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## Varia on adoption

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## VARIA ON ADOPTION

The four brief notes contained in this paper deal with a variety of matters. The one common factor is that they are all concerned with, or touch upon, adoption in ancient Near Eastern sources.

(I) CH 185: *ina m?-e-šu* — ‘out of its amniotic fluid’.

Section 185 of the Code of Hammurabi, introducing a new topic, adoption, is brief and straightforward. It reads as follows:

*šumma awilum šihram ina me-e-šu ana marutim ilqima urtabišu tarbitum ši ul ibaqqar*

The modern translations reveal no significant differences, and that given by Driver and Miles can be taken as representative of all: ‘If a man has taken an infant for sonship (to be called) by his name and brings him up, that adopted child shall not be (re)claimed.’

There have, however, been some divergences of opinion among scholars with regard to the scope of the section. D a v i d<sup>1</sup> holds that it refers to a foundling. D r i v e r and M i l e s<sup>2</sup> disagree. In their opinion it is unlikely that the law would deal with so unimportant a being as a foundling. The draftsman would have referred to the foundling explicitly if he had had him in mind. As it is, there appears to be no compelling reason why both the views put forward should not be correct. There is nothing in the wording of the section which would necessarily restrict its application to the one or the other of the two possibilities.

On the other hand, D r i v e r and M i l e s (p. 388) share the opinion of D a v i d (p. 25) that the child can be reclaimed at any time, as long as it is not yet grown up. They deduce this from *urtabišu* — ‘has brought him up’, making this verb an essential part of the provision as a whole. I am not sure whether too exacting a standard of interpretation is not being applied. It seems open to question whether the law would wish to give the parents so protracted a period for reclaiming the child. It would be basically unlikely in case of contractual adoption, and rather too long a time even if the child was a foundling.

<sup>1</sup> *Die Adoption im altbabylonischen Recht*, 1927, 27f.

<sup>2</sup> *Babylonian Laws I*, 1952, 391.

also it is not certain that *urtabišu* must mean that the upbringing has already come to its conclusion.

But our main purpose is to reconsider the phrase *ina mešu* which is interposed between the *šihru* and his being taken for sonship. Interpretations which have been offered so far fail to give satisfaction. *mešu* is usually derived from *mu*, assumed to be a loan from Sumerian MU — ‘name’. The word would be a *hapax legomenon* within the legal part of the Code<sup>3</sup>. Driver and Miles (p. 389) adduce a parallel from the Attic orator Isaeus (4th century B.C.). This, for all its interest, is remote, in time and place, and — what is more important — it is not quite exact: the passage quoted concerns the introduction of a grown-up child ἐπὶ τῶν αὐτοῦ ὀνόματι — ‘in his (the adoptant’s) own name’ to his *Phratría*, not the adoption itself of a small child. But what decisively refutes the prevalent interpretation is a document from Susa, MDP xxiii, no. 288<sup>4</sup>: ‘the midwife PN and the *ištaritu*-woman PN<sub>2</sub> declared orally as follows: „The *ištaritu*-woman PN<sub>1</sub> (her child) PN<sub>3</sub> *ina mešu u damešu izibšuma* and to PN<sub>5</sub>, the wet nurse, *taddiššuma* — gave him.”’ Driver and Miles render the key phrase *ina mešu u damešu* — ‘in’ or ‘by his name and blood’. There are two objections to this: the verb concluding the phrase, *izibšuma*, means ‘he/she abandoned him’; when this is added to ‘name and blood’, the result is not very satisfactory. Perhaps more important is the other point: except for the child being handed over this is an all-female affair. The child is given by its mother to a woman. This leads to the conclusion that the twice-repeated masculine suffix *-šu* refers to the child, not to the person adopting. The correct solution has indeed already been given in CAD iv (E) 417a, where the phrase is rendered ‘with amniotic fluid and blood still on him’. In other words, *me* is nothing but the common word for water. And no doubt the same is true also of CH 185.

There remains a further question, a very minor one, of the translation of *ina*: is it to be rendered ‘in’, or ‘from, out of’? The former rendering is obviously indicated in the document from Susa, but this cannot be automatically transferred to the Code: the persons acting are different, in the one case it is the parent giving away the child, in the other the adoptant. We can perhaps derive a measure of guidance from two Roman legal texts, even though they are 2000 years later than Hammurabi, and no connection is claimed beyond the similarity of the subject matter. Both the texts deal with the purchase of small children, immediately after birth. *Fragmenta Vaticana* 34, a constitution issued by Constantine in A.D. 313, regulates the question of the redemption of such a child: *Cum profitearis te certa quantitate mancipium ex sanguine comparasse, ... Si voluerit liberum suum recipere, tunc in eius locum mancipium*

<sup>3</sup> It may perhaps be present in the prologue, col. iva, line 63; see the comments of Driver and Miles II, p. 144; but even this is rather doubtful, since *šumu* is the word usually employed.

<sup>4</sup> Mentioned already by Driver and Miles I, p. 389, note 6.

*domino dare aut pretium quo valuisset numeraret.* Constantine returns to this topic a second time in A.D. 329, in Codex Theodosianus 5.10.1: *Secundum statuta priorum principium si quis a sanguine infantem quoque modo legitime comparaverit vel nutriendum putaverit, obtinendi eius servitii habeat potestatem*<sup>5</sup>. It is interesting how the 'amniotic fluid' of CH and the 'blood' of the Roman sources are linked by the document from Susa, which combines both the components in one phrase.

CH 185 should then be translated as follows: 'If a man an infant out of his amniotic fluid for sonship has taken and has brought him up, that adopted child shall not be (re)claimed'.

(II) *Archives royales de Mari* viii, Text 1

Volume viii (*Textes juridiques*) of the *Archives royales de Mari*, edited by the late Professor B o y e r, contains only one document of adoption. The text, no. 1, has been discussed by the editor in full detail (at pp. 178—182). Here we wish to consider anew one clause only, which figures prominently in the document, immediately after the declaration that the adoptee is the son of the adoptive father and mother. Lines 4—5 read as follows:

<i>damaqišunu idammiq</i>	Il jouira de leurs joies
<i>lemenišunu ilemmin</i>	il souffrira de leurs peines.

B o y e r (p. 179) sees in this clause a desire to put the adoptee in a position as similar as possible to that of a natural son<sup>6</sup>. 'Cette intention se manifeste en particulier par une clause qui associe expressément l'adopté à la vie et à la bonne ou mauvaise fortune des adoptants... cette formule exprime globalement les obligations que l'adopté va assumer envers ses parents adoptifs'.

These remarks are unexceptionable, but one might try to focus the picture somewhat more precisely. The true import of the clause, so it seems, is less to give the adoptee a share in the family fortunes, but to impose upon him the duty of associating himself, of adjusting himself. His joy, just as much as his sorrow, are duties rather than rights. It is the adoptive parents who determine the mood, the adoptee will have to follow suit.

We arrive at this narrower interpretation with the help of comparable provisions in other texts. A close parallel occurs in S c h o r r UAZP, nos. 4 and 5, two marriage contracts referring to the same parties, viz., a husband and his two wives. The clauses here of interest regulate the relationship of the two wives. They are not equals, and the inferior is enjoined to associate herself with the sentiments of her superior: *zeni ša PN PN<sub>1</sub> izenni salamiša*

<sup>5</sup> Cf. also the reformulated version of this constitution in Codex Justinianus 4.43.2.

<sup>6</sup> Cf., in a different context, Institutes of Justinian 1.11.4: *adoptio... naturam imitatur.*

*isallim*<sup>7</sup>. Kohler-Ungnad, *Hammurabi's Gesetz*, iii, 1909, text 2, render: *ist PN ärgerlich, wird PN<sub>2</sub> ärgerlich sein; ist sie vergnügt, wird sie vergnügt sein*. More exactly one ought to render — as suggested to me by Dr. Loewenstein as follows: 'with whom PN is angry, PN<sub>2</sub> will be angry; with whom she (PN) is at peace, she (PN<sub>2</sub>) will be at peace'<sup>8</sup>.

Schorr rendered: *ihren Schmuck wird sie besorgen, hilfreich wird sie ihr beistehen*, remarking that *so eine abstrakte Bestimmung* (as suggested by Ungnad) *bei der sonst sehr konkreten Ausdrucksweise in den Rechtsurkunden* would be *sehr auffällig*. If by nothing else, his doubts would be dispelled by ARM viii 1; and indeed we find CAD xxi (Z) 85f (s.v. *zenu*) following Ungad<sup>9,10</sup>.

It is noteworthy that we find notions reminiscent of these solidarity clauses also in literary texts from outside the cuneiform world. So Ruth declares her solidarity with her mother-in-law Naomi: '... for whither thou goest, I will go; and where thou lodgest, I will lodge: thy people shall be my people, and thy God my God' (1.16). Perhaps more to the point are some passages from Plautus. In one of the pieces of *Sklaivenweisheit* so common with that author, a slave says as follows: *atque ita servom par videtur frugi sese instituere: proinde eri ut sint, ipse item sit; voltum e voltu comparet: tristis sit, si eri sint tristes; hilarus sit, si gaudeant* (Amphitryon 960f.). In another comedy a husband angrily reproaches his wife: *Ni mala, ni stulta sies, ni indomita imposque animi, quod viro esse odio videas, tute tibi odio habeas* (Menaechmei, 110f.). Needless to say, it is not suggested that these Plautine verses (or their Greek models) are in any way connected with the Eastern legal clauses under discussion. There is, however, the similarity of topic which gave rise to similar trends of thought and expression.

Back in the ancient Eastern orbit, — we find solidarity clauses in some international vassal treaties. True we are here on a level different from the situations

<sup>7</sup> The wording of the corresponding clause in text 5 is slightly different: *zeniša izin, salamiša isallim*. The import is the same.

<sup>8</sup> This, incidentally, makes the phrase strikingly similar to that quoted below from the Hittite-Ugaritic vassal treaties.

<sup>9</sup> But the actual interpretation given in CAD is somewhat fanciful: 'PN<sub>2</sub> (the second wife) will side with PN (the first wife), whether she (PN) is on bad or good terms (with her husband)'. There is nothing to warrant the line suggested by the bracketed end. It is unlikely that the husband would be bent upon writing a united front of his two wives into the marriage contract. The provision is quite general in its tenor, and not confined to intra-marital situations.

<sup>10</sup> The relationship between superior and inferior wife is one *sui generis*, falling outside the ordinary categories of the law of persons. Some rules concerning it are laid down in CH 144 to 147, but details are complicated by reference to special classes of women. If the inferior woman had actually been a slave of the superior one, and given by her to her husband (in the absence of issue to the marriage), the Code provides against the possibility that the former slave may make herself the equal (*uštamaḫḫar*) of her mistress. If she had borne children her mistress may re-enslave her because of her impertinence, but may not sell her; if she has not borne children she may be sold. One is reminded of the story Sarai and Hagar, Genesis 16 and 21.

of ordinary private law *potestas* reflected in ARM viii 1 and UAZP 4, 5. Nevertheless, there is a basic similarity which justifies mentioning here these international documents. When suzerain and vassal call each other son and father, slave and master, this is no doubt in the main formalized court-language, but it is yet not entirely devoid of some actual content. As examples we may refer to some documents concerning the relationship between the Hittite great-king and the king of Ugarit; so, e.g., in RS 17.132, lines 10ff.:<sup>11</sup> *anumma atta niqmandu lu akannama itti nakrija lu nakrata u itti šalamaja lu šalmata — maintenant, toi, Niqmadu, sois de même avec mon ennemi ennemi et avec mon ami, ami!*<sup>12</sup>

### (III) *The Alalakh Tablets*, Text 16.

A document of adoption of the 15th century is among the texts from Alalakh, published in 1953 by Dr. D. J. Wiseman. This text, no. 16, reads as follows (on the basis of the transliteration given by the editor):

*ana pani (m)Niqmepa šarri Tulpuri (m)Ilimilimma ana abušu ipuš adi bal[bal]tat (5) ittanappalšu matime (m)Tulpuri imatma minumme HALA zittašu kala mimmašu (10) ti(?)-lišu<sup>13</sup> ša (m)Tulpuri ša Ilimilimmama<sup>14</sup> šumma (m)Ilimilimma abušu ittanappalšu (15) u ina appušu isattat u ipduru u ištu kala mimmašuma sahit u šumma abušu ul ittanappalšu (20) mimmašuma ileqgešu IGI Irkabdu IGI Arki(d)IM IGI Šiptianta IGI Kušaiia (amel)tupšarru*

The interpretation of the document is hampered by numerous deviations from ordinary Accadian grammar and syntax. E.g., the usual casus-endings are repeatedly dispensed with: in line 3 we have *ana abušu* for *ana abišu*, in line 15 *ina appušu* for *ina appišu*. In both the instances no difficulty is created, since the sense is assured by the prepositions. It may, however, be of more importance with regard to *abušu*, in lines 14, 19, which will be discussed below. The use of the feminine stative *baltat* (line 4) is quite unaccountable. There is also a phrase — *ina appim šadadu* — which apparently does not occur outside Alalakh<sup>15</sup>. Nevertheless, the provisions are not too complicated and can be satisfactorily interpreted with the help of what we know from other sources. The document can be divided into the following five parts: (1) Declaration constitutive of the relationship (lines 2—3); (2) Duty to support the adoptive father (lines 4—5); (3) Inheritance rights of the adoptive son (lines 6—12);

<sup>11</sup> *Palais royal d'Ugarit* iv, 1956, p. 36.

<sup>12</sup> Cf. also the declaration of submission made by Niqmadu to Šuppiliuma, when asking for his help: *ma anaku ardu ša šamši šarri rabi belija ma itti nakri ša belija nakraku [u] itti salami ša belija šalmaku* (ibid. p. 49, RS 17.340: 12f.). See also, in the same document, verso 11f. (p. 51.)

<sup>13</sup> CAD vol. xxi (Z), p. 147a, read *zji-ta-šu*.

<sup>14</sup> Speiser, JAOS lxxiv (1954) 23; the editor read the last sign as *-šu*.

<sup>15</sup> The phrase occurs also in Alalakh Tablet 92:10—11; no references to texts outside Alalakh are given by von Soden AHW 60a.

(4) Breach of the relationship by the father (lines 13—18); (5) Breach of the relationship by the son (lines 18—20). Only the last two will require detailed consideration.

The declaration concerning the creation of the relationship deviates from that customary in adoption documents in one significant point: the adoptive son is said 'to have made someone his father'. The usual, and more plausible formulation is the other way round: X takes Y as his son. Even though adoption is a bilateral transaction, requiring the consent of the person adopted (or of some other person, having *potestas* over him), the position of the adoptive father is normally regarded as the predominant one. We have, of course, no means of deciding whether the peculiar wording of the clause is due to a special factual situation. *epešu ana* (relationship) occurs also in other contemporary sources, so in Nuzi and in a Hittite document<sup>16</sup>. The relationship is usually expressed by means of an abstract noun, such as *marutu*, *martutu*, *ahhutu*, *ahatutu*.

Next comes the simple provision imposing upon the adoptive son the duty of maintaining the father *adi balṭat* — 'as long as [she] (he) is alive'. The desire to obtain such support may occasionally have been a main inducement for adoption<sup>17</sup>. In some Old-Babylonian documents the duty of support is set out in a more exact and detailed fashion; see, e.g., HG iv 1047: a father divides his property in equal shares between a stepson and an adopted son. Each of them will supply the father yearly with 2 2/5 kur grain, 3 minas of wool, 3 qa of oil. He who fails in his duty, forfeits his share in the inheritance. See also HG vi 1425 and an adoption document from Nuzi<sup>18</sup>.

In consideration for support given to the father, the next clause makes the son sole heir of the father's belongings. This is one of the ordinary consequences of adoption, and very frequently expressly provided for in the documents. Here the property is to pass *matime imatma* — whenever the adoptive father dies. The father's power of alienation *inter vivos* — e.g., by sale — is apparently not restricted<sup>19</sup>.

The document is concluded by two clauses concerning behaviour which is in breach of the adoption relationship. It is these that have caused difficulty to the editor, who translated them as follows: 'If Ilimilimma his father shall continually be responsible for his father but then insults his father and frees (himself), then he is deprived(?) from whatever is his. If as his (I's) father he (T) does not support him, he (I) shall take whatever is his (T's)'.

First of all, the words for his father, ... his father (my emphasis in the translation) are unwarranted expansions of the suffix *-šu* — 'him'. We

<sup>16</sup> See the references in CAD iv (E) 230bf.; AHW 227a.

<sup>17</sup> Cf. also David, *op. cit.*, p. 92.

<sup>18</sup> C.J. Gadd, *Tablets from Kirkuk*, no. 51, RA xxiii (1926) 126—127.

<sup>19</sup> Cf., on inheritance, David, *op. cit.*, p. 86ff.

shall submit that the second of these expansions is materially objectionable. Secondly, the duty of support has already been defined in clause (2), lines 4—5 of the document: it is the son's duty to support the father, and this emerges clearly also from the editor's rendering: 'So long as he (T) lives he (I) shall be responsible for him'. One must be guided by this also when interpreting the clauses regarding the breach of the undertaking. The first breach-clause starts from the assumption that the son has lived up to his part of the bargain, has indeed rendered support to the father. So far we are in agreement with Wiseman, since this is also the import of his rendering of the introductory passage, 'if II... responsible for his father'; the phrasing is, however, not without difficulty. As we understand it *šumma Ilimilimma abušu ittanappalšu* is equivalent to *šumma II. abašu ittanappal*. The scribe's *abušu* (also in the second clause, in line 19) reflects his tendency to disregard *casus*, a tendency on which we have already remarked. The repetition of the suffix, possibly for the sake of emphasis, is by no means unusual. We submit then that the introduction is a condition precedent to what follows: only if the son fulfils his obligation may he have cause for complaint.

By our last submission we have already parted from the editor. He does indeed note that what follows is in contrast to the introduction, but he seeks this contrast in the behaviour of the same person, the son: In his rendering it is the son who insults the father<sup>20</sup>, but this is obviously not the case, since thereby the introduction would become quite irrelevant: the consequences follow directly upon the insult, and any previous behaviour of the son cannot mitigate them. One has, consequently, to postulate a change of subjects: the father has illtreated the son.

This, in our view, ends the protasis; Wiseman adds to it also *ipduru* (= *ipturu*). There are, again, difficulties of a linguistic nature: an apodosis is not usually introduced by any conjunction, but here we have *u* — 'and' (this question is present equally if one follows the editor's division of the sentence). Moreover, there appears to be no ready explanation for either the mood

<sup>20</sup> The rendering 'insult, deprecate or mistreat' for the phrase *ina appušu isattat* (or *išaddad*, see text 92:11) is one *ad sensum*, and as such quite acceptable. The literal meaning must for the time being remain unexplained. The editor suggests 'drag him by the nose', but this is not quite satisfactory. The resultant phrase is somewhat strange: one hardly does actually drag a person by his nose; 'by his ear' would have been more natural.

The phrase occurs also in a marriage contract from Alalakh (text 92, lines 10 and 11). Mendelsohn ('On Marriage in Alalakh', *Essays on Jewish Life and Thought presented in Honor of S. W. Baron*, 1959, p. 352) renders *ina appišu išaddadši* — 'leads her by the nose' (i.e. mistreats her); here too the sense is certain, but the literal meaning is open to question. CAD xvi (§) 231a (s.v. *šuhartu*) render 'the young wife thumbs her nose at him'. This must be rejected, since the passage in which the idiom occurs deals with divorce for which the husband bears responsibility: that much is clear from the financial provisions (and see already Mendelsohn).



(why the sudden switch to the subjunctive?) or the tense (praeteritum, following the present *isattat*; one would expect, in accordance with the usual Accadian structure, the present *ipattar*)<sup>21</sup>. In spite of these problems the sense of the provision can be made out, with a fair degree of probability, from what is known from other sources dealing with the unilateral (and unjustified) dissolution of the adoption relationship. See, in the first place, the Sumerian family law contained in tablet 7 of *ana ittišu*, lines 34—39: *šumma abu ana marišu ul mari atta iqtabi ina bitu u igarum iteli* — ‘if a father says to his son „Thou art not my son”, he forfeits house and wall’. See also the identical provision in ARM viii, 1, lines 6—11<sup>22</sup>.

The import is then that the father will have to leave. The final part of the apodosis gives further details as to the circumstances in which this will have to take place: deprived<sup>23</sup> of whatever is his.

The final clause (5), will now be relatively simple. The protasis is the opposite of the introduction to the preceding clause: it deals with the son's failure to support the father. The grammatical problems are the same as have already been discussed in the introduction to (4). The apodosis is quite brief, consisting only of the two words *mimmašuma illeqešu* — ‘whatever is his he shall take’. Contrary to the editor, we regard as subject the father, Tulpuri, and as the person whose property is taken the son' Ilmilimma. Nothing is said about any other consequences, such as enslavement of the adoptive son, which is frequently envisaged in other sources<sup>24</sup>. One may perhaps gather that Ilmilimma was the owner of considerable property, forfeiture of which would constitute a sufficient threat. We may also assume that he would have had to leave.

<sup>21</sup> Ordinarily the protasis employs the praeteritum, the apodosis the present; see, e.g., CH 185, discussed above (i); the sentence here before us uses the tenses much the way familiar from the Bible: there a sentence often begins with the imperfect (= Accadian present), and then switches (either at the beginning of the apodosis, or already in the protasis) to the perfect plus *waw consecutivum* (cf. Gesenius-Kautzsch, *Hebrew Grammar*, sec. 112). E.g., Exod. 21.11: *we'im šeloš 'eleh lo' ya 'ašeh lah weyaše'ah ḥinnam 'en kasef*; *ibid.* 19: *'im yaqum wehithhal-lekh... weniqqah*. If the usage of our text can be legitimately compared to that of Biblical Hebrew (and on that I am not entitled to an opinion of my own) this would solve also the question, remarked upon, of the introductory conjunction *u*.

<sup>22</sup> For a full discussion of all the relevant texts, and also of the import of the clause, see Driver and Miles I, 399ff; David, *op. cit.* 90ff. There is a tendency to whittle down the effect of the clause. *Verlust der gesamten Habe* is said to be identical with *Wahrung des Erbrechts des Adoptierten* (p. 91, note 34). I am not quite satisfied that this is correct. Why, if a limited effect was desired, should much broader wording have been employed? Also, too much weight ought not to be given to the fact that in some documents of adoption lesser penalties are fixed: one is not entitled to assume the identity of provisions in all the relevant text.

<sup>23</sup> *saḥiṭ*, stative of *saḥaṭu* (= *šahaṭu*? — *ausziehen, entblößen*, Bezold, 267b); cf. Hebrew *šahaṭ*, Gen. 40.11.

<sup>24</sup> David, *op. cit.* 48ff.

We may now offer the following translation of the document as a whole: 'Before Niqmeša the king, Ilmilimma has made Tulpuri for his father. So long as he (i.e.T.) lives, he (i.e.I) shall support him. When Tulpuri dies, all the assets of the inheritance, whatever is Tulpuri's is Ilmilimma's. If Ilmilimma shall support his father, and he (the father) illtreats him, he (the father) shall go forth, and of all that is his he is deprived. If his father he (I) does not support, whatever is his (I's) he (T) shall take'. There follow the names of three witnesses and the scribe.

(iv) 'He shall (not) go out empty'.

The dissolution of the adoption relationship, and also of other status relationships, will often involve financial consequences. We have referred to such questions in our discussion of Alalakh text 16, and we have already seen that these consequences may depend upon the circumstances, the blame — if any — attaching to the person whose status is changed, usually for the worse, but possibly also for the better, as the case may be.

In the present context we shall not deal with the controversial forfeiture clauses, mentioned above, nor with those straightforward cases laying down the payment of a fixed sum of money<sup>25</sup>. Instead we shall concentrate on clauses which refer to a person going forth (or being sent away) either empty-handed, or — just the opposite — not empty-handed.

The provisions to be examined come from a variety of sources: general legal texts (CH, MAL, biblical legal texts), private legal documents (from Nuzi, Ugarit and Aššur (middle period)), and biblical narratives. They refer to a variety of status relations: adoption, slavery and manumission, marriage and divorce; also to some special situations which defy classification into the one or the other of the usual categories. There are many and manifest differences between these relationships; yet, when one looks at them from the point of view of the bearer of the right they have some common features, and this makes it possible to consider them together.

CH 191 provides for the case that an adoptive father, having subsequently to the adoption begotten children, desires to expel the adoptee: if, so, *riqussu ul itallak* — 'he shall not go out empty'. The section, in continuation, defines this more exactly: the ex-adoptee is assured of a compensation amounting to one third of the property of the adoptive father, exclusive of his field, plantation or house.

MAL 37, dealing with divorce, gives the husband an unwonted measure of discretion. It depends upon his will only, whether or not he gives his divorcee something: '... if (it is) not his will, he shall not give her anything; she shall go forth empty (*raqut:ša tuššu*)'.

<sup>25</sup> See David, *op. cit.*, p. 53, note 63; cf. also RS 15.92 (PRU iii, p. 55), line 10.

In the Bible, there is the well-known provision of Deut. 15.13: on the termination of his period of service, the Hebrew slave is not to be sent away empty-handed (*lo tešallehennu reqam*).

Of private documents there are three dealing with the same situation: the possible remarriage of a widow, an idea apparently viewed with dislike by the husbands executing the documents: in each case she is to leave empty<sup>26</sup>. So in a text from Nuzi<sup>27</sup>, *šubate ihammašuma erišišš[a] ušeššuš* — ‘they shall take away her clothes, and cause her to leave naked’<sup>28</sup>; a similar provision occurs in another Nuzi text<sup>29</sup>, *u šumma W ana muti illak u ušša[b] u šubatišu ša aššatiija maruja ihammašu u ištu bitija ušeššu* — ‘and if W goes to (another) husband and dwells (with him), the clothes of my wife my sons shall take away and shall cause (her) to leave from my house’. Finally, in the Middle-Assyrian document KAJ 9: *šumma ana muti tuššab raqvti[ša tušša* — ‘if she dwells with a husband, she shall go forth empty’<sup>30</sup>.

In the biblical narratives there are three cases requiring mention. The one is the story of Laban’s pursuit of Jacob. C. H. G o r d o n has made it likely that adoption was involved in the relationship of the two<sup>31</sup>. In comparison he mentions a well-known adoption document from Nuzi<sup>32</sup>. The failure of Laban’s search after his household-gods (*terafim*) emboldens Jacob, who embarks upon a recital of the faithful services he has rendered to his father-in-law (Gen. 31.38–41). He is careful to describe the relationship as one between an employer and his free employee. Yet the existence of an adoption relationship is suggested not only — as G o r d o n has pointed out — by Laban’s answer (verse 43: ‘... the daughters are my daughters, and the sons are my sons and the cattle is my cattle, and all that thou seest is mine...’), but already by Jacob’s charge that but for divine intervention Laban would have sent him away empty (*reqam šillahtāni*). Actually, as Gordon points out, it is quite possible that in so doing Laban would have been within his legal rights: Jacob’s clandestine disappearance may well have been in breach of an adoption relationship.

Next there is the story of the exodus. In Exod. 3.21 the people are promised that when they leave Egypt ‘you will not go out empty’ (*lo’ telekhu reqam*)<sup>33</sup>. These passages have been discussed in detail by D a u b e, who regards the promise as based upon legal provisions akin to that quoted above from Deut.

<sup>26</sup> Provisions limiting the financial rights of widows to the time of their widowhood occur also in later sources. Cf. Y a r o n, *Introduction to the Law of the Aramaic Papyri*, 1961, p. 74.

<sup>27</sup> Text 19, in S p e i s e r, *New Kirkuk Documents relating to Family Laws*, AASOR x (1930).

<sup>28</sup> Cf. K u h l, ZAW xi (1934) 106; CAD iv (E) 320.

<sup>29</sup> Text V 444, lines 19–23; quoted according to G o r d o n, ZAW xiii (1936) 279f.

<sup>30</sup> K o s c h a k e r, *Neue keilschriftliche Rechtsurkunden aus der el-Amarna Zeit*, 1928, p. 155; cf. D r i v e r and M i l e s, *Assyrian Laws*, 1935, p. 477, note 1.

<sup>31</sup> BASOR lxvi (1937) 25ff.

<sup>32</sup> Text 51, in C. J. G a d d, *Tablets from Kirkuk*, RA xxiii (1926) 125f.

<sup>33</sup> See also *ibid.*, ll. 2–3, 12.35–36.

15.13<sup>34</sup>. His contention has been disputed, mainly on the ground that Deuteronomy is later than the Book of Covenant, of which the exodus narrative is part<sup>35</sup>. Actually, there appears to be no convincing reason for holding that the provision in Deuteronomy was the first of its kind. D a u b e's opinion is supported by the general concern discernible in ancient Near Eastern sources regarding the financial consequences of the dissolution of status relations.

A very different situation is the subject matter of I Samuel 6.3, dealing with the restoration of the ark of covenant previously captured by the Philistines, who had in turn suffered dire punishment. The priests advise that on returning it, 'you shall not send it away empty' (*'al tešalleḥu 'otho reqam*). It is irrelevant to our discussion whether the ark is regarded as itself similar to a human being, or whether perhaps the Deity is regarded as dwelling in (or on) it. While we are here outside the ordinary legal sphere, the terminology employed is yet identical with that which we find in Deut. 15.13, on manumission.

Finally, one might refer in brief to Job 22.9, where 'sending away widows empty-handed' is a transgression listed by one of Job's friends. No further details are given, so it is impossible to know whether some special situation is envisaged, like that provided for in the documents from Nuzi and Aššur, which we have discussed, or, in general, hard-hearted and ungenerous behaviour towards widows. On the whole, the second possibility is the more likely one<sup>36</sup>.

The notions of 'emptiness', or 'nakedness', which are common to all the texts with which we have dealt so far, may provide the clue for the correct interpretation of some symbolical expressions which occur — especially in texts from Ugarit — in circumstances similar to those which we have been considering.

In RS 8.145<sup>37</sup> a man donates all his property to his wife. There are also two sons. Whoever of them contests the dispositions made by the father, or otherwise belittles (*uqallil*) the donee — *nahlaptašu išakkanma ana sikkuri u ipaṭṭar ana šuqi* — *sa tunique il deposera a la serrure et s'en ira dans la rue*. Substantially the same expression occurs in RS 17.159<sup>38</sup>, concerning the divorce of the queen of Ugarit by king Ammistamru II. The document contains clauses regarding the heir-apparent: his position is confirmed, but should he desire to follow his mother, or to restore her to Ugarit subsequent to the death of the king, *šubassu*

<sup>34</sup> *Studies in Biblical Law*, 1947, 49ff.; see also *Archiv Orientalní* xvii/1 (1948) 88ff.

<sup>35</sup> C a z e l l e s, *Bibliotheca Orientalis* v (1948) 63f.

<sup>36</sup> We do not include in our discussion Hos. 2.15, the threat to strip the wife naked (*pen 'afšitannah 'arummah*), since we are not satisfied that the situation there is similar to those with which we are concerned. They may well form part of disparaging procedures in the course of divorce (*pace* K u h l, ZAW cit.). It is for the same reason that we have omitted the Old-Babylonian document from Hana BRM 4 52:14, adduced by K u h l. Here too a strong element of public disparagement seems to be involved (cf. CAD iv (E) 320).

<sup>37</sup> Published by T h u r e a u-D a n g i n, *Syria* xviii (1937) 249.

<sup>38</sup> PRU iv (1956) 126f.

*ina (iṣ)litti liškun litallak* — ‘his dress upon the throne he shall put and shall go’. The ‘laying down of clothes’, envisaged in both the documents, is equivalent to the ‘nakedness’ of the other texts.

Less immediately obvious are phrases in two other documents. RS 15.92<sup>39</sup> is a deed of adoption. If the adoptee wishes to dissolve the relationship *qati<sup>m</sup>-šu imašši ina šuqi ipat(?)[tar]*. Professor Nougayrol, the editor of PRU iii, renders: *il lavera(?) ses mains et s'en ira(?) dans la rue*. The end of the sentence, in spite of difficulties of reading, is fairly certain, supported as it is by many parallels<sup>40</sup>. The meaning of the phrase turns on the verb *imašši*. The editor derives this from *mesu* — ‘to wash’, but the result is not quite satisfactory. ‘Washing of hands’ or ‘cleanness of hands’ is indeed a well-known notion; famous not only from the gesture of Pontius Pilatus, it is quite common also in a series of Old Testament texts<sup>41</sup>. But in all these instances it is merely an expression of innocence, and as such cannot be related to our text. So perhaps it will be better to turn to *mašu* — ‘to forget’. The adoptee, departing from his father’s home will ‘forget’ his hands, — hence he will leave without taking anything<sup>42</sup>.

If then in RS 15.92 the hands forget their function, the same result can be obtained in less spectacular a fashion, — by keeping them occupied with some other task. This may be the import of a peculiar phrase in RS 16.344<sup>43</sup>, a document of adoption into brotherhood. If the adoptee ‘hates’ (*izir*) the adoptant, i.e. wishes to terminate the relationship, (*šir*)*uzne<sup>M</sup>-šu iṣabbat u ipatṭar* — ‘he will seize his ears and go’. Who however, is the subject of *iṣabbat*? Does the adoptant seize the ears of the adoptee<sup>44</sup>? Not impossible, but not likely either. A change of subjects is involved (A hates, B seizes the ears, A goes); in itself this is nothing startling<sup>45</sup>, yet to be resorted to only if the alterna-

<sup>39</sup> PRU iii (1955) 55.

<sup>40</sup> See, e.g., RS 8.145, just quoted, and RS 16.344, to be considered next.

<sup>41</sup> See, e.g., Gen. 20.5, 2 Sam. 22.21, Ps. 18.21, 25; 24.4; 26.6; 73.13 etc.

<sup>42</sup> Cf. Ps. 76.6: *lo’ maše ’u yedhehem* — ‘they did not find their hands’; Ps. 137.5: ... *tiškah yemini*, where the reading is apparently not quite certain. The Targum has *’anšeyah* — ‘I shall forget’, the Septuagint read *tiššakhaḥ* (ἐπιληθησεται): both would give good parallels to our text.

<sup>43</sup> PRU iii, p. 75.

<sup>44</sup> So Nougayrol, p. 55, note 1; the same is probably intended also in the translation (p. 75), where apparently the names got confused, both in line 10 and in the second part of note 1. Similarly Klíma, *RSO xxxii* (1957) 659 (but *aḥašu* is accusative, and belongs to the protasis!). Not quite clear to me is Gordon, *RA* 1(1956) 130; his interpretation is the following; ‘... one of the parties must pay a large sum to break up the relationship, the other has only “to grab the ears” of his adopted brother and get rid of him’. This would imply that the adoptee seizes the ear of the adoptant and evicts him! So indeed Rainey, *Orientalia xxxiv* (1965), 20, excerpting his dissertation (written under Gordon). But is altogether unlikely. It is always the party misbehaving who is suffering some disadvantage. *CAD xvi* (§) 74a (s.v. *sabatu*) conjecture that the adoptant ‘will mark his (i.e. the adoptee’s) ears’.

<sup>45</sup> See p. 179, above, where we postulated its occurrence.

tive interpretation is not tenable. Also the resulting meaning is not easily associated with the phrases occurring in similar contexts, which we have been discussing. Hence it is altogether preferable to take as subject of *išabbat* the adoptee: he holds on to his own ears, and is thereby prevented from taking anything<sup>46</sup>.

A last text to be mentioned is Jer. 2.37: 'thou shalt be ashamed of Egypt, as thou hast been of Aššur *gam me'eth zeh teše'i weyadhayikh 'al rošekh* — from this one also thou shalt go forth with thy hands on thy head'. The phrase 'with thy hands on thy head' has usually been connected with 2 Sam. 13.19, where Tamar laments the crime perpetrated on her by her brother Amnon: 'Tamar took ashes, and put them on her head, and tore in pieces the embroidered robe which she had on, and she put her hand on her head, and she went on crying'. Here the putting of the hand on the head is obviously a gesture of lament, of sorrow. The situation in Jeremiah is quite different; although it is not possible (nor, for our purposes, necessary) to arrive at an exact definition of the contemplated relationship between the 'couple', Judah and Egypt, it is probable that the verse refers, as do the other texts discussed, to a person leaving deprived of property<sup>47</sup>. The phrase occurs also in a late text, Palestinian Talmud Sanhedrin 29d (11.9), and implies there the total loss of property: '... Lot who dwelt in Sodom only for the sake of his property, he too went forth with his hands on his head. That is (the meaning of) what is written, *Haste thee escape thither* (Gen. 19.22) — it is enough that thou savest thy soul.'

[Jerusalem]

R. Yaron

(Postscriptum: This paper was submitted for publication in September 1962. Some minor additions were made in the course of correcting the proofs, and a few more points may deserve mention: To p. 172: CH 185 is not dealt with by CAD S. 182f (*s.v.* *sihru* — 'child'). To p. 172f. see A. Babakos, ZS 1xxx (1963) 342ff., discussing the phrase ἐξ ἀμαρτος, in *Tituli Calymni* 198 (an inscription of manumission — 1st century A. D.); this is equivalent to *e sanguine*; see further his remarks at p. 351.

To p. 180: For further examples from Nuzi documents see Elena Cassin, RA lvii (1963) 118f: HSS xix, nos. 1, 10, 19. To p. 180f.: For detailed observations on Jacob and Laban, the exodus, and the captivity of the ark of covenant see Dube, *The Exodus Pattern in the Bible*, 1963, pp. 55ff.

<sup>46</sup> Essentially similar is already the interpretation suggested by Nougayrol (p. 75, end of note 1); 'he will take (only) the tip of his ears'.

<sup>47</sup> Outside the Eastern sphere, cf. Codex Theodosianus 3. 16. 1 (of A.D. 321): a wife divorcing her husband without a cause recognised by the law: — *oportet eam usque ad aculam capitis in domo mariti deponere* — it behoves her to leave in the husband's house (all the belongings) up to a hairpin.