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Guido Pfeifer (Frankfurt am Main):

Judicial Authority in backlit Perspective: Judges in the Old Babylonian Period

Some of the earliest ever written records in the history of law are those concerning the resolution of disputes between private parties. The Neo Sumerian (or Ur III) period at the end of the third millennium B.C. already had its own style of court documents - the form marked with the note “*di til-la*”¹. The subsequent Old Babylonian epoch, which covers approximately the first four centuries of the second millennium B.C., represents a period in the history of the Ancient Orient, from which we have perhaps the greatest amount of documentary material from legal practice, including the documentation of legal disputes and judicial rulings made on them². 1

There are a wide range of possible interpretations with regard to the legal classification of the latter documents: on the one hand, the interpretation that the decision made by the judge regarding the dispute did not represent a binding judgement and was rather simply a suggestion on how to resolve the dispute. Their decision only achieved the force of law once the parties took an oath stating that they would not pursue further legal complaints and was therefore more comparable to a settlement or an arbitration agreement³. On the other hand, there is the alternative assumption that it was an authoritative and therefore enforceable decision similar to a *res iudicata*, which had both legal validity and preclusive effect⁴ in equal measure. These two interpretations more or less cover the entire spectrum of judicial and extrajudicial dispute resolution. 2

1 *di til-la*, sum. „closed case“. Essential reading: Adam Falkenstein's, *Die neusumerischen Gerichtsurkunden. Erster Teil: Einleitung und systematische Darstellung*, Munich 1956, p. 9-15; on Neo Sumerian court organisation *ibid.* p. 18-58. On early records see Sophie Démare-Lafont, art. „Prozeß (Procès). A. Mesopotamien.“, in: *Reallexikon der Assyriologie und Vorderasiatischen Archäologie (RIA)*, Volume 11, Berlin und New York 2006-2008, p. 72-91, p. 72-74. Abbreviations correspond to the index RIA 11, p. III-XLIV, unless stated otherwise.

2 On source material Hans Neumann, *Recht im antiken Mesopotamien*, in: Ulrich Manthe (ed.), *Die Rechtskulturen der Antike*, Munich 2003, p. 55-122, p. 83 as well as p. 90 f. on the courts.

3 An extremely concise summary of Julius Georg Lautner's theory in *Die richterliche Entscheidung und die Streitbeendigung im altbabylonischen Prozessrechte*, Leipzig 1922, in particular p. 35-67.

4 See Eva Dombradi, *Die Darstellung des Rechtsaustrags in den altbabylonischen Prozessurkunden (FAOS 20, 1 and 2)*, Stuttgart 1996, vol. 1, §§ 485-508; Gerhard Ries' discussion of this, *SZ* 116 (1999), p. 313-318, esp. p. 315 f.

The quality or the classification of this type of dispute resolution – as suggested not least 3
by the call to start this debate here – is dependent on the status, or put in more general
terms, on the disposition of those playing an influential and "decisive" role in this process.
This does not necessarily mean the parties involved in the legal dispute, but rather
primarily the judges⁵. This means that for the Old Babylonian records we must (also) pose
the question: what do we know about their judges and the organization of their courts?

At first glance, it would seem that we are able to give a solid answer to this question⁶: the 4
King served as the highest judicial power; however, he also delegated decisions to his
officials. The administration of justice at a local level was generally carried out by
committees of judges comprising approximately 3 to 10 judges (*dajjānū*), or less
commonly by individual judges. The mayor (*rabiānum*), the elders (*šībūtum*), the
assembly (*puhrum*) and the merchants' guilds (*kārum*) were involved in the decisions, as
well as other institutions such as „the town“ (*ālum*), „the citizens“ (*awīlū*) or „the
neighbourhood“ (*bābtum*) and the temple jurisdiction to a limited extent.

Nevertheless, if you look more closely, it soon seems apparent that our ignorance far 5
exceeds our (at least partially) secure knowledge: from the written records we are unable
to discover, *why*, apart from the judges in the narrower sense of the word (and who were
described as such), further groups were also involved in the process (as mentioned
above)⁷. We also have almost no knowledge about the way in which judgements were
reached or the time frame within which they were reached⁸. Equally, there are almost no
records describing the enforcement of these judgements⁹. It appears there was no specific
professional training or qualification to become a judge¹⁰. Evidently our questions, which
we are used to asking in the context of judicial and extrajudicial dispute resolution cannot
be satisfactorily answered by the sources available to us from the Old Babylonian period.
Thus we are unable to acquire detailed understanding of the judges and their real function,
despite the fact that they are clearly described as such in sources and are documented in

5 Similarly, Eva Dombradi, *Das altbabylonische Urteil. Mediation oder res iudicata? Zur Stellung des Keilschriftrechts zwischen Rechtsanthropologie und Rechtsgeschichte*, in: Claus Wilcke (ed.), *Das geistige Erfassen der Welt im Alten Orient. Sprache, Religion, Kultur und Gesellschaft*, Wiesbaden 2007, p. 245-279, p. 249.

6 On the following see Hans Neumann, art. „Richter. A. Mesopotamien.“, in: *RIA 11* (note 1), p. 346-351, p. 348.

7 Dombradi, *Urteil* (note 5), S. 252; *ibid.* on the possible link between the content of the dispute and the judicial bodies in personal and family legal issues.

8 Dombradi, *Urteil* (note 5), p. 265.

9 On this, Dombradi, *Urteil* (note 5), p. 260 ff.

10 See Neumann, *Richter* (note 6), p. 346 f.; *ibid.* on the context of the curriculum for the training to be a scribe.

written records. We can only make out the shadowy outline of the figure of the judge and flesh it out with our own suppositions and speculative assumptions. By so doing, we are projecting our own ideas onto the written records¹¹ and in this context, bringing our ideas about how a court is organized and functions to bear. Ultimately, the very methodology of our questioning is the reason for unsatisfactory results in our analysis of the sources.

An approach with lower expectations would possibly offer greater success. If one risks an open minded glance at the textual material, a truth at once becomes apparent, which probably appears quite banal, one that cannot, however, be taken for granted in the context of the above mentioned background of disparate organisational structures - namely that Old Babylonian, with the word *dajjānum*, already has a term for a “judge”¹². Etymologically it is closely related to the verb *diānum*, which itself has the meaning of „deciding (a legal matter)“¹³. Of particular significance here, is that it represents distinct specialist terminology, in as much as these terms are not used in other non-legal contexts, in contrast to other terminology which also occurs in everyday language¹⁴. The act of “deciding” the legal dispute represents the central category in terms of the tasks performed by the judge. Viewed in the wider context of other written records it is clear, that this is virtually fundamental to the understanding of justice during the Old Babylonian period¹⁵.

This finding is supported by the fact that deviant behaviour by the ruling judge is sanctioned in § 5 of the Code of Hammurabi¹⁶.

§ 5 CH: „If a judge renders a judgment, gives a verdict, or deposits a sealed opinion, after which he reverses his judgment, they shall charge and convict that judge of having reversed the judgment which he rendered and he shall give twelvefold the claim of that judgment; moreover, they shall unseat him from his judgeship in the assembly, and he shall never again sit in judgment with the judges¹⁷.”

Alongside the specific preventative aspect of the sanction, the authority of judicial judgement is, of course, also being protected here. Incidentally, apart from the elements

11 Essential for this question Benno Landsberger, *Die Eigenbegrifflichkeit der babylonischen Welt*, in: *Islamica* 2 (1926), p. 355-372 (reprint Darmstadt 1965).

12 AHW. I, 151 left, CAD „D“, 28 right ff.

13 In particular in connection with the similarly used noun *dīnum*; *diānum* can, however, also be used on its own for “take to court”; compare. AHW. I, 167 right f., CAD „D“, 100 right ff.

14 In particular for *dīnum* see Michael P. Streck, art. „Recht. A. In Mesopotamien“, in: *RIA* 11 (note 1), p. 280-285.

15 Dombradi, *Urteil* (note 5), p. 260 with footnotes. 133-135 and examples from letters and other literature.

16 On the relevant ethical laws and on judicial bribes see Dombradi, *Urteil* (note 5), p. 260, footnote 134.

17 KH VI 6-30; Translation in Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, 2nd ed., Atlanta 1997, p. 82.

concerning defamation in §§ 1-4 CH within Hammurabi's legal code, this regulation is the only provision with a clear reference to court proceedings.

The connection between decision making and justice also recurs however to some extent on a political level in the context of the way the ruler presented himself and the style of his legislation. Thus the epilogue of Hammurabi's laws commences by calling the previous standardized component of this section of the text the "just just decisions which Hammurabi, the able king, has established and thereby has directed the land along the course of truth and the correct way of life"¹⁸. Regardless of how literally this wording should be taken and to what extent the standard texts of the code, which were clearly arrived at casuistically, are in reality traceable to actual legal cases (possibly imparted during the training to become a scribe), here, as in further sections of the prologue and epilogue, a very specific model for the figure of the ruler is revealed. The ruler carries out the above mentioned task of directing the state as if he were a judge¹⁹, but also at the same time, and as already mentioned above, actually represents the highest (secular) judicial authority²⁰.

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This model can also be found immortalised in the Old Babylonian Pantheon, which displays a selection of judicial deities, most important of all, however, the Sun God Šamaš as the highest patron of law and the highest divine judge²¹. His significance as well as the close connection between the divine and the human, especially in the fields of governance and law, is perhaps most apparent through the portrayal on the front of the stela with the Code of Hammurabi, in which the ruler Šamaš²² receives the ruling insignia of a ring and sceptre²³, whilst praying to the God on his throne. Correct and just decision making is therefore portrayed as a universal principle, which has a lasting influence on the way of life of the Old Babylonian people.

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Taken together, all of these aspects do reveal a typology of judges in the Old Babylonian period, even if this does not directly result in us being able to infer details about the

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18 KH XXIV r 1-7; Translation in Roth, *Law Collections* (note 17), p. 133.

19 This also corresponds to the use of *dajjānu* in royal forms of address, compare CAD „D“, 30 left.

20 Detail about royal jurisdiction *Dombradi, Rechtsaustrag I* (note 4), §§ 283-289.

21 Manfred Krebernik, art. „Richtergott(heiten).“, in: *RIA 11* (note 1), p. 354-361, p. 354.

22 Or from Marduk, as the highest city deity of Babylon, who was already compared to him at this time and is the subject of particular scrutiny in the prologue of the CH.

23 Or measuring rod and cord, regarding this and other interpretations of the scenes also depicted elsewhere with other rulers and deities see F.A.M. Wiggermann, art. „Ring und Stab (Ring and Rod)“, in: *RIA 11* (note 1), p. 414- 421, p. 417.

dispute resolution strategies of the period. Nevertheless this synopsis can provide us with valuable information about judges, their status or disposition, as it is precisely this "image" of a judge, or perhaps even the "idea" of a judge, which seems to have played a significant role in the development of identity in the Old Babylonian period. In this respect, the term "judicial culture" also gains another dimension. On the other hand, the image of judges which we have gained in this way could at least allow us to draw conclusions about the quality and above all the acceptance of those judicial decisions, even if we need to be cautious in assessing them. For my framework here, this type of speculative approach must suffice; however, this material offers enormous and promising potential for the topic of this debate.