

# The Assertory Oath in Neo-Babylonian and Persian Administrative Texts

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## 1. Introduction

Oaths appear in numerous types of documents from ancient Mesopotamia, including letters, treaties, contracts, and especially texts related to trials<sup>1</sup>. Scholars have generally divided the oaths into two categories: promissory oaths and assertory oaths<sup>2</sup>. The difference is straightforward. Promissory oaths indicated that the oath-taker would perform some act in the future. These occur in a variety of genres but are especially well known from treaties, such as the so-called vassal treaties from the Neo-Assyrian period. In these documents, subjects of the Assyrian king would demonstrate their allegiance by swearing that they would be loyal to him and to the

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<sup>1</sup> Research for this article has been funded in large measure by the U. S. National Endowment for the Humanities and its award of a Collaborative Research Grant for the authors' project, "Neo-Babylonian Trial Procedure." Any views, findings, conclusions, or recommendations expressed in this publication are those of the authors alone and do not necessarily represent those of the National Endowment for the Humanities. The abbreviations herein follow those of the *Assyrian Dictionary of the Oriental Institute of the University of Chicago* (CAD). All translations of ancient texts, unless otherwise noted, are those of the authors.

<sup>2</sup> I.M.PRICE, *The Oath in Court Procedure in Early Babylonia and the Old Testament*, *Journal of the American Oriental Society* 49 (1929) pp.22–39; A.FALKENSTEIN, *Die neusumerischen Gerichtsurkunden*, 3 vols., Munich 1956–1957, vol. 1, pp.63–64; R.WESTBROOK, *The Deposit Law of Exodus 22,6–12*, *Zeitschrift für die alttestamentliche Wissenschaft* 106 (1994) pp.392–393; E.DOMBRADI, *Die Darstellung des Rechtsaustrags in den altbabylonischen Prozessurkunden*, 2 vols., Stuttgart, 1996, vol. 1, pp.138–150; and S.LAFONT, *La procédure par serment au Proche-Orient ancien*, in S.LAFONT (ed.) *Jurer et maudire: Pratiques politiques et usages juridiques du serment dans le Proche-Orient ancien*, Paris 1997, pp.185–198.

crown prince and that they would report and act against any seditious activity of which they became aware<sup>3</sup>. In trial proceedings, either party, and sometimes both, might be required to offer a promissory oath, stating that they would comply with the terms of the verdict or settlement agreement<sup>4</sup>.

Assertory oaths, on the other hand, declared that a particular act had already been performed or that a particular state of affairs had already obtained; they played a much more important role in litigation than promissory oaths. Assertory oaths in the ancient Near East were serious business. They were taken so seriously, in fact, that it became common for courts<sup>5</sup> to impose the assertory oath on a litigant (and only occasionally on a witness) when the evidence before them seemed insufficient, ambiguous, or problematic in some other way<sup>6</sup>. Those who served as judges could hardly imagine, it seems, that litigants would lie before the gods. Not a few litigants themselves dithered at the prospect of taking such an oath and, although ordered

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<sup>3</sup> These Neo-Assyrian loyalty oaths are often referred to as *adê*-oaths. The term *adû* itself probably means “oath” or “loyalty oath.” For further discussion of the Neo-Assyrian *adê*-oaths, see K.WATANABE, *Die adê-Vereidigung anlässlich der Thronfolgeregelung Asarhaddons*, Berlin 1987; S.PARPOLA and K.WATANABE, *Neo-Assyrian Treaties and Loyalty Oaths*, Helsinki 1988; E.OTTO, *Gottes Recht als Menschenrecht. Rechts- und literaturhistorische Studien zum Deuteronomium*, Wiesbaden 2002, pp.94–128; and C.KOCH, *Vertrag, Treueid und Bund: Studien zur Rezeption des altorientalischen Vertragsrechts im Deuteronomium und zur Ausbildung der Bundestheologie im Alten Testament*, Berlin 2008, pp.37–50, 78–96.

<sup>4</sup> See, e.g., the Neo-Babylonian documents BE 10 9, Donbaz and Stolper Istanbul Murašû Texts 105 (joined to Stolper Entrepreneurs 109), and VAS 6 38. While most of these oaths are post-verdict oaths, VAS 6 38 is a promise on the part of both parties to abide by the decision of the court before it renders its verdict.

<sup>5</sup> On the nature and make-up of ancient Near Eastern courts, see F.R.MAGDALENE, *On the Scales of Righteousness: Neo-Babylonian Trial Law and the Book of Job*, Providence 2007, pp.55–65.

<sup>6</sup> R.JAS, *Neo-Assyrian Judicial Procedures*, Helsinki 1996, p.73. It is not, however, always apparent why the judges in a particular case favored the oath over a decision on the evidence at hand. For example, in a text from Nuzi, HSS 9 108, the plaintiff accuses the defendant of not returning all of the barley that he (the plaintiff) had deposited with him. The defendant has five witnesses on his side who testify in his favor; the plaintiff has none. Nevertheless, the judges resort to the “lifting-of-the-gods” ritual, well known from Nuzi texts (*a-li-ik-ma-mi . . . DINGIR.MEŠ . . . iš-šu-mi* “go and . . . lift up . . . the gods”). This appears to have been an oath procedure whereby one of the litigants swore an oath to decide the case (see G.R.DRIVER and J.C.MILES, *Ordeal by Oath at Nuzi, Iraq* 7 [1940] pp.132–138).

by the court to do so, sometimes tried to settle with the opposing party at the last minute, just before they were expected to swear<sup>7</sup>.

An oath, after all, was really a self-curse, albeit a conditional one. The oath-taker placed himself or herself directly under the threat of divine punishment, which everyone believed would surely be imposed should the person utter falsehood in his or her oath<sup>8</sup>. It was this aspect of the oath that made it useful as a judicial device<sup>9</sup>. Were the court to order a person to take an assertory oath and were the person, in fact, to swear by the gods to the veracity of his or her claim, that person—or the party he or she favored—automatically won the case. The oath, therefore, was dispositive<sup>10</sup>. The human courts believed that any punishment deserved by the oath-taker would be handled by the gods, and they could now put the case to rest with a clear conscience.

The assertory oath was used in this way throughout much of ancient Near Eastern history. Records from a wide range of locations, from the second half of the third millennium and on into the seventh century BCE, show that the oath was a favored recourse of many ancient Near Eastern judicial panels. A number of Neo-Babylonian and Persian period trial records from the sixth and fifth centuries BCE also contain assertory oaths but of a distinctly different character. These oaths are the subject of this article. In particular, our discussion seeks to demonstrate that this different type of assertory oath appears, not only in the expected judicial contexts, but also in administrative contexts. In what follows, we offer a brief overview of assertory oaths in prior periods and go on to consider in more detail important aspects of the oath in the Neo-Babylonian and Persian periods (henceforth,

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<sup>7</sup> See, e.g., the Old Babylonian document, CT 47 12, where the judges “put . . . Ḫaliatum to the oath of Ayya” (*a-na ni-iš<sup>d</sup>a-a . . . i-di-nu*; lines 13–14). Then the text says, regarding the two parties, “At the gate of the oath, they reached an agreement with each other” (*i-na ba-ab ni-iš DINGIR im-ta-ag-ru-nim*; lines 15–16).

<sup>8</sup> Ritual and divination texts refer to divine punishment for false oath-takers. See MU *ilišu amēla iṣabbat* “the oath by his god will seize the man” (Boissier DA 210:26; CAD N/2 p.294 [s.v. *nīšu* A f]); and *arnu māmīt . . . nīš ilāni . . . bulluṭu . . . ittikama* “it is in your power (Marduk) to heal (from the consequences of) sin, *māmītu*, and *nīšu*-oath” (Šurpu IV 56; CAD M/1 pp.193–194 [s.v. *māmītu* 2a]).

<sup>9</sup> See, generally, LAFONT, *op. cit.*, pp.185–198.

<sup>10</sup> See FALKENSTEIN, *op. cit.*, vol.1, pp.63–64; K.VAN DER TOORN, *Sin and Sanction in Israel and Mesopotamia: A Comparative Study*, Assen 1985, pp.45–55; and DOMBRADI, *op. cit.*, vol.1, pp.138–150.

we will use “Neo-Babylonian” to encompass both)<sup>11</sup>. We then analyze one important text that presents several interpretive difficulties. We conclude that the text is administrative in nature, that its oath is assertory, and that it points to the use of the Neo-Babylonian style assertory oath outside strictly judicial contexts.

## 2. *The Character of the Neo-Babylonian Assertory Oath*

Unbeknownst to some, assertory oaths fall into two categories: the formal assertory oath and the weakened assertory oath. For most periods of Mesopotamian history, the former overwhelmingly predominated during trial proceedings. As a result, the other type of oath often goes unacknowledged. As indicated above, the formal assertory oath was generally court-ordered and always dispositive of the lawsuit. That is, when taken, it was the decisive factor in a trial and ensured a favorable verdict for the party that swore the oath. The court decided which party should take the oath, and, in the Old Babylonian period, for instance, that was usually the defendant<sup>12</sup>. Such a decision typically came at the end of a trial when a court required one of the parties to swear by one or more deities—and sometimes by the king, as well—to the veracity of his or her position<sup>13</sup>. The court then often moved to a cultic site where the oath was performed; in some instances, a divine statue or emblem was moved to the site of the trial<sup>14</sup>.

Another feature of the Old Babylonian judicial system involved the issuance of a document in which the court set forth its decision

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<sup>11</sup> The term “Neo-Babylonian” is typically used in a linguistic and cultural sense to refer to a period significantly larger than the span when the Neo-Babylonian kings held political control of southern Mesopotamia (612–539 BCE). Our use of the term, therefore, covers a period of time that extends well beyond the advent of Persian rule (539 BCE) in Mesopotamia; see F.JOANNÈS, *Les textes judiciaire néo-babyloniens*, in F.JOANNÈS (ed.) *Rendre la justice en Mésopotamie: Archives judiciaires du Proche-Orient ancien*, Saint-Denis 2000, pp.201–202.

<sup>12</sup> DOMBRADI, *op. cit.*, vol.1, p.330.

<sup>13</sup> See, e.g., S.H.BLANK, *The Curse, the Blasphemy, the Spell, the Oath*, *Hebrew Union College Annual* 23 (1950–51) pp.73–95; DRIVER and MILES, *op. cit.*, pp.132–138; S.E.LOEWENSTAMM, *The Cumulative Oath of Witnesses and Parties in Mesopotamian Law*, in *Comparative Studies in Biblical and Ancient Oriental Literatures*, Neukirchen-Vluyn 1980, pp.341–345; and LAFONT, *op. cit.*, pp.197–198.

<sup>14</sup> J.N.POSTGATE, *Early Mesopotamia: Society and Economy at the Dawn of History*, London 1992, p.280.

and any required action on a party's part so that a final verdict would issue. This document would have been written in conjunction with the court's order of the oath. Such verdict tablets are known in the scholarly literature as *Beweisurteil* documents<sup>15</sup>. R.A.VEENKER says in regard to these particular documents that they were "a 'conditional' verdict, which was to become effective after the swearing . . ."<sup>16</sup>. There is no doubt that the formal assertory oath predominated in the Old Babylonian period—in fact, it was the primary assertory oath from the Old Akkadian period down through the Neo-Assyrian period, as evidenced by numerous conditional and final verdict documents<sup>17</sup>.

The other type of assertory oath is the weakened oath, which also occurs in the Old Babylonian period and other periods, but rarely. Any party or witness could take it, and it functioned to add more weight to the proffered evidence<sup>18</sup>. Such oaths did not automatically resolve the suit, but they did increase the efficacy of the testimony in meeting a party's burden of proof. Furthermore, the procedure surrounding the oath was different: it was typically not court-ordered but voluntary on the part of the individuals before the court<sup>19</sup>; and it generally invoked only the king and did not comply with the other formalities of the significantly more common formal oath<sup>20</sup>. In the Neo-Babylonian period, the dominant position of the formal oath was taken over by the weakened oath. In fact, extremely little evidence of the formal assertory oath exists in the available corpus<sup>21</sup>. The weakened form of the oath reigned supreme<sup>22</sup>.

<sup>15</sup> *Ibid.*, p.281; and G.RIES, *Altbabylonische Beweisurteile*, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung)* 106 (1989) pp.56–80.

<sup>16</sup> R.A.VEENKER, *Old Babylonian Judiciary and Legal Procedure*, Ph.D. diss., Hebrew Union College-Jewish Institute of Religion 1967, pp.45–53, quote on p.47.

<sup>17</sup> See, e.g., the Old Akkadian documents MAD 1 135 and Gelb OAIC 7 and 51; the Neo-Sumerian texts NSG 32, 80, and 177; the Old Babylonian texts CT 4 47a, CT 47 12, and YOS 8 150; the Nuzi document HSS 9 108; and the Neo-Assyrian texts cited in JAS, *op. cit.*, pp.41–42 (no. 24) and pp.84–87 (nos. 55 and 56).

<sup>18</sup> DOMBRADI calls this "hardening" the evidence (*op. cit.*, vol.1: pp.330–331).

<sup>19</sup> DOMBRADI asserts that it is very difficult to tell in which situations the Old Babylonian courts might seek the weakened oaths from parties or witnesses (*ibid.*, vol.1, p.331). It is possible that parties and witnesses offered them primarily on their own initiative. That appears to be the typical scenario in the Neo-Babylonian period.

<sup>20</sup> *Ibid.*, vol.1, p.331.

<sup>21</sup> Only a few Neo-Babylonian legal texts refer to dispositive oaths: see, e.g., Wunsch Egibi 166 (Nbn. 954 + BM 33145) and YOS 7 61, both of which mention the taking

Several indices of the dominance of the weakened oath exist beyond the high number of such assertory oaths in the available corpus. First, even where an assertory oath met certain formalizing requirements, the oath often remained non-dispositive. For example, where the document explicitly mentions that the oath was sworn before one or more gods, it remained non-dispositive as to the litigation before the court<sup>23</sup>. Second, in this period, most assertory oaths were taken voluntarily: apart from the few formal assertory oaths of which we know, there appear to be only two instances of court-ordered oaths in the Neo-Babylonian corpus, and surprisingly, even then, they were not given dispositive effect<sup>24</sup>. Third, in previous periods, the testimony of only one party was usually sworn in instances of the formal assertory oath, but cases exist in the Neo-Babylonian record where both parties offered sworn contradictory testimony<sup>25</sup>. Third-party witnesses might also offer sworn testimony, but that, too, was the weakened form of the oath<sup>26</sup>. Fourth, the Neo-Babylonian evidence derives, in large measure, from temple archives. This is significant because we might expect formal assertory oaths to be regarded more favorably in the temple courts than in the secular courts, given the temple's frequent involvement in administering such oaths. This is not, however, the case<sup>27</sup>. Hence, it appears that use of

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of an oath within “the magic circle” (*gišḫuru*). On the half dozen or so other texts that appear as if they might refer to formal assertory oaths but very likely do not, see F.R.MAGDALENE, *Who is Job's Redeemer? Job 19:25 in Light of Neo-Babylonian Law*, *Zeitschrift für altorientalische und biblische Rechtsgeschichte* 10 (2004) pp.305–307, nn.66–69; and B.WELLS, *The Cultic Versus the Forensic: Judahite and Mesopotamian Judicial Procedures in the First Millennium BCE*, *Journal of the American Oriental Society* 128 (2008) pp.211–214.

<sup>22</sup> For texts that record weakened assertory oaths in a judicial context, see, e.g., Cyr. 312, Dar. 53, *Iraq* 59 155 (no. 9), TCL 12 122, TCL 13 170, TCL 13 179, TCL 13 181, Wunsch Urkunden 45, Wunsch Urkunden 46, YNER 1 2, YOS 6 156, YOS 6 169 (= YOS 6 231), YOS 7 140, YOS 7 152, and YOS 7 192.

<sup>23</sup> Nearly all Neo-Babylonian assertory oaths, including all those listed in n.22, *supra*, were sworn by one or more deities.

<sup>24</sup> On the two formal assertory oaths, see n.21, *supra*. On the two mentioned non-dispositive court-ordered oaths, see MAGDALENE, *On the Scales*, p.82 n.129.

<sup>25</sup> See, e.g., YOS 7 140, and the discussion of this text in S.E.HOLTZ, *Neo-Babylonian Court Procedure*, Leiden 2009, pp.86–89.

<sup>26</sup> See, e.g., TCL 12 70, YOS 6 169 (=YOS 6 231), and YOS 6 224.

<sup>27</sup> S.E.HOLTZ rightly observes that no significant difference in legal procedure exists between the temple and secular courts in the Neo-Babylonian period (*op. cit.*, pp.267–268).

the formal oath was diminishing considerably in this period in favor of the weakened oath<sup>28</sup>.

The general rejection of the formal assertory oath created a problem concerning how to resolve close cases. A number of documents show that the party on whom the burden of proof fell now had to produce additional rational evidence in order to win the case<sup>29</sup>. This additional evidence was typically the statement of a second accuser or other corroborating witness<sup>30</sup>. The records that provide the best evidence for this are a new form of the conditional verdict document<sup>31</sup>. There are approximately 40 known examples of these conditional verdict documents, in which the court sets forth a verdict but then requires one of the parties at trial to bring an additional

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<sup>28</sup> In accord, F.JOANNÈS, who maintains that, in the Neo-Babylonian period, the probative value of the oath was less than that of the available rational evidence, unlike the rule of priority in earlier periods of ancient Near Eastern history (*La pratique du serment à l'époque néo-babylonienne*, in S.LAFONT [ed.] *Jurer et maudire: pratiques politiques et usages juridiques du serment dans le Proche-Orient ancien*, Paris 1997, pp.169–170, citing YNER 1 2 and YOS 6 169 [=YOS 6 231]). E.OTTO observes that there is a “Säkularisierungstendenz” in the courts from the second to first millennium (*Neue Aspekte zum keilschriftlichen Prozeßrecht in Babylonien und Assyrien*, *Zeitschrift für altorientalische und biblische Rechtsgeschichte* 4 [1998] 282). We suspect that the shift began to accelerate during the Neo-Assyrian period as evidenced by the existence of a few Neo-Assyrian conditional verdict documents (see, e.g., JAS, op. cit., no. 53 [=ADD 101]) that look much like those from the Neo-Babylonian period (see the next paragraph). R.WESTBROOK observes that even the promissory oath in the ancient Near East lessened in importance during this period: “Documents recording the standard contractual forms may also record a promissory oath, by one or both parties. For the most part, the oath relates to ancillary matters: either special terms not usually found in that type of contract, or (most frequently) a promise not to deny, contest, or alter the terms of the completed contract in the future. In the third millennium, oaths are sometimes recorded for central obligations of the contract, e.g. repayment of a loan. This type of oath disappears in the second millennium, where only ancillary oaths are recorded. By the first millennium, it is rare to find any mention of an oath in the records of standard contracts” (*The Character of Ancient Near Eastern Law*, in R. WESTBROOK [ed.] *A History of Ancient Near Eastern Law*, 2 vols., Leiden 2003, vol. 1, p.66).

<sup>29</sup> B.WELLS, *The Law of Testimony in the Pentateuchal Codes*, Wiesbaden 2004, pp.124–126.

<sup>30</sup> See, e.g., RA 67 148–149, YOS 6 169, YOS 6 224, YOS 7 7, YOS 7 10, YOS 7 88, YOS 7 94, and YOS 7 152.

<sup>31</sup> WELLS, *Law of Testimony*, pp.108–124.

supporting witness in order to make that verdict effective<sup>32</sup>. This is in contrast to the Old Babylonian conditional verdict documents where the verdict was conditioned upon the taking of the oath. The copious use of this type of conditional verdict in the Neo-Babylonian period, coupled with an absence in the published corpus of the older form of conditional verdict document, also seems to lay bare the courts' hesitation to use the formal assertory oath and its preferred use of an alternative means of dispute resolution in close cases. It was in this period that the need for a second accuser or corroborating witness or some other rational evidence became essential as the formal assertory oath faded significantly in influence<sup>33</sup>.

### 3. *The Formulation of the Assertory Oath*

Scholars have long recognized that assertory oaths in Neo-Babylonian legal texts are formulated as conditional statements where the apodosis is left unstated<sup>34</sup>. For instance, a person might swear, "If I stole the sheep . . ." The understood apodosis would be something along the lines of "may the gods punish me"<sup>35</sup>. Hence, in their sworn statements, oath-takers precede their assertions with a conditional particle ("if") and then assert the opposite ("I stole the sheep") of

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<sup>32</sup> The typical wording of these types of verdicts will be discussed in more detail below.

<sup>33</sup> It should be noted that this pattern appears in some biblical texts as well. First, Job's oath of innocence in chapter 31 does not end the suit against him in his favor. Both Elihu and God speak after Job ends his major speeches with the oath. See further F.R.MAGDALENE, *Job's Compositional History One More Time: What Its Law Might Contribute*, in R.G.KRATZ and A.C.HAGEDORN (eds.) *Law and Religion in the Eastern Mediterranean*, Oxford forthcoming. Second, three pentateuchal texts require at least two witnesses (the original accuser and an additional witness) before a conviction can be handed down in certain cases (Num 35:30; Deut 17:6–7; Deut 19:15).

<sup>34</sup> See, e.g., W.VON SODEN, *Grundriss der Akkadischen Grammatik*, Rome 1969, §185a, j–k; and J.HACKL, *Der subordinierte Satz in den spätbabylonischen Briefen*, Münster 2007, pp.72–73.

<sup>35</sup> Assertory oaths in earlier periods, too, typically had unstated apodoses; only a few included them. See, e.g., EA 209, lines 13–16: "If I have not protected your cities, may the gods who are with you strike my head" (see B.CONKLIN, *Oath Formulas in Biblical Hebrew*, Winona Lake 2011, p.87); and UET 6 402, where the curses include leprosy, poverty, and childlessness.



what they are actually claiming (that they did not do anything illegal<sup>36</sup>).

There are two primary ways of translating these oaths. The first—and the one that we employ—is to translate fairly literally by rendering the oath as a conditional statement and indicating by means of an ellipsis that the apodosis of the statement has gone unspoken. The second way is to invert the oath and translate it as a declarative rather than a conditional statement (*e.g.*, “I did not steal the sheep”).

The most common type of assertory oath is one where a person—usually a defendant in a case—asserts that he or she has not performed some action. This is sometimes called an oath of purgation or an oath of clearance, whereby defendants seek to clear themselves of the charges against them. Accordingly, they swear, essentially, “If I did it . . . .” This is the negative assertory oath. Even though the statement uttered is a positive one, the oath is one of denial, for the oath-taker is swearing that he or she did not, in fact, commit the wrongdoing in question. The text of YOS 7 152 provides a good example<sup>37</sup>.

Innin-zēr-ibni, son of Ina-tēšî-ēṭir, an oblate of Ištar of Uruk, swore by Bēl, Nabû, and the *adû* of Cambyses, king of Babylon, king of the Lands, to Nabû-mukîn-apli, administrator of the Eanna temple, son of Nādin, of the Dābibî family, and to Nabû-aḥ-iddin, royal commissioner of the Eanna temple: “If I took silver or anything whatsoever from the possession of the runaway oblates of Ištar of Uruk and then let them go (...).”

The main verbs in Innin-zēr-ibni’s oath—*aššû* and *umašširu*—are first-person common singular preterite forms from *našû* (“to take, steal” in this context) and *muššuru* (“to release”), respectively. It has been asserted for some time that the main verbs of Neo-Babylonian

<sup>36</sup> S.COLE qualifies this somewhat: “But in addition, in formulae with multiple clauses, the inversion of negative and positive sense seems to occur only in the clause immediately following *kî*” (*Nippur IV: Early Neo-Babylonian Governor’s Archive from Nippur*, Chicago 1996, p.11). Each of the oaths that we examine below has, however, only one clause.

<sup>37</sup> For a full edition and a detailed discussion of this text, see K.KLEBER, *Zum Meineid und zu seiner Bestrafung in Babylonien*, *Zeitschrift für altorientalische und biblische Rechtsgeschichte* 13 (2007) pp.23–38, esp. pp.28–33.

negative assertory oaths had to be in the preterite tense<sup>38</sup>. Should one find an oath with a perfect verb, according to this view, one should understand it as a negative *promissory* oath—about avoiding some action in the future rather than an assertion about something that has taken place in the past. By and large, this is the case. One text raises questions, however, about this contention<sup>39</sup>. The text, AnOr 8 61, seems to reveal a context that would necessitate an assertory oath, yet the formulation of the oath matches that of a negative promissory oath with a verb in the perfect tense. We, therefore, turn to an investigation of AnOr 8 61 and its context.

#### 4. *The Context and Oath of AnOr 8 61*

AnOr 8 61 is an important administrative document that has been much discussed<sup>40</sup>. It was drawn up on the 23rd day of the 4th month of the 8th year of the reign of Cyrus II, when four officials performed an inspection of the livestock in the care of five herdsman<sup>41</sup>. The latter were oblates of the Eanna temple in Uruk and had been entrusted with sheep, goats, and cattle that belonged to the temple's holdings. The group of inspectors consisted of the two chief Eanna officials, the

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<sup>38</sup> See, e.g., HACKL, *op. cit.*, p.76. HACKL points out that the verb *bašû* (“to exist, occur”) is an exception to this. This verb can take stative and present (or durative) forms in negative assertory oaths.

<sup>39</sup> At least one other text also appears to deviate from this pattern: TCL 13 167. This text, however, requires an extended discussion of its grammar and syntax. In addition, the events and statements that it records took place within a judicial context. Thus, it is beyond the more confined scope of our discussion that seeks to focus on administrative contexts.

<sup>40</sup> See, e.g., M.A.DANDAMAEV, *Slavery in Babylonia: From Nabopolassar to Alexander the Great (612–331 B.C.)*, rev. ed., edited by M.A.POWELL and D.B.WEISBERG, translated by V.A.POWELL, DeKalb 1984, p.545; M.G.KOZUH, *The Sacrificial Economy: On the Management of Sacrificial Sheep and Goats at the Neo-Babylonian/Achaemenid Eanna Temple of Uruk*, Ph.D. diss., University of Chicago 2006, p.104; M.SAN NICOLÒ, *Materialien zur Viehwirtschaft in den neubabylonischen Tempeln II*, *Orientalia* 18 (1949) pp.288–306, esp. pp.295–299; and M.W.STOLPER, ‘No-One Has Exact Information Except for You’: *Communication between Babylon and Uruk in the First Achaemenid Reigns*, in W.HENKELMAN and A.KUHRT (eds.) *A Persian Perspective: Essays in Memory of Heleen Sancisi-Weerdenburg*, Leiden 2003, pp.266–267.

<sup>41</sup> The “herdsmen” (*nāqīdu*) of the temple, even though they were responsible to the temple for the animals in their charge, did not usually care for the animals themselves. For this, they hired shepherds about whom there is very little information in the extant records. See KOZUH, *op. cit.*, p.10.

*šatammu* and the *ša rēš šarri bēl piqitti*<sup>42</sup>, and two representatives of the satrap's administration, both scribes. The core of the document consists of an oath sworn by the herdsmen. We present the text in English translation:

Tālimu son of Šulaya, Silim-ilī son of Nanaya-ēreš, Nabû-aḥḥe-bullit son of Šamaš-zēr-iqīša, Gimillu son of Ḥaḥḥuru, and Nabû-dūr-īniya—the oblates of Ištar of Uruk (and) herdsmen of sheep and goats and cattle, altogether five herdsmen of <sheep and goats and> cattle, the property of Ištar of Uruk and Nanaya—have sworn by Bēl, Nabû, and Cyrus, king of Babylon, king of the lands, to Nabû-mukīn-apli, the chief administrator of Eanna, son of Nādin from the Dābibī family, Nabû-aḥ-iddin, the royal commissioner of Eanna, Sīn-nādin-zēri, the (Babylonian) scribe, and Iddin-Bēl, the (Aramaic) scribe, the envoys of Gobryas, the satrap of Babylon and Across-the-River, who were sent for the inspection of sheep and goats and cattle of Ištar of Uruk:

“If we have hidden any cattle, property of Ištar of Uruk, that are in our care (. . .).”

On the day when a witness or an informer testifies against them, they will bear the guilt of (an offense against) the king.

Witnesses.

Scribe.

Uruk, 23rd day, 4th month, year 8 of Cyrus, king of Babylon, king of the lands.

The form of the oath's main verb, *niltakan* (“we have placed”), is perfect<sup>43</sup>. Several scholars have, for this reason, interpreted the oath as promissory; they maintain that the herdsmen take the oath at the beginning of the inspection, before the officials begin to count the number of animals present<sup>44</sup>. According to this view, the herdsmen swear that they will not, during the inspection, hide or conceal any animals as a way of leading the inspectors to believe that the herdsmen have fewer animals than they actually do. While the above interpretation is based on the oath's grammatical features, we suggest

<sup>42</sup> Translations of these titles vary. We prefer “temple administrator” and “royal commissioner,” respectively. On these officials and the possible translations of their titles, see K.KLEBER, *Tempel und Palast: Die Beziehungen zwischen dem König und dem Eanna-Tempel im spätbabylonischen Uruk*, Münster 2008, pp.5–7.

<sup>43</sup> This has the shift, *št* > *lt*, which is often but not always attested in the Neo-Babylonian dialect.

<sup>44</sup> See the studies in n.40, *supra*.

that the grammar is not the key issue but, rather, that the text's legal formulas and its external context are the more decisive factors, which support the interpretation that the oath is assertory.

First, the text contains a conditional verdict formula: "On the day when a witness or an informer testifies against them, they will bear the guilt of (an offense against) the king." The verdict, set forth in the apodosis, will take effect only if the condition, contained in the protasis, is met. This type of conditional verdict is one that depends on future testimony and that always formulates its protasis as follows: *ina ūmu mukinnu . . . uktinnu(š)* ("on the day when a witness . . . testifies [establishes<sup>45</sup>])." As far as can be determined from the existing corpus, this type of conditional verdict never occurs with promissory oaths<sup>46</sup>. There are three texts, however, that combine such a verdict with a negative assertory oath: *Iraq 59 155* (no. 9), YNER 1 2, and YOS 7 192. The one that is most similar to AnOr 8 61 is *Iraq 59 155* (no. 9). In the latter, the assertory oath, in which a man denies having been the one to misplace a particular temple garment, is followed by a conditional verdict nearly identical to the one in AnOr 8 61.

AnOr 8 61

*ina ūmu mukinnu lū bātiqū uktinnušunūtu hīṭu ša šarri išaddadū*

"On the day when a witness or an informer testifies against them, they will bear the guilt of (an offense against) the king."

*Iraq 59 155* (no. 9)

*ina ūmu mukinnu uktinnušu hīṭu ša ilī u šarri išaddad*

"On the day when a witness testifies against him, he will bear the guilt of (an offense against) the gods and the king."

<sup>45</sup> For the different elements that can come in between the words *mukinnu* and *uktinnu(š)* and for further discussion of this formulation, see Wells, *Law of Testimony*, p.113.

<sup>46</sup> It is worth noting that there are documents that begin with a guarantee (*e.g.*, *pūt X PN naši* "PN guarantees for X," where X is either a person or an action) and then conclude with a conditional verdict formulated like the one in AnOr 8 61. See, *e.g.*, WZKM 94 152 (NCBT 209; edited in K.KLEBER, *Die Fischerei in der spätbabylonischen Zeit, Wiener Zeitschrift für die Kunde des Morgenlands* 94 [2004] pp.151–153). These verdicts state that the guarantor will be found guilty should he fail somehow in his duties as the guarantor. To some degree, guarantees are like promissory oaths, since the guarantor has future duties to fulfill. Nonetheless, promissory oaths themselves seem not to be found in conjunction with these types of verdicts.

There are also conditional verdicts that do not anticipate the appearance of a future witness or informer. These have various formulations. With many, the condition is that one or more individuals must appear at a certain place by a particular date. YOS 7 31 is an example of this type of conditional verdict:

On the 20<sup>th</sup> day of the 9<sup>th</sup> month of the 4<sup>th</sup> year of Cyrus . . . , Marduk-dīn-ēpuš will come to Babylon . . . . If he does not come, he will pay 30-fold, for two sheep, to the Lady-of-Uruk.

Others make the verdict contingent on the performance of a task or issue an injunction against an act. It is only with these conditional verdicts, which involve either doing a task or refraining from an act that one finds promissory oaths. In these instances, the protasis of the conditional verdict always makes reference to the possibility that the promise will not be kept. For example, if the promissory oath is a positive one—a promise to perform an action in the future—the protasis of the verdict will be, in essence, “if PN does not perform the action . . . .” NCBT 989<sup>47</sup> illustrates this type of oath:

PN has sworn by Bēl, Nabû, Ištar of Uruk, Nanaya, and the *adû* of Neriglissar, king of Babylon: “If, by the 14th day of the 11th month, I do not go to [*broken*], and bring [*broken*], (. . .).” If he does not go, he will bear the guilt of (an offense against) the king.

If the oath is a negative one—a promise not to perform some action—then the protasis of the verdict will be, in essence, “if PN performs the action . . . .” For instance, YOS 7 85 states:

(A group of seven men) have sworn by Bēl, Nabû, and the *adû* of Cyrus, king of Babylon, king of the lands: “If we herd the sheep, cattle, or donkeys of the bow-men [in the fields, (which are) the property] of Ištar of Uruk, (. . .).” If someone is seen herding his flock in the fields, he will bear the guilt of (an offense against) the king.

A pattern can, consequently, be identified. It is only assertory oaths that are combined with conditional verdicts that depend on additional testimony. Because AnOr 8 61 has this type of conditional verdict, it is reasonable to conclude that the oath it contains is assertory and not promissory.

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<sup>47</sup> We thank M.JURSA who brought this text to our attention.

A second reason to identify the oath in AnOr 8 61 as assertory relates to the fact that the oath takes place on the same day as the inspection. Two other documents, PSBA 38 26 and TCL 13 137, share particular features with our text: a reference to an accounting of temple animals in the charge of herdsmen<sup>48</sup>, an oath by the herdsmen, and the use of the phrase *hītu ša šarri*, “guilt of (an offense against) the king<sup>49</sup>”. Two differences, however, stand out. First, the oath in each of these other texts is clearly promissory and, second, it is taken well in advance of the day of the accounting: 15 days and 46 days, respectively. A promissory oath is entirely understandable when taken well before the accounting. It seems to be less so, however, in the context of AnOr 8 61, when the oath and the accounting take place on the very same day, because the opportunity for hiding livestock had most likely passed by the day of the inspection when all the animals were already in town and the inspectors had arrived<sup>50</sup>.

Third, that this particular inspection took place at all indicates that questions had already arisen as to the dealings of these herdsmen. Both M.W.Stolper and M.G.Kozuh infer that this inspection was not an ordinary one but one that had been ordered by the satrap Gobryas in light of suspicions that herdsmen were withholding livestock that rightfully belonged to the temple<sup>51</sup>. One of the state’s motivations for interfering in such matters stemmed from the fact that the animals for the royal offerings, as well as those for the necessary cultic sacrifices, were provided by the temple’s livestock holdings<sup>52</sup>. The state wanted to ensure an ample supply. In addition to that, the state seemed to employ a policy that sought to “increase existing capital, production,

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<sup>48</sup> Different terminology is used in these texts. The text of AnOr 8 61 refers to an *amirtu* (“inspection”), whereas PSBA 38 26 and TCL 13 137 both refer to *nikkassu epēšu* (“to settle accounts”). The same basic issue, though, is still operative in all three.

<sup>49</sup> In place of “the king,” TCL 13 137 has “the god and the king.” On documents from the Neo-Babylonian period that use the term *hītu* in this way, see our forthcoming work, *Fault, Responsibility, and Administrative Law in Late Babylonian Legal Texts*.

<sup>50</sup> On where the livestock may have been prior to such accountings, see KOZUH, *op. cit.*, pp.40–51.

<sup>51</sup> STOLPER, *op. cit.*, p.267; and KOZUH, *op. cit.*, p.104. KOZUH claims, in fact, that there is no good evidence for regular, yearly inspections (*ibid.*, pp.25–26). The implication is that an inspection such as this was likely the result of a specific suspicion and, thus, of a specific order.

<sup>52</sup> *Ibid.*, pp.163–164.

and manufacture [in temple agricultural and livestock endeavors] in an effort to extract taxes (under whatever rubric) from the temple in the form of finished products<sup>53</sup>. Two of the four inspecting officials are acting as representatives of Gobryas, and they will have to report back to him. An assertory oath, as opposed to a promissory one, would seem to provide the stronger confirmation that the inspection had resulted in an accurate count.

The above internal and external data suggest that the oath in AnOr 8 61 should be read as assertory. Previously, however, the fact that the oath's verb was in the perfect tense summarily precluded such a conclusion. How should we understand this?

One way to comprehend this situation is to suggest that an assertory oath's grammar may have been more flexible than previously thought (*i.e.*, both preterite and perfect forms could be used in assertory oath formulas). Another way to understand this is by suggesting that AnOr 8 61 contains a scribal error or, at least, that the scribe took some poetic license here. Yet a third possibility exists. It may be that the oath formula in AnOr 8 61 is a truncated form of another, longer, but similar, formula that occurs, for example, in YOS 7 153. In the latter text, the oath contains the verbs *niškunu* and *niltakan* and reads: "If we have hidden away or will hide away any fisherman of the Lady of Uruk, (. . . )<sup>54</sup>". The oath uses both preterite and perfect forms of the main verb and encompasses, therefore, both assertory and promissory oaths. It is quite possible that the oath in AnOr 8 61 was also meant to convey a dual oath and contains an ellipsis. If that should be true, however, the oath still retains an assertory component that cannot be overlooked. Furthermore, the scribe used, then, the perfect rather than the preterite verb tense to represent both aspects of the oath. This, too, should not be ignored. We conclude, consequently, that AnOr 8 61 contains, at a minimum,

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<sup>53</sup> *Ibid.*, p.271. Regardless of the specific reason, it is fairly clear that the state wished to have a hand in these particular temple affairs: "In order to gain tighter control over such strategic financial powers and to improve agricultural profitability, the royal authority [under Nabonidus, first, and then under Cyrus and Cambyses] decided to play a direct role in the economic activities of the Babylonian temples under its control" (P.BRIANT, *From Cyrus to Alexander*, Winona Lake 2003, p.72).

<sup>54</sup> See CAD P 252, (*s.v.* *pašīru*) and B 134 (*s.v.* *adû B a2'*); and KLEBER, *Die Fischerei*, p.159.

an assertory component in its oath formula and that the perfect verb in this case accommodates that component.

##### 5. *The Weakened Oath in Administrative Texts*

Another leg of the support for the former view that the oath in AnOr 8 61 is of a promissory nature is the assumption that assertory oaths tend to belong in trial records and promissory oaths in administrative documents. Because AnOr 8 61 involves an administrative procedure, the thinking goes, this oath is likely to be promissory. Indeed, it is understandable to argue that promissory oaths are more likely to appear in administrative texts. This notion, however, fails to take into account the import of the weakened oath in the Neo-Babylonian period. Administrative situations, normally ill-suited to dispositive oath-taking, could now take advantage of this period's oath of choice. This is especially true where punishments for an administrative violation might be meted out. The document PTS 2291<sup>55</sup> illustrates this point. It records a weakened assertory oath, with its main verb in the preterite tense, in an administrative context. The oath-taker swears before several temple officials that he has not hidden (*ina pāšīru šakānu*) any of the archers whom he was already supposed to have delivered to the provincial governor. This is clearly an administrative situation. The text also contains a conditional verdict, although not identical to the one in AnOr 8 61: it contains the same apodosis but a slightly different protasis. Given its use of the preterite tense, there can be no doubt that PTS 2291 reveals the use of a weakened assertory oath in an administrative context.

The context out of which AnOr 8 61 arises is also administrative: it has to do with the proper fulfillment of the duties that the herdsmen owe to the temple and to the state. Should one of the herdsmen be found guilty for having failed to fulfill his duties, his violation would be of an administrative nature. The circumstances of the violation would undoubtedly be investigated, and, if embezzlement of temple assets should be discovered, only then would the matter transition from an administrative issue to a more serious criminal matter. If, by the time that AnOr 8 61 was drawn up, the situation had already reached the level where a crime such as theft was suspected, the

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<sup>55</sup> We thank G.FRAME who brought this text to our attention.



conditional verdict in the text would likely have contained a 30-fold penalty. This was the standard penalty during the period for theft and embezzlement of temple property<sup>56</sup>. That the conditional verdict does not refer to this type of penalty confirms the administrative character of the matter and that the suspicions had not risen to an extremely high level. Hence, the oath here seems to be used as an administrative tool in an attempt to reduce the misreporting of temple assets by the herdsmen and to ensure a greater degree of accuracy in the accounting process. We argue, as a result, that AnOr 8 61 is yet another example of a weakened assertory oath in an administrative context and maintain that an administrative context for an oath is not grounds for automatic exclusion of the possibility that the oath is assertory. Rather, one must examine the external context and other internal features of the text before making a decision regarding the type of oath that is in the text. Hence, the combination of AnOr 8 61 and PTS 2291 provide evidence for an assertory oath in an administrative context that is susceptible to contradiction by future testimony, in the same way that an assertory oath was susceptible in judicial settings during this period.

#### 6. Conclusion

The formal assertory oath had a long and distinguished history in the ancient Near East. It was employed throughout most of that history as a means of resolving legal disputes finally and decisively. In the Neo-Babylonian period, however, the weakened assertory oath, especially the negative assertory oath, came into its heyday. We have sought to demonstrate that the type of assertory oath that one finds in Neo-Babylonian judicial texts—one of diminished gravity and power—appears to have been used in administrative contexts as well, with the same degree of diminishment intact.

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<sup>56</sup> HOLTZ, *op. cit.*, p.295. Holtz classifies the case represented by AnOr 8 61 as a criminal proceeding (HOLTZ, *op. cit.*, p.161).