Neo-Assyrian Legal Practices – Law Without Lawyers

By Betina Faist

When dealing with the Neo-Assyrian empire, the focus often is on the mechanisms of power, which are characterized by terms such as military predominance, use of violence, and exploitation. It is true that this image is partly based on Assyrian self-representation in royal inscriptions and reliefs. However, the Assyrian success and the relative stability of its power system during ca. 300 years (934–612 BCE) cannot be properly explained on the bases of a well-functioning army alone. It also rested on an experienced administrative organisation, including the administration of justice.

The main evidence for jurisprudence in the Neo-Assyrian period are documents in cuneiform script and Neo-Assyrian language written down in the context of settlement of private disputes. Most of the clay tablets come from the Assyrian heartland, i.e. from Ashur, Nineveh, Kalhu (Nimrud), and Imgur-Illil (Balawat), as well as from the Western provinces of the empire, especially from Durkatlimmu (Tell Sheikh Hamad) and Guzana (Tell Halaf). The texts go back to the 8th and 7th centuries BCE, when Assyria was at the peak of its power. Their main concern was to document the outcome of the judicial procedure rather than to give information about procedurally relevant aspects such as the cause of the dispute, the claims of the parties, the adjudicating court, the pieces of evidence, or the applied law.

The professions of the parties, for example goldsmiths, professional transporters, scribes, chief musicians, palace stewards, and chariot fighters, clearly show that we are looking at litigations among the urban middle and upper classes. How disputes in the villages, with their increasing proportion of deportees, or in the lower classes of society were resolved, remains unknown. Most conflicts addressed by our documentation relate to purchases (especially of slaves), loans, and pledges (a purchase price that has not been paid, a loan that has not been redeemed, a pledge that has not been released), to marriage and inheritance, and to theft (often of animals).
Detail of an alabaster wall panel relief depicting a pair of musicians playing nine-stringed horizontal harps. Nimrud: North West Palace, 9th century BCE. Museum number: BM 124533. © The Trustees of the British Museum
Detail of an alabaster wall panel relief showing two scribes. The first holds a clay-tablet in his left hand; the second is writing on a roll presumably made of leather. Nimrud: Central Palace, 8th century BCE. Museum number: BM 1848,1104.5. © The Trustees of the British Museum

Detail of an alabaster wall panel relief displaying fat-tailed sheep and goats. Nimrud: Central Palace, 8th century BCE. Museum number: BM 1848,1104.5. © The Trustees of the British Museum
A distinction between civil and criminal law did not exist. Both civil and criminal cases were submitted to the same procedure. People of the lower classes (herdsmen, peasants) are attested only in a few instances and always as the defendant party. Women generally appear as legal persons when they hold a high social position or are no longer tied up by marriage, like widows. In court documents regulating divorces, they are treated as legal objects in accordance with the patriarchal marriage law. Slaves appear only in connection with theft and exclusively as perpetrators. They probably did not have the right of action. As a rule, the slave owner was liable for the damage caused by the slave and he could decide whether to pay the fine or to hand over the slave instead of the fine to the damaged party.

Judicial document concerning a purchased slave who ran away. Kouyunjik, 7th century BCE. Museum number: K.397. © The Trustees of the British Museum

The Assyrian king was the highest judicial authority, but his intervention was limited to cases concerning public interests, like treason, temple theft, or corruption. Little is known about the legal procedure in these cases, because they were not documented, except for some mentions in royal letters. The settlement of private disputes was entrusted to
officials acting at different governmental levels. It seems most likely that the disputing parties usually turned to the local authorities, particularly to the mayor, but also to military and priestly superiors. Additionally, they had the possibility to appeal to officials from the central state administration, like the chief judge and the vizier, when these were in the area and especially when offenses were involved. For all the officials except the chief judge, jurisprudence was only one of several duties. Actually, the most striking feature in the context of Ancient Near Eastern legal practice is the predominance of single judges. Unlike judges’ panels, single judges ensure that court procedures are carried out tightly and speedily.

Judicial document regarding the theft of an ox. Kouyunjik, 7th century BCE. Museum number: K.279. © The Trustees of the British Museum

The trial was typically initiated by the damaged party, both in civil matters and in case of criminal offence. There is no evidence that a court or other public instance acted on its own initiative when a crime was committed against an individual. Usually, the plaintiff
summoned the defendant orally. If, for whatever reason, the latter did not appear in court, an official summons was written. Lawyers did not exist and each party made its claims in free speech. As expected, the statements did not agree with each other, so that the judge had to recourse to other means of knowledge, such as testimonial and documentary evidence, which have also to be provided by the parties. Lacking or in spite of other evidence, the judge could impose an oath on one of the parties or send one or both of them to the river ordeal. Normally, it was the defendant who had to swear before a god (i.e. the statue or the symbol of a god) taking the risk of divine punishment in case of perjury. As to the river ordeal, the texts tell very little about the way it was executed. The person concerned was meant to jump or submerge into the water, perhaps to walk a distance in the water. If he did not sink, it was considered that the god judged him innocent.

The evidence probably was subjected to free evaluation by the judge. Before rendering a verdict, we may assume that he tried to arbitrate between the parties. Actually, there are some few examples where the parties came to a mutual agreement in court, mainly in criminal cases. The texts do not mention what was the legal base for the sentences, but we must presume that the legal practice primarily relied on customary law since no written collection of statutes is known from the Neo-Assyrian period. The trial took place in the presence of witnesses, most likely in public spaces such as city, temple, or palace gates.

Ordinarily, the losing party was obliged to pay compensation or a fine in (uncoined) metal (copper, bronze, silver) to the successful party. This applied also to crimes like theft and murder. If the sum could not be paid, it was possible to enslave the “debtor” and his family. Physical punishments are not attested. However, it would be premature to conclude from this that mildness prevailed in the juridical penalties of the Neo-Assyrian period.

The judicial documents were intended for the parties and not for the archives of the judiciary. Most of them are formulated as receipts and were kept by the losing party as proof that it has complied with the verdict. If more time was needed, a debt-contract was written for the successful party. The fine was treated as a private liability and could be secured by guarantee and pledge as well as default interest. Physical punishments are not to be expected in this kind of documentation. Therefore, it cannot be ruled out that, in addition to fines, there were other penalties for private offences not recorded in writing. On the other hand, it seems likely that the idea of material compensation played a major role in the private sphere, whereas in the public sphere, primarily addressed in the royal correspondence, the focus might have been on punishing the offender and therefore more serious penalties are to be looked for.

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