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Maqlû I.73–121 and Trial Procedure

Shalom E. Holtz

Yeshiva University

sholtz@yu.edu

Abstract

In the Akkadian anti-witchcraft ritual *Maqlû*, the incantation in 1.73–121 exemplifies the theme of conducting adjudicatory proceedings against the witch in the divine courtroom. In particular, the patient's presentation of the witch in effigy and the demand for judgment accord well with similar features attested in Neo-Babylonian trial records. Study of the incantation in light of these court records reveals the incantation's attention to the details of legal procedure.

Keywords

Maqlû – divine courtroom – trial procedure – Akkadian trial records

The late Raymond Westbrook observed that for the common person in the ancient Near East, divine courts were “the ultimate court of appeal.”¹ Thus, in Mesopotamian literature, courtroom imagery characterizes both sides of the communication between humans and the gods. Diviners speak of the results they achieve—that is to say what can be known of the gods' messages to humans—as “judgments.”² In the other direction, courtroom metaphors are a common feature of prayer—when humans speak to gods.³ The overlap

* A version of this essay was read at the 2011 meeting of the American Oriental Society in Chicago. Thanks are due to members of the audience, especially J. Scurlock, whose stimulating insights are reflected in the closing paragraph.

1 R. Westbrook, “International Law in the Amarna Age,” in *Law from the Tigris to the Tiber: The Writings of Raymond Westbrook*, ed. B. Wells and F. R. Magdalene (vol. 2; Winona Lake, IN: Eisenbrauns, 2009), 270.

2 See *CAD* P, 533–5, s.v. *purussû*, mng. 3.

3 See S. E. Holtz, “Praying as a Plaintiff,” *VT* 61 (2011): 258–79.

between the language of law, divination, and prayer concretizes the concept of a stream of justice that begins in trials before human adjudicators and ends in the court of the gods.

The long Akkadian anti-witchcraft ritual, *Maqlû*, provides an excellent example of this conceptual continuity. In several of the ritual's incantations, the patient calls on the gods to adjudicate a case against the alleged witch. A particularly extensive and consistent evocation of the courtroom occurs in *Maqlû* I.73–121, the sixth incantation in the series. According to Tzvi Abusch, this incantation accompanies "the most significant act" in the entire ritual: the actual trial of the witch.⁴

If, indeed, the incantation creates a trial, then it invites investigation of just how successfully it does so. How closely does this part of *Maqlû*'s presentation of the case of Patient v. Witch, with the gods-as-judges presiding, resemble what is known about how trials were conducted between human litigants, with earthly judges presiding? Is the incantation's language simply a creative use of standard Akkadian words with overtly legal meanings, or are there, perhaps, more extensive connections between the vocabulary and the legal imagery?

Since ancient literature imagines continuity between the human and the divine courts, one should expect to find commonalities between the venues. Indeed, Abusch and others have drawn on legal texts and legal terminology to explicate the magic in *Maqlû* and elsewhere.⁵ Earlier study of *Maqlû*'s opening incantation (I.1–36), the call to the gods of the night, has shown how that incantation draws on legal terminology and can be interpreted in line with legal concepts.⁶ Neo-Babylonian trial records, in particular, provide insight into the opening incantation's basic structure, which, as has been briefly noted previously, resembles that of *Maqlû* I.73–121.⁷

4 I. T. Abusch, *Babylonian Witchcraft Literature: Case Studies* (BJS 132; Atlanta: Scholars Press, 1987), 86.

5 For examples, see J. Bottéro, "Symptômes, signes, écritures," in *Divination et Rationalité*, ed. J. P. Vernant et al. (Paris: Éditions du Seuil, 1974), 140; I. Starr, *The Rituals of the Diviner* (BM 12; Malibu: Undena, 1983), 58; and T. Abusch, *Mesopotamian Witchcraft: Toward a History and Understanding of Babylonian Witchcraft Beliefs and Literature* (AMD 5; Leiden: Brill, 2002), 236–45.

6 T. Abusch, *Mesopotamian Witchcraft*, 236–45; R. Westbrook, "Witchcraft and the Law in the Ancient Near East," in *Law from the Tigris to the Tiber: The Writings of Raymond Westbrook*, ed. B. Wells and F. R. Magdalene (vol. 1; Winona Lake: Eisenbrauns, 2009), 290–2; S. E. Holtz, "Praying as a Plaintiff," 270–2. For a response to Westbrook's critique of Abusch, see T. Abusch, "Divine Judges on Earth and in Heaven," in *The Divine Courtroom in Comparative Perspective*, ed. A. Mermelstein and S. E. Holtz (BIS 132; Leiden: Brill, 2014), 15.

7 Holtz, "Praying as a Plaintiff," 271 n. 41.

This brief essay develops that previous structural observation. It draws on the corpus of Neo-Babylonian trial records to inform a reading of *Maqlû* 1.73–121 and to demonstrate the connections between human and divine courtrooms. The discussion will focus on two features of the incantation: the presentation of the witch in effigy and the patient's demand for judgment. Comparison between the magical text and its parallels from human courts of law shows that the trial in *Maqlû* follows the conventions, and even the rhetoric, of proper trial procedure. By presenting the witch in effigy, the speaker conforms, as best as possible, to attested trial procedure, which required the presence of the opposing party. Similarly, the speaker's narration of the charge, culminating in the demand for judgment, follows the rhetorical style attested in the records from human courtrooms.

Before turning to the texts themselves, one methodological point is in order. The choice of the Neo-Babylonian trial records is not meant to suggest that these records had any direct influence on the formation of the incantation in 1.73–121, or any part of *Maqlû*, for that matter. The nature of both bodies of evidence—*Maqlû* and the legal materials—prevents this kind of conclusion. In general, *Maqlû*, for its part, probably has a long and complicated redactional history; Abusch, in fact, uses the incantation in 1.73–121 to document aspects of this history.⁸ Regarding the trial records, it should be obvious that the need to bring an opponent to court is practically universal and that the demand for judgment could also have been a feature of courtroom speech in any period. The reason for turning to the Neo-Babylonian texts is simply that they provide the easiest access to the legal convention of presenting the opponent and to regularly formulated statements by plaintiffs in court, including the demands for judgment.

The Incantation as a Trial and Presentation of the Opponent

Here is the incantation, divided into a rough thematic outline:⁹

1. Presentation of the Figurines (73–87)

(73) Oh Nusku, these are the figurines of my sorcerer,

⁸ T. Abusch, *Mesopotamian Witchcraft*, 136–47.

⁹ The main interruption to this thematic division occurs in the description of the opponents' malicious behavior (11), where lines 93–95 refer to the opponents and ask Girra to destroy them, after which the description of behaviors resumes and continues through line 109. The translation here is the author's own, made in consultation with the text and translation published in T. Abusch, *The Witchcraft Series Maqlû* (SBLWAW 37; Atlanta: SBL, 2015), 48–51.

These are the figurines of my sorceress,
 (75) The figurines of my warlock and witch,
 The figurines of my sorcerer and the instigating-sorceress,
 The figurines of my enchanter and enchantress,
 The figurines of my male and female poisoner,
 The figurines of my male and female irritators,
 (80) The figurines of my male and female enemies,
 The figurines of my male and female persecutors,
 The figurines of my male and female litgants (*bēl dīni*),
 The figurines of my male and female accusers (*bēl amāti*),
 The figurines of my male and female adversaries (*bēl dabābi*),
 (85) The figurines of my male and female slanderers,
 The figurines of my male and female evildoers,
 Whom you, Nusku, the judge, know, but whom I do not know—

II. Description of Opponents' Malicious Behavior (88–109)

Who witchcraft, spittle, enchainment, evil machinations,
 Sorcery, rebellion, evil-speech, love-magic and hate-magic,
 (90) Distortion of justice, cutting of life, speech-paralysis, calming-anger,
 Confusion, vertigo, madness,
 Have conjured against me, and caused to be conjured against me, have
 sought against me and have caused to be sought against me.
 These are they. These are their figurines.
 Since they are not present, I bear their figurines.
 (95) You, Nusku, the judge, who captures evildoer and enemy, capture
 them, so I will not be harmed!
 Those who have made figurines of me, who imitated my face,
 Who have bound my mouth, shaken my neck,
 Pressed against my chest, bent my spine,
 Weakened my heart, seized my libido,
 (100) Made me angry with myself, weakened my strength,
 Poured out my arms, bound my knees,
 Filled me with fever, stiffness and debility,
 Fed me bewitched bread,
 Given me bewitched water to drink,
 (105) Washed me with contaminated water,
 Anointed me with salves of evil herbs,
 Betrothed me to a dead person,
 Brought the waters of my life to the grave,
 Caused god, king, lord and prince to be angry with me.

III. Petition (110–121)

III.A Demand for Judgment (110–114)

(110) You, oh Girra, burner of warlock and witch,
 Destroyer of the wicked, seed of warlock and witch,
 Demolisher of evildoers, are you!
 I call upon you, like Šamaš, the judge,
 Judge my case, decide my decision (*dīnī dīn purussāya purus*)!

III.B Demand for Destruction (115–121)

(115) Burn my warlock and my witch!
 Consume my enemies, devour those who do evil against me!
 May your angry storm capture them!
 Like water from a waterskin, trickling, may they come to an end!
 As if by a blow from a stone, let their fingers be cut back!
 (120) By your exalted command, which cannot be altered,
 And by your true assent, which cannot be changed.

For all of its detail, the incantation progresses quite clearly. It begins with the presentation of the figurines, covering all bases, as it were, by enumerating no less than thirteen categories of opponents, male and female. These include, appropriately enough, warlock and witch (*kaššāpu* and *kaššāptu*, 75), as well as the more legal-sounding *bēl dīni* (“litigant,” 82), *bēl amāti* (“accuser,” 83) and *bēl dabābi* (“adversary,” 84). The speaker, here the patient, then describes what these opponents have done, with a complete catalogue of all sorts of maladies they have inflicted. Finally, the speaker details the desired results for this incantation.

The presence of adjudicatory language—most prominently, the actual demand for judgment (114), but also the legal terminology for the opponents and for the deities being petitioned—shape the perception that this incantation evokes a trial. Thus, the parts of its outline can be interpreted as procedures, of sorts, in the trial. The speaker, or plaintiff, presents the accused defendant (Part I) and makes the accusation or charge (Part II). The incantation ends (Part III) with what Westbrook has termed a statement of the “remedy sought.”¹⁰

Strictly speaking, the incantation’s text is not a record of a complete trial, but rather an extended statement by the patient/speaker-as-plaintiff. Therefore, within the corpus of trial records from human courts, the parallel presents itself in the plaintiffs’ statements before the adjudicating authorities. In the

¹⁰ R. Westbrook, “Witchcraft and the Law,” 291. Westbrook’s observation pertains to *Maqlû* 1.18–19, but the same categorization applies here.

Neo-Babylonian corpus, these statements are often recorded according to recognizable conventions.¹¹ Here is an example:¹²

(1–2) Bunanītu daughter of Hariṣaya said thus to the judges of Nabonidus, king of Babylon:

(2–23) “Apla-addu-natan son of Niqmadu took me as a wife and received my *nudunnû* of 3 1/2 mina of silver. I gave birth to a daughter for him ... My husband died.

(23–27) “Now, Aqab-ili, the son of my father-in-law has brought a claim concerning the property and whatever was sealed and given to me, as well as concerning Nabû-nûr-ilī whom we purchased for silver from Nabû-ahhe-iddin.

(28) “I have brought him (Aqab-ili) before you. Render our decision!”

The opening sentence introduces the plaintiffs’ statement by naming the plaintiff and the authorities (1–2). The speech itself is then quoted (2–23); it concludes with a formulaic address to the judges, in which the plaintiffs demands judgment (28). With this formula, the plaintiffs make a formal demand for a trial.

In this example, just prior to the demand for judgment, Bunanītu, the plaintiff, declares that she has brought her opponent, her brother-in-law Aqab-ili, before the judges. Study of the broader corpus shows that, in general, plaintiffs were, in fact, responsible for the opposing parties’ appearance.¹³ Thus, in Bunanītu’s case, the inclusion of this notice formally marks her fulfillment of this obligation.

The equivalent to this notice in *Maqlû* I.73–121 is the speaker’s declaration: “these are they, these are their figurines, since they are not present, I bear their figurines” (lines 93–94). These words are not simply the notice that, in the

11 For discussion of the general contours, examples and variants, see S. E. Holtz, *Neo-Babylonian Court Procedure* (CM 38; Leiden: Brill), 27–35 and 41–4 (Summary Table 1.1).

12 Nbn. 356, following Cornelia Wunsch, *Die Urkunden des babylonischen Geschäftsmannes Iddin-Marduk, Zum Handel mit Naturalien im 6. Jahrhundert v. Chr.* (CM 3A, 3B; Groningen: Styx, 1993), no. 167. Similar examples that include the presentation of the opponent prior to the demand for judgment are: YOS 19, 101; BM 32023+, edited in C. Wunsch, “Und die Richter berieten ...: Streitfälle in Babylon aus der Zeit Neriglissars und Nabonids,” *AJO* 44/45 (1997–1998), 77–78 (No. 6) and BM 32431, edited in C. Wunsch, “Richter,” *AJO* 44/45 (1997–1998), 88 (No. 19).

13 S. E. Holtz, *Court Procedure*, 38–40; 224–32. See also F. R. Magdalene, B. Wells and C. Wunsch, “Pre-Trial Negotiations: The Case of the Runaway Slave in Dar 53,” *Iraq* 70 (2008): 205–13.

absence of real, live opponents the speaker is substituting effigies. In light of Bunanītu's speech in Nbn 356, and other, similar speeches by plaintiffs, this declaration carries legal import. The case can proceed because the plaintiff has met the obligation to present the opponents. To be sure, the circumstances are not ideal: the speaker admits that really the opponents "are not present," and, in line 87, only Nusku really knows who they are. But with the help of wax figurines, these impediments to the progress of justice can be overcome.¹⁴

At this point, it is worth noting that the subject of the opponent's presence and identity raises a slight contradiction within the incantation itself. According to line 87, only Nusku, but not the speaker, knows who the opponents are. On the other hand, lines 93–94 imply that the speaker can identify the opponents, at least in their effigies. Diachronic and synchronic explanations for this present themselves. Diachronically, this contradiction may reflect the development of the ritual, particularly the insertion of line 87 into an otherwise unproblematic original text.¹⁵ Synchronically (or, if one prefers, to explain the text in its final form), one can suggest that this contradiction reflects the unique circumstances of the ritual, which attempts to conduct a trial without a readily available opposing party. Regardless of how much the patient knows about the imagined opponents, the effigies are sufficient to identify them for the purposes of the ritual trial. Thus, the ritual breaks, or at least stretches, the limits of the analogy to litigation in a human courtroom. This is not really surprising, nor does it undermine the validity of pursuing the ritual's adjudicatory analogues. Ritual, rather than law, provides the primary context for this incantation, and indeed, *Maqlû* as whole. Thus, one need not expect total compliance with what would be expected in human courtrooms. Even so, this ritual remains anchored in trial procedure, at least to the extent that it attempts, as best as possible, to present the opponent so the trial can go forward.

The Demand for Judgment

The structural similarities between *Maqlû* 1.1–36 and 1.73–121 that have already been briefly observed pertain to the positioning of the demand for judgment (1.14; 1.114). Both incantations are structured along the lines of the plaintiffs' speeches in Neo-Babylonian trial records.¹⁶ Bunanītu, the plaintiff quoted above, ends her statement with a demand for judgment: "Render our

¹⁴ Westbrook, "Witchcraft and the Law," 292.

¹⁵ See Abusch, *Mesopotamian Witchcraft*, 142–7.

¹⁶ Holtz, "Praying as a Plaintiff," 267–72.

decision (*purussâni šuknā*)!" In its concluding position, this imperative to the judges transforms her statement from a narration of facts into a plea for justice to be served. Rhetorically, it commands the judges' attention and moves them to action.

Within the broader structure of the decision record from Bunanītu's case, and others like it, the demand for judgment marks a pivotal point in the telling of the case's story. It comes not only at the end of the plaintiff's statement, but also just prior to the section that narrates the judges' actions.¹⁷ If one imagines the legal record as a courtroom drama, the spotlight shifts from the plaintiff to the adjudicating authority. The judges are moved by the plaintiff's plea, and the case proceeds.

The example of Bunanītu's demand for judgment sheds important light on the very existence of a demand for judgment in *Maqlû* 1.73–121, and elsewhere. As with the presentation of the opponents, this demand is not simply a legal-literary embellishment in the service of the more serious business of magic. The legal texts show that this kind of demand was a regular, perhaps even required, feature of the plaintiffs' speeches in "real life" courtrooms. In fact, the speaker in *Maqlû* deploys this demand in much the same way that a plaintiff would have. As in Bunanītu's speech, the demand for judgment follows the accusations against the opponent. Only the invocation of Gira (lines 110–113), equivalent to the plaintiff's shift to direct address in the decision records, comes between the complaints and the actual demand, as an introductory expansion or lead-up to the demand itself.

Moreover, the demand for judgment occurs at a pivotal point in the incantation, not only as a plea after the complaints, but also immediately before the main presentation of the "remedy sought," which begins in line 115. This positioning, already observed regarding *Maqlû*'s opening incantation, is analogous to the positioning of the demand within the decision records: between the complaint and the judicial actions. In the decision records, judicial actions are recorded as facts. In the incantation, they are presented as facts-to-be. The outcome is prayed-for, rather than actually achieved.¹⁸

In sum, the evidence from earthly court records bears out the interpretation of *Maqlû* 1.73–121 as a trial. In the incantation, the presentation of the opponent in effigy and the demand for judgment find equivalents in the adjudicatory process. Thus, rhetorically and procedurally, the incantation makes the patient's case just as plaintiffs might within the mundane adjudicatory system. The patient, as a plaintiff, complies with expected legal-procedural norms.

¹⁷ Holtz, *Court Procedure*, 32–7.

¹⁸ Holtz, "Praying as a Plaintiff," 268–9.

This procedural overlap stems, most generally, from the broader Mesopotamian religious worldview, which imagines legal continuity between earth and heaven. In the particular case of *Maqlû*, however, more may be at play. As can be seen from *Maqlû* 1.73–121 itself, the patient and the alleged witch engage in exactly the same behaviors, specifically the fashioning of effigies to their opponents' detriment. In rendering their decision, the godly adjudicators must, therefore, distinguish between licit and illicit forms of the same practices. The patient's compliance with trial procedure marks a plaintiff's effort to legitimate a claim through law. Failure to do so would risk rejection of the claim on procedural grounds and lead, in all likelihood, to an adverse decision against the patient.