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Trial by Water through the Ages[1]

Joanna TÖYRÄÄNVUORI[2]

Abstract. *The concept of trial by water or water ordeal is best known to the wider public through European witch trials from the Late Middle Ages and the Early Modern Period, but the practice is first attested in near eastern texts from the Middle Bronze Age (2200–1550 BCE). The depiction of the medieval trials is largely folkloric, such trials were nonetheless known throughout the ancient world. The best evidence for ordeal by river is found in the letters from the clay tablet archives of Mari on the Upper Euphrates. A central site for divine arbitration among the Amorite kingdoms, the practice seems to have dwindled after the destruction of Mari and its cultic sites in 1759 BCE. Reviewing the ancient evidence for trial by water, this article demonstrates how the trials were used for a particular purpose: to verify the truth statements of compromised witnesses in legal cases that for lack of credible witnesses could only be solved by divine arbitration. The ancient background of the concept will help us better understand why the practice was later connected with witches in the European context.*

Rezumat. *Noțiunea de proba apei sau supliciu prin apă este cel mai bine adusă în evidență publicului larg grație proceselor vrăjitoarelor în Europa de la sfîrșitul Evului Mediu și începutul Erei Moderne, deși această practică este atestată pentru prima dată în textele din Orientul Apropiat și datate din Epoca Mijlocie a Bronzului (2200–1550 BCE). Descrierea proceselor medievale este în mare măsură de natură folclorică, cu toate că ele erau cunoscute peste tot în lumea antică. Cea mai pertinentă mărturie a probei apei se găsește în scrisorile din arhivele de tăbliță din argilă din Mari, pe cursul superior al Eufratului. Sit central pentru intervenția divină în rândul regatelor amorite, această practică pare să fi căpătat o amploare redusă după distrugerea orașului-stat Mari și a siturilor sale de cult în 1759 î.Hr. Studiind mărturiile antice ale probei apei, articolul de față își propune să demonstreze modul în care aceste probe serveau un scop precis : verificarea depunerilor de jurământ ale martorilor compromiși în cazuri legale care, din cauza lipsei martorilor credibili, nu puteau fi rezolvate decât prin arbitraj divin. Fundalul antic al conceptului ne va ajuta să înțelegem de ce această practică a fost mai târziu asociată cu vrăjitoarele în contextul european.*

Keywords: *Trial by water, water ordeal, ancient arbitration, divine judgement, Mari letters, Mari kingdom, witch trials, Euphrates.*

Introduction

This article discusses the concept of trial by water or water ordeal, best known in the ancient world from texts from the Middle Bronze Age (2200–1550 BCE) but known to the wider public through European witch trials from the Late Middle Ages and the Early Modern Period. While the depiction of these medieval trials is largely folkloric, often greatly exaggerated and in many cases not based on verifiable evidence, such trials were known throughout the ancient world. Evidence of the concept of ordeal by river is found in several letters from the archives

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of the city of Mari on the Upper Euphrates, and these letters may help us better understand the function of such ordeals. How widely trial by water was practised in the ancient Near East is up for speculation. The practice seems to have dwindled after the destruction of Mari and its cultic sites in 1759 BCE, and it certainly changed in both focus and form during the Neo-Assyrian and Neo-Babylonian periods, although it is difficult to know whether the gradual abandoning of the practice was caused by the downfall of the Mari kingdom. This article demonstrates how trials by water in the ancient world were not gendered, as it is often assumed, and were used for a particular purpose: to verify the truth statements of compromised witnesses in legal cases that could only be solved by divine arbitration. The ancient background of the concept will help us better understand why the practice was later connected with witches in the European context.

According to Tikva Frymer-Kensky, whose work on the Mesopotamian ordeal remains unsurpassed, the ordeal by river was the most important suprarational form of trial in the ancient Near East.[3] Considered a form of divine arbitration, the Mesopotamian ordeal is believed to have functioned as a last-resort judgement, whereby legal cases that could not otherwise be decided were presented to the river, and, in some ways, it is an alternative form to arbitration by the divine weapon. Arbitration by the ordeal and arbitration by the divine weapon both seem to be rooted in the ancient Near Eastern myth of divine combat, and they are definitely tied into the judicial authority belonging to the king's duties.[4]

While the discovery of the Mari letters has greatly increased our knowledge of the practice, one could argue that in some ways it is even less understood now than it was prior to their discovery, when more was believed than strictly known. Before the Mari letters pertaining to the ordeal (ten in number) were discovered and published by J.-M. Durand in 1988 (ARM 26 I/1), the river ordeal was known mostly through Old Babylonian and Middle Assyrian laws, discussed for example by Jean Bottero in *L'Ordalie en Mesopotamie ancienne* (1981) and Frymer-Kensky in her 1977 PhD dissertation *The Judicial Ordeal in the Ancient Near East*, in two volumes.[5] The ancient Near Eastern river ordeal is most familiar from the Amorite law-code Codex Hammurapi (§ 2, 132). The laws of the Hammurapi code are contemporary with the Mari letters.[6] It is further featured in several Babylonian and Assyrian laws (e.g., MAL §§ 17, 24, 25).

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[3] FRYMER-KENSKY 1981, 115.

[4] The king's social prerogatives of rights and duties are discussed by Bourdieu 1982. On the use of divine weapons in arbitration, see TÖYRÄÄNVUORI 2012.

[5] There is also another PhD thesis on the topic, A. Lieberman's *Studies in the Trial by River Ordeal in the Ancient Near East in the Second Millennium B.C.E.* (Brandeis: 1969), but this has not been available for my perusal.

[6] The second law of the Hammurapi code is the only text to suggest double ordeal, in which both the accused and the accuser were meant to undergo the trial.

§ 2: *šumma awīlum kišpī eli awīlim iddima lā uktinšu ša elišu kišpu nadû ana* ^{d}ÍD *illak* ^{d}ÍD *išalliamma šumma* ^{d}ÍD *iktašassu mubbiršu* É-*sú itabbal šumma awīlam šuati* ^{d}ÍD *utebbibaššuma ištalmam ša elišu kišpī iddû iddak ša* ^{d}ÍD *išliam* É *mubbiršu itabbal* / If a man has cast sorceries upon another man and he has not offered evidence (for it) he, upon whom the sorceries have been cast shall go to the river; he shall plunge into the river; if the river overpowers him, his accuser shall take

Kyle McCarter posited that the *primary function* of the divine river in Mesopotamian sources was to serve as a judge in certain legal cases.[7] In addition to the laws mentioned previously, there exists a Sumerian law from Ur (U.7739 ii 3–12), which also dates to the Old Babylonian period.[8] It must be stressed that older Sumerian legal codices, such as the Laws of Eshnunna, make no reference to the practice; its earliest mentions in legal contexts are thus dated to the Old Babylonian period.[9] The laws pertaining to trial by river are prescriptive: they make mention of an offense and then prescribe the ordeal as a solution to correcting the offence. For two different reasons, they do not offer a lot of information on the workings and specifics of the ordeal. During the Old Babylonian period, trial by river was still very much a living practice, so it was likely assumed that judicial authorities, the people in charge of implementing the laws, knew exactly what was meant by the term used in the letters.

By the Middle Assyrian period, the vagueness of the language and some actual grammatical problems[10] used to refer to the ordeal betray the fact that it was probably no longer practised, and that these references had simply been copied from earlier law codes. The vagueness of the Middle Assyrian texts[11] may also attest to the gradual disappearance of the practice. Furthermore, the vocabulary of the ordeal begins to change in the Middle Assyrian period, taking on more mythological aspects. In the Middle Assyrian texts, the river (Sumerian ID) is called *ḫuršan* – which comes from the Sumerian ḪUR.SAĜ, 'mountain'. The concept of the river ordeal changes into a judgement of the dead, suggesting that the actual judicial ordeal had taken on a more abstract meaning by this time.[12]

William F. Albright discussed a commentary text on the so-called Babylonian Job (*Ludlul bēl nēmeqi,* SAACT 7), which mentions the "border of the river where the judicial case of men is examined". In this commentary, the border (*itê*) is explained as representing the *ḫuršan*,

away his house; if that man is cleared by the river and returns, he who cast sorceries on him shall be killed; he who plunged into the river shall take away his accuser's house.

[7] MCCARTER 1973, 403.

[8] GURNEY and KRAMER 1965, 13–19. The Elamite ordeal by river has also been studied by J. Klima, *Das Wasserordal in Elam* (ArOr 39: 1971); *L'ordalie par le fleuve en Elam* (RA 66: 1972)., and by H. Hirsch, *Zum Fluß-Ordal in Elam* (RA 67: 1973). However, Frymer-Kensky (1981, 115) considered these forms of the drinking ordeal, not ordeal by river. Ordeal by river is also mentioned in laws § 13 and § 14 of the Laws of Ur-Nammu, the reasons being sorcery and adultery (the same reasons as those in the Code of Hammurapi), respectively. See ROTH 1995, 18.

[9] Note, however, that in the Old Babylonian period, the Eshnunnakeans went to Id for the ordeal. Cf. TIM II 102, JCS 21. Also note Frymer-Kensky (1977a), who associates ^{d}Ilurugu, featured in earlier Sumerian laws, with the ordeal, although the first mention of the divinity is probably in the Hymn of Nungal mythic text. Here the name is a temple epithet or a term for a 'house of judgement', and the god of the same name may be a later development. See also FRYMER-KENSKY 1983, 139, where she discussed the meaning of the Sumerian term as a netherworld river.

[10] DRIVER & MILES 1975 [1935].

[11] DRIVER & MILES 1960, 308–311.

[12] Frymer-Kensky (1983) discussed a text referred to as the "Marduk Ordeal", which seems to offer a thorough mythologization of the concept. According to Annus (2012, 25), the Marduk Ordeal refers to a historical situation when the boat carrying the statue of Bel was capsized during a procession of the Akītu festival.

which Albright interpreted as "the mountain in which men are judged after death, according to Babylonian conception". He further described the belief, which I would assess as having represented Middle Assyrian conceptions specifically, writing that

> the river in question is the River of Death [...] which was not unnaturally conflated at various times and in various ways with the terrestrial Euphrates. It is on the bank of the River of Death that men are judged after decease, according to Babylonian conceptions. The transfer of the notion of trial by a river to ordeal by plunging into a river is very natural, though it is by no means impossible that the trial by ordeal in this way came first, and that the conception of the River of Death was modified by it.[13]

In fact, the extant textual evidence would seem to support the notion that the trial by river came first, while the concept of judgement in the afterlife was only subsequently attached to the tradition. A connection between the river ordeal and an underworld or "infernal" river was already made by Marvin Pope in 1955. Following Driver & Miles, he suggested that the Akkadian word *ḫuršan(u)* was used for the river ordeal in the 14th and 15th centuries BCE, three centuries after the destruction of Mari and its cultic sites where it is best known.[14] But where did the practice originate?

The Origins of the Ordeal

According to Kyle McCarter,[15] the earliest witnesses to ordeal by river were Sumerian. While the oldest texts referring to the ordeal appear to have been written in the Sumerian language, this does not yet betray their Sumerian origins, as this may well have represented Akkadian or Amorite "legalese", namely the use of a more ancient and authoritative language in the writing of laws. Sumerian texts do not necessarily witness to Sumerian culture as the origin of the practice and use of the Sumerian language in the writing of laws does not mean that such laws were indigenously Sumerian.

References to trial by river are indeed found in Sumerian laws (e.g., U.7739 ii 3–12[16]), which Gurney and Kramer dated to the Ur III "Neo-Sumerian" period (c. 2112–2004 BCE, a period of Sumerian renaissance following the Akkadian empire period), roughly contemporary to the oldest inscriptions from Mari. The Sumerian law (§ 10), concerning what seems to be adultery, reads:

TUKUM-BI	if
DAM GURUŠ-a-da	with the wife of a male worker
ÚR-ra	in the lap

[13] ALBRIGHT 1936, 19–20.

[14] POPE 1955, 60. McCarter (1973, 407) remarked that the name of El's mountain is referred to in some Ugaritic texts with the borrowed Akkadian term *ḫursan*, which does suggest a connection between mountains and rivers.

[15] MCCARTER 1973.

[16] Published by Gurney & Kramer (1965, 13–19).

NÁ-a	of lying
LÚ ì-da-lá	a man he has accused,
ÍD-dè	the river
ù-um-ZALAG.ZALAG	after/if it purified them,
LÚ ì-da-lá-[ra][17]	(to) the man he has accused
ŠUŠANA.ŠA [MA-NA-KÙ]	a third [of a mina of silver]
ì-[lá-e]	he [will pay].[18]

It is on the basis of this law that McCarter, with no knowledge yet of the Mariote material, claimed a Sumerian origin for the practice. It is interesting that the next law (§ 11), which is extremely fragmentary, seems to feature the word A-AB-[BA], 'the sea', on line 22, followed by a verbal form. The law seems to begin with TUKU[M-BI] NITAL[AM], possibly continuing with laws dealing with adultery. The appearance of NÍG- on line 21 may also point towards sorcery. The punishment or end result for whatever the infraction was seems to have featured something or someone being thrown into the sea. This cannot be a trial or ordeal here, as it appears at the end of the law, the normal place for the meting out of punishment. Note that in the law mentioning trial by river, the punishment at the end of the text is a payment of silver.

In the Sumerian text called *Enlil and Ninlil* (also known by the name *The Begetting of Nanna*),[19] reference is also made to a "river of the netherworld, the man-devouring river", an epithet which is repeated in the text several times. In the story, Enlil disguises himself as the river and copulates with Ninlil, and the act of their copulation is described with references to flowing waters. In the text, Enlil is referred to as the king whose decrees are unalterable. In another text, which Kramer called *Enki And Sumer: The Organization of The Earth and Its Cultural Processes*,[20] Enki is described as "king of the abyss, who decrees the fate", showing that the connection between water and judgement was a Sumerian conception. A similar description of "king of the abyss" and "who well understands the decreeing of fates" is given of the god in the

[17] Gurney & Kramer (1965, 14) reconstructed LÚ Ì-DA-LÁ-[A], "the man who was accused (of lying) with her". It hardly makes sense for the accused man to have to pay the penalty after being cleared of charges. While the last sign is completely chipped off, a comparison to line 7 suggests that there is indeed an additional sign to line 10.

[18] To parse the Sumerian in more comprehensible English, it would read something to the effect of: "If he has accused a man of lying in the lap of the wife of a *gurus*-man, should the river clear them, he will pay one third of a mina of silver to the man he (falsely) accused".

[19] BM 38600, CBS 8176, 8315, 10309, 10322, 10412, 13853, 29.13.574, 29.15.611, 8176 + 8315 + 13853, 10309 + 10412. Ni 2707. See KRAMER 1944, 114 for sources and BEHRENS 1978 for composite text, score transliteration, translation, photograph, and hand copy. The most recent (German) translation is by Römer (1993).

[20] CBS 29.15.38; Ni 4006; PBS X 2, 1; SRT 44; STVC 78–80, TRS 36. See KRAMER 1944, 116. Cf. also plate XIV for pictorial witnesses to the judging water-god Enki, seated on a chair or throne of judgement (KRAMER 1944, 60 described him as "sitting in judgement" and "seated in judgement").

texts *Enki and the World Order*[21] and *Enki's Journey to Nibru*.[22] The temple of Enki in Eridu was called the É.ABZU, the 'house of the abyss'. Neither the river nor the sea, which Enki decrees as the domain of the goddess Sirara in the story, are hostile entities in Sumerian mythology, nor do they have adversarial relations with the storm-god Ishkur.

There is also a mythic text from Nippur, which has been dated to Ur III, called the Hymn of Nungal (Nungal A) with the native title É U_4.HUS AN.KI, 'the house (of) the furious storm (of) the world', in which "the gods" oversee the ordeal held at the Ekur temple. Frymer-Kensky interpreted this text as a witness to the judicial ordeal in Sumer.[23] However, the hymnic text is not a witness to the historical practice,[24] nor is the ordeal its central topic. In the hymn, an unnamed god (DINGIR) stands witness to the ordeal.

Montgomery also drew attention to an Early Dynastic (EBA) statuette excavated from Mari and published in *Syria* XVI, inscribed with the Sumerian and Akkadian names for the river (Idi-^{d}Nârum).[25] The statuette portrays a bearded and bald-headed man, likely a Mariote official, and it is broken at the waist. In its current form it is 20.4 cm in height but is missing the bottom half. The eye-sockets of the statuette are hollow and are likely to have been bejewelled. If the dating of the statuette to c. 3000 BCE is correct, then Mari's close connection to the river would predate Zimri-Lim's kingdom and the texts of the Mari letters by at least a thousand years, which is unsurprising considering the geographic location of the city. It would similarly push back by over a millennium the date of the first mention of the practice of the ordeal by river, if that is indeed what is referenced by the statue. While the dating of the inscription is not necessarily the same as the dating of the statuette, the combination of the inscription and the letters do suggest a Mariote (if not Amorite) origin for the ordeal.

The inscription is located on the figure's back, across its left shoulder-blade. It is unclear whether the inscription names the figure itself or whether it is a votive gift with a dedication to the river or to the river-god. The statuette does not appear to represent a divine figure, as it is devoid of any divine attributes. Bottero, for his part, seemed convinced that the city of Mari had housed a temple for the river-god.[26] He was undoubtedly influenced here by

[21] For German translation, see FALKENSTEIN 1956, 57–231. See also the PhD dissertation by C. Benito, *Enki and Ninmah and Enki and the World Order* [Ann Arbor, MI: 1969].

[22] ETCSL 1.01.04 ll. 4–5, 44–45a. See also CECCARELLI 2012, 89–118.

[23] FRYMER-KENSKY 1977b, 78.

[24] Frymer-Kensky (1977b, 78), however, argued that hymns and other religious texts can be used to "illuminate the social and juridical systems and institutions" of their given societies, and on p. 89 that there "does not seem to be any doubt that these hymns reflect an actual juridical situation." While they may 'illuminate', we must be careful in using them to reconstruct practice. On p. 85, she uses a rather obscure passage to suggest that, in the actual juridical ordeal, the ordalists were not allowed to drown, as "Nin-Dimgul, the divine mooring pole" snatched a man from the river and brought him to Nungal in the mythic text. According to her, "it is possible that this allusion may be literal: that people were rescued from the river by having them grasp a mooring pole in order to be pulled from the water."

[25] MONTGOMERY 1935, 269.

[26] BOTTERO 1981, 1029, 1052.

the statue of the proposed god, Idi-^{d}Narum.[27] Lambert, however, held that no temples of these numinous deities of Northern Mesopotamia are known to have existed – and, according to him, they would not have to, as the river and the god of the river were one and the same, and the river itself would have thus served the purpose of the temple.[28] He also pointed out that, in the official pantheon lists of Mari, the river has no temple.[29] However, this is only negative evidence for the absence of a temple in the city of Mari itself, not necessarily for the Amorite city of Hit that formed a part of the Mari kingdom and where one would expect such a temple to have been located.

The divinized river is also mentioned on a dedicatory bowl from Mari (M.2241, also E1.10.11.2001), where ^{d}ÍD is followed by ^{d}(*G*)*eš-dar-ra-at:*

DUMU.NITA	Heir
be-bu.BAD	(of) Bebu-BAD
RAŠ.GA	merchant
^{d}ÍD	River
^{d}(*G*)*eš-dar-ra-at*	Ishtar
SAG.TUG	(to them) he dedicated it.

According to Lambert, the "obvious conclusion" to draw from these clues is that the river and Ashtarte were conceived of as husband and wife. While the conception of such a relationship between the gods is not unheard of, it is far from certain. Lambert connected the goddess to Ashtarte, *ʿṯtrt* of Ugarit.[30] The Amorite inscription, written mostly in Sumerian, has usually been translated as "heir of Bebu-BAD, the great merchant of the river, dedicated to Ishtar",[31] but it is quite possible to read it as "heir of Bebu-BAD, the great merchant, dedicated to the river (and) to Ishtar". The existence of the former dedication corroborates this interpretation of the text. It is also likely that ^{d}(*G*)*eš-dar-ra-at* and *aš-ta-ar-ra-at* are variant

[27] Curtis (1988, 8) seems to suggest that the example represents a personal name in the form of *I-ti* ^{d}*Narum*, "the River knows" or "Naru knows". This interpretation seems plausible, as DN-^{d}DN is not a usual format for ancient Semitic names, divine or otherwise (whereas noun-DINGIR-DN is an ordinary Sumerian personal name format, e.g., Ur-^{d}Nammu, "(hairy) man of Nammu"). If the Mari name was an Akkadized form of the Sumerian format, one would expect a noun rather than a verb in the first position, and so the name could have a meaning to the effect of "Hand of Naru", which would be interesting with regard to the concept of the hand symbolizing the divine weapon. On the other hand, Ebla personal names follow the Semitic verb-^{d}DN pattern, which would allow Curtis' interpretation of the name. But if we are dealing with a bilingual designation or divine name, it may not follow expected patterns anyway. Roberts (1972, 46) also pointed out a Pre-Sargonic attestation of the name Iddi(n)-Nâru (*i-ti*-^{d}ÍD), "The River gave". The personal name from Mari was discussed by Parrot (1935, 27) and Thureau-Dangin (1934, 142). While the interpretation of the first element is a matter of importance, what is proved by the inscription with absolute certainty is the concept of the divinized river existing at this time.

[28] LAMBERT 1983, 84.

[29] LAMBERT 1985, 530.

[30] LAMBERT 1985, 535–356.

[31] "Iku-Shamgan, King of Mari, Suwada the singer (?), son heir of Bebu-BAD the great merchant of the river to Eshdarat dedicated". PARROT 1967, 239; BUDIN 2004, 106.

spellings of the name of the same divinity.[32] The inscription, on a stone vessel found in the temple of Ishtar, is dedicated to the king of Mari, Ikun-Šamagan.

Lambert also submitted that the river ordeal is mentioned in an Akkadian-Hurrian bilingual wisdom text from Ugarit (BWL 116:3 = RS 15.010).[33] On lines 3–4 we read:

tá-me-e a-na na-ri ka-li a-pí-il ZI Who swears to the river is withheld a true heir
du-ri-iš mar-ḫé-ta-šu DUMU *ú-ul i-šu* forever to his wife a son there will not be.

The meaning of the lines is not entirely clear, but it would seem that if the text is a reference to the ordeal, the cause of the ordeal seems to be somewhat different from the other instances examined. One possible interpretation suggests that it presents a warning: if one uses the ordeal to make false witness, the result will be infertility and lack of progeny. Swearing by the river could indicate a (discouraged or antiquated) legal practice, but the threat of having progeny withheld for using the river for arbitration seems ill-fitting considering the proposed potentially lethal nature of the actual practice. What is noteworthy is that in the Hurrian translation of the text, the river is not mentioned at all. Instead, mention is made of committing perjury against the moon-god, which causes an heir to be withheld from the perjurer and his wife. In any case, we are not dealing here with a legal text or a text written in the Ugaritic language. It is difficult to ascertain where and when the text originated, although it would seem that the Akkadian text is the base text and the Hurrian text the translation.[34] The text does not witness a native Ugaritic practice.

Roberts suggested that there was an Akkadian river-god called Naru, who was primarily conceived of as a judge through the social character of the role it played in the river ordeal.[35] Lambert also held that the variation between the forms *íd* and ^{d}*íd* in BM 45690 IV suggests the reading *nāru*.[36] He wrote, "Thus not even the normal grammatical gender of nārum in Akkadian prevents the deity of the river ordeal from being male."[37] Undoubtedly the god was conceived of as male (and is explicitly mentioned as such in CT 4:50, which features the personal name 'The-river-is-god', *na-ru-um-íl*).[38]

[32] Budin (2004, 106–107) stated that the Eshdarat of the Mari inscriptions is the earliest occurrence of the goddess name Ashtar(a)t.

[33] LAMBERT 1965, 11; DIJKSTRA 1993; ARNAUD 2007, text 46; COHEN 2013, text 2.7. The editions contain slightly different readings. The text was found in the East-Archive along with other Hurrian religious texts.

[34] For the most part, it is a rather literal translation at that. DIJKSTRA 1993, 170.

[35] ROBERTS 1972, 46. All well and good, but this still does not settle the question of whether the god's name was pronounced Id or Naru.

[36] LAMBERT 1965, 11.

[37] LAMBERT 1985, 535.

[38] BOTTERO 1981, 1036, lists the form ^{d}*i-id*. The gloss *i-id* is also found in the Middle Assyrian laws, which Lambert argued does not prove that every instance of ^{d}*íd* would have been read *id*. Syllabic spellings for *nāru(m)* can also be found (e.g., CT 4:50 *na-ru-um-íl* and K 4721:2 ^{d}*na-rum*). LAMBERT 1965, 11.

While the origins of the ordeal may be (and, strictly according to textual witnesses, likely are) Sumerian, in the Old Babylonian period the practice of the ordeal seems to have been centred around the city of Hit, which was a part of the Amorite cultural ambit.[39] Thus, regardless of the putative origins of the concept, it was at least embraced, if not wholly appropriated, by the Amorites in this period. Whether or not the origins of water judgement were culturally Sumerian or simply connected with the pre-history of the Euphrates River, it seems that at some point the Amorites adopted the idea.

The Ordeal in the Mari Texts

Unlike the famous law of Hammurapi and other ancient legal texts, the Mari letters do not present laws suggesting an underlying practice, but instead demonstrate actual administrative reports and accounts of the practice being used in a variety of contexts.[40] The letters from the Mari archive are descriptive. Although contemporary to the laws of Hammurapi, they are not laws and make no references to laws. They are actual administrative reports and accounts from the scene of the ordeal. They are letters from people who witnessed an ordeal first-hand and were reporting back from it. This is why they present us with unique insight into the concept of the ordeal, allowing us to deduce some facts about its function: all ordeals of the Old Babylonian period seem to have taken place in one specific location: the city called Id.[41] In the Old Babylonian period, the river ordeal was not in fact practised on all rivers but only on the Euphrates. Furthermore, it was not practised just anywhere along the Euphrates but in this one, very specific location. The city was located on the western bank of the Euphrates, roughly half-way between Mari and Babylon where we find the modern Iraqi city of Hit today.

The city was a major point of tension between Babylon and Mari (which can be seen, e.g., in the texts ARM 26:160 and 468), with ownership of the city being contested between them for over half a decade. This was not least because of its strategic location, but also because of its wealth of bitumen wells, which were used in the building of Babylon.[42] Troops from both Mari and Babylon were situated there, but at least during Zimri-Lim's reign it seems to have been considered Mari territory. The importance of the city is witnessed not only by the fact that its ownership seems to have been the single biggest, ongoing point of contention between Hammurapi and Zimri-Lim (cf. ARM 26:40, 449, 468, 499), but that in the letters we have several mentions of foreign parties coming to this Mariote city to engage in this curious judicial

[39] What Frymer-Kensky (1977b, 89) seems to suggest is that at the time of the writing of the Nungal hymn, the practice was centred or centralized in Nippur, which not only served as the site of the ordeal but also provided prison facilities for those convicted by ordeals and other trials. However, the Old Babylonian evidence points to the city of Hit as the sole location of the ordeal.

[40] Frymer-Kensky (1977b, 78) held that legal texts were frequently too obscure, ambiguous, or laconic to answer questions on function.

[41] HEIMPEL 1996.

[42] HEIMPEL 1996, 8; SASSON 2001, 331.

practice. Kings from outside of Mari could – and demonstrably did – send troops and officials to oversee their own people undertake the ordeal (ARM 26:253, 254, 255, 256).

The cuneiform for the name of the city and the word 'river' are the same. In fact, when it comes to the river ordeal, the terms ID (or A.ENGUR), ^{d}ID, ID^{ki}, and ^{d}ID^{ki} (e.g. in A.457:33) seem to be used interchangeably. According to Heimpel, the city of ID was one of the few cities along the Euphrates named after its principal god,[43] even suggesting that the city may have originated as an example of the ancient "temple city" (i.e., a city that grew up around a temple complex).[44] Such cities seem to be a northern Mesopotamian particularity, according to Lambert, who held that the numinous character of geographical features is commonly attested there. The most famous of such cities in the ancient world was Aššur, the cultic centre of its tutelary god Aššur. He states that unlike northern Mesopotamia, the southern Sumero-Babylonian culture had few cities bearing the name of the local god.[45] But the numinous character of geographical features was not limited to sites of later urban settlements, as several mountains and rivers in northern Mesopotamia were also thought to have divine characteristics. He additionally pointed out that the concept of a numinous mountain was also known in many Eastern Mediterranean cultures. These western numinous mountains were not considered gods in themselves, but rather served as the seats of gods.[46]

It bears noting that there existed some variation in the writing of the name of the city of Id. The form ^{d}ENGUR *ki* or ^{d}i$_{7}$ *ki* has both the Sumerian determinative for 'god', the *dingir*-sign, as well as the determinative for a placename. Forms such as *i*$_{7}$ *ki* and *i*$_{7}$ were also used. It would seem that, in the text KAV 65 r, ii 2, the form ^{d}ÍD^{ki}, while containing the determinative for a placename, actually designates the name of the god. There seems to have been no rule as to whether the *dingir*-sign should be attached to the name of the city or to the Euphrates River. Whenever the river ordeal is mentioned, forms such as ^{d}i$_{7}$, ^{d}ÍD are used, and it would be easy to contend that it did have something to do with a river-god or divinized river.

We ought to be careful reading too much into the determinatives, however. Perhaps it was done out of respect for the river, or the form may have been archaic even at the time of the writing of the Old Babylonian texts. In one letter (ARM 26:253), the river itself is also simply called "god", *ilum*/DINGIR, with the river and god being explicitly associated. The text reads *ina ilim ipšum*, "he solved in the god". The text does not feature a determinative and the word for 'river', merely the word for 'god' which is considered to be the river. Whatever the case, the Mari letters suggest that ^{d}ÍD had a strong Mari connection. And according to Lambert, the term alluded more to the river ordeal than to any geographical river.[47] Speiser, on the other hand,

[43] Along with Yabliya and Hanat, a peripheral city of the Mari kingdom.

[44] On temple economies, see MAKKAS 1983.

[45] The city of Nippur (EN.LÍL^{ki}) forms a notable example to the contrary.

[46] LAMBERT 1983, 84.

[47] LAMBERT 1985, 535.

believed that the Akkadian *id* ("when so pronounced") did contain a specific cultic bearing, especially in the Assyrian Laws.[48]

The Mari letters mentioning the ordeal, ten in all, were sent to Zimri-Lim. Accordingly, they were found in the royal archive. The senders of the letters were:

Meptum 26:249, 251, 253, pasture-chief in Suhum, guard of crossing
Yaqqim-Addu 26:252, 254, governor of Saggaratum
Ibal-Pi-El 26:250, pasture-chief, military commander
Yasim-Dagan 26:251, military officer (?)
Ishi-Dagan 26:255, envoy
Zu-Hadnim 26:256, envoy
[PN] 26:257, 258

What we can observe in the letters is that none of them were sent by the regent of Id or by any judiciary official stationed at the city with a permanent position of overseeing ordeals. Most of the authors seem to be military correspondents of Zimri-Lim who were either passing through Mari or just happened to be there when ordeals took place. None were religious personnel, and in fact no religious functionaries are mentioned in the letters in connection with the ordeal.

As for the probands or "ordalists", which is to say people who were either forced or voluntarily undertook the trial, the letters witness to the following numbers:

80 Emarites of high rank
9 individual women + 4 intended female probands
3 young boys
2 Elamites, n Hananeans
1 elder man
1 individual man (+ 1 possible individual man)
1 young girl

From the letters it is possible to infer that most of the reported ordalists were not local. Male ordalists outnumber female ordalists, but the number of females is still relatively high. Most of the female ordalists were not accused of anything but had to stand witness. The number of children and elderly is low, but statistically significant. Discounting foreigners, elders, and male children, there is only one person that can be interpreted as a free man (*awīlum*) among the ordalists, and even he is for some reason unnamed ('brother of Hammu-Kuna'). From these facts we can conclude that most ordalists came from groups whose capacity for making oaths was weakened or non-existent (with the exception of the elders of Emar, who have been interpreted as 'high ranking', but they were also foreigners and not locals).[49] If the

[48] SPEISER 1955, 10.
[49] DURAND 1990, 56.

elders were to be interpreted as 'old', then this category would also display a compromised ability to make an oath.

People who successfully completed the ordeal were sometimes sent to the king of Mari for further questioning, perhaps due to the principle of "*din napištim ana šarrim*", according to which litigation over life belonged to the king: the king *personally* had to decide all of the cases that would result in loss of life. The foreign kingdoms of Elam and Yamhad sent their own parties with their own probands. Something called the 'tablet of the king' was required to be read at the ordeal, and this was especially important for the foreign parties. The king's officials, agents and secretaries were present at ordeals, and the king personally inquired about the resolutions of the ordeals. The direct royal involvement in these cases is interesting, as the state also needed these crimes with inadequate inquisitorial or evidentiary procedure to be resolved. But in these cases, it was the authority of the king that legitimized the divine judgement. As a form of divine arbitration, the river ordeal is believed to have functioned as a *last resort judgement*, whereby legal cases that could not otherwise be decided were presented to the river. While this may or may not have been the case, the ancient Mesopotamians also had other means of litigating such cases. Some of these featured the divine weapon.[50]

As to the reasons for undertaking the ordeal, Durand originally categorized the ordeals into four types: accusations of adultery, sorcery, treason, and material concerns.[51] In the actual letters, the reasons given for the undertaking of the ordeal are: three cases of confirming the truth of a statement, two cases of an oath (sorcery), a case of giving witness (adultery, murder, possibly paternity), a claim (land, territorial dispute), and a case concerning the silver of the goddess Ba'alta-Matim (26:256). It is difficult to ascertain from the letter what exactly had befallen the silver of the goddess. It is possible that a question of the truth of statements also underlay this case. What can be deduced from the letters is that one of the main functions of the ordeal was confirming the statements, witnesses and oaths of persons whose word was for one reason or another considered as holding less power than of the '*awīlum*' man, with whom other forms of arbitration could be used. This could be due to reasons of gender, age, social class, reputation, or prior infractions.[52]

For example, one case includes a woman who was a murder witness, but because she was a woman, her witness statement had to be confirmed by undertaking the ordeal (26:254). In only one case (26:250) the ordeal *may* have been used for bilateral divine arbitration between two parties, but it is not certain that the two cases in the text are connected. Note, however, that in the code of Hammurapi, it is precisely the *awīlum* man for whom this form of arbitration by river was prescribed. However, we must contend with the fact that the Babylonian laws are

[50] REDE 2003, 169–170; TÖYRÄÄNVUORI 2012.

[51] DURAND 1989.

[52] Frymer-Kensky (1981, 126) claims that it was at the discretion of the judges to determine how compelling a witness was.

a theoretical construct, and we have no witnesses of a single Babylonian having undertaken the ordeal during this period. Therefore, it is unknown how closely the law resembled actual practice. It seems that the practice kept being codified into law long after it was no longer a living tradition.

The Ordeal in Mesopotamian Legal Provisions

It seems that this very specific form of the Old Babylonian ordeal found in the Mari texts was no longer a living practice during the writing of these Middle Assyrian laws, although it is possible that the fact that the laws were still being codified may have meant that ordeals of a similar nature could ostensibly have re-surfaced from time to time. There existed legal precedent for the re-appropriation of the practice. For example, there are Neo-Babylonian and Neo-Assyrian letters in which the river ordeal is mentioned specifically in connection with land disputes (BBS I 14–17 iii 37–v 26; 66–7 iva 2–22, KB IV 168–169 2 6–9, ABL 965 r. 11–15),[53] and it seems to be used as a judicial *ritual* rather than a legal procedure employed to determine outcomes. While these letters are not prescriptive like the laws, at best they offer us vague information on its workings and details. From them, we can gather that a 'tablet of the ordeal' (*ṭuppa ana huršan*) was written by the king to settle matters of land ownership. This phrase is found in the older Mari texts in a seemingly different context.

As for the legal witnesses to the ordeal, the word *ḫuršan* is used for the ordeal in the three Middle Assyrian laws mentioned earlier (MAL §§ 17,54 24,55 25,56),[57] and apparently it had become a technical term denoting "banks of the river as a place of trial for the dead", and, subsequently, a method of "securing the acquittal (or conviction) of a person by the intervention of the holy river".[58] The Babylonian laws preserved in *ana ittišu* (S. I 25–26) also contain a law (§ 5)[59] which may refer to the ordeal used in cases of adultery or marital discord.

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[53] FRYMER-KENSKY 1977a, 378ff. Note also the Elamite tradition of "going to the waters" (*ana mê illakma*) to settle land ownership. FRYMER-KENSKY 1977a, 186ff; DRIVER & MILES 1975 [1935], 89–90.

[54] *šumma awīlum ana awīlam iqtibi mā* DAM-*ka ittinikku šebutu lassu riksate išakkunū ana* ^{ID}I.ID *illukū.* // If a man has said to a man: "like a harlot is your wife", (and) witnesses there are not, an agreement they will make and go to the river.

[55] *...ù ḫadima* DAM-*su ilakkû ù šumma* ENÉ ki DAM-*at* LÚ *ina bissu ištu* DAM-[*su*] usbutuni i-[di] 3a-te *iddan ù šumma ittikîr la idīma iqabbi ana* ÍDI.ID *illūku ù šumma* LÚ *ša* DAM-*at* LÚ *ina bissu usbutuni ina* ÍDI.ID ittura 3a-te *iddan šumma* LÚ *ša* DAM-*su ina panīšu ramanša talduduni ina* ÍDI.ID *umalla...* // And if the lord of the house knew that the wife of man was in his house with his wife, he shall pay thrice. And if he denies it and says "I did not know", they will go to the river. And if the man in whose house the wife of a man was staying refused to go into the river, he shall pay thrice. ...If the man whose wife before his face has run away from him has refused the river, he will be released and has fulfilled the complete river.

[56] *...ana riḫate* DINGIR.MEŠ-*ni ušituqu ubarrū ilakkû ana* dÍDI.ID *ú mamite la iṣṣabutu. ...* // Before the gods they will put the remains and take a claim, by the river or oath they will not be seized.

[57] For a more recent edition of the laws, see ROTH 1995.

[58] DRIVER & MILES 1975 [1935], 86–87.

[59] *šumma aššata mussu izirma ul muti atta iqtabi ana nāri* (ÍD(DA)-ŠÈ) *inaddušu.* // If a wife has hated his husband and she says, "you (are) not my husband", they shall give her/him to the river.

In Babylonian texts from Arrapḫa (EN II 7:24–26), which contain several references to *ḫuršan*, the expression for the ordeal is *ana nār ḫuršan alāku/illaku* (perhaps also to be read *ana* ÍD/*nārḫuršan alāku/illaku*)[60,] "to go to the river *ḫuršan*". This does seem to connect the concepts – at least in 15th century Arrapḫa. Pope also mentions a bilingual or interlinear text[61] where the Sumerian ^{d}ÍD KUG.GA (which Driver & Miles and Pope translate as "pure river goddess")[62] has the Akkadian equivalent of *amēlu ina ḫuršan zukkū*, "to declare a man pure by the river ordeal".[63]

Peiser likewise referred to a goddess in his translation of a Babylonian syllabary, where he rendered *ina itê īdī ašar dien nišē ibbirru* as "on the banks of the river-goddess where the judgement of men is decided", identifying *ḫuršan* with "*itê ilatīdīm*", which Peiser translated as the "banks of the holy river".[64] As the Sumerian *dingir*-sign denoting divinity is not actually gendered, the interpretation of *īdum* as a goddess must revert back to the gender of the Sumerian loan-word in Akkadian, which possibly took its gender from the homophonous Akkadian word *īdum,* hand (which could be construed both masculine and feminine), and had very little bearing on how the gender of the river or river deity was conceived.

The word *ḫuršan* is sometimes found with the determinative for 'river', and sometimes with the determinative for 'mountain' (e.g., Gilg. 48 i II). According to Driver & Miles and Pope, it referred to the cosmic mountain of the netherworld connected to the world-encircling ocean or river where the dead were judged, based on the text Akîtu 221–222.[65] In Akkadian, it came to denote the place(s) of the river ordeal or the ordeal itself. The *ḫuršan* was used of the ordeal, especially in the texts from Nuzi dated to the 15th and 14th centuries BCE.[66] While this does not prove that such an ordeal took place on the banks of any "sacred" river, Driver & Miles suggest

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The verbal form does not allow for conclusions as to which party is given to the river. Driver & Miles (1960, 308–311) held that there are errors in the grammatical forms due to the original Babylonian text having been converted by Assyrian copyists, and they interpret the law as saying, "If a wife has hated her(!) husband and says 'Thou art not my husband', they shall throw her(!) into the river". Their interpretation does make sense in light of the next law (§ 6), decreeing what is to happen in the event that a husband says to his wife that she is not his wife.

[60] Driver & Miles (1975 [1935], 87) favour their interpretation as determinative ideograms.

[61] From the Babylonian records in the library of J. P. Morgan, cf. IV 20:59.

[62] While it is true that in certain contexts ^{d}ÍD can be interpreted as a feminine entity (e.g. ^{d}ÍD AMA URU *zí-ba-ge* in KL 11:31, translated as "River, mother of the good city", in which it is the word AMA, "mother" that allows us to discern the gender of the river, and BM 74329 where the river is the daughter of the sea), it does not follow that this was always the case. There is nothing in the context to suggest the gender of the river. The seeming association of the *ḫursan* with the river ordeal does make one wonder whether the goddess Ninḫursaĝ had any connection to it.

[63] POPE 1955, 70.

[64] PEISER 1890, 477–479.

[65] DRIVER & MILES 1975 [1935], 86; POPE 1955, 69.

[66] There are 11 texts in which ordeal by *ḫuršan* is mentioned: AASOR 16:74, 75; HSS 9:7, 13:310, 422, 14:8; JEN 124, 125, 631; SMN 855, 3557. According to Frymer-Kensky (1981, 122–123), it was used for both personal and property disputes, like theft and burglary. In land disputes, litigants could opt for the *ḫuršan* trial if the decision of the judges was unacceptable to them. Ordeal by oath seems to have been more common in Nuzi. On this ordeal, see DRIVER & MILES 1940 and FRYMER-KENSKY 1981, 122–125.

that various texts featuring the compound *nārḫuršān* and the simple term *ḫuršan/ḫursan* appear to make the meaning unmistakable.[67] According to Pope, there is also no doubt that it refers to the ordeal.[68] Smith suggested that ^{d}*ḫuršān* was actually the divinized river ordeal, as opposed to the divinized river, ^{d}ID.[69] Note, however, that the river is not mentioned as a god in the pantheon-lists of Mari.[70]

According to Driver & Miles, the Middle Assyrian references to the ordeal present a number of difficulties due to the vagueness of their language, which assumes that the reader would be familiar with the practice. Driver & Miles also remarked on the paucity and obscurity of references to the ordeal outside of the Middle Assyrian documents.[71] While they seem to be unaware of the Mari material, this new evidence seems to have done relatively little to shed light on the issue. It is also uncertain how familiar the Assyrian of the 15th century would have been with this 18th-century practice, which seems to have dwindled with the destruction of Mari, even if McCarter does claim that the practice was a "widespread phenomenon".[72] Exactly how widespread the phenomenon actually was, however, remains unclear. The vagueness of the Middle Assyrian texts may also attest to the gradual disappearance of the actual practice. The extra-Mariote witnesses create a context for the references to the ordeal found in the Mari texts, which have greatly increased the information available on the concept.

Trial by River may also be referenced in the Neo-Assyrian text KAR 143+219.[73] The text, often dubbed the "Marduk Ordeal", contains both cultic and mythic portions. It has been interpreted as containing Assyrian propaganda toward the Babylonians during and after the fall of Babylon in 689.[74] Frymer-Kensky called the Marduk Ordeal "One of the best known, most discussed and least understood texts from Mesopotamia".[75] She noted that the text has also been interpreted as an Assyrian anti-Marduk parody written at the time of Sennacherib.

Frymer-Kensky further suggested that the historical occasion for the writing of the text was the return of Marduk's statue to Babylon in 668 by Esarhaddon's son Šamaš-šuma-ukin, and that it was written for the purpose of incorporating that historical event into the

[67] DRIVER & MILES 1975 [1935], 87.

[68] POPE 1955, 69.

[69] SMITH 1994, 236.

[70] LAMBERT 1985, 526–527, 532.

[71] DRIVER & MILES 1975 [1935], 86. McCarter (1973, 407), on the other hand, boldly states that the "legal procedures in question are well known to students of Assyriology". On p. 412, he also claims that the concept of judgement by river ordeal was something shared by Israel with Mesopotamia, which overstates the evidence.

[72] MCCARTER 1973, 403.

[73] This text is from Assur, but there is another edition from Nineveh: BM 134503–4+S.1903 features the same text but in a slightly different sequence. FRYMER-KENSKY 1982, 132.

[74] Following VON SODEN 1955. Both VON SODEN 1955 and FRYMER-KENSKY 1983 contain editions and translations of the text, although the *edition princeps* was by W. Zimmern in *Zum babylonischen Neujahrfest* (BSGW 70/5: 1918). The text was also published by Livingstone (1989) (34 Assur and 35 Nineveh).

[75] FRYMER-KENSKY 1983, 131.

religious framework celebrated in the Akītu festival. Accordingly, she saw the text as "manifestly political".[76] The celebration of the festival had been foregone between 689–668, partially as a result of Babylon's rebellion against Assyria during the reign of Sennacherib and its subsequent destruction.[77] In the Marduk Ordeal text, Marduk (called ^{d}EN throughout) is held captive and a goddess (possibly Tashmetu) pleads to Sin and Shamash on Marduk's behalf, while his son, Nabu, searches for Marduk. On l. 6–7, unnamed persons are questioned at the *ḫuršan.* Nabu goes to Borsippa; on l. 23, it is said that after "Marduk went to the *ḫuršan*",[78] the city revolted.

Frymer-Kensky argued that there is no ordeal in the text. It was traditionally read into the word *ḫuršan* on l. 38, but she claimed that this is the only thing connecting the text to the concept of the ordeal. There are five uses of the word in the text, and only two of them may reference an ordeal. She argued that the *ḫuršan* found in the text is the name of the place where (the statue of) Marduk was taken.[79] However, Frymer-Kensky does connect the text with the Babylonian New Year's festival, recalling a period "before Marduk's victory in which he was considered to be in the power of Tiamat", and claimed that the text was related to events in the Akītu house.[80] The *ḫuršan* where Marduk is held captive is a "cosmic location".[81]

While I think that Frymer-Kensky is correct in her belief that the text does not reference the actual historical ordeal,[82] even though some legal terminology is used in the text (cf. l. 18, where a case is opened before Aššur), *ḫuršan* as a 'cosmic location' is on par with the abstraction of the concept of the river ordeal from the Middle Assyrian period onward. The fact that the term is found in connection with the mythology of *Enuma Elish*[83] in the Neo-Assyrian period only bespeaks the ordeal having become a thing of myth and legend by this time, but it does not follow that the concept of the ordeal was not consciously invoked in this text.

Annus revisited the text of the Marduk Ordeal in 2010 and 2012, suggesting on the basis of the parallels of Babylonian processional omen texts[84] that the Marduk Ordeal in fact

[76] FRYMER-KENSKY 1983, 140–141. The festival was re-instated two years later to celebrate Esarhaddon's son's ascension to the throne of Babylon. NIELSEN 2012, 7.

[77] NIELSEN 2012, 6, 8.

[78] L. 23: ^{d}EN *ina hur-sa-an il-lik-u-ni.*

[79] FRYMER-KENSKY 1983, 138.

[80] Mentioned on l. 38, 4, 66. In addition, l. 7 mentions the "house near the banks of the *ḫuršan*" (É *šu-ú ina* UGU *šap-te ša hur-sa-an*), which could recall the proposed temple at Id. Frymer-Kensky (1982, 138), however, thinks that the mention of the house "clearly" indicates that the text is using the term as a name for a location rather than as a judicial term.

[81] FRYMER-KENSKY 1983, 139.

[82] Von Soden (1955, 161), however, seems to discuss an ordeal myth, a myth in which Marduk is beaten and forced to undergo the ordeal. Therefore, Frymer-Kensky's argument is a little misplaced.

[83] *Enuma Elish* is mentioned twice in the text: l. 34, 54.

[84] These texts describe the condition and movement of the statue of Marduk during the Akītu festival. One of the omens states that if the boat (KI.MIN) used to transport the statue turns over in the river, there will be a revolt (*nabalkattu*). Based on this omen, Annus (2010, 102) deduced that the Marduk Ordeal refers to a historical event in which the statue

recounts the capsizing of the boat transporting the statue of Marduk when it was *en route* to the Akītu house. The statue was seen as undergoing the ordeal, which had "many consequences for how Marduk's annual battle against Tiamat was interpreted".[85] Among these changes was that Marduk's victory was no longer seen as immediate but rather resulting from a prolonged battle following Marduk's imprisonment. According to Annus, in the Mesopotamian legal and religious worldview, acquittal in the river ordeal demonstrated "moral and physical fitness and superiority over the adversary".[86] Whether or not the capsizing of the boat was intentional, the performative discourse of the return of the statue and the re-institution of the festival during this time functioned to legitimize Esarhaddon's rule over Babylon.[87] However, it seems clear from these later texts that the actual Mariote tradition of trial by river was not actively practiced in later times. But what actually happened during the trial when it still was a living tradition?

The Causes and Function of the Ordeal

Because of the specific case of the river ordeal mentioned in the Code of Hammurapi and its association with the *Iudicum Dei* of medieval Europe, the river ordeal has a strong association with sorcery, although to claim that the European so-called "ordeal of cold water" (as opposed to the "ordeal of hot water") dealt solely with sorcery is a gross misrepresentation of the evidence.[88] According to recent research,[89] the medieval ordeal was a process that was intended to determine the guilt or innocence of the proband, not through divine intervention but by the observance of the clerics who administered it. Unlike the stereotypical image associated with medieval witch hunts, few women were actually forced to undergo the ordeal of submersion. This was because of the higher ratio of fat to water in female bodies (a lean male body was more likely to be submerged during the ordeal). It must also be emphasized that the ordeal itself was not meant to kill the proband. As many of the offences or situations it was prescribed for were not even capital crimes, more probands would have been found guilty, and it has been suggested that the ordeal was actually meant to find the innocent and acquit most people who chose to undertake it.

Rather than being a form of divine judgement, the ordeal was a process through which the examiner could discern from the behaviour of the proband whether he or she was guilty or

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of Marduk fell into the river during the procession from the Ishtar gate to the Akītu house, leading to the divinity "involuntarily" undergoing the ordeal.

[85] ANNUS 2012, 25; 2010, 102–103. He suggests that the plunging of Marduk's statue into the water "prematurely and unprepared" for his annual cosmic battle against Tiamat, representing both the sea and the netherworld river of Ḫubur, lead to an "unusually harsh" combat being imagined between the divinities at that time.

[86] Annus (2010, 102) calls it the "spiritual meaning" of the myths.

[87] NIELSEN 2012, 7.

[88] Discussed, e.g., by Bartlett (1983).

[89] LEESON 2012. See also bibliography.

not, and then rig the resulting ordeal accordingly. This is why the ordeals of hot water and scalding iron were used more often with female probands. Acquitting them through these ordeals was easier. This practice, which ended in the 13th c. after being banned by the Lateran Council in 1215 CE, probably influenced the later Early Modern-era European superstition or folk belief that witches could not sink.[90] Sorcery is also mentioned in two Mari letters (26:249, 253), and adultery is alluded to in two (26:251, 252). In both cases, the accused are women. Yet it cannot be claimed that punishing sorcery was the main or even a major function of the ordeal, nor that sorcery was a particularly feminine enterprise. Furthermore, the ordeal had no sociological function to punish sorcery in these cases, but to *confirm truth statements*. Those found guilty of the malicious use of sorcery by means of the ordeal were most likely punished or executed by the usual methods of the time – which is also what took place later in Europe where it was actually possible to hire someone to take one's place in the ordeal.[91]

El-Barghuti discussed a similar ordeal among the Bedouin of Palestine in the early 20th century. While temporally very distant from the ancient Mariotes, they may still closely resemble the Amorite tribes in terms of social organization. He explains that the judges "have full authority to increase or reduce a penalty, always taking into consideration the common welfare and the personal influence of both parties. [...] The Judge must know the social position of the offenders and their family exactly. [...] Sometimes a judge cannot decide a case because it is too complicated. In this event he sends somebody secretly to reconcile the parties. If he does not succeed, he postpones his decision until he discovers the right one with the help of some other judge who must proffer his advice."[92] He further described the conditions upon which an accused person may be appointed a lawyer: their inability to defend themselves, that either party is a woman, when plaintiff and defendant are of unequal social rank, and when both parties are "still in a very excited state", when the accused is ashamed of appearing before the assembly due to the nature of the crime, and when "a party is composed of a number of persons, so that it is difficult to hear them all." This list seems to cover all of the cases for the use of the ordeal for arbitration in the Mari letters. El-Barghuti described the proceedings of giving an oath of guiltlessness ("Generally none but the powerful have the right to take the oath") and the payment of reparations in the case no reliable witnesses exist to decide the case, adding an interesting detail that if one of the persons of the family of the accused is absent, "a rifle, held by one of the *muzakkîn*, takes his place", which may recall one of the functions of the divine weapon.[93]

Also interesting are the ancient Semitic echoes found in the oath itself: "By the great God [...] who deprives children of their fathers and makes women widows, who vanquishes

[90] See ZGUTA 1977; BARTLETT 1986, 53.

[91] BARTLETT 1986, 13ff.

[92] EL-BARGHUTI 1922, 5–6.

[93] EL-BARGHUTI 1922, 15–16; 21–22.

kings, who subdues oppressors [...]". El-Barghuti finally describes the ordeal by Fire, used in cases where arbitration has failed and taking an oath is not an option: "A piece of iron, or a coffee-roaster, is heated until it becomes red-hot, whereupon the suspects, one after the other, come forward to lick it with their tongues [...] Everyone who undergoes the ordeal must pay a fee of 500 piastres for the privilege [...] Originally this custom may have been introduced to frighten people, and force them to speak the truth. Many a man who feels his guilt tries secretly to find someone to arrange the matter with the accuser before being brought to the ordeal by fire." One important thing to note about the Bedouin ordeals is that again they are not a means of punishment but indeed of arbitration; if the result of the ordeal is capital punishment, it was imposed by other means after the judgement is obtained. Furthermore, capital punishment is only one of the possible penalties, as the others include blood-money or weregild, banishment, or the payment of indemnity (like for like).[94] Likely all of this was also true of ancient forms of divine arbitration.

It seems that the river ordeal was at least partially used for political purposes in Mari, as evidenced by the fact that it was used to determine guilt regarding treason. It also seems that officials or "experts" of some kind often attended or watched over the process of the ordeal, as in A.457.[95] But the river of the ordeal was not conquered or defeated by a god (or a king); it served as an instrument of divine retribution. It seems that at least in Mari the river ordeal was connected to the king and his judicial power. The causes for the use of the ordeal not only included sorcery (A.457 37–39), which was the only reason given for the ordeal in the law of Hammurapi, but also murder (King of Justice) and adultery (A.457 40–41). In addition to these, in the Mari texts, we find the ordeal also being used for cases of treason (A.457 39–40) and the solving of territorial conflicts (A.457 1–30, A.1251).[96] The ordeal was also employed with prisoners of war. It may have served an important cultic function, being a public display of the king's judicial power. The Mari texts even preserve a letter in which the king himself addressed the river (ARM 191:1), indicating a ritual.

As for the actual functioning and proceedings of the ordeal, they remain as murky as ever. What is known is that a tablet was recited, containing the witness statement of the ordalist (26:254). Some type of ritual involving pouring water on the hand of the ordalist was involved (26:254). And at least on one confirmed occasion, the ordeal took place at dawn (26:254). The terminology used to describe the ordeal consists of the verbs *alākum*, 'to go to the river', *pašārum*, 'to resolve', *ipšum*, 'to solve', *rehûm*, 'to spit out', *waṣûm*, 'to come out', and *šalāmum*, 'to come out safe'. What the verbs signified as technical terms is difficult to ascertain, although some suggestions have been made, the most popular of which claims that the ordalist

[94] EL-BARGHUTI 1922, 21–22.

[95] MICHEL 1990, 203–204.

[96] DURAND 1988, 532–533.

had to swim to the other side of the river (or to traverse a set distance under water).[97] In only one letter (ARM 26:253), is it explicitly stated that the ordalist "fell into the god and died".

While it is often assumed that the way the ordeal functioned was a simple case of 'sink or swim',[98] in actuality, death is only mentioned as an outcome in one letter. Such a special mention implies that it was not the usual outcome, while the fact that her death did not seem to not settle the case anyway suggests that this was something of an anomaly. In fact, in five out of the six confirmed cases the ordalist survives, which is on par with statistical analyses made of the later European ordeal.[99] In the end, however, it is not known exactly what took place during the actual implementation of the ordeal. Lambert, for his part, was convinced that the ordeal took place in a river, either in the Euphrates or in the Ḫubur. The Euphrates is explicitly mentioned as the place of the ordeal in King of Justice (BM 45690 III 21–IV 23), a text which Lambert described as the "most detailed and vivid account of a river ordeal from ancient Mesopotamia".[100] According to him, the Ḫubur river, with its known nether-world associations may actually have served as the place of the ordeal at Mari.[101] In the period of the King of Justice text, it seems that a specific place had to be used for the ordeal: the accuser and the accused were sent under guard along the Euphrates to a spot upstream from Sippar (BM 45690 III 22–23).[102]

Based on the terminology and some possible later references to the ordeal,[103] the safest assumption would be to infer that going *into* the river was somehow involved. It is important to note, however, that "going into the water" does not necessarily refer to an ordeal by river. As Frymer-Kensky pointed out, non-royal grants, adoptions and divisions (but not sales or royal grants) could be contested, according to Elamite texts, by going to the water (*ana mê illakma*). This is a reflection of an accepted legal procedure whereby the plaintiff either initiates or substantiates a claim by going into the water, perhaps symbolically.[104] However, Heimpel[105] has offered some interesting alternative ideas of how the ordeal could have proceeded; according to him, even though the city of ÍD and its god were named after the concept of the river, the river ordeal was not located at the "wholesome waters of the Euphrates" but at the bitumen

[97] See MCCARTER 1973, 8 for withstanding the rushing waters; BOTTERO 1981 for staying afloat a measured distance; DURAND 1988 for swimming a set distance under water (based on A.457).

[98] "Witch dunking" is often recounted as the classic Catch-22 or 'damned if you do, damned if you don't' situation. Cf. e.g., Clive Aslet, *Villages of Britain* [London: 2010], 281.

[99] LEESON 2012, 705ff.

[100] LAMBERT 1965, 4.

[101] LAMBERT 1985, 535.

[102] LAMBERT 1965, 4.

[103] FRYMER-KENSKY 1977a, 186ff.

[104] FRYMER-KENSKY 1981, 117.

[105] HEIMPEL 1996.

wells or springs near the city of Id (^{d}ENGUR^{ki} in the Mari texts; e.g. A.457:33) where a cluster of such wells still remains.[106]

These wells are circular ponds filled with naphtha, a volatile variety of benzene, making the warm saline water of the springs highly toxic.[107] Heimpel suggested that the people undergoing the ordeal plunged into these wells where, scalded, they had to "endure chest-gripping temperatures". Upon inhaling the noxious gases or imbibing the toxic water, they would have "been overcome quickly, lost their consciousness, lapsed into a coma, and died."[108] One of Heimpel's arguments for the river ordeal taking place in the bitumen wells is their apparent power to sometimes push out the people submerged in them,[109] a display of the god's divine power to absolve the accused. Or, according to Heimpel, "the god not just stated, he emphasized, the truthfulness of the statement of the ordalist".[110]

McCarter seemed to take it for granted that trial by river featured the plunging of the accused into the river, where their success in withstanding the rushing waters determined their guilt or innocence.[111] He also claimed that the divine river served as a final litigant in the kind of legal cases where the normal adjudication between defendant and plaintiff was seen as having reached a stalemate.[112] There is little evidence to suggest that ordeal by river was ever a *common* feature of judicial arbitration in the ancient Near East. That the judicial function of the river was still known during the first millennium BCE, although likely no longer practised, is witnessed by a text known from several recensions that Lambert called "The River Incantation",[113] even though it seems more like a hymn addressed directly to the river. In

[106] HEIMPEL 1996, 8. Curiously, bitumen (*esir*) and ^{d}ÍD are associated in BM 6060, a tablet from the Kassite period in the second half of the 2nd millennium BCE, which could at least tangentially support Heimpel's theory. Tukulti-Ninurta II's inscription records the king staying a night by the city of Id, "at the bitumen spring, where the stele of the great gods is erected" (A.0.100.5:60). The fact that they did not cross the river to stay in the city itself suggests that the crossing was no easy matter.

[107] Note also Strabo's description of an undisclosed location near the Euphrates: "there is a fountain of this latter asphalt near the Euphrates river; and that when this river is at its flood at the time of the melting of the snows, the fountain of asphalt is also filled and overflows into the river; and that there large clods of asphalt are formed which are suitable for buildings constructed of baked bricks [...] The liquid kind, which they call naphtha, is of a singular nature; for if the naphtha is brought near fire it catches the fire; and if you smear a body with it and bring it near to the fire, the body bursts into flames; and it is impossible to quench these flames with water (for they burn more violently), unless a great amount is used, though they can be smothered and quenched with mud, vinegar, alum, and bird-lime." *Geography* 16.1.15.

[108] HEIMPEL 2003, 9; 1996, 8–9.

[109] HEIMPEL 1996, 8.

[110] HEIMPEL 1996, 10.

[111] MCCARTER 1973, 403.

[112] MCCARTER 1973, 407.

[113] LAMBERT 2013, 396. "Quite rapidly, attention is drawn to the judicial functions of this river." Lambert goes on to discuss the difficulty of the text being addressed to one river when "Babylonia" was located between two rivers, but I find this irrelevant with regard to the tradition. Babylon is not mentioned in the text, and it was Euphrates (and later, Ḫabur) which was connected to a judicial function, a function that the Tigris never bore. For all we know, the invocation

K.2782 the river is addressed: "You judge the judgement of mankind" (*di-in te-né-šᵉ-e-tum ta-din-ni*). A variant exemplar (CBS 344, pl. 70) reads in the same line: "You accomplish the judge<ments> of Ea, judgement takes place [b]efore you" (*ga-me-ra-te di-*<in> ^{d}E.A [m]*a-har-ki di-ni*).

An important facet of this text is that it witnesses a survival of the ordeals and the judicial function of the river in poetic memory, long after they were no longer actively practised. There is one late non-mythological mention of the river ordeal in the Babylonian area: it is mentioned in a 6th-century letter from Uruk in the context of royal anger in a legal case (YOS XXI, 149): "the king is furious with all of Babylon, he has not listened to my statements, my witness has not proven (or testified) in my case and I have not yet undergone the river ordeal." It is the only non-literary witness to the use of the ordeal in the time of the Neo-Babylonian Empire, although we do not know whether it refers to a symbolic ordeal or to the actual judicial practice.

Bottero, one of the first to remark on the concept of the river ordeal, believed that the ordeal did involve plunging into the river, but that different procedures were involved in different uses of the ordeal. If a defendant was ordered to stay afloat for a certain distance, he had to do that in order to show the god confirmed the truth of his statement. Durand published the text (A.457) Bottero referred to in ARM XXVI, interpreting it so that the accused had to travel the given distance (corresponding to c. 40 metres) underwater.[114] Heimpel, however, may be right in suggesting that the measure of 80 *a-ša* or "fields" (which Durand likened unto cubits)[115] mentioned in the text may actually have more to do with the particular statement of the accused (the case was one of land ownership) than the ordeal itself.[116] The rest of the texts fail to mention any such measurements.

Heimpel doubted this procedure on the basis that the Mesopotamians might not have had an accurate method of measuring the distance of the accused from the shore, and he further pointed out the difficulty of determining whether one is afloat or not, with a drowning man sinking and emerging again and again in his struggle.[117] One would imagine that the determining factor was simply whether one survived the plunge or not: survive, and one's claims were validated; perish, and they were not. The King of Justice text specifically states that the guilty party in the ordeal would sink.[118] Heimpel humorously asks whether the "ordalist" was rescued by an able lifeguard when he reached the given distance, and he suggests that

of "*at-ti* ÍD" at l. 1 may originally even have been addressed to the city of Id ("You, oh Id!").

[114] DURAND 1988, 519.

[115] DURAND 1988, 519.

[116] HEIMPEL 1996, 12.

[117] HEIMPEL 1996, 7.

[118] LAMBERT 1965, 4, in which he states that the text "does finally settle the controversy as to which judgement sinking or floating implied."

anyone capable of swimming would have survived the ordeal as Bottero described it. As discussed previously, the death of litigants did not seem to be the purpose of the ordeal, but rather the confirmation of truth statements.

Heimpel also cast doubt on Durand's idea of traversing the distance underwater, referring to the instinct to come up for air when air is needed.[119] But one has to wonder how common it was in ancient Mesopotamia for people to be able to swim, not to mention in a rushing river. Heimpel does admit that such an ordeal only makes sense among people who cannot swim, and he finds it difficult to believe that such a culture existed anywhere at any time – let alone along the Euphrates River, as shown by a document.[120] While I have failed to locate any study discussing how widespread the ability to swim was among ancient Mesopotamians, or whether the Euphrates was a swimmable river, I doubt it can be taken for granted that all people living along bodies of water are able to swim.[121] Indeed, it must be pointed out that according to the Mari letter, most ordalists did not even live in the vicinity of the river, which Heimpel recognizes.[122] Furthermore, the ability to swim may be lacking even in cultures inhabiting areas near bodies of water which are not suitable for swimming. One possible and simple explanation for the distance (*a-šà*) mentioned in the text A.457 would be that the accused had to make a 40-metre dive from a suitable spot along the river into the rushing stream, either to survive it or perish. Although I am inclined to the proposition that the measurement concerned 40 square metres of land, whose ownership was resolved by the ordeal in the case, one text is not enough to draw conclusions, but merely facilitates discussion.

Heimpel seemed to think that the god of the river ordeal was not ÍD at all, but rather Ea, "King of the Apsu", the ruler of the subterranean waters, connected to the concept of springs and the river by the city of Hit.[123] In the Weidner god-list, ÍD is equated with Ilurugu who was closely associated with Ea in the Old Babylonian period. According to Johandi, Id/Ilurugu seems to be an independent deity in the god-list, mentioned between Enki/Ea and Asalluhi. In some other sources, Ilurugu is equated either with Enki (*Letterprayer of Sîn-iddinam to Ninisina*) or Asalluhi (hymn *Asalluhi A*).[124] The domains of these deities seem to have had enough overlap to allow them to blend into one another. Ea is mentioned as the god of the ordeal in King of Justice III, a literary text that may have been somewhat fashioned after

[119] HEIMPEL 1996, 7.

[120] HEIMPEL 1996, 7.

[121] There is iconographic evidence of at least assisted swimming among Assyrian military troops from the Neo-Assyrian period, but one can hardly interpolate from this that civilians who may have lived far from bodies of water suitable for swimming could have swum across a river (e.g. ANE 124538, a relief from the North-West palace of Aššurnasirpal II from Nimrud).

[122] HEIMPEL 1996, 8: "Single ordalists and plunging parties [...] came from Mari, Karkemish, Aleppo, the Habur triangle, and Elam".

[123] HEIMPEL 1996, 10.

[124] JOHANDI 2019, 116–117.

Hammurapi's code, functioning perhaps as a fictional commentary on it.[125] There are three cases presented in the text, all of which all have a precedent in the Hammurapi code: corrupt judges and altering judgement correspond to § 5, an ordeal to § 2, and a case of false accusation parallels § 3. The cases probably comment on the most interesting laws and were not randomly chosen; the concern of the text is the judicial process itself.

The Neo-Babylonian text was a story of a miracle meant to impress the fear of law, king, and god upon its audience.[126] The text both contains narrative portions and references a code of laws,[127] which may indeed have had precedents in actual legal codices. It must be born in mind that this text is several centuries younger than the Mari records, and thus it would have limited bearing on how the ordeal was understood in the 18th century BCE. While in the King of Justice the cause of the ordeal is the same as in Hammurapi's code – that of sorcery – there are also some differences. In Hammurapi's second law, both the accuser and the accused are sent to the ordeal, while in the King of Justice only the accuser is put to the test.[128] The text also specifies dawn as the time for the ordeal, and that people spoke with fear of the event, suggesting that it was not commonplace.[129]

Yet, had the bitumen wells discussed by Heimpel been meant by the authors of the letters, one would expect to find specific terminology relating to them in the texts. Heimpel also does not account for the fact that many texts specifically refer to diving into or emerging from the *river*, not from a spring or a well, for which there were perfectly suitable words in Akkadian. Even if one considers ÍD a *terminus technicus* for the ordeal,[130] texts where the accused person's body is said to have come up from the river where his head had been hit (such as the King of Justice), or where it is hypothesized that the accused who could not be found may have crossed over to the other side of the river, do seem to refer to an actual river. It must be acknowledged that the King of Justice is not a primary witness to the ordeal. But Heimpel does admit that the text can be used to level arguments against his proposal.[131] There also exists a

[125] LAMBERT 1965, 3–4.

[126] According to LAMBERT 1965, 2, the language of the text is the standard literary language of late Babylonia and Assyria.

[127] LAMBERT 1965, 1.

[128] Note that in the Nuzi texts, both the plaintiff or accuser and the accused could be asked to undergo the ordeal (not necessarily both at once), and the refusal of either party to undergo the ordeal resolved the case for the benefit of the other party. DRIVER & MILES 1940, 134. On p. 136, they come to the conclusion that "there seems to be no rule laying down which party shall be submitted to the ordeal. This question must therefore have been left to the discretion of the judges, who will have settled it presumably on the merits of each particular case; either may be sent to it, either may be winner or loser." This is in line with what we know of the medieval European ordeals. Of course, the fact that we cannot discern the logic between whether the accused or the accuser engaged in the ordeal does not mean that no logic existed.

[129] LAMBERT 1965, 3–4.

[130] FRYMER-KENSKY 1977a, 377.

[131] HEIMPEL 1996, 10.

text from Mari (M.8142) where two men (a "boy of Alpan" and a "boy of Abi-Maṭar") have to drag a millstone across the river, which makes little sense in the context of bitumen wells; thus not all of the texts that could be used to argue against Heimpel are diachronic or literary texts.

But Heimpel's hypothesis, while certainly possible in light of these geographical studies – and through a bit of fantastic speculation – is not based on the evidence of the Mari letters, but on later accounts. Some of these witnesses are semi-mythological, such as the text called the "King of Justice" (BM 45690: III 21–IV 23). His proposition also seems unnecessarily complicated, compared to the scenario where the accused are urged *into the river*, which is the term used in all of the Old Babylonian accounts. On the other hand, his hypothesis could well accord with the medieval 'ordeal of the Hot Water' (*iudicium aquae fervantis*), in which the proband had to plunge his or her hand into scalding water, and it was only days later upon the examination of the healing of the resultant blisters that the outcome of the ordeal was decided.[132] Strabo's description of the ordeal is, however, not the only reference to the concept between the Old Babylonian texts and the medieval witnesses.

There is also an example of a judicial trial in the Hebrew Bible, in Num. 5:11–31, although not in reference to a river. On the surface, the passage would appear to describe a trial by drinking, which was connected to the crime of adultery. In this 'ordeal of Bitter Water', the ordalist was made to drink a poisoned liquid, which would either kill her or leave her unscathed.[133] A similar type of ordeal has been practised in certain African societies (e.g. Liberia and Nigeria) until recent times, and studies have been made on its function.[134] Apparently an innocent ordalist, convinced of his or her guiltlessness, will consume the poison more readily and quickly, increasing the likelihood of survival. The ordeal then works as a rather brutal lie detector – one that is not kind to the innocent sceptic.[135]

El-Barghuti described a similar ordeal among the Bedouin of Palestine in the early 20th century. Called 'the swallowing', the ordeal consisted of swallowing "quickly and without hesitation either something hard, like dry bread, or something nauseating and disagreeable, like medicine." The guilty party is the one that

> hesitates, complains, or vomits [...]. Those who perform the act quickly and with nonchalance are declared innocent, even though they may be the real offenders. The

[132] LEESON 2012, 694.

[133] BARTLETT 1986, 82, 84. FRYMER-KENSKY 1981, 118, also mentions a trial of "taking the waters" from Susa, mentioned in four texts, which she thinks cannot be a form of ordeal by river, as "you cannot throw someone in a river and not know whether he has floated or sunk." She viewed the Susa texts, which incidentally contain the phrase "waters coming up", as representing drinking trials. According to her, however, the trial by drinking is misunderstood, and it is actually a "classic solemn oath" rather than an ordeal.

[134] TONKIN 2000; ADEWOYE 1977. Adewoye mentions (p.8) that in cases of witchcraft, the accused person was made to swim across a creek full of crocodiles and determined innocent if he surfaced alive.

[135] LEESON 2012, 699ff. According to Leeson, these forms of the ordeal would not have been used on known non-believers and, e.g., Jews in Europe were exempt from them.

> sheikh frightens the accused by repeating some magic words and prayers over the articles to be swallowed, pretending that they thus attain a special potency, which has a different effect upon the guilty and the innocent.[136]

Perhaps a similar inner working could have affected the outcome of the ordeal by river, but the practice is so poorly understood that such musings are mere idle speculation. The language of the Num. passage clearly borrows from Mesopotamian legal tradition, which does not necessitate a borrowing from any single source. It is likely that the entire legal tradition of the time of the writing of Num. owed much to Babylonian law.

Conclusions

The strongest evidence for the actual practice of the legal ordeal seems to exist in the Old Babylonian period, in the 18th century BCE, and the source of the tradition appears to have been the Amorite culture. While there is some indication that the ordeal was employed by peoples all over the ancient Near East,[137] the city of Id – where it took place – was in Mari territory. While it is mentioned in texts from a wide geographical area, the practice itself seems to have been both localized and tied to the cult of a specific city god. As an instrument of the king's judicial power in the Amorite Bronze Age, however, the source of the concept is ultimately rooted in kingship and the king's role as a judge on behalf of the monarchic divinity in which the executive power of the king was ultimately derived. But it is also possible that some of the texts discussed here could reference the river in allusion to the cultic functions of the king, emphasizing the king's role as judge in order to legitimize his dual role as an executive and a judiciary. The underlying mythology served to legitimize the judicial role of the king, representing a divine guarantee of the king's judgements. However, a comparison of the ancient trials with more modern ones can illuminate aspects of both of them that have not been considered previously.

Combining the evidence of Mesopotamian legal provisions, epistolary 'real world' evidence of the Mari letters and examples of trials from witnesses closer to the modern era together help explain what the actual function and purpose of the practice was. The main purpose of trial by water seems clearly to have been to confirm the truth statements of witnesses that were not legally independent subjects under Mesopotamian legal provisions (free, adult men). While the practice was not gendered as such, the legal witness of women was

[136] EL-BARGHUTI 1922, 22.

[137] While no suggestions have been made that the ordeal would have been practised in ancient Egypt, there is a curious mention in the "Tale of the Eloquent Peasant" (BI 59–61) of not "tasting the evils of the river" ("[...]the current shall not carry you off, you shall not taste the evils of the river, you shall not see the face of fear, the darting fish shall come to you"), which according to Faulkner, Wente & Simpson (1973, f35) was a "high-flown" metaphorical way of telling the magistrate of the story that should he do justice by the plaintiff, he would prosper. Even if the ordeal was alluded to in the text, it does not mean that it was ever practised in Egypt. It is possible that it references the Euphratean ordeal.

considered lacking just like that of children, the elderly, foreigners and otherwise compromised witnesses. Trial by water was not a means of execution in the ancient world, but as its use was tied to legal cases where arbitration was required for capital crimes, it often did result in the death of one of the parties involved in it. For lesser crimes, lesser forms of arbitration could be used. Similar forms of arbitration are known from elsewhere in the world, like early modern Europe and colonial-era Africa. Arbitration via suprarational trial seems to be required in cases where it is the word of one person against another, and no forensic evidence can settle the manner. Anthropologically, the ordeal is supposed to reveal whether the witness or accused is lying through the threat of supernatural punishment, functioning as a primitive lie-detector test. Its use in European witch trials likely also follows from this function, as accusations of witchcraft were often spread through social contagion. An important facet of the trials is that they seem to have been meant to acquit the accused innocent of the crime in most of the cases it was used.

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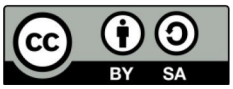

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