnel charged by a central government with the duty to investigate offenses or to arrest and prosecute a suspect.⁸

It is best to understand this process as blood feud, avenging the killing of kin by the taking of the life of the slayer by the victim's kin. This label allows us to link this process to two essential characteristics of blood feud: it is local in nature, and it is rule-bound.⁹ These characteristics are interrelated because blood feud is a legal mechanism that both assures the redress of wrongs and controls the violence to a level tolerable in a community. Blood feud is not a paroxysm of rage, careening out of control.

Rule-boundedness was manifest in many ways. The victim's family undertook the initiative in punishing a homicide, but there were qualifications. Only the slayer was subject to action, not anyone else, whether having a connection to him or not. Apparently only a specific member of the victim's family, גאל הדם, had the right to kill the slayer with impunity. The cities of refuge acted as a check on the right of גאל הדם to kill the slayer with impunity. He could not kill a slayer while the slayer was within the city of refuge (Num. 35:12; Deut. 19:5; Josh. 20:5). Second, once the slayer had entered the city of refuge, he was subject to trial to determine whether it was an intentional or accidental homicide (Num. 35:24; Deut. 19:12). This decision limited the ability of גאל הדם to effect vengeance because if the slayer was judged to be an accidental killer, he was permitted to stay in the city of refuge safe from the avenger. Only if the slayer was determined to be an intentional killer was he handed over to the avenger for execution. Indeed, biblical texts manifest anxiety over the possibility that גאל הדם might kill an accidental killer because he could kill any slayer with impunity outside the city of refuge (Deut. 19:6).

Blood feud came into play in biblical law because the victim's family had the primary responsibility to respond to the slaying of one of its members. By contrast, the members of the victim's family did not have to assume that responsibility in Mesopotamian law. They had the right to make a claim on the slayer, but the slayer was not in mortal danger from a blood avenger waiting to strike him down.¹⁰ In some cases, the victim's family might play a role in determining the penalty, but it must be emphasized that the members of the victim's family were not otherwise involved in the remedy.

Indeed, in Mesopotamian law, those outside the victim's family effect the remedy, although there is variation in this regard. The right of making a charge of homicide seems

reasonably infer (but not be absolutely certain) that the threat to the killer came from the family's agent, the blood avenger, because his actions are described in the other biblical legal texts as an unswerving pursuit in order to put the killer to death, and this serious threat to the killer's life necessitates a safe haven for the killer, precisely what is assumed here.

⁷ The literature on גאל הדם assumes almost without exception that גאל הדם is a blood relative. (Cf. S. R. Driver, *Deuteronomy*, International Critical Commentary [Edinburgh, 1901], p. 232; Moshe Greenberg, "Avenger of Blood," *Interpreter's Dictionary of the Bible*, vol. 1, p. 321; S. David Sperling, "Blood, Avenger of Blood," *Anchor Bible Dictionary*, vol. 1, pp. 763–64). This is correct because of the linguistic connection with the גאל, who was a close male rela-

tive who was obligated to reclaim land sold by a member of his extended family (Lev. 25:25; Jer. 32:7–8; Ruth 3:12; 4:3–4) and to redeem a relative sold into slavery (Lev. 25:47–49). He acted on behalf of a powerless person in the restoration of lost property.

⁸ Even in the case when a victim's family could not come forward because the victim could not be identified (and presumably his family had not come searching for him), a local body representing the local community, the elders of a town, not a state mechanism, came forward on an ad hoc basis to address the problem (Deut. 21:1–9).

⁹ Max Gluckman, "The Peace in the Feud," *Past and Present* 8 (1955): 1–14.

¹⁰ There were, of course, angry people who would have wanted to kill the slayer, but they did not have the legal right to do so with impunity.

to be fairly general: the initiative did not specifically devolve upon the victim's family. Anyone could initiate the legal process by informing the authorities. An official investigation would then ensue. As a result, charges could then be brought up, but a trial was necessary before a punishment could be effected, a stark contrast to the right of גאל הדם to strike down the slayer. According to Laws of Hammurabi ¶ 1, the first in an introductory series of laws on procedure, a private person can lay a charge of homicide against another person, in this case, an unsubstantiated accusation. The relationship of this private citizen to the victim is unstated. In NSG 202, from the Ur III period, the victim's widow charged a particular individual with the death of her husband before the authorities.¹¹ By contrast, in the Nippur Murder Trial of the early Old Babylonian period, the widow refrained from informing the authorities, which led to her conviction as an accessory.¹² The authorities must have been notified by others, perhaps suspicious friends or neighbors. In another Ur III document, NSG 121, a man reported to the governor that he has heard of a homicide.¹³

(1–4) Nannakiaga, son of Lugaladda, told the governor that someone killed another in . . . (5) He sent Urmami the bailiff with him. (6–8) Nannakiaga presented to him the one against whom he had given his statement. (9) That this one committed the murder was not ascertained. (10–12) He said to Bidati and Aguzu, the inspector: "Bring him there." (13) Aguzu said: "I will bring him there." (14–17) He said to Ilumma, the collector, who came from Nagsu together with Nannakiaga: "Bring him there." (18–19) Ilumma said (that) because he is a bailiff, he will not return with him, (but) *SU-nam-ILA-NE* will return with him. (20–25) Witness, Amu'a. Witness . . . Witness, Na . . . Witness, Dati. Witness, Girine'isha, the courier. The month of RI, year in which the en-priestess of Eridu was enthroned.

It does not appear that Nannakiaga has witnessed the homicide but merely has come across a rumor about one. He informed the governor, who assigned a bailiff to investigate.

Neo-Assyrian law concerning homicide occupies an intermediate position between biblical law and the rest of Mesopotamian law—there was no threat of blood feud, but there was a group response. The slayer and his social group, the town in which he lives, initiated the process by formally assuming the responsibility for making restitution to the claimant from the victim's family before the claimant ever arrived.

*ADD 618*¹⁴ is an acknowledgment of debt obligation: the right of the victim's family to demand compensation and the responsibility of the villagers from the killer's village to

¹¹ Henri de Genouillac, *Textes économiques d'Oumma de l'époque d'Our*, TCL 5 (Paris, 1922), no. 6168; Adam Falkenstein, *Die neusumerischen Gerichts-urkunden*, Bayerische Akademie der Wissenschaften, philosophisch-historische Klasse 39 (Munich, 1959), vol. 2, pp. 331–33, no. 202 (hereafter *NSG*).

¹² Edward Chiera, *Legal and Administrative Documents from Nippur*, Publications of the Babylonian Section, vol. 8, no. 1 (Philadelphia, 1914), no. 173; Thorkild Jacobsen, "An Ancient Mesopotamian Trial for Homicide," in William C. Moran, ed., *Toward the Image of Tammuz and Other Essays on Mesopotamian History and Culture*, Harvard Semitic Series, no. 21 (Cambridge, Mass., 1970) (originally published in *Analecta Biblica* 12 [1959]), pp. 198–201; Samuel Noah Kramer, *From the Tablets of Sumer*, 3d ed. (1956; Philadelphia, 1981), pp. 57–58; Martha T. Roth, "Gen-

der and Law: A Case Study from Ancient Mesopotamia," in Victor H. Matthews, Bernard M. Levinson, and Tikva Frymer-Kensky, eds., *Gender and Law in the Hebrew Bible and the Ancient Near East*, Journal for the Study of the Old Testament, Supplement Series 262 (Sheffield, 1998), pp. 173–84.

¹³ Genouillac, *Textes économiques d'Oumma de l'époque d'Our*, no. 6165; *NSG*, vol. 2, pp. 206–8, no. 121.

¹⁴ C. H. W. Johns, *Assyrian Deeds and Documents*, vol. 1, 2d ed. (Cambridge, 1924), no. 618, pp. 470–71 (hereafter *ADD*); J. Kohler and A. Ungnad, *Assyrische Rechtsurkunden* (Leipzig, 1913), pp. 388–89, no. 660; Martha T. Roth, "Homicide in the Neo-Assyrian Period," in Francesca Rochberg-Halton, ed., *Language, Literature, and History: Philological and Historical Studies Presented to Erica Reiner*, AOS 67 (New

pay compensation are formally recognized. The person of the killer was no longer of concern: if he died or escaped, the village was still obligated.

(1–11) Seal of Shamash-taklāk, seal of Ibtāsh-lēshir, seal of Tablāya, seal of Eridāya, seal of Nergal-aḥu-ušur, seal of Silim-ili, seal of Muqallil-kabti, seal of Adad-ahu-ušur, seal of Edu-tēshir, seal of Sariuni, seal of the entire city of Samānu. (12–15) Širi, the owner of the blood, whom Silim-ili killed, is their responsibility. (15–17) Whoever appears among them (to claim compensation), whether it is his wife, his brother, or his son, (18) they themselves shall pay the blood money. (19–29) Witness: Tarditu-Assur, the third rider on the chariot. Witness: Nabu-rēsh-ishi the doorkeeper. Witness: Nusku-aḥ-iddin, the official in charge of the reeds. Witness: Mannu-ki-Adad, the doorkeeper. Witness: Assur-shum-iddin, the captain of the victualler. Witness: Abu-ul-idi, the third rider on the chariot. Witness: Nabua, the scribe. 8th month, third day, eponym of Labashi (657 B.C.E.).

Siri had arrived to claim compensation from Silim-ili for a homicide, but the murderer Silim-ili struck again, killing Širi.¹⁵ Since the victim was not a native, there were no

Haven, 1987), pp. 352–54; Theodore Kwasman, *Neo-Assyrian Legal Documents in the Kouyunjik Collection of the British Museum*, Studia Pohl, Series Maior 14 (Rome, 1988), no. 334, pp. 386–87; Remko Jas, *Neo-Assyrian Judicial Procedures*, State Archives of Assyria Studies, vol. 5 (Helsinki, 1996), no. 41, pp. 63–65.

¹⁵ Identifying who is the victim and who is the killer in this text is problematic. Lines 12–13 can be translated as “Širi, the owner of the blood, whom Silim-ili killed” or as “Širi, the owner of the blood, who killed Silim-ili.” Postgate argued that Širi is the killer and Silim-ili is the victim and that the people of his (Širi’s) village, whose seals appear in lines 1–11, confirm their responsibility to deliver up Širi (*Fifty Neo-Assyrian Legal Documents*, p. 171). According to Postgate, the murderer, Širi, and his family, those mentioned in lines 15–16, have escaped from their own village to avoid punishment and cannot be found. The rest of the villagers, who comprise those named in lines 1–11, have assumed a corporate obligation: in the case that the murderer or any of his family reappear, the villagers would be responsible for paying the blood-money by handing him over to the injured party to serve as a slave in compensation. Postgate appears to be reading lines 12–14 as “Širi is the owner of the blood of Silim-ili (whom) he killed,” and identifies the family members in lines 15–16 as members of Širi’s family who will be handed over to the victim’s family as payment. The identification of Širi as the killer was forced upon Postgate because he believed that *bēl damē* refers only to the one who shed the blood. Its appearance, however, in J. N. Postgate, ed. and trans., *The Governor’s Palace Archive*, Cuneiform Texts from Nimrud 2 (London, 1973, no. 95 (hereafter *PPA*), where the individual named as a *bēl damē* is a witness to the payment made by a father for a homicide his son committed, is clear evidence that the term can refer to the claimant from the victim’s family.

Theodore Kwasman argued that Silim-ili was the killer and the Širi, whose relationship to Silim-ili is not

mentioned, assumed the responsibility for paying the compensation for the homicide (*Neo-Assyrian Legal Documents*, p. 386). He read lines 12–14 as “Širi is responsible for the blood money (of the person) whom Silim-ili killed.” This translation is problematic because the relative pronoun *ša* cannot do double duty to denote both the possessive relationship, “of the person,” and the direct object, “whom.” The relative pronoun *ša* is in apposition to the personal name Širi. It would then be better to understand the personal name Širi as either the subject or the object of the verb *GAZ-u-ni*; that is, Širi is either the killer or the victim.

Martha T. Roth, in contrast to Postgate and Kwasman, argued that the people enumerated in lines 15–17 are, in fact, claimants from the victim’s family, not members of the killer’s family (“Homicide in the Neo-Assyrian Period,” pp. 352, 354–55). She based her argument on the standard pattern of a Neo-Assyrian debt-note, which she believed applied here. Roth’s argument that the people in lines 15–17 are claimants from the victim’s family is sound because it is based on the recognition that this tablet follows the pattern of an economic text. Although the physical appearance of the tablet makes it look like a conveyance—it is a single tablet without an envelope and its writing is at right angles to its longer axis—in fact, it contains the literary formulation of a debt-note or contract (Postgate, *Fifty Neo-Assyrian Legal Documents*, p. 171).

Silim-ili’s name, however, appears among those sealing this documents in line 6. Is this the same Silim-ili referred to in line 13? If he is, then he cannot be the one who was killed. If Silim-ili were dead, it would be impossible for him to impress his seal on the document. While it is possible that two men by the name Silim-ili are mentioned in the same document, it seems odd that they are not differentiated in some way by the mention of their fathers’ names or occupations. Furthermore, if the argument of Ockham’s razor holds true—that the simplest explanation is preferable—then equating the Silim-ili in line 6 with the one in line 13 makes the most sense. Silim-ili, then, was the murderer of Širi. His

relatives in the vicinity to claim compensation. Nonetheless, the village where Šilim-ili resided did possess corporate responsibility for compensating the victim's kinsmen. Ten of the villagers formally assumed responsibility and promised to make restitution to the claimant from the victim's family who might arrive. *ADD* 618 represents the first stages in a case of unlawful death, when the rights of the victim's family and the obligations of the killer and his community are formally recognized, in this case by the killer's community.

When the claimant did arrive, negotiation ensued, and the parties came to terms on the type and quantity of property to be handed over. Execution of the slayer was a threat only if he did not pay (*ADD* 321).¹⁶

(2'–6') It is now mutually agreed:¹⁷ the one who shall give Amat-adimri, the daughter of Attar-qāmu, to Shamash-kēnu-ušur, the son of Samaku (who was killed) in place of blood(-money) and wash the blood away.¹⁸ (6'–8') If he does not give the woman, they will kill him on top of¹⁹ Samaku's grave (9'–10') Whoever breaches the contract with the other party²⁰ shall pay 10 minas of silver (1000 shekels). (10'–11') Assur, Shamash and the oath of the king will call him to account. (12'–21') Eponym of . . . of Assurbanipal, king of the land of Assyria. Witness: . . . , the chief. . . . Witness: Adalal, the *mār qātē* of. . . . Witness: Adad-Babā'u, the *mār qātē* of the crown prince. Witness: Assur-ilaya. . . .

presence among those who have set their seal reflects his acquiescence in his guilt and acknowledgement of his debt.

Since Širi is identified as *bēl damē* (in line 12) a term referring to the claimant from the victim's family, we can extrapolate from this identification that Šilim-ili had killed before and that Širi was seeking to make a claim against him on behalf of the victim's family but was killed by Šilim-ili. If, in fact, the opposite were true, that Širi was the murderer, his killing at the hands of Šilim-ili would be justified, and there would be no need for this document. After the homicide, the villagers assumed the responsibility for the compensation for Širi's death. If, and when, claimants from Širi's family would arrive, the villagers would discharge their obligation.

¹⁶ *ADD*, vol. 1, no. 321, pp. 238–39; Kohler and Ungnad, *Assyrische Rechtsurkunden*, no. 659, p. 388; Roth, "Homicide in the Neo-Assyrian Period," p. 357; Kwasman, *Neo-Assyrian Legal Documents in the Kouyunjik Collection of the British Museum*, no. 341, p. 393; Jas, *Neo-Assyrian Judicial Procedures*, pp. 65–66; Simo Parpola, "Collations to Neo-Assyrian Legal Texts from Nineveh," *Assur* 2/5 (1979): 49.

ADD 321 conforms to the pattern of a court order.

lines 2'–6': the guilty party is required to discharge his obligation;

lines 6'–8': the penalty for the guilty party's failure to comply is given;

lines 9'–10': the penalties that devolve upon either party for repudiating the agreement are stated.

It would appear in this case that if the murderer did not provide the slave-woman, he would be killed as punishment, and then his kin would have to pay as well. This is the force of this document.

¹⁷ Literally, "Now that (a hand) has been mutually extended." Both parties have agreed to the conditions and the tablet is, then, a statement of the agreement. The form *ittatrus* is a Gt perfect of *tarāšu*, which is otherwise unattested (cf. *AHw.*, vol. 3, p. 1327). In fact, von Soden, in *AHw.*, reads *i-ta-ru-uy*, as do Kohler and Ungnad, *Assyrische Rechtsurkunden*, p. 388, which would be a simple G perfect. There are, however, a fair number of hapax Gt forms, and the reciprocal meaning is appropriate here.

¹⁸ Kwasman reads lines 2–6 as follows: "Shamash-kēnu-ušur, the son of Attar-qāmu, the scribe, shall give KUR-adimri, the daughter of Attar-qāmu, the scribe, in place of blood money for Samaku (who was murdered) and washes the blood away" (*Neo-Assyrian Legal Documents*, p. 393). In order to render it this way, however, Kwasman must separate *mārūšu* from the following phrase, *ša¹ sa-ma-ku*, posit that it refers back two lines to Attar-qāmu, and claim that despite the single occurrence of the personal name Attar-qāmu, it is linked to both Shamash-kēnu-ušur and KUR-adimri. Furthermore, Kwasman assumed that the first three signs in line 4' are LÚ.A.BA, *tuṣṣarru*, "scribe." These signs, to be sure, are given in Johns' copy of *ADD* 321, but Parpola has collated the line and determined that the third sign is *na*, thus LÚ *a-na* ("Collations to Neo-Assyrian Legal Texts from Nineveh," p. 49).

¹⁹ The prepositional phrase *ina muḥḫi* is a bit ambiguous, since it can mean either "on top of" or "nearby," but the sense of it, as translated here, works well in this context.

²⁰ Literally, "whoever transgressed before someone shall pay . . .," meaning "to act against an agreement." Cf. the numerous attestations in Neo-Assyrian contracts, *CAD*, vol. N/I, s.v. *nabalkutu*, p. 13.

In the Neo-Assyrian period a number of parties assumed active roles in the process of remedying a homicide. The parties specific to the case asserted their rights and obligations and assented to the negotiations.

A role for the victim's family appears in the Middle Assyrian laws as well. MAL A 10 reserves the right of the claimant from the victim's family to choose between killing the slayer or forcing him to pay.

[If either] a man or a woman enters [another man's] house and kills [either a man] or a woman, [they shall hand over] the killers [to the head of the household]. If he chooses, he shall kill them, or if he chooses to come to an accommodation, he shall take [their property]. And if there is [nothing of value to give from the house] of the killers, either a son [or a daughter] . . .

The right of the victim's family is the basis of another statute, B 2:

If a man who has not yet received his share of the inheritance takes a life, they shall hand him over to the next of kin.²¹ Should the next of kin so choose, he shall kill him, or if he chooses to come to an accommodation, then he shall take his share of the inheritance.

The role of the claimant from the victim's family here is to decide on the penalty. In general, it appears, families had the right to either execution or compensation; the legal institutions of a particular society were required to preserve the rights of the family to choose. This is to be distinguished from the role of the avenger in feud, where the avenger has the right and responsibility to take the initiative and kill the murderer on sight. In MAL A 10, other individuals have arrested the murderer and have handed him over to the victim's family. In Mesopotamia, the victim's family did not shoulder the burden of remedying the murder but could participate in aspects of the case. The actions of the victim's family did not have to insure that the slaying was punished.²²

There is a striking contrast between the Mesopotamian and the biblical materials in regard to certain technical terms for the parties involved in remedying the homicide. The Bible's term, גאל הדם, refers to a relative of the victim, whereas the Mesopotamian documents refer to *bēl damê*, a term that can refer either to the slayer or to the claimant from the victim's family.²³ The fact that the term *bēl damê*, "the owner of the blood," is used to

²¹ Literally, "the owner of life."

²² The Edict of Telepinus 49 is a special case: although it preserves the right of the claimant from the victim's family to choose between killing the slayer or forcing him to pay, it applies only within the royal family. It is a mid-seventeenth century text, sketching the state of affairs to the royal household at the time of Telepinus's accession. It emphasizes that the prosperity of the country and royal family depends directly upon harmony within the royal family. Above all, assassination of the royal princes by other members of the royal household must cease. (Cf. Edgar H. Sturtevant and George Bechtel, *A Hittite Chrestomathy*, William Dwight Whitney Linguistic Series [Philadelphia, 1935], p. 200; Inge Hoffmann, ed., *Der Erlass Telipinus*, Texte der Hethiter, Heft 11 [Heidelberg, 1984], pp. 52–53).

And a case of murder is as follows. Whoever commits murder, whatever the heir himself of the mur-

dered man says (will be done). If he says: "let him die," he shall die; but if he says: "Let him pay compensation," he shall pay compensation. But to the king, he shall not pay compensation.

The Edict of Telepinus assumes a court process in which the victim's heir is called upon to decide the penalty that others carry out.

²³ The phrase's appearance in PPA 95, where the individual named as a *bēl damê* is a witness to the payment made by a father for a homicide his son committed, and in the Vassal Treaties of Esarhaddon (D. J. Wiseman, *The Vassal-Treaties of Esarhaddon* [London, 1958]), ll. 576–78, 582–84, is clear evidence that the term can refer to the claimant from the victim's family. The phrase's appearances in ABL 1032, r. 8, ABL 1109, r. 10, and Šamši-Adad I, text 2, iv, 17 (in A. K. Grayson, *Assyrian Rulers of the Third and Second Millennium BC (to 1115 BC)*, Royal Inscriptions of Mesopotamia, Assyrian Periods, vol. 1 ([Toronto and

refer to both reflects the shared responsibility manifest in the Mesopotamian process, where both parties must participate, the party making the claim and the party obligated to discharge the claim. The biblical process, by contrast, focused on the claimant from the victim's family.

This difference between biblical law and Mesopotamian law has direct ramifications for the types of institutions involved. Because there were no blood feud and no blood avenger, cities of refuge were, therefore, unnecessary and did not exist in Mesopotamia; they were an essential part of the process where feud was in effect, that is, in the Hebrew Bible.

III. THE INVOLVEMENT OF THE STATE

For the same reason, the role of the monarchy and central government is different in Mesopotamian texts and the Bible. In the Hebrew Bible, their role is limited. Exodus 21, Leviticus 24, Numbers 35, and Deuteronomy 19 and 21 do not portray any involvement by the monarchy. The only reference to a central government is found in Deut. 17:8–10, where a local court could appeal to the levitical priests and the judge at the central sanctuary for clarification of the law in a difficult case: the facts of the case were then remanded to a lower court. As to the role of the king himself, only the narrative of 2 Sam. 14:1–17 indicates that the king could overturn the law.²⁴ The king, however, is portrayed as hesitant as to whether he ought to become involved. The wise woman presents her case, King David equivocates, and the wise woman presses him to clarify his ruling.²⁵

In contrast, the crown and central authority played a major role in the rest of the ancient Near East. Once the legal process had been launched by a private individual, a central authority or monarchy assumed oversight of the situation. Officially constituted authority intervened in the resolution of the dispute in the Old Babylonian text, CT 29 42.²⁶

Buffalo, New York, 1987], p. 54) clearly show that it can also refer to the slayer. Cf. Roth, "Homicide in the Neo-Assyrian Period," pp. 363–65.

²⁴ In general in the Pentateuch, the role of the king is ignored. While this might tell us more about the Pentateuch than legal procedures, even in Deuteronomy, the one Pentateuchal text that acknowledges the monarchy, the king's role in the legal process is submerged.

A clear distinction must be drawn between the ideal of the king as the one who assures justice and the reality of the king's role: there is no evidence that the king acted as a court of last resort (Keith Whitelam, *The Just King: Monarchical Judicial Authority in Ancient Israel*, Journal for the Study of the Old Testament, Supplement Series 12 ([Sheffield, 1979], pp. 29–37, 197–206, 219–20). The rise of the monarchy, according to Whitelam, gave rise to new legal realms, such as the royal estate and crown officials, which were outside the already established judicial system of the local communities.

²⁵ There is one instance in which the king initiated the process, 2 Samuel 21. This is because the Gibeonites were enslaved to the Israelites and did not dare wreak vengeance on an offender without permission, especially from a high-ranking family such as Saul's.

It is important to note that the text reports that David did not execute Saul's sons himself but handed them over to the blood avengers, the Gibeonites. Even in a time of national calamity, the privilege of blood vengeance is not eliminated. Cf. Samuel E. Loewenstamm, "The Laws of Adultery and Murder in Biblical and Mesopotamian Law," in idem, *Comparative Studies in Biblical and Ancient Oriental Literatures*, Alter Orient und Altes Testament 204 (1962; Kevalaer and Neukirchen-Vluyn, 1980), p. 152. This episode is anomalous in that Saul's sons are executed for Saul's crime, but revenge for politically motivated killing is assumed to encompass more than the guilty. Amaziah's restraint in killing only his father's assassins is considered by the Deuteronomist to require explanation (2 Kings 14:5–6).

²⁶ *Cuneiform Texts from Babylonian Tablets in the British Museum* 29 (London, 1910), pls. 41–43; P. Dhorme, "Mélanges," *Revue d'Assyriologie* 8 (1914): 102–5; Arthur Ungnad, *Babylonische Briefe aus der Zeit der Hammurapi-Dynastie* (Leipzig, 1914), pp. 180–84; John David Fortner, "Adjudicating Entities and Levels of Legal Authority in Lawsuit Records of the Old Babylonian Era" (Ph.D. diss., Hebrew Union College, 1996), pp. 938–40.

(1–3) When Iqqatum died, Ibni-Amurrim and Ilu-Shamash, sons of Iqqatum, initiated a suit regarding the property of their father's estate. (4–8) Iddin-Irra, son of Tapigiri-Shamash, Nannatum, son of Naram-Sin, Ilu-bani, son of Ipiq-Adad, Appan-ilu, judge of Babylon, Imgur-Sin, son of Šilli-Adad, (and) Annatum, son of Awil-il rendered a decision for us in the first trial. (9) They investigated and each returned his finding. (10–16) They said as follows to Ilu-Shamash and Ibni-Amurrim: "Now, let Ashqudum²⁷ declare under oath at the gate of Ningal, 'I do not know the murderer of Iqqatum, I did not instigate (him), and I did not take the fortune of Iqqatum. I did not touch (it)'. Ashqudum and Amat-Amurrim shall take an oath." (17–22) They (Ashqudum and Amat-Amurrim) did not accept this judgment, and in a second trial (further litigation), Haya-abni-ilu, Iddin-Irra, Ilu-shubani, Nannatum, and Appan-ili, judge of Babylon, tried (?) them (Ashqudum and Amat-Amurrim) inside the storehouse. (23) They did not accept this judgment. (24–29) In a third trial, they presented (themselves/the case) to the king. The king sent us, (namely) Ashqudum, Ilu-Shamash, and Amat-Amurrim, to the River (ordeal). We reached the River (ordeal), the true judge, and Ilu-Shamash said as follows: "I know who killed my father." (30–32) Amat-Amurrim said as follows: "What I eat and what I lie across²⁸ is my master's. I did not acquire (it) fraudulently."²⁹ (32–40) Lushtamar, the attendant, Burtu-Ishtar, the wagon-driver, Shep-Irra, the soldier of the king, Sin-aham-iddinnam of the king('s court) . . . x of the king, Adad-mansum . . . -ibni, son of . . . annazi-Marduk, Belanum . . . son of Etellum. These are their witnesses before the River (ordeal).

In a Neo-Babylonian case, TCL 12 117, the city assembly of Uruk investigated an attempted murder on the royal commissioner of the Eanna temple then turned the case over to the crown judges.³⁰

(1–7) The citizens before whom (was presented the case of) Ibni-Ishtar, son of Amēl-Nanā, (who) removed an iron dagger from his belt against Ilu-rimanni, a chief official of the king, an appointed officer of Eanna, at the great gate of Eanna. The assembly bound and sealed the iron dagger which he drew from his belt.

The actual judgment was at the jurisdiction of royal judges, while the assembly was limited to the preliminary investigation. In a fifteenth-century case from Alalakh, Wiseman Alalakh 17, the slayer's property has been confiscated by the palace.³¹

(1) Seal of Niqmepa (2–6) Shatuwa son of Suwa of Luba has made a payment to Apra³² for his daughter(-in-law?) and according to the decree of Aleppo has brought a gift. (7–11) Apra has turned against a private enemy and as his punishment has murdered him. Therefore his property has been confiscated by the palace. (11–14) Shatuwa has come and received what is his, namely, 6 talents of copper and 2 bronze daggers. (15–16) Therefore from this day Niqmepa has satisfied Shatuwa.

²⁷ Dhorme identified Ashqudum as the brother of the litigants on the evidence of another tablet, "Mélanges," pp. 101–2.

²⁸ The meaning of the verb *parāku* is "to lie across; to obstruct, to block." Dhorme understood Amat-Amurrim's statement as "That which I eat and that which I cover" ("Mélanges," p. 104). Ungnad rendered her statement as "What I eat and carry" (*Babylonische Briefe*, p. 183). *CAD*, vol. S, s.v. *sakālu*, pp. 68b–69a, translated it as "all that I eat and that I wear."

²⁹ Ungnad, in *Babylonische Briefe*, p. 183, suggested that this verb is from the root *s-k-l*, meaning "to trade," but *CAD*, vol. S, s.v. *sakālu*, pp. 68b–69a, demonstrated that this meaning is limited to the Neo-Babylonian period. Only in Neo-Babylonian is the

semantic field of *s-k-l* equivalent to that of the corresponding Hebrew root. Otherwise, the verb *sakālu* means "to appropriate."

³⁰ G. Contenau, *Contrats néo-babyloniens*, TCL 12 (Paris, 1927), pl. 56, no. 117; M. A. Dandamaev, "The Neo-Babylonian Popular Assembly," in Petr Vavroušek and Vladimír Souček, eds., *Šulmu: Papers on the Ancient Near East Presented at International Conference of Socialist Countries (Prague, Sept. 30–Oct. 3, 1986)* (Prague, 1988), pp. 67–68.

³¹ D. J. Wiseman, *The Alalakh Tablets* (London, 1953), no. 17.

³² Apra is mentioned in texts 139, 167, and 170, but no further information about him can be gleaned from these.

(17–18) In the future . . . Shatuwa will (bring no further claims). (19–23) Witness: Apu-x. Witness: x-bēl. Witness: Dura his brother. Witness: Irkabtu. Witness: Iraḥalpa. Witness: LÚ-ia. Witness: Shar-ruwa the scribe.

It can be speculated that the palace refunds the bride-price to the father because the daughter might become a slave as compensation for the slaying and the father does not want to get involved in litigation.

Although in Neo-Assyrian documents the private parties were required to assume greater initiative than elsewhere in Mesopotamia, the crown still maintained control. When the private parties involved asserted their rights, acknowledged their responsibilities, and assented to the negotiations, the monarchy managed them by defining the limits of their rights, serving as a mediating body for the disputants, and ensuring that the obligation was properly fulfilled. There was an official recording institution of the monarchy at which outstanding homicide obligations were deposited, pending the claim of the victim's family (*ADD* 618³³ and 321).³⁴ Next, the parties negotiated the amount of compensation with the intervention of a mediating authority, an officer of the crown (*ADD* 164).³⁵ Finally, when a specific amount had been agreed upon, the obligation was paid in the presence of an official authority, a crown official (*ADD* 806³⁶ and *PPA* 95³⁷). In sum, once the state became involved, the participation of others in the process became less active. The monarchy in essence managed the case as it proceeds to its conclusion. It must be recognized that for Assyrians homicide is not entirely a state crime, nor is it entirely a private offense. It had first significance for the king or community groups affected, whom the state, then, tried to manage.³⁸

³³ Since *ADD* 618 was deposited in Nineveh, it can be surmised that the villagers had this document sent to Nineveh and deposited in a central archive as an official recognition of their obligation, even before the crown became involved, in anticipation of the government's oversight of the process.

³⁴ Roth arranged three of these texts in such a progression, in "Homicide in the Neo-Assyrian Period," pp. 362–63.

³⁵ *ADD*, vol. 1, no. 164, pp. 97–98; Kohler and Ungnad, *Assyrische Rechtsurkunden*, no. 658, p. 387; Kwasman, *Neo-Assyrian Legal Documents in the Kouyunjik Collection of the British Museum*, no. 108, pp. 128–29; Kwasman and Parpola, *Legal Transactions of the Royal Court of Nineveh*, part 1, SAA 6 (Helsinki, 1991), no. 264, p. 212; Jas, *Neo-Assyrian Judicial Procedures*, no. 1, pp. 8–11; Postgate, *Fifty-Neo-Assyrian Legal Documents*, no. 44, pp. 159–60.

³⁶ *ADD*, vol. 2, no. 806, pp. 59–60; F. M. Fales and J. N. Postgate, *Imperial Administrative Records*, part 2, SAA 11 (Helsinki, 1995), no. 222, pp. 149–50; Roth, "Homicide in the Neo-Assyrian Period," p. 357.

³⁷ *PPA*, pp. 123–24 and pl. 44; Roth, "Homicide in the Neo-Assyrian Period," pp. 358–59; Jas, *Neo-Assyrian Judicial Procedures*, no. 43, pp. 66–67.

There are two elements that mark off *PPA* 95 from other receipts. The payment recorded in this document is made in the office of the palace scribe—the usual practice in Assyria is to pay the fine directly to the injured party—and lacks the validating seal or fingerprint impression of the party being paid. The creditor is

not named in the operative section of the document that mentions the repayment because the money is not paid directly to him. His name can be inferred because one of the witnesses, Nabu-remanni, is identified as *bēl damē*, "the owner of the blood," the claimant from the victim's family. Otherwise, we would not know that this debt has anything to do with homicide. (The large size of the debt may also be an indication that it is blood money). The *bēl damē*, the claimant from the victim's family, does not act as a party to the transaction: he is solely a witness because it is the palace that assumes an active role at this point in the proceedings. *PPA* 95 is a record of a payment made before the authorities who had decided the case and had imposed the fine and was, therefore, deposited in the public archives. (The governor's palace archives excavated in Nimrud are official archives and do not contain the private archives of the governor; see Postgate, *The Governor's Palace Archive*, p. 10).

³⁸ A role for community groups in Mesopotamia exists in a single statute in the Laws of Hammurapi. Statute 24 addresses the case in which a killer has not been arrested. The mandate here is that if a person is killed in the course of a robbery, the city and governor must pay 60 shekels to the victim's kinsman if the robber is not arrested. The communal authorities must compensate the victim's family when the killer himself cannot be forced to. Otherwise, in Mesopotamia, the state managed one individual's claims against another individual.

The king himself appeared as an actor in the judicial realm. In the Nippur Murder Trial, the case was presented before the king,³⁹ who then sent the case back to the Assembly of Nippur for adjudication. In CT 29 42, lower courts were the appropriate venue for the first two trials, but the final appeal was made to the king, who then dispatched the case to be tried in a cultic setting. The case recounted in *BBS* 9⁴⁰ was brought before the king: no lower court intervened.⁴¹

(1–5) In the second year of Ninurta-kudurri-ušur, the king, Arad-Sibitti, son of Atrattash attacked the *ḥarmītu*-woman of Burusha, the maker of bows and arrows, whom Bel-ilani-ušurshu had married, with an arrow and killed (her). (6–8) Before Ninurta-kudurri-ušur, the king, Burusha, the maker of bows and arrows, and Arad-Sibitti, son of Atrattash, met in litigation. (8–11) Ninurta-kudurri-ušur, the king, said to Arad-Sibitti: “Go and give 7 slaves to Burusha.” (11–14) Arad-Sibitti did not complete the payment of slaves. Burusha succeeded in his claim against him for 7 slaves although he was angry about the slave woman. . . .

There is no clear pattern for determining when a case would be handled by the king or by a functionary of the central government. It appears impossible to draw conclusions about royal participation vis-à-vis a particular time period or location because of the danger of homogenizing all these cases stretched over considerable time and place. It is possible, however, to measure the congruence of one king’s legal function to the evidence from other monarchs. In the light of the extensive documentation of Hammurapi’s participation in the judicial process, W. F. Leemans categorized the ways a king may dispose of a case: (1) the king may himself act as a court and render a judgment; (2) the king may determine the law but remit the case to local judicial authorities for the determination of the facts; and (3) the king may remit the entire case to the appropriate local authorities.⁴² Although Leemans dealt mostly with disputes over land tenure and revenues, the ways in which the king participates in these cases are congruent with the manner in which the king participates in homicide cases. In *BBS* 9, the king acted as judge. In CT 29 42, the king issued a ruling as to how the third appeal was to be handled and assigned it to a particular court. In the Nippur Murder Trial, the king assigned the case to the local assembly. Furthermore, even though this paradigm is constructed from cases involving one particular king, Hammurapi, it fits the evidence we have for lesser documented kings. The Assyrians of the Neo-Assyrian period, for example, appeared to be able to appeal to their king in person, who then disposed of the case as he wanted.⁴³

To sum up so far, the Mesopotamian documents confirm the involvement of the state in remedying homicide concomitant with the initiation of the legal process by individuals. The victim’s family had the right to make a claim, but there does not seem to be anxiety engendered by the specter of a blood avenger waiting to pounce. By contrast, feud operated

³⁹ The king was in Isin even though it appeared that the homicide occurred in Nippur because Nippur was under the political domination of Isin at that time. Cf. the analysis of the situation in late 1900s B.C.E. in Georges Roux, *Ancient Iraq*, 3d ed. (1965; London, 1992), p. 183.

⁴⁰ L. W. King, ed., *Babylonian Boundary-Stones and Memorial Tablets in the British Museum* (London, 1912), pp. 51–69, pl. 79.

⁴¹ The critical role of the crown, so pronounced in

the other documents we have analyzed, is simply not mentioned explicitly in the Mesopotamian laws. It may be implicitly assumed in the ascription of so many of the law codes, the Laws of Lipit-Ishtar, the Laws of Ur-Nammu, and the Laws of Hammurapi, to kings.

⁴² Cf. W. F. Leemans, “King Hammurapi as Judge,” in *Symbolae Juridicae et Historicae Martino David Dedicatae II* (Leiden, 1968), p. 110.

⁴³ Cf. J. N. Postgate, “‘Princeps Iudex’ in Assyria,” *RA* 74 (1980): 180–82.

in biblical law, and cities of refuge were required for the slayer's protection. The role of the king was limited.

IV. SOCIAL STRUCTURE AND THE ADJUDICATION OF HOMICIDE

The difference between Israel and Mesopotamia can be attributed to their social, political, and economic differences. A pivotal characteristic of Mesopotamian society is urbanism,⁴⁴ embodying a social organization which is centralized, bureaucratic, and specialized; whereas the constituent parts of the Bible reflect a decentralized, mildly bureaucratic, rural agricultural society. This is so, even though the cities of Mesopotamia were highly dependent on a massive agricultural base and biblical Israel was at times a rump state centered on Jerusalem.

The essential urbanism of Mesopotamian society was pervasive.⁴⁵ Urban centers in Mesopotamia lay in sight of one another: cities were densely concentrated. The city was the seat of culture, and by definition, nonurban life was uncultured. A bucolic countryside did not lie outside the city in Mesopotamian thought. Nomads were held in contempt.⁴⁶ The idea that urbanism was the only possible social structure was so extreme that the destruction of a rival political power was portrayed as the destruction of cities, even if the enemy lacked cities to destroy.⁴⁷ The great literary works reflect the climate and temper of city life, not an earlier period of preurban/tribal life.⁴⁸ The Epic of Gilgamesh, for example, celebrates urban life through the acculturation of Enkidu and the exaltation of the city of Uruk.

One of the characteristics of urbanism is the substitution of a society organized politically on territorial principles for one based on ties of kinship.⁴⁹ This type of society was divided by class and ruled by an elite, whether military, religious, or political. This is certainly true for Mesopotamia. A Mesopotamian city was a society organized hierarchically along territorial or political lines, not along lines of kinship.⁵⁰ Identifying oneself as part of an extended family lessened in importance early in Mesopotamian history.⁵¹ People acted primarily as individuals in the social and legal spheres: extended families did not dominate economic or political life. The most basic social unit was the nuclear, not the extended,

⁴⁴ Marc Van De Mieroop, *The Ancient Mesopotamian City* (Oxford, 1997), pp. 1–19.

⁴⁵ Benno Landsberger, *Three Essays on the Sumerians*, intro. and trans. Maria deJ. Ellis, Monographs on the Ancient Near East, vol. 1/2 (Los Angeles, 1974), p. 3.

⁴⁶ K. van der Toorn, *Sin and Sanction in Israel and Mesopotamia: A Comparative Study*, Studia Semitica Neerlandica 22 (Assen, 1985), p. 155, nn. 5–8.

⁴⁷ Cf. the Assyrian campaign in 714 B.C. against the Mannaeans, south of Lake Urmia (F. Thureau-Dangin, *Une relation de la huitième campagne de Sargon*, TCL 3 [Paris, 1912], p. 16, col. i, ll. 89–90), or a campaign in the marshes at the head of the Arabian Gulf (D. Luckenbill, *The Annals of Sennacherib*, OIP 2 [Chicago, 1924], pp. 35, col. iii, ll. 65–70).

⁴⁸ Van der Toorn, *Sin and Sanction*, p. 3. For a rare spate of anti-urban feeling, cf. Erica Reiner, *Your Thwarts in Pieces, Your Mooring Rope Cut: Poetry from*

Babylonia and Assyria (Ann Arbor, 1985), pp. 44–45.

⁴⁹ V. Gordon Childe, "The Urban Revolution," *The Town Planning Review* 21 (1950): 16; Robert McC. Adams, *The Evolution of Urban Society: Early Mesopotamia and Prehispanic Mexico* (Chicago, 1966), pp. 87, 110.

⁵⁰ Van De Mieroop, *The Ancient Mesopotamian City*, pp. 100–104; Samuel Greengus, "Legal and Social Institutions of Ancient Mesopotamia," in Jack M. Sasson, ed., *Civilizations of the Ancient Near East* (New York, 1995), p. 469.

⁵¹ I. M. Diakonoff, "Extended Families in Old Babylonian Ur," *ZA* 75 (1985): 52; Elizabeth Stone, "Texts, Architecture and Ethnographic Analogy: Patterns of Residence in Old Babylonian Nippur," *Iraq* 43 (1981): 19–33; Norman Yoffee, "Aspects of Mesopotamian Land Sales," *American Anthropologist* 90 (1988): 119–30.

family. This accounts for the absence of blood feud and the presence of the central government and crown in the Mesopotamian adjudication of homicide.

It must be noted that although urbanism and the concomitant dissolution of kinship ties were primary characteristics of Mesopotamian society, there was some variation over time and geography. First, although extensive urbanism was the norm already early on, literary texts did refer to clans, *im-rù-a*. These clans, however, are rarely mentioned in administrative documents.⁵² In the Old Babylonian period, there is some evidence from land sales that there were cases of joint ownership of land. The issue with these particular cases from the Old Babylonian period is whether these references to joint ownership signify that an extended family was involved or whether they were a resuscitation of family ties in order to comply with a legal requirement that was nothing more than an archaic relic of the role of the extended family.⁵³ Later on, during the late second millennium and first millennium B.C.E. in Babylonia, there was a marked decline in urbanism. By contrast, the Neo-Assyrian empire witnessed a massive expansion of cities. Furthermore, it is generally assumed that kinship ties in general were more significant for seminomadic people who lived outside of the settled, urban areas.⁵⁴ What is striking, though, is that with the partial exception of Assyria, variation in the extent of urbanism and kinship ties over time appears *not* to be reflected in the adjudication of homicide.

In contrast to Mesopotamia, biblical Israel is characterized by the persistence of social organization based on kinship ties.⁵⁵ It is no wonder, then, that the initiative for remedying a homicide lay with the victim's family. The family in biblical Israel acted as a mutual aid society and, therefore, in a case of homicide, blood feud ensued.

This understanding of Israelite social development contravenes the dominant models of state formation, which dictate that a kin-based society, such as that of a tribe or chiefdom, breaks down in a territorial state.⁵⁶ These theories assume that the development of society culminates in a state, a territorially defined, class-based society reflecting a fundamental change between pre-state and state societies, especially in terms of the extent to which the central government controls society. They equate kin-based structures with pre-state forms of organization. Statehood represents a fundamental reorganization of society. Controversy has arisen, therefore, over when the Israelite polity moved from stage to stage—one

⁵² J. N. Postgate, *Early Mesopotamia: Society and Economy at the Dawn of History* (London, 1992), p. 83; Åke Sjöberg, "Zu einigen Verwandtschaftsbezeichnungen im Sumerischen," in D. O. Edzard, ed., *Heidelberg Studien zum Alten Orient: Adam Falkenstein zum 60. Geburtstag* 17. Sept. 1966 (Wiesbaden, 1967), pp. 201–31.

⁵³ Postgate, *Early Mesopotamia*, pp. 94–96.

⁵⁴ Greengus, "Legal and Social Institutions of Ancient Mesopotamia," p. 469.

⁵⁵ J. David Schloen, *The House of the Father as Fact and Symbol: Patrimonialism in Ugarit and the Ancient Near East*, Studies in the Archaeology and History of the Levant 2 (Winona Lake, Indiana, 2001), pp. 46, 51, 135–83; Shunya Bendor, *The Social Structure of Ancient Israel: The Institution of the Family (Beit 'Ab) from the Settlement to the End of the Monarchy*, Jerusalem Biblical Studies 7 (Jerusalem, 1996),

pp. 82–86; Yigal Shiloh, "The Four-room House—Its Situation and Function in the Israelite City," *IEJ* 20 (1970): 180–90; Norman K. Gottwald, *The Tribes of Yahweh: A Sociology of the Religion of Liberated Israel 1250–1050 B.C.E.* (Maryknoll, New York, 1979), pp. 267, 298–302.

⁵⁶ The reasons for the transformation differ among various theoreticians. Elman Service postulated that societies develop from tribe to chiefdom to state. As societies become more densely populated, they require stronger and more permanent coordination by a chief and his family, who thereby gained power and prestige. Morton Fried posited that deepening social stratification due to the rise of private property spawned authority structures on the level of the state. See Daniel M. Master, "State Formation Theory and the Kingdom of Ancient Israel," *JNES* 60 (2001): 123–24.

question that inspires heated debate is whether ancient Israel was a full-blown state during the reign of David or only a chiefdom.⁵⁷ These models of state formation make an explicit contrast between kin-based tribes and chiefdoms and territorially-based states, but this distinction is insufficient.

More recent analyses have noted the striking persistence of kin-based social structures in ancient Israel, and a different developmental theory is necessary. Israelite society, being patrimonial or segmentary, retained kin-based structures while developing a limited amount of centralization.⁵⁸ Israelite society was divided up into households of extended families, that is, patrimonies or segments based on kinship ties.

In general, patrimonial authority depended on the forces of tradition and personal association. The master of a household has authority because of his personal relationship with the members of a household and because of tradition that dictates that they obey him. This model can be extended to the relationship of individual houses to the leader of a group of households. An entire society can be organized on the model of a single household. Just as members of a household would obey the master of a house, so would individual houses obey a ruler. This model can be applied to an entire state: the coalescence of a kingdom does not necessarily involve change in all levels of society. The development of a patrimonial state would add a higher level of social organization on top of the existing level of social organization. In the case of ancient Israel, what changed with the rise of the monarchy was the addition of another household, the royal household, at the next higher level of social organization. Kin-based authority systems would permeate such a society. The extended patriarchal family was the fundamental metaphor of social and political relationships. The extended household acted as the organizing model of society, and the entire social order was an extension of the ruler's household. With this model in mind, we no longer need to try to plot monarchic Israel's place on a trajectory of development that dictates that kin-based society was necessarily effaced in a state.

The social structure of biblical Israel consisted of extended kin groups or lineages, and this segmentary structure persisted through the First Temple period and reappeared in the exilic period and the early Second Temple period.⁵⁹ Its recrudescence was not an invention or revival of terms dormant for half a millennium. This can be extrapolated from both literary and archaeological remains. Although these data are fragmentary and originate from a wide range of dates of origin, including evidence whose date can be fixed with some degree of precision and evidence whose date must remain approximate at best, it can provide a general picture of Israelite society. Furthermore, literary and archaeological data are independent of one another: if one fails, the other is not affected.

Both First Temple and Second Temple biblical texts express the identity of individual Israelites in genealogical terms that refer to extended kin groups (Josh. 7:14–18; 1 Sam. 9:11; Ezra 2; 8:1–14; Neh. 7:4–72; 11; 1 Chron. 2–9).⁶⁰ Individuals are identified by tribe, clan,

⁵⁷ Bellefontaine, "Customary Law and Chieftainship," pp. 47–72; J. W. Flanagan, "Chiefs in Israel," *JSOT* 20 (1981): 47–73; David W. Jamieson-Drake, *Scribes and Schools in Monarchic Judah: A Socio-Archaeological Approach*, Journal for the Study of the Old Testament, Supplement Series 109, Social World of Biblical Antiquity Series 9 (Sheffield, 1991), pp. 138–45.

⁵⁸ Capital cities in ancient Israel functioned as regal-ritual cities as defined by Richard G. Fox, *Urban Anthropology: Cities in Their Cultural Setting* (Englewood Cliffs, New Jersey, 1977), pp. 16–57.

⁵⁹ Lawrence Stager, "The Archaeology of the Family in Ancient Israel," *BASOR* 260 (1985): 24.

⁶⁰ Abraham Malamat, "Mari and the Bible: Some Patterns of Tribal Organization and Institutions," *JAOS*

and lineage/nuclear family, and their genealogies go back generations beyond ancestors with whom they would have personally had contact.

Attachment to patrimonial property remained tenacious. A number of examples can show this. The priestly law in Lev. 25:13–17 stipulates that patrimonial property that has been sold reverts to the family in the Jubilee year: it can never be alienated. Num. 36:5–9 provides legislation preventing patrimonial estates from shifting from tribe to tribe when the only heirs are daughters, who are otherwise not entitled to the property. In the tale of Naboth's vineyard (1 Kings 21:1–15), set in the mid-ninth century, Ahab the king wants to purchase Naboth's vineyard, but Naboth refuses to sell the vineyard, which was part of his patrimonial estate, to the king, stating: "The LORD forbid that I give you the inheritance of my fathers." The upset king realizes that he is obliged to accede to Naboth's refusal. The prophet Jeremiah, active in the late seventh and early sixth centuries, purchased the field of one of his cousins in their ancestral village of Anathoth in compliance with the law of redemption, which offered the nearest kin the first right of purchase (Jer. 32:6–15).

The monarchy had only a slight impact on the social structure of biblical Israel at the local level. The provincial reorganization attributed to Solomon preserved much of the pre-monarchic tribal boundaries intact.⁶¹ The reorganization of society at the hands of the monarchy did not affect kinship structures at the level of extended families. This is reflected in a variety of biblical texts. The book of Deuteronomy, at least a version of which dates from the late seventh century and which received a final redaction during the exilic period, is addressed to a villager living away from the central sanctuary in his ancestral village. Although the elders lost much of their political authority during the monarchy, they did not lose it completely and were called upon to exercise it in times of national emergency (1 Kings 20:7; 2 Kings 23:2), and the institution of the elders was restored in the exilic and the Second Temple periods (Jer. 29:1; Ezek. 8:1; 14:1; 20:1,3; Ezra 5:5,9; 6:7,8,14; Ezra 2:68; 4:2; 8:1; Neh. 7:70; Ezra 1:5; 4:3). The texts present a segmentary social structure, reflecting the prevalent way of life consisting of the settlement of extended families in small towns.

Archaeological data coincide with the biblical presentation of Israelite society. Samaria ostraca of the eighth century B.C.E. record place-names that also appear as names of the children of Menasseh in biblical genealogies in Josh. 17:2–3 and Num. 26:30–33 and reflect the continuing integrity of patrimonial structures centuries after the settlement of Canaan.⁶² Excavations attest to the presence of family compounds, where an extended family would dwell, well into the Iron II period at Tell Beit Mirsim, Tell el-Far'ah, and Tell en-Naṣbeh and perhaps extending into later periods as well.⁶³ The presence of family tombs,

82 (1962): 143–50; Malamat, "King Lists of the Old Babylonian Period and Biblical Genealogies," *JAOS* 88 (1968): 163–73. A useful comparison can be made to first-millennium Babylonia where individuals are named "personal name 1, son of personal name 2, descendent of personal name 3," where personal name three is not an individual's grandfather but an ancestor or professional designation, akin to modern-day family names (see Van De Mieroop, *The Ancient Mesopotamian City*, pp. 107–9).

⁶¹ Yohanan Aharoni, *The Land of the Bible: A Historical Geography*, 2d ed., rev. and enl., trans. and ed.

Anson F. Rainey (Philadelphia, 1979), p. 367; Baruch Halpern, *The Constitution of the Monarchy in Ancient Israel*, Harvard Semitic Monographs, no. 25 (Chico, 1981), pp. 251–56.

⁶² Ivan T. Kaufman, "The Samaria Ostraca: An Early Witness to Hebrew Writing," *Biblical Archaeologist* 45 (1982): 229–39; Schloen, *The House of the Father as Fact and Symbol*, pp. 156–65.

⁶³ Stager, "The Archaeology of the Family in Ancient Israel," p. 22. Living in family compounds may be reflected in textual evidence as well: see the household of Micah pursuing the abducted Levite, Judg. 18:22.

which would be used by a clan for a number of generations, attests to the continuing importance of kinship ties, and it is surmised that the tombs would serve as a physical claim to patrimonial land.⁶⁴

Israelite society was an agrarian society settled in small towns, not an urban society. Although the monarchy produced a period of urbanization, the Iron Age II cities were almost entirely given over to administrative structures and were vacant of inhabitants.⁶⁵ The Israelite population lived out in the countryside in villages and farmsteads. Even Jerusalem at its greatest size of 50 hectares was only 15 percent the size of the central cities in Mesopotamia.⁶⁶

Individuals in ancient Israel fitted into a social pattern that differed sharply from that of Mesopotamia. The overriding fact in Mesopotamian society was the state and its administrative subdivisions, whereas blood ties bound Israelite society. This distinction between Israelite and Mesopotamian societies had other effects. Patrimonial property was not attested in Mesopotamian society because it was organized on a nongentilic pattern, whereas a liberal policy of the sale and purchase of land was in effect.⁶⁷ Adoption, which abrogates blood ties, became a prominent institution in Mesopotamian society; levirate marriage, which protects blood ties, never did.⁶⁸

Assyrian law's distinctiveness may confirm this argument. Assyrian legal procedure differs from other Mesopotamian law in that it posits a role for the slayer's community and for the victim's family. One possible explanation for this variance is Assyria's geographic difference from Babylonia and Sumer. This geographic difference had a profound impact on Assyrian social structure. The fact that Assyria was assured of sufficient rainfall for dry-farming meant that there were more permanent rural settlements further from cities than in Babylonia and Sumer, where permanent settlements were possible only near natural or artificial bodies of water.⁶⁹ The extended family persisted in a rural environment. Another possible explanation, less likely than the first, is that most of the Assyrian material comes from rural villages, while the rest of the documentation from Mesopotamia originates in urban settings. In general, the vast majority of the data we have for Mesopotamia is from urban sites: the smaller, outlying settlements have almost completely been neglected by excavators.⁷⁰ We have access to the Neo-Assyrian texts treating homicide

⁶⁴ Burial evidence has mainly been attested in Judean territory during the First Temple period. See Elizabeth Bloch-Smith, *Judahite Burial Practices and Beliefs about the Dead*, Journal for the Study of the Old Testament, Supplement Series 123 (Sheffield, 1992), pp. 148–50.

⁶⁵ Zeev Herzog, *Archaeology of the City: Urban Planning in Ancient Israel and Its Social Implications* (Tel Aviv, 1997), pp. 270, 276. Indeed, only modest remains can be dated to the United Monarchy, which is generally considered in contemporary scholarship to be a period of building of monumental architecture.

⁶⁶ Jamieson-Drake, *Scribes and Schools in Monarchic Judah*, p. 153.

⁶⁷ Malamat, "Mari and the Bible: Some Patterns of Tribal Organization and Institutions," p. 150. Johannes M. Renger, in "Institutional, Communal, and Individual Ownership or Possession of Arable Land in Ancient Mesopotamia from the Fourth to the End of the

First Millennium B.C.," *Chicago-Kent Law Review* 71 (1995): 269–320, argued for a more cautious analysis of the documents regarding the possession and sale of arable land. He contended that in Babylonia state-control over land, owing to state involvement in irrigation, gave way gradually to the increasing control of entrepreneurs, whereas in Assyria collective ownership over land was replaced by manorial control as the rural populace became impoverished.

⁶⁸ E. A. Speiser, "'People' and 'Nation' of Israel," *JBL* 59 (1960): 161.

⁶⁹ Van De Mieroop, *The Ancient Mesopotamian City*, p. 8; Greengus, "Social and Legal Institutions of Ancient Mesopotamia," p. 470.

⁷⁰ Robert McCormick Adams, *Heartland of Cities: Surveys of Ancient Settlement and Land Use on the Central Floodplain of the Euphrates* (Chicago, 1981), p. 248.

only because the Neo-Assyrian material was deposited in a state archive. Ironically, the effect of state control in Assyria sheds light on the extent, albeit limited, of the responsibility of communities in remedying homicide. Throughout Mesopotamia, not just in Assyria, rural communities always had the capacity for some measure of independence and for the maintenance of corporate social groups.⁷¹

V. CONCLUSION

The organization of society had a profound effect upon the concept of justice and the process of law in the Bible, and the treatment of homicide in biblical Israel was directly linked to the social structure of biblical Israel. Although the most influential culture of the ancient Near East, Mesopotamia, left its mark on almost every chapter of the Bible, the Mesopotamian adjudication of homicide differed radically from that in biblical Israel because of the profound differences in social organization between the two cultures. In Israel, kinship ties were strong, and the family acted as a mutual aid society, whereas in a heavily urban and centralized Mesopotamia, a bureaucracy had control. This is striking because biblical law was based upon Mesopotamian law and yet at the same time differed so greatly. The institutions that assured that a homicide would be investigated and remedied in biblical law were vastly different from those in Mesopotamian law. The difference originates in disparate conceptions of the organization of society. Blood feud operated in biblical law: a relative of the victim had the right to kill the slayer on sight with impunity, and the process by which homicide was adjudicated enabled the family to exercise its role while providing safeguards for the slayer. By contrast, in Mesopotamia, state institutions insured that homicide would be remedied. The victim's family had the legal right to make a claim upon the killer, but the fear that a blood avenger was about to strike down the killer is simply not manifest in Mesopotamian law.

⁷¹ *Ibid.*, p. 250.

