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# THE LEGAL BACKGROUND OF GENESIS 23

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IT HAS long been recognized that Genesis 23, the account of Abraham's purchase of a burial place for Sarah from the *בְּנֵי־חֵת*, contains numerous legal formulae, but the question of the nature and background of these expressions has not been settled. One widely-accepted view sees Hittite law reflected in the story and insists that the account must have arisen in the second millennium B.C., before the end of the Hittite empire.<sup>1</sup> The formulae in this chapter and the institutions behind them can indeed be illuminated by the extrabiblical — as well as the biblical — analogies, but when the character and function of these conventions are seen, specific connections with Hittite law and second-millennium customs cannot be supported. On the contrary, the passage has many general characteristics in common with Near Eastern legal forms from many periods. Furthermore, it has some specific features in common with certain Neo-Babylonian documents.

## I. *The Negotiations*

Most of the chapter is a detailed description of the formal legal negotiations for the purchase, conducted in the gate (cf. vss. 10, 18) before the legally responsible citizens<sup>2</sup> who validated the agreement as witnesses (cf. vss. 11, 16, 18, and Ruth 4 9–11). Because Abraham was, as he said, a *גֵּר־חֹשֶׁב* and therefore not ordinarily entitled to buy land,<sup>3</sup> it was necessary for the purchase to be approved by the citizens (cf. vss. 3, 4, 20). The responses to Abraham's repeated requests for a burial place have been interpreted variously. Some see in the offer by the *בְּנֵי־חֵת* to *give* Abraham a burial place (vs. 6) a reluctance to *sell* him

<sup>1</sup> M. R. Lehmann, "Abraham's Purchase of Machpelah and Hittite Law," *BASOR*, 129 (1953), pp. 15–18. Cf. John Bright, *A History of Israel*, p. 72; V. R. Gold, "Machpelah," *IDB*, iii, p. 219; Cyrus H. Gordon, "Abraham and the Merchants of Ura," *JNES*, 17 (1958), p. 29.

<sup>2</sup> E. A. Speiser, "'Coming' and 'going' at the 'City' Gate," *BASOR*, 144 (1956), p. 23.

<sup>3</sup> B. Perrin, "Trois textes bibliques sur les techniques d'acquisition immobilière," *Revue historique de droit français et étranger*, 3 (1963), p. 8; M. Sulzberger, "Status of Labor in Ancient Israel," *JQR*, 13 (1922–23), p. 292. Cf. especially Gen 34 20–21.

property, since then he would no longer be a נָיִף.<sup>4</sup> M. R. Lehmann, on the other hand, sees in Ephron's offer to give both the cave *and* the field (vs. 11) the desire to sell his entire holdings in order to transfer to the patriarch the feudal obligations which — according to the Hittite Code, 46 and 47 — would pass to the buyer only if he acquired the entire plot.<sup>5</sup> Abraham had specifically asked for the cave alone (vs. 9), Lehmann suggests, in order to avoid the feudal duties, and only with great reluctance (vs. 13) buys the field as well. The argument between Abraham and Ephron, he concludes did not concern the price, nor did Ephron make a false offer of a gift to entice Abraham. "It rather concerned the question of who would render the services due the king as a result of principal ownership of the land."<sup>6</sup>

It is true that the bargaining is not directly concerned with the price, but the interchange is fully comprehensible without recourse to Hittite laws or feudal customs. Rather, the passage is an account of normal legal negotiations which were conducted with elaborate hospitality and exaggerated politeness.<sup>7</sup> The seller's offer to give the property to the buyer is a natural part of such procedures<sup>8</sup> and conceals neither a reluctance to sell nor a desire to be rid of property which is encumbered with feudal duties. The object of the offer and of the excessive politeness as a whole is to put the other party on the defensive. More important, there are parallels in the OT to the seller's offer to *give* more than the buyer requested. When David told Araunah that he had come to buy his threshing floor to build an altar, the Jebusite replied: "Let my lord the king take and offer up what seems good to him; here are the oxen for the burnt offering, and the threshing sledges and the yokes of the oxen for the wood. All this, O king, Araunah gives (נָתַן) to the king" (II Sam 24 22–23a; cf. I Chron 21 23). David asked for the site, and Araunah offered both the site and the essentials for the offering! Here there can be no question of the exchange of feudal duties. In this transaction as in Genesis 23 the offer is a definite if subtle means for the seller to indicate how much he wishes to sell. By offering more than was requested, he would indirectly command a higher price. In both instances the buyer responded by insisting upon paying for the property. Abraham did not hesitate to buy the entire field, nor did he ever insist that he wanted to buy *only* the cave. (The phrase in vs. 9, "the cave . . . which is at the end of his field," simply specified the loca-

<sup>4</sup> Hermann Gunkel, *Genesis übersetzt und erklärt*,<sup>6</sup> p. 275; John Skinner, *ICC, Genesis*, p. 336.

<sup>5</sup> Lehmann, *BASOR*, 129, p. 16.

<sup>6</sup> *Ibid.*, pp. 16–17.

<sup>7</sup> Polite expressions and gestures abound: "bowed" (vss. 7, 12), "mighty prince" (vs. 6), "my lord" (vss. 6, 11, 15), "hear me," or "hear us" signifying polite entreaty (vss. 6, 11, 13, 15).

<sup>8</sup> On similar modern customs, cf. Elihu Grant, *The Peasantry of Palestine*, p. 147.

tion of the burial place.) Throughout he insisted upon owning property. There is no reference to encumbrances — feudal or otherwise — on the land. Hence, Hittite feudal laws do not stand in the background of the story.<sup>9</sup>

One expression in these negotiations which often has been considered a technical legal term is the phrase,  $\text{N}^{\text{L}}\text{Q}^{\text{L}} \text{Q}^{\text{L}}\text{Q}^{\text{L}}$ , “for the full price” (vs. 9). The term also occurs twice in the Chronicler’s account of David’s purchase of the threshing floor (I Chron 21 22, 24). It has been considered the equivalent of the very common legal term *ana šmi-šú gamrūti*, “for its full price,” which occurs — with slight variations — in Akkadian sale contracts from many periods. Behind the Akkadian stands a Sumerian original, ŠAM.TIL.LA.BI.ŠU, which was used in Old Babylonian contracts. Both the Sumerian as well as the Akkadian equivalent which occurs in the Mari texts, the Alalakh tablets, and Neo-Babylonian deeds signify simply that the complete price had been paid; no balance remained. The comparable expression in Neo-Assyrian texts was *kašpu gammur taddin*, which also indicated that the sale was for cash.<sup>10</sup> In all these texts the formula was used in final contracts of sale which included clauses establishing the irrevocability of the transaction. The expression also occurs infrequently in Akkadian legal texts from Ras Shamra, always in sale contracts when the buyer had fulfilled his obligations.<sup>11</sup> Neo-Babylonian deeds use not only the standard formula but also specify that the amount paid was *šem eqli-šú kašap ga-mir-ti*, “the price of his field, silver in full.”<sup>12</sup> This second phrase

<sup>9</sup> Furthermore, the attachment of feudal duties to land instead of to individuals, which Lehmann considers a characteristic of Hittite Law, is seen in Mesopotamia and Northern Syria from the time of the first dynasty of Babylon and following. Cf. G. Boyer, “La place des textes d’Ugarit dans l’histoire de l’ancien droit oriental,” in J. Nougayrol, ed., *Le P(alais) R(oyal) d’U(garit)*, III (vol. VI of *Mission de Ras Shamra*, ed. by Claude F.-A. Schaeffer), p. 297.

<sup>10</sup> J. Kohler and A. Ungnad, *Assyrische Rechtsurkunden*, p. 461.

<sup>11</sup> The texts are *PRU* III 16.156, 16.263, 15.109+16.296, 16.145, 15.139, 16.147. Mendelsohn has suggested that since the term is used in private sales, when it is used in transactions between private individuals and the king it signified an outright sale and not the transfer of fief-land (“Samuel’s Denunciation of Kingship in Light of the Akkadian Documents from Ugarit,” *BASOR*, 143 [1956], p. 19). It does indicate an outright sale, but it is not the technical means of distinguishing between sale and fief transfer; cf. *PRU* III 15.109+16.296 which records a series of similar sales by the king wherein only one is described as “for the full price.” While the term was used in sale contracts, most sales did not use it. Furthermore, while transactions which use the term never mention feudal obligations of the buyer, there are numerous other contracts without the phrase in which the buyer (e. g., *PRU* III 15.136, 15.37) or the recipient of a gift is not said to have feudal obligations (e. g., *PRU* III 16.150, 16.166, 16.275).

<sup>12</sup> Cf. G. Conteneau, *Contrats néo-babyloniens* I and II, *TCL* XII, XIII (Paris,

also signifies complete payment, since it is followed immediately by *a-pil*, “he is paid.” It will be noted immediately that the Neo-Babylonian and Neo-Assyrian phrases constructed with *kaspu*, “silver,” are nearer the Hebrew form than is the more common formula with *šimu*.

The Hebrew phrase מְלֵא בְּכֶסֶף מְלֵא does not occur in a contract proper but in each instance is used in negotiations. In the Chronicler’s account, David’s negotiations with Araunah begin: “Give me (תִּתְּנֵה לִי) the site of the threshing floor that I may build an altar to the LORD. Give it to me (תִּתְּנֵהוּ לִי) at its full price (מְלֵא בְּכֶסֶף מְלֵא) . . .” (I Chron 21 22). Paralleling this verse is David’s opening statement according to II Sam 24 that he has come “to buy (לִקְנוֹת) the threshing floor of you, in order to build an altar to the LORD. . .” (vs. 21). When Araunah offers to *give* the site to David, according to the Chronicler the king replied: “No, but I will buy it for the full price (מְלֵא בְּכֶסֶף מְלֵא); I will not take for the Lord what is yours, nor offer burnt offerings to the LORD my God which cost me nothing” (vs. 24a). In the context of these requests and in the light of the parallels, מְלֵא בְּכֶסֶף מְלֵא in these negotiations simply indicates that the king wishes to *buy* property, paying its full *value*. It is indeed unlikely that the Chronicler means to have David insisting that he is prepared to pay the complete amount, that is, to pay cash.

The term has the same use and connotation in Genesis 23. When the תְּבַיִתֹת offer to give Abraham a burying place, he asks that Ephron’s cave be given to him, “For the full price (מְלֵא בְּכֶסֶף מְלֵא) let him give it to me in your presence as a possession for a burying place” (vs. 9a). The patriarch is stating here (as he does with different terminology in vs. 13) that he will give the full *value* for the field; he will *buy* it.

The OT phrase, therefore, does not parallel the Akkadian *ana šimi-šú gamrūti* at all. While מְלֵא בְּכֶסֶף מְלֵא in its legal contexts bears some resemblance to the common Near Eastern phrase — and more specifically to the Neo-Assyrian and Neo-Babylonian formulae — it conveys none of the original technical force of the Akkadian expressions.

## II. *The Contract*

Many commentators have observed that the last few verses in particular of Genesis 23 are in the style of the deed of sale,<sup>13</sup> but little has been said about the specific legal characteristics of these verses. They do not contain, to be sure, a complete sale document, but are rather the report of a contractual agreement. Nevertheless, this report reflects the schema, style, and individual formulae of a sale contract.

1927, 1929), texts 10, 12, 19, 30, etc., transliterated and translated by E. W. Moore, *Neo-Babylonian Business and Administrative Documents*.

<sup>13</sup> Gunkel, *Genesis*, p. 277; Skinner, *Genesis*, p. 338; G. von Rad, *Genesis*, p. 244.

Most Akkadian or Sumerian real estate deeds were styled objectively, that is, the legal step was described from the perspective of a third party, the scribe. The Aramaic legal texts from Elephantine, on the other hand, were subjective: The scribe quoted the statements of the parties, e. g., "We have sold it to thee and thou didst give to us its value in money. . . ."<sup>14</sup> The Aramaic contracts were formulated from the perspective of the seller's action, while Old Babylonian, Old Assyrian, Neo-Babylonian, and Ras Shamra Akkadian deeds generally described the buyer's action. The conclusion of the agreement in Genesis 23 is expressed objectively, from the perspective of the buyer, hence on both counts its style stands in the general Mesopotamian tradition.

But it is possible to be more specific. One type of legal text used in the Neo-Babylonian period for the sale of immovables as well as other transactions is the so-called "dialogue document." This contract, as its name implies, described an interchange between buyer and seller. Dialogue sale documents used the following schema:

1. Title: "Tablet of . . ." (*tup-pi* . . .).
2. The dialogue:
  - a. Offer or request: "A(seller) went before B(buyer) and spoke as follows: 'Let me give you my house and you give me the money . . . .'"
  - b. Acceptance: "B agreed with him (*iš-me-šú-ma*) . . ."
3. Payment formula: "He weighed out (*i-ḫi-it-ma*) and gave him (*id-da-áš-šú*) X mina Y shekels of silver."
4. Transfer or purchase clause, including property description: "He (seller) assigned (*kun-nu*) Z (the property) . . ." or "He (buyer) has acquired (*ma-ḫir*) Z . . ."
5. Quitclaim clauses and/or provisions against suit with fines of twelve times the purchase price.
6. Seals and witnesses.
7. Date.<sup>15</sup>

Since this formulary was used for more than two centuries<sup>16</sup> for diverse transactions some variations are to be expected. A title was not always

<sup>14</sup> Emil G. Kraeling, *The Brooklyn Museum Aramaic Papyri*, papyrus 3, pp. 154–55.

<sup>15</sup> For texts cf. H. H. Figulla, *Ur Excavations Texts IV: Business Documents of the Neo-Babylonian Period*, texts 8, 21, 27; R. P. Dougherty, *Records from Erech, Time of Nabonidus*, YBT VI, text 188; A. Pohl, *Neubabylonische Rechtsurkunden aus den Berliner Staatlichen Museen*, I and II, text 14; transliterated with translations and notes by M. San Nicolò, *Babylonische Rechtsurkunden des Ausgehenden 8. und des 7. Jahrhunderts v. Chr.*, and H. Petschow and M. San Nicolò, *Babylonische Rechtsurkunden aus dem 6. Jahrhundert v. Chr.*

<sup>16</sup> From the first half of the seventh century B.C.; cf. M. San Nicolò, "Neubabylonische Urkunden aus Ur," *Orientalia*, 19 (1950), p. 221.

used; the transfer was expressed in a variety of ways, and the number and nature of quitclaim and noninterference clauses varied. It will be noted that the basic structure of the contract is objective, giving only the statement of one party in direct address. Either party could be quoted. The texts thus not only documented the final agreement but also gave a brief summary of the negotiations.

The similarities between this type of contract and Genesis 23 are striking, though the OT narrative preserves a much fuller account of the negotiations. The dialogue document's pattern is reflected in Ephron's quoted "offer" (vs. 15), Abraham's acceptance described in the third person (vs. 16a $\alpha$ ), the payment clause (vs. 16a $\beta$ b), and the transfer clause (vss. 17–18) which includes a description of the property. In both cases the transition from subjective to objective style occurs at the same juncture. Though the chapter may intend to report an oral contract, Gen 23 16 ff. resembles the style and schema of the written dialogue documents much more closely than it does a strictly oral contract such as that in Ruth 4, which is concluded with statements by the parties and witnesses.

The similarities between dialogue documents from the Neo-Babylonian period and Genesis 23 extend beyond parallels in style and schema. In both cases the acceptance is stated with the same verb שׁמַע in the sense of "to agree."<sup>17</sup> Furthermore, in both cases the operative expression or main clause is a payment formula, in contrast, for example, to the standard Old Babylonian, Old Assyrian, and many Neo-Babylonian contracts in which the main clause was a purchase formula, or the Elephantine papyri and the Neo-Babylonian contracts for movables which used sale formulae. In all these texts payment clauses frequently occur, but they are not generally the main clause except in the dialogue documents.

As in most ancient Near Eastern deeds, the exact price of the sale is mentioned in Gen 23 16. The account also notes, as some dialogue documents, that the buyer "weighed out" (here לְשָׁקַל) the silver. It also describes the silver as that "which he [Ephron] had named (רְדָקָר)," recalling a convention in Neo-Babylonian sale contracts of various types: "A (the buyer) the purchase price has named (*im-bi-e-ma*) and bought it . . . ."<sup>18</sup>

The change of ownership, and probably of possession as well was accomplished according to Genesis 23 by the payment of the price; further steps such as the execution of a document seem not to have

<sup>17</sup> Cf. also I Kings 5 22, 15 20a, II Chron 16 4a, II Kings 16 9a, Gen 34 17, 24, Judg 11 17, I Kings 12 15, 16, II Chron 10 15, 16.

<sup>18</sup> E. g., Conteneau, *TCL XII*, texts 6, 10, 12, 19, and Moore, *Neo-Babylonian Business and Administrative Documents*.

been required.<sup>19</sup> The transfer is recorded with the expression, “So the field . . . went over to (לְ אַבְרָהָם) Abraham . . .” (17–18), which is the equivalent of a transfer clause in an actual contract. The verb קָנָה in this technical sense occurs elsewhere in the OT,<sup>20</sup> but references to the transfer itself are exceptional in Near Eastern deeds. Usually it was only noted that the property was bought, sold, or the like. But a few documents are more specific about transfer. Some of the Akkadian deeds from Ras Shamra state that the property “is transferred” (*šamit* or *šamat*).<sup>21</sup> In the Elephantine deeds the alienor often says to the alienee of the property, “Thine it is,” or “Thou hast power over it,”<sup>22</sup> and occasionally transfer is indicated in the Neo-Babylonian dialogue documents (cf. schema above). But no conclusive parallels with Genesis 23 can be demonstrated.

As in most Near Eastern deeds, the account of the transfer in Genesis 23 includes a description of the property (vs. 17). The following features are noted in this description: the type of real estate (“field”), the name of the landlord, the general location by region (“Machpelah”),<sup>23</sup> and the appurtenances of the land (cave and trees). Virtually all the Near Eastern contracts of sale identified the property by type (field, house, vineyard, etc.) and either directly or indirectly by the name of the owner. The region often was mentioned in Old Babylonian, Nuzi, Ras Shamra Akkadian, Neo-Assyrian, and Elephantine Aramaic deeds. In addition most of these extrabiblical texts give the size of the property by area or length of sides or both, and also specify the appurtenances. Furthermore, in contrast to Genesis 23, the location usually is given very precisely, often by noting the neighbors on each side of the tract.

It has been suggested that the mention of the trees (vs. 17) is evidence for the Hittite background of the passage,<sup>24</sup> but this is by no means the case. Since trees are noted as appurtenances in — among others — the Neo-Assyrian<sup>25</sup> and Neo-Babylonian<sup>26</sup> conveyances and some of these documents even record the *number* of trees on the land,<sup>27</sup> the specifica-

<sup>19</sup> Cf. Perrin, *Revue historique de droit français et étranger*, 3, p. 15.

<sup>20</sup> Ruth 4 7, Lev 25 30, 27 19 and probably also Lev 27 14, 17.

<sup>21</sup> PRU III, 15.37, 15.182, 15.123+16.152, 16.147, 16.246, 16.207.

<sup>22</sup> Kraeling, *Brooklyn Museum Aramaic Papyri*, papyri 3, 6, 9, 10, 12.

<sup>23</sup> S. R. Driver, *The Book of Genesis*<sup>5</sup>, p. 226.

<sup>24</sup> Lehmann, *BASOR*, 129, pp. 17–18.

<sup>25</sup> E. g., C. H. W. Johns, *Assyrian Deeds and Documents*, texts 359, 360, 361, 363, 446; transliterated and translated by Kohler and Ungnad, *Assyrische Rechtsurkunden*, texts 372, 373, 377, 371, 376.

<sup>26</sup> E. g., Conteneau, *TCL XII*, text 35; *TCL XIII*, texts 223, 234; transliterated and translated by Moore, *Neo-Babylonian Business and Administrative Documents*.

<sup>27</sup> E. g., Johns, *Assyrian Deeds and Documents*, texts 362, 444, 445 (fragmentary), 448, 455 (fragmentary); corresponding to Kohler and Ungnad, *Assyrische Rechts-*



tion of the trees in Genesis 23 cannot be construed as evidence for the application of Hittite law or custom.

The story of the purchase of the patriarchal burial place fails to mention several features common in Near Eastern contracts. There are no references to guarantee clauses or provisions against suit which in many cases were supported by oaths and/or penalties in terms of corporal punishment or fines. There is no reference to a date or to the sealing of a document. No list of witnesses is given, but there is an allusion to the witnessing of the agreement in vs. 18: "in the presence of the  $\text{תַּבְּיָיִק}$ , before all who went in at the gate of his city." These omissions and this allusion emphasize what was noted at the outset, namely, that Genesis 23 is not a deed, but a narrative about a deed.

The parallels which have been shown contribute significantly to the understanding of the passage. First, they show more specifically what long has been known, viz., that the style, structure, formulae, and content of certain parts of the report are modeled after deeds of sale. Through the narrative the general characteristics of Near Eastern deeds can be perceived. Furthermore, since many particular aspects of the rather unusual Neo-Babylonian dialogue documents are employed in Genesis 23, and there are no features inconsistent with that genre, it is safe to conclude that such texts had a definite influence on the formation of the narrative.

Second, consequences for the historian follow. The material of the story cannot be taken as contemporary with the events it describes on the basis of the legal practices it mentions unless it reflects customs which occur only in the second millennium and not later.<sup>28</sup> While some aspects of the account of the acquisition of the burial place of the patriarchs may very well rest on ancient traditions, the legal details are indebted to late patterns. Thus the idea that Genesis 23 is comprehensible only in the light of Hittite law should be abandoned, with the consequent re-assessment of the historical reliability of at least this particular patriarchal narrative.

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*urkunden*, texts 378, 445, 446, 443, 381. And cf. Conteneau, *TCL XII*, text 30, and Moore, *Neo-Babylonian Business and Administrative Documents*.

<sup>28</sup> Cf. Driver's reaction to Sayce's argument that the details of the transaction belonged to the "early Babylonian period," *Genesis*, p. 230.