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*Legal Sanctions Imposed on Parents  
in Old Babylonian Legal Sources*

One may conclude from an analysis of Old Babylonian legal sources that a parent was not permitted to cancel, without lawful cause, the legal tie between himself and his natural or adopted child by means of the declaration, “you are not my son,” or “you are not my daughter.” Severe sanctions were imposed on a parent who willfully uprooted his child from his house. The most common sanction found in the scholastic-legal texts and in adoption documents that include a sanction clause against one who deprives his child of his legal status as son and heir is forfeiture of the property of the parent.

Sanctions could be imposed on a parent who tried unlawfully to annul the legal tie between himself and his child by using the formula *ul māri attā* “you are not my son,” or *ul mārī attī* “you are not my daughter.” These formulae and others, such as *ul abī attā* “you are not my father,” or *ul ummī attī* “you are not my mother,” are *verba solemnia* which appear in adoption documents, marriage contracts, and deeds for the acquisition of slaves. The aim of such formulae was to mark the exact time of the change in the legal status between the two parties concerned.<sup>1</sup> S. Greengus has shown<sup>2</sup> that the formula was actually spoken during the Old Babylonian period, and that only after the declaration did an accompanying act have legal validity.

The legal consequences of a parent’s declaration “you are not my son,” or “you are not my daughter,” was the dissolution of the legal bond between the child and the parent. This means that the child could be evicted from the house. We shall endeavor to show that negating the right of a child to be an heir was not the exclusive prerogative of the parent. A parent who infringed upon the legal status of a child in violation of the accepted legal norms could expect to be severely punished.<sup>3</sup>

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<sup>1</sup> G. R. Driver and J. Miles, *The Babylonian Laws* (Oxford: Clarendon Press, 1952), vol. 1, 402–3. S. Greengus, “The Old Babylonian Marriage Contract,” *JAOS* 89 (1969): 515–16, 518 n. 61.

<sup>2</sup> Greengus, “Marriage Contract,” 515–18.

<sup>3</sup> In ancient Near Eastern law various limitations were placed on the right of the parent to negate the status of the child as son and heir even in situations where the son acted wrongfully towards his parent. See my study, “Legal Continuation and Reform in Codex Hammurabi, paragraphs 168–169,” *ZAR* 5 (1999): 54–65.

We have no available Old Babylonian legal texts which attest to legal sanctions imposed on natural parents for illegally depriving their child of the status of son and heir of his father. However, there are many adoption documents from this period that include a penalty clause in which a penalty is imposed on an adopter who illegally damages the status of the adoptee as a son and heir.<sup>4</sup> Basically the legal status of lawful children, whether natural or adopted, was equal.<sup>5</sup> Therefore it is possible to learn from the sanction clauses in adoption contracts about penalties imposed on a parent for denying his legal child.<sup>6</sup>

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<sup>4</sup> The sanction clauses in Old Babylonian adoption contracts were recently discussed and analyzed by P. R. Obermark, in “Adoption in the Old Babylonian Period” (Ph.D. diss., Hebrew Union College, 1991), 47–52.

<sup>5</sup> For other researchers who have reached the same conclusion, see Driver and Miles, *The Babylonian Laws*, 1:326; M. J. Ellis, “An Old Babylonian Adoption Contract from Tell Harmal,” *JCS* 27 (1975): 140–46; E. C. Stone and D. I. Owen, *Adoption in Old Babylonian Nippur and the Archive of Mannum-mesu-lissur* (Winona Lake, Ind.: Eisenbrauns, 1991), 33.

<sup>6</sup> Although this subject is beyond the scope of this paper, we will present a few arguments concerning the basic equality between the legal status of a natural child and that of an adopted child, as can be derived from various legal sources. We hope to expand upon this subject at a later date.

a) From the denial formula of the adoptee to the adopter: “you are not my father/mother” or of the adopter to the adoptee: “you are not my son/daughter,” we learn that the relationship between an adopter and adoptee was like that between a parent and child not merely metaphorically, but legally (cf. Obermark, “Adoption,” 60).

b) Sections 168–69 of Codex Hammurabi are laws that regulate the negation of a lawful child’s legal status by his uprooting from the father’s house. Since these sections do not

The earliest relevant documentation known to us is found in the so-called Sumerian Family Laws (YOS 1 28 iv 3–33), an Old Babylonian scholastic legal text dated to the nineteenth century B.C.<sup>7</sup>

(tukum-bi) ad-da-ni ù ama-ni nu dumu-[mu]-  
meš ba-an-na-ab-du<sub>4</sub> ub<sup>7</sup>é-ta bar-ra-è-a  
(If) his father and mother say to him, “you are not our son,”  
they forfeit . . . the property.<sup>8</sup>

distinguish between an adopted and a natural child, one can conclude that the same rules applied whenever a legal child was removed from his father’s house because of sinful behavior toward his father. For an extensive discussion of these provisions see Fleishman, “Legal Continuation,” supra n. 3.

c) Various wills show that natural parents had the legal right to deprive a natural child of the right to be an heir, if there was a legal reason—that is, for criminal activity on the part of the heir towards them. A comparison between wills and penalty clauses in adoption contracts shows us that criminal behavior by a legal child, natural or adopted, toward a lawful parent, was a legitimate reason to dissolve the legal relationship between the parties. The similarity between the natural and adopted child derives from their basic equality. See, e.g., *PBS* 8/1, 16; *BE* 6/2, 28 (both from Nippur), ed. Stone and Owen, *Adoption*, 29–30, 39–40.

d) In *ARN* 174 from Sippar, a natural child attempts to prevent another person, who claims to be the adopted son of the deceased, from inheriting from the father by maintaining that his father had never adopted the other person. The verdict was that the man was indeed the adopted son of the deceased. He would therefore receive a share in the inheritance, while the natural son would be evicted from the father’s house. This interesting document can be understood against the background of the equal status of the natural and adopted sons. It is difficult to believe that if the legal status of an adopted son were lower, the court would have penalized the natural son so harshly for attempting to harm the legal status of the adopted son.

<sup>7</sup> On the date and nature of these laws, see J. J. Finkelstein, “Sex Offenses in Sumerian Laws,” *JAOS* 86 (1966): 357–58.

<sup>8</sup> Transliterations and translations cited in this study are based on M. T. Roth, *Law Collections from Mesopotamia and Asia Minor* (Atlanta: Scholars Press, 1995), 44. The duplicate provision to this law (YOS 1, 28 iv 34–v 2) reads:

tukum-bi ad-da-ni ù ama-ni nu dumu-mu-meš  
[x-x]-x du<sub>4</sub>? [é íb-t]a-è-a  
If his father and mother say [to him], “you are not our son,”  
they shall forfeit [the property].

For possible links between the two paragraphs, see J. J. Finkelstein, in *ANET*<sup>3</sup> (Princeton: Princeton Univ. Press, 1969), 526 n. 3.

Some scholars maintain that this rule refers to adoptive parents.<sup>9</sup> However, since the language of this clause does not contain any indication that it applies only to adoptive parents, one can view the clause as dealing with penalties inflicted on any parent who disavows legal ties to any legal child.<sup>10</sup>

According to the above paragraph, the penalty for a parent who disavows his child is similar to the penalties imposed in article 4 of the Sumerian Family Laws on a child who disavows his parents by saying “you are not my father,” or “you are not my mother.”<sup>11</sup> In both cases it is provided that because of the infringement of the legal obligations of one party towards the other, the guilty person loses his legal status in his family unit.

Sanctions imposed on parents who wished to annul the legal ties between themselves and their legitimate child are also found in two paragraphs of the Sumerian-Akkadian lexical text *ana ittišu* which goes back to the eighteenth century B.C.<sup>12</sup>

tukum-[b]i	<i>šumma</i>
ad-da dumu-n[a-r]a	<i>abu ana mārīšu</i>
dumu-mu nu-me-en	<i>ul mārī attā</i>
ba-an-na-an-du <sub>11</sub>	<i>iqtabi</i>
é é-gar <sub>8</sub> -ta	<i>ina bīti u igarim</i>
ba-ra-e <sub>11</sub> -dè	<i>itell[i]<sup>13</sup></i>

If a father says to his son “you are not my son,” he forfeits house and wall.

tukum-bi	<i>šumma</i>
ama dumu-na-ra	<i>umma ana mārīšu</i>
d[umu-m]u nu-me-en	<i>ul mārī attā</i>
[ba-an-n]a-an-du <sub>11</sub>	<i>iqtabi</i>
[é nì-g]ú-na-ta	<i>ina bīti u unūti</i>
[ba-ra]-e <sub>11</sub> -dè	<i>itell<sup>14</sup></i>

If a mother says to her son “you are not my son,” she forfeits house and property.

This principle of punishing the child or the parent who denies any legal relationship is not unique to the sources just cited, which do not differentiate between an adopted child and a natural child;<sup>15</sup> it is also found in many other

<sup>9</sup> See, e.g., Roth, *Law Collections*, 44.

<sup>10</sup> Cf. Ellis, “Adoption Contract,” 140–41.

<sup>11</sup> Ellis, “Adoption Contract,” 141.

<sup>12</sup> For the date of this text, see B. Landsberger, *Die Serie ana ittišu*, MSL I (Rome: Pontifical Biblical Institute, 1937), i–iii.

<sup>13</sup> 7 iii 34–39.

<sup>14</sup> 7 iii 40–45.

<sup>15</sup> The “story-line” of tablet 7 iii indicates that the context is in fact one of adoption. Nevertheless, on the grounds of the ba-

legal documents. These documents, which include clauses providing for a penalty if an adopted child disavows his obligations to the adoptive parents, also contain clauses providing sanctions for parents who disavow their adopted child by saying “you are not my child.”

The clauses include the following punishments: a) the parent forfeits his property;<sup>16</sup> b) the parent is to give the son his share in the inheritance from the father’s house;<sup>17</sup> c) the parent is to give financial compensation.<sup>18</sup>

It is important to note that in all cases where the sanctions clause refers to both parents, the penalty is the same for both and does not differ as provided in the series *ana ittišu* cited above. The most severe and frequent penalty imposed on those found guilty is loss of property, movable and immovable. On the other hand, it is possible to punish a child who disavows his parents by selling him into slavery.<sup>19</sup>

The verb that defines the penalty for loss of property is *elû*. It generally appears in the Gt stem form, meaning “to lose.”<sup>20</sup> How is one to explain this penalty? One possibility is to understand it literally, i.e., the parent who is guilty of disowning his child is to be expelled from his

house and property. Another possibility is that the parent forfeits only that portion which the adopted child would receive as heir after the death of the father. The adopted son receives this property after the death of the father.<sup>21</sup>

According to Driver and Miles,<sup>22</sup> it is not likely that the intention of this penalty is that the adoptive father should lose all his property. They base themselves on the following two arguments. First, in a number of adoption documents the parent is penalized with two penalties: loss of property and a monetary fine; if he lost all his property where would he get money to pay the fine?<sup>23</sup> Second, even the mother who denies her son is penalized by the loss of movable and immovable property, and it would be untenable to say that the father should lose his property because of the actions of his wife. Driver and Miles explain the sanction clause in the following manner: “The penalty is so excessive that it seems unlikely that it should be taken literally, and it seems more probable that these clauses are mere threats inserted *in terrorem* in the contract of adoption.”<sup>24</sup>

However, it is difficult to accept these arguments. First, the parent might pay the financial penalty from property not included in the family property as recorded in the adoption document *OECT* 8, 21. There a couple adopts a son and gives him the house, field, garden, and family property as his inheritance portion, and in addition he receives two shekels. If all the property were given to the adopted son, why was it necessary to record that he was given another two shekels? Secondly, Driver and Miles are correct when they say that it would be unacceptable for the father to lose all of his property because the mother denied the son. It is, however, possible that we are dealing in this case with a woman who for some reason has no husband. If she forfeits her property, no husband would suffer any damages.

It is plausible that the legal and practical meaning of the punishment inflicted on parents who disavow their children is that the son receives his share in the family property upon the death of the father. This solution appears reasonable because it is difficult to suppose that the other children should suffer any loss as a result of the criminal behavior of their father toward one of their brothers.

sis similarity of the status of the adopted and the natural sons, one can argue that they also apply to any legal child.

<sup>16</sup> See Obermark, “Adoption,” 48–49, 53. See, e.g., also *BAP* 93 (Uruk), ed. B. Meissner, *Beiträge zum altbabylonischen Privatrecht* (Leipzig: Hinrichs, 1893), 73–74; *VS* 8, 73 (Sippar), ed. M. Schorr, *Urkunden des altbabylonischen Zivil- und Prozessrechts* (Leipzig: Hinrichs, 1913), 22–23; *ARN* 45 (Nippur), ed. Stone & Owen, *Adoption in Old Babylonian Nippur*, 43–44.

<sup>17</sup> See Obermark, “Adoption,” 50. See also, e.g., *BAP* 97, ed. Schorr, *Urkunden*, 23–24; *YOS* 12, 206, ed. M. Roth, “Scholastic Tradition and Mesopotamian Law: A Study of FLP 1287, A Prism in the Collection of the Free Library of Philadelphia” (Ph.D. diss., University of Pennsylvania, 1979), 186–88.

<sup>18</sup> See Obermark, “Adoption,” 50. Also, e.g., *TIM* 4, 13 (Nippur), ed. Stone and Owen, *Adoption in Old Babylonian Nippur*, 38–39; *BE* 6/2, 48 (Nippur), ed. R. Westbrook, *Old Babylonian Marriage Law*, AfO 23 (Horn: F. Berger, 1988), 115–16; Stone and Owen, *Adoption in Old Babylonian Nippur*, 51–52; *SAOC* 44, 30 (Nippur), ed. Stone and Owen, *Adoption in Old Babylonian Nippur*, 48; *ARN* 37 (Nippur), ed. R. Westbrook, *Old Babylonian Marriage Law*, 112.

<sup>19</sup> Cf. Obermark, “Adoption,” 51–52.

<sup>20</sup> W. von Soden, *Akkadisches Handwörterbuch* (Wiesbaden: Harrassowitz, 1959–81), 207; *The Assyrian Dictionary of the Oriental Institute of the University of Chicago* (Chicago: The Oriental Institute, 1958), E 114, mng.- 3ab2'; Y. Muffs, *Studies in the Aramaic Legal Papyri from Elephantine* (Leiden: Brill, 1969), 183 and n. 2; Driver and Miles, *The Babylonian Laws*, 399.

<sup>21</sup> P. Koschaker, “Adoption,” *Reallexikon der Vorgeschichte*, vol. 1 (Berlin: M. Ebert, 1924), 27; M. David, *Die Adoption im altbabylonischen Recht* (Leipzig: T. Weicher, 1927), 90–91; Roth, “Scholastic Tradition,” 188.

<sup>22</sup> *The Babylonian Laws*, 399.

<sup>23</sup> See *The Babylonian Laws*, 400 for an example of this sanction in *BE* 6/2, 24.

<sup>24</sup> *The Babylonian Laws*, 400.

Therefore one can say that as a result of the father's illegal declaration "you are not my son," the son ceases to be a legal son. However, since he did not sin against the father, the latter has no authority to annul his right to inherit the family property. The father must give the son his inheritance portion. The implication is that the judicial authorities do not prevent the father from expelling his son from the household, but at the same time they do not permit the father to send him away empty-handed.<sup>25</sup> They require the father to give the son his portion. It is also very likely that the execution of the sanctions was delayed until after the death of the father.

However, we are not convinced that this is the correct solution. R. Yaron, in his discussion of the apodosis of article 59 of the Laws of Eshnunna, indicates the link between the problem treated in this paragraph and the denial by the father of his adopted son:

One may broaden the basis of the argument [concerning the apodosis of paragraph 59] by pointing to similar penal provisions in a relationship which is in some respects comparable to marriage, namely adoption. There, wrongful disowning of the adoptee (which corresponds to wrongful divorce) is often said to be punishable by depriving the adoptive parent of his property. Moreover, in this case one can point to a text akin to the LE, namely the so-called Sumerian Family Laws contained in *ana ittišu* 7, 3 lines 34–39.<sup>26</sup>

Before we examine the significance of this principle for our question, we must make two comments. First, this principle can be found in the Sumerian Family Laws, which are earlier than the series *ana ittišu*. Secondly, the wording of these sources does not limit their application only to an adopted child. On the contrary, the formulation implies that these sanctions are applicable in any case that a legal child is disowned by a parent.

It is possible to explain the penalty of forfeiture of the property of the parents who wish to annul illegally the legal ties between themselves and their child in the light of the analogy cited by Yaron. This conclusion is supported by a survey of other documents which shows that the

most widespread sanction against parents who illegally disown their child is forfeiture of their movable and immovable property.

The legal principle common to both the case of the husband who illegally divorces his wife and a parent who illegally disowns a child is that the husband or father is allowed to evict the wife or child, but the law provides for the evicted by means of serious sanctions. A parent who illegally annuls the legal tie between himself and his children loses his house and property. The property remains in the possession of the other legal heirs, and they divide it according to the law. Thus illegal action by a father against one son does not deprive other sons and heirs of their shares. We do not know how this principle actually worked, just as we do not know how the penalties in article 59 of the Laws of Eshnunna and article 137 of the Code of Hammurabi were carried out. As noted above, there are contracts which do not provide for the forfeiture of property. Instead, the document may determine that a father must give his son his share of the inheritance in the father's household. It is possible that this formulation hints at some modification of the forfeiture of the property. However, the legal significance of the two penalties is the same: a parent who disowns his child without just cause cannot negate the child's legal rights as heir.

Analysis of the penalty provisions in school texts and adoption agreements for a parent who denies his legal tie with a child shows that annulling the legal tie required the intervention of legal authorities. The annulment was not a private matter between the parent and the child.<sup>27</sup>

The earliest available scholastic traditions on the subject of the punishment of the parent are in the Sumerian Family Laws (*YOS* 1, 28), paragraph 5, and *ana ittišu* 7 iii 34–45. In view of the laconic formulation of these provisions it is not possible to know who determines whether a parent has disowned his child illegally, or who administers the penalty provided therein. Our contention is that one may conclude from these paragraphs that not only did the law provide important support in the case of willful breaking of the parent-child tie, but also that the penalties could only be administered by a judicial authority to whom the father was subject. This authority could administer punishment to the parent only after the situation had been investigated by the authority and clarified before it. Moreover, both paragraph 4 of the

<sup>25</sup> It is possible that sections 168–69 of Codex Hammurabi were intended to restrict the authority of a father even further. The father was forbidden to uproot his son without legal cause determined by customary law. In addition, he was compelled to forgive his sinful son for the first offense, and was not permitted to uproot him from his house until after the second guilty verdict.

<sup>26</sup> R. Yaron, *The Laws of Eshnunna*, second revised ed. (Jerusalem and Leiden: Magnes Press and Brill, 1988), 218.

<sup>27</sup> Sections 168–69 of Codex Hammurabi set forth important rules that were intended on the one hand to continue the customary law in this matter, and on the other hand, to execute a significant reform.

Sumerian Family Laws and *ana ittišu* 7 iii 34–45 indicate that the law limits the authority of the parent by stipulating that he is permitted to punish his son only if that son has violated his legal obligations towards his parent by saying, “you are not my father” or “you are not my mother.” This implies that in other instances the parent is not permitted to negate a son’s legal status as son and heir. A parent who violates his legal obligations towards the child is liable to be punished as provided by law.

Most of the Old Babylonian adoption documents from various regions<sup>28</sup> include a clause providing for sanctions against an adopter or adoptee who denies the legal ties between them. The clauses contain various penalties, the most common being forfeiture of movable and immovable property. This was the penalty provided for disowning a child according to the scholastic legal sources treated above. One can thus conclude that this severe penalty was imposed on a parent, whether natural or adoptive, who illegally annulled the legal tie between himself and his child.

Inasmuch as adoption is a formal legal agreement, should it be violated, the judicial authority is the proper authority to give legal succor to the injured party. Therefore, one can conclude from the sanction clause that, according to the law practiced in those places where such agreements were composed, an arbitrary annulment of the agreement by the adopter was deemed essentially a violation of the adoption agreement. In such cases the judicial authorities would give legal aid to the injured party. The intervention of the court is to be explained in that the sanctions which were provided by the agreement, especially the severe ones, could only be imposed by an authority to whom the father was subject. It is reasonable to suppose that this authority would punish the parent only after investigating the circumstances and becoming convinced that the parent had indeed violated the adoption agreement. We do not know of documents from which it is possible to deduce that the sanctions were actually imposed on a parent. This, however, does not weaken the argument that a one-sided breach of the adoptive tie was within the jurisdiction of a court.

These legal principles find expression, for example, in the adoption agreement recorded in *YOS* 12, 206. It was

agreed that if the adopter said to his adopted son, “you are not my son,” he (nevertheless) was his son, and would have a share in the property as an heir (ll. 14–19).<sup>29</sup> Although the son had ceased to be considered the son of his father following the declaration, it was provided that the father was obligated to give his son his share in the property, since he did not have a legal cause to deprive his child of his legal status or inheritance.<sup>30</sup> It is very likely that we have here an elliptical expression that is to be understood as follows: if a father has cancelled his legal tie to his son, but it is proven to the judicial authorities that the son has not committed a sin against his father for which the father is legally permitted to expel him from the house, then the father is required to give the son his share as son and heir. It is reasonably certain that the execution of this sanction was delayed until after the death of the father. *YOS* 12, 206 reflects the rule to which we have referred, namely, that the parent does not have the authority to cancel willfully the legal tie with his child and thus deny his rights as son and heir. The law does not prevent the father from removing his child from his house, but it requires him to give the latter his full rights as son and heir. This might prevent the parent from willfully uprooting his child, because he would not wish to pay the high price for this act.

It is fairly certain that one should understand literally the severe sanctions imposed on parents who disowned their children. They forfeited their property, whether movable or immovable. Indeed these penalties are quite severe and would appear to be incomprehensible. However, since there is a common denominator in the Mesopotamian sources for the cases surveyed above, one may conclude that Old Babylonian Mesopotamian legal tradition aimed to protect the legal status of the child. The authorities even proffered legal aid when the head of the household wanted to infringe upon the elementary rights of a child to be considered a son and heir.

The juridical authorities were involved in instances where a parent wished illegally to annul the legal tie between the parent and the child, and they supervised the execution according to all the rules of law.

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<sup>28</sup> For the distribution of these agreements, see J. Fleishman, *Parent and Child in the Ancient Near East and the Bible* (Jerusalem: Magness Press, 1999), 186–89 [Hebrew]; Obermark, “Adoption,” 162–63.

<sup>29</sup> For the transliteration and translation of this document, see Roth, “Scholastic Tradition,” 186–87.

<sup>30</sup> Cf. Roth, “Scholastic Tradition,” 188.