

Stylistic Conceits: The Negated Antonym

REUVEN YARON

Hebrew University of Jerusalem (Emeritus)

The jurist in the act of interpreting a law may tend to find a distinct meaning, an addition of substance, in every word or phrase. In rabbinic tradition, however, one finds in opposition to the approach of Rabbi Aqiba, who sought significance in every letter of the Torah, the contrary view of Rabbi Ishmael, that "the Torah spoke in the manner of people," that is, in a manner in which idiom, style, and rhetoric play an essential role.¹ The present study rests on the conviction that the language of law, like human language generally, may put words to the purpose of making a point by means of emphatic structures² and that verbal repetition may serve to underscore an idea. The jurist, no less than other mortals, must remain alert to the rhetorical possibilities of language in reading a law. The present study, written to honor Yochanan Muffs, a scholar whose research has often shown how law may co-opt the rhetoric of ordinary language, contributes a case in point from Mesopotamian and biblical law.³

It was the phrase *imāt ul iballūt*, "he [or she] shall die, shall not live," which alerted me to questions concerning the relationship between style (or idiom) and matters of legal substance. The phrase is one of the expressions used in the Old Babylonian Laws of Eshnunna (LE) to denote the death penalty. It occurs in secs. 12, 13, 27/28,⁴ and is not used in any other collection of laws.⁵

LE 12 and 13 deal, in parallel provisions, with unlawful entry into a field and house, respectively. They read as follows:

12: A man, who is seized in the field of a subject, in the *crop*,⁶ in broad daylight, 10 shekels of silver shall weigh out. (He) who is seized at night in the *crop*, he shall die, shall not live.

1. On the differences of the schools, see TB *Ber.* 31b; cf. H. Freedman, in *Encyclopaedia Judaica* (1971) 11:491.

2. For a cautious study of "emphasis," see T. Muraoka, *Emphatic Words and Structures in Biblical Hebrew* (Jerusalem, 1985).

3. See also my "Stylistic Conceits II: The Absolute Infinitive," to appear in a *Festschrift* for Jacob Milgrom.

4. The diagonal stroke, in some references to the Laws of Hammurabi (LH) and the LE, indicates dissent from the division of sections as fixed by the respective first editors of these collections, Vincent Scheil and Albrecht Goetze. For criticisms of Scheil, see already Arno Poebel, "Eine altbabylonische Abschrift der Gesetzessammlung Hammurabis aus Nippur," *OLZ* 18 (1915), 161–69, 193–200, 225–30, 257–65, at 257–58; see further R. Yaron, *The Laws of Eshnunna*, 2nd ed. (Jerusalem and Leiden, 1988), 30–38. In many cases, the division goes too far, and what is called a "section" is but a fragment. In this paper there are two such instances: sec. /24 denotes that this is the second part of sec. 23/24; /28 is the second part of 27/28.

5. Other expressions are *din napištim imāt*, "a case of life: he shall die" (LE /24, 26); and *napištim šimdat šarrim*, "(a case of) life: decree of the king" (LE 58).

6. The meaning of the Akkadian phrase *ina kurullim* is uncertain; see Yaron, *Eshnunna*, 50.

- 13: A man, who is seized in the house of a subject, in the house, in broad daylight, 10 shekels of silver shall weigh out. (He) who is seized at night in the house—he shall die, shall not live.

If the trespass took place in the daytime, a penalty of 10 shekels of imposed. Nightly trespass is punishable by death.

LE 27/28 deals with a complicated situation in the context of marriage, as follows:

"If a man took a man's daughter without asking her father and(?) / or(?) her mother:

(i) and also (subsequently) did not fix the marriage feast and(?) / or(?) contract for her father and(?) / or(?) her mother—should she (even) dwell in his house the days of one year, (she is) not "a wife."

(ii) If he (subsequently) fixed the contract and(?) / or(?) marriage feast for her father and(?) / or(?) her mother and took her, (she is) "a wife." The day in the lap of a man she is seized, (one) shall die, shall not live.

There is no need to go into all the details.⁷ Our immediate concern is the final part, "The day . . . shall not live." It imposes the death penalty on one of the parties to adultery.⁸

What is the concrete legal import of *imāt ul iballu?* This question has elicited four replies, as follows.

1. In 1954, Szlechter gave *imāt ul iballu?* a "two-track" interpretation. In his view, the phrase indicated, on the one hand, the obligatoriness of the death penalty; on the other hand, it provided for immediate self-help, at the discretion of the offended party.⁹ Szlechter's suggestion, taken as a whole, found no support in the writings of others.¹⁰ But the rejection was not total; authors would usually accept one or the other part of Szlechter's suggestion.

2. Obligatoriness of the death penalty was the understanding adopted by the great majority, by, amongst others, Bottéro—"devra mourir, sans remission,"¹¹ and Landsberger—"kann nicht begnadigt werden."¹² Dropping the interpretation of self-help retribution in the second edition of his work, Szlechter took essen-

7. For these see *ibid.*, 200–3.

8. It is uncertain whether the provision refers to the male culprit or to his female partner in crime. Cf. note 23 in my forthcoming paper "Zu babylonischen Ehrechten," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 109 (1992).

9. E. Szlechter, *Les lois d'Ešnunna* (Paris, 1954), 110–11.

10. In due course I objected: "From the point of view of method, it is hardly legitimate to attach to one phrase two quite different implications (mandatoriness of the penalty and immediacy of retribution)"; *The Laws of Ešnunna*, 1st ed. (Jerusalem, 1969), 173.

11. "Antiquités assyro-babyloniennes," in *Ecole pratique des hautes études, IV^{ème}-section, Sciences historiques et philologiques, Annuaire* (1965/1966), 91, 93.

12. "Jungfräulichkeit: ein Beitrag zum Thema 'Beilager und Eheschließung' (mit einem Anhang: Neue Lesungen und Deutungen im Gesetzbuch von Ešnunna)," in *Symbolae David* (Leiden, 1968), 2:72. This is Landsberger's rendering of the phrase in LE 12; in the immediately following sec. 13 he deviates slightly, rendering "darf nicht"; no translation is offered for the phrase in sec. 128. One may wonder whether Landsberger was aware of a legal import of his minute variation, or whether it was at all present to his mind: "kann nicht" means "is not possible," is in law a nullity (*nihil egit, lō' ʿāšāh kelūm*); "darf nicht" is contrary to precept, but not necessarily void, possibly *quod fieri non debet factum valet*.

tially the same line.¹³ Borger rendered "soll sterben, darf nicht am Leben bleiben."¹⁴ Already in 1969, however, I expressed my doubts, arguing that

one fails to see a reason for the exclusion of composition. The protection of life and property does indeed demand the severe punishment of nocturnal burglary; nevertheless, this is not a particularly heinous crime, so why not allow the parties to settle the case amicably, if they are ready to do so . . . As for adultery . . . this crime is expressly pardonable in Laws of Hammurabi 129, Hittite Laws 198, Middle Assyrian Laws 15; there is little reason to assume that the LE were more severe.¹⁵

Those who opted for a mandatory death penalty failed to pay attention to the substantive legal problem to which I had pointed.

3. Having rejected for LE 12, 13, and /28 the obligatoriness of the death penalty and the exclusion of composition, I opted for the other part of Szlechter's solution:

A better case could be made out for the immediacy of retribution, since the assumption of *flagrans delictum* is supported by the use of *našbutum*—"to be seized, caught"—which recurs in all three sections . . . Altogether, then, one may agree with Szlechter that . . . the aggrieved party was allowed to react at once, on the spur of the moment.¹⁶

My view was followed by Westbrook, as follows: "Yaron suggests that the double formulation of the penalty . . . allows the husband to resort to immediate self-help, i.e., if he surprises his wife with her paramour he is entitled to kill her . . . and plead justifiable homicide."¹⁷ While gratified to see that Westbrook had refrained from joining the proponents of a mandatory death penalty, I was less happy with his support of my 1969 view, with which, as time went on, I had grown more and more disenchanted.

I saw that my mistake was parallel to that of the philologists. They had gone wrong in failing to concern themselves with legal substance. I had gone wrong in not paying due attention to the linguistic aspect of *imāt ul iballuṭ*. While following, in part, the view of Szlechter, I had overlooked an essential difficulty with self-help retribution: the justifiable homicide inflicted by the victim of the crime on its perpetrator. True, sections 12, 13, and /28 all display the common feature of *flagrans delictum*, but that is not enough. Hence, in 1988 I noted that "in situations of the kind described, the paramount question is whether the reaction was justified or justifiable. *Imāt ul iballuṭ* does not connect up."¹⁸ I recognized that "as a matter of language, the idea of excluding composition, of making the death penalty mandatory, would fit better the emphatic element in *imāt ul iballuṭ*," but I repeated my 1969 misgivings, on grounds of legal substance.

13. "Les lois d'Eshunna," *Revue internationale des droits de l'antiquité* 25 (1978), 197.

14. "Der Codex Eschnunna," *Texte aus der Umwelt des alten Testaments* (1982), 1:34, 36. See also Ulrich Sick, *Die Tötung eines Menschen und ihre Ahndung in den keilschriftlichen Rechtssammlungen unter Berücksichtigung rechtsvergleichender Aspekte* (Tübingen, 1984), 150.

15. Yaron, *Eshnunna*, 1st ed., 173.

16. Loc. cit.

17. *Old Babylonian Marriage Laws*, AfO Beiheft 23 (1988), 75—adhering exactly to the wording of his thesis (2:210), which first came to my hands in late 1984.

18. Yaron, *Eshnunna*, 2nd ed., 260, and see n. 11 there.

Having failed to settle the question to my satisfaction, solely on the basis of juristic arguments, I realized that it was necessary to concentrate on the sphere of language, to try to get to the bottom of the question by scrutinizing the philological data. I looked for parallels (and shall present them shortly). But the gist of my statement ran as follows:

Imāt ul iballuṭ is a precursor of a frequent detail of biblical style, a particular form of parallelism . . . A meticulously exact parallelism is achieved by the pairing of antonyms, one of which (usually the second) is negated. In this manner antonyms become synonyms . . . the best example of a "negated antonym parallelism" is furnished by *imāt ul iballuṭ* itself. The verbs *mātuṃ* and *balāṭum* are a true "Gegensatzpaar," turned into synonyms by the simple expedient of inserting *ul*; *imāt* = *ul iballuṭ* . . . The verb *imāt* . . . conveys all; *ul iballuṭ* adds nothing, nor indeed does it diminish from the gravity of what is being decreed. . . .¹⁹

Two comments followed. F. R. Kraus (in a private communication of November 28, 1988) wrote: "Ihre Theorie, *imāt ul iballuṭ* sei als Stilfigur zu betrachten, scheint mir neu und interessant. Man sollte dem weiter nachgehen." Two years later, Westbrook's comment was this: "Yaron objects that the phrase in its literal meaning 'does not connect up' with the question of whether the killing was justified. But such is frequently the case with technical legal phrases, and Yaron's own suggestion that it is a stylistic conceit devoid of legal meaning, is a counsel of despair."²⁰

I am equally indebted to both scholars, notwithstanding the extreme difference of their reactions. Kraus was cautiously positive, not committing himself, calling for further investigation. I did not at once answer his call for further scrutiny. What jolted me into action was Westbrook's negative footnote. So, whatever merit the following remarks may have, part of the credit is due to him, for goading me along. Also, his enviable command of English provided this paper with the first part of its title. I was disappointed by his nonchalant remark about "technical legal phrases"; taken literally, this might be understood as implying that legal substance and legal language are independent of each other, often if not always. There remains the issue of my so-called "counsel of despair." I confess to despairing, but the object of my despair was not the search for a better understanding of *imāt ul iballuṭ*; rather, it reflected my increasing awareness of the inadequacy of my earlier efforts (an awareness not allayed by the fact that I found Westbrook sticking to the position that I had abandoned).

Broadening the scope of our inquiry, let us turn to the details. As already mentioned, *imāt ul iballuṭ*—and beyond it, the phenomenon we called the negated antonym—is apparently isolated within the Akkadian of the law collections.²¹ Broadening the base of our inquiry, we turn to lay (i.e., non-legal) parallels. An interesting Old Babylonian text is *ARM X*, 32:30.²² It is part of a small collection of letters, *ARM X*, 31 to 35, all addressed, with insignificant variations, to *kakkabi abi u bēli*, "my star, my father, and my master," probably Zimri-Lim, king of

19. *Ibid.*, 261.

20. "Adultery in Ancient Near Eastern Law," *RB* 97 (1990), 552, n. 40.

21. See *loc. cit.*

22. Mentioned, but not discussed, in *ibid.*

Mari. The writer is Kirum, who describes herself as *maratka*, “your daughter.” We do not know the circumstances which led to the removal of the princess from Mari, but—as emerges specifically from letter 33—it is her urgent desire and request to be returned there. Letter 32 ends *ul itāranni īdi amāt ul aballuṭ*, “should he not return me, let him know: I shall die, shall not live.” In letter 33, Kirum claims twice that her life is in danger;²³ in letter 34, she threatens that if she is not taken back to Mari, she will throw herself from the roof.²⁴ The writer’s distress is evident, hence also her desire for emphasis; in letter 32, the briefer expression *ul aballuṭ* would have fully served her purpose, but conciseness of expression was evidently not Kirum’s major concern at the moment. Nevertheless, the full version is but a “Stilfigur.”²⁵ In this context, one might mention *ARM* II 92, in which Kibri-Dagan, the representative of the king of Mari, reports to his master of a reprimand administered to the sheikhs of the townships of the Binū-Iamina: “Qui que tu sois, toi, de la ville duquel un individu partira vers le Haut-Pays que tu n’appréhenderas pas et que tu ne m’amèneras pas, en vérité, tu ne vivras pas ([*pi*]qat *ul taballu*[f]).”²⁶ The threat of *ul taballuṭ* is palpable enough, and the writer feels no need for reinforcement.

Of later times, two Neo-Assyrian letters are to be mentioned. Waterman, *Royal Correspondence* 1: no. 620, a letter addressed to the king, contains a statement of the writer: *ša duaki anāku la ša balūti anāku*, “I deserve to die, not to live.” The writer of the letter *ABL* 259, rev. 8 (quoted from *CAD* B, 56a) declares *ul abluṭ mītu anāku*, “I am not alive, I am dead.” These examples are not many, but they all point in the same direction: they are all emphatic, using emphasis for its own sake. The double phrase implies no addition to the substantive import, only a desire to impress, a wish to be taken seriously.

A similar picture, though not without variations and idiosyncrasies, emerges from the biblical sources, to which we turn now. It is significant that here, too, the negated antonym parallel “die, not live” does not occur in provisions of law. The isolation of the three LE sections remains unaffected by the Bible. Interesting is 1 Kgs. 21:25; Jezebel tells Ahab, her royal husband, to go and seize the vineyard of Naboth the Jezreelite—*kī ʔēn nābōt ḥay kī mēt*, “for Naboth is not alive, for he is dead.” This is the only instance in which the phrase refers not to some future event, but tells of a past occurrence. There is little to emphasize in relation to a death which has already taken place. The text draws a repugnant picture of the queen gloating over achieving her evil purpose, the successful perpetration of a judicial murder. But then one ought to note that this is not a source with the authenticity of the Kirum letters, for example, from which we quoted above. Even if one accepts that the case of Naboth in fact occurred, Jezebel’s statement is no

23. *iktaru napašti*; see *CAD* K, 230.

24. *ištu ūrim amaqqur*; see *CAD* M/1, 242b.

25. *imtuṭ ū-[ul iballu]* is restored in *ARM* X 116: rev. 25, but this is not necessarily reliable, and we discount the text.

26. Translated by Charles-F. Jean; note that the rendering of *piqat* is problematic: our text is not mentioned in André Finet’s *Lexique*, in *ARM* XV, 241; *AHw*. 864b renders *piqat* by “vielleicht,” here too without reference to *ARM* II 92; “vielleicht” hardly suits the context.

more than a literary embellishment, supplied by the authors of Kings, who loathed the foreign princess.²⁷

There is something unexpected also in the message which Isaiah is reported to have delivered to Hezekiah: *šaw lebēteka kī mēt ʿattā welōʿ tihyeh*, “put your house in order, because you are dying, and will not live” (Isa. 38:1 = 2 Kgs. 20:1). The message is unnecessarily harsh, and it is difficult to see what it might have purported to convey—if one assumes that the quote is exact. “Put your house in order, because you will not recover from your illness,” would have been a gentler, more compassionate way of formulating the message of death delivered by the prophet to his king.²⁸ More instructive is another detail: the emphatic negated antonym does not, in the end, emerge as a final decree, something that is immutable, “not subject to parole.” The king prayed and “wept sore.” His prayer “is heard,” his life prolonged for a period of fifteen years. It is a marginal, minuscule point that concerns us: in this instance, the phrase “you are dying, will not live” is in fact no more than a “stylistic conceit.”

When something really serious is said, negated antonyms are not employed. In such situations, the intrinsic weight of the statement is emphasis enough. So in Gen. 31:32: he who will be found in possession of Laban’s idols *lōʿ yihyeh*, “shall not live.” So in Gen. 44:9, in the tale of the trumped-up charge of theft against Benjamin, the brothers proclaim that “he with whom of your servant’s [Joseph’s] silver cup be found shall die—*wāmēt*²⁹—and we too shall be the slaves of our master.”

Exod. 19:12f., in preparation of the theophany at Sinai, is as stringent and explicit a prohibition as can be: “Take heed *not*³⁰ to go up onto the mountain, or touch its border.” This general prohibition is followed by a set of three provisions, each with its capital sanction: “everyone who touches the mountain, shall be surely put to death (*mōt yūmāt*); no hand shall touch him, rather he shall surely be stoned, or shall surely be shot. / Neither man nor beast shall live. . . .” The first provision decrees quite generally the death of the culprit. The second declares, in

27. R. David Qimḥi (1160?–1235?) would endow the phrase with specific significance: “After it [Scripture] says ‘Naboth is not alive’, for what purpose did it say ‘for he is dead’: to indicate that he did not die his own (natural) death, rather died because he owed death to the king, and his property belonged to the king.”

28. TB *Ber.* 10a makes the double phrase refer to “double” death: “You are dying in this world, and will not live in the world to come.” The king says to him: “What is all this?” The prophet’s answer: “Because you did not engage in procreation.”

This Talmudic attempt is rather surprising. With all the importance attached to (marriage and) procreation (see M. *Yebam.* 6:6, and TB *Yebam.* 63b, where abstention from procreation is compared to the shedding of blood [*šepikūt dāmim*]), disregard of this duty is not portrayed as closing the gate to the world to come: such punishment applies to those who deny that resurrection derives from the Torah, that the Torah is of heavenly origin, and the Epikoros (= one engaging in the study of philosophy), M. *Sanh.* 10:1. Qimḥi, whom we have just mentioned, notes that “in truth” (*beʿemet*) Hezekiah’s sons were born only after his illness, pointing out that Manasseh, his successor, ascended the throne at the age of twelve years (2 Kgs. 21:1). I have not made a study of Qimḥi’s style, but his assertion “in truth” may indicate surprise, perhaps even a measure of discomfort.

29. The Samaritan reads *yūmāt*, “shall be put to death.”

30. The Masoretic text has *hiššāmerū lākem ʿalōt*, i.e., the negation is missing, but, with Onkelos, we read *mēʿalōt*.

a unique fashion, the culprit to be "untouchable"; he is to be executed by stoning or by shooting (from a greater distance, by arrow). The third clarifies that the sanction is not limited to people but applies also to beasts. Here we encounter, in the first provision and in the last, the elements of our "negated antonym parallelism"; but the phrase has been dissected, with its components separated from each other by the intervening provision concerning "untouchability": the expressions "shall die" and "shall not live" occur here as elegant variations, nothing more.

Exod. 22:17 provides tersely that *mekašēfā lō² teḥayyeh*, "you shall not let a witch live."³¹ In the following verse, in a different provision (concerning bestiality) *mōt yūmāt* may be in elegant variation.

In 1 Kgs. 2:36f. Solomon forbids Shimei ben Gera to leave Jerusalem: "The day you go forth, and cross the brook Kidron, know that you shall surely die, your blood will be upon your head."³² In 2 Kgs. 10:19 Yehu issues an urgent summons to the priests of Baal: "Whoever will not appear, shall not live." It is the kind of language we encountered in ARM II 92. Finally, see Zech. 13:3, where his father and his mother proclaim to their false-prophet son: "You shall not live, for you have lied in the name of the Lord. . . ."

In quite a few texts, one finds the inverted form of this antonym parallelism: "live, not die." This, too, is nothing more than a matter of style with hardly any significance. So in the Joseph stories (Gen. 42:2; 43:8; 47:19) *wenihyeh welo² nāmūt*, "so that we live, not die," is the expression of a wish, or purpose. Similarly in Num. 4:19, concerning the caution required in approaching the holiest of holies—*wezō²t^c ašū lāhem weḥāyū welo² yāmūtū*, "do this for them, so that they live and not die . . ."; and in Deut. 33:6: *yeḥi re²ūbēn we²al yāmōt*, "may Reuven live and not die." In 2 Kgs. 18:32 Rabshakeh, the emissary of Sennacherib tells the people that those who surrender will be taken to another country, similar to theirs, "so that you will live and not die" (*wiḥeyū welo² tāmūtū*). Of interest, too, are some statements of Ezekiel. One (18:17) states the principle of individual responsibility: "(the son) will not die because of the sin of his father, he will surely live" (*hū² lō² yāmūt ba^ca-wōn² abiw ḥāyōh yiḥyeh*); vv. 21 and 28 stress the efficacy of repentance: the penitent *ḥāyōh yiḥyeh lō² yāmūt*, "will surely live, not die." (The theme of repentance as preserving life is taken up again in Ezek. 33:15.) Finally, see the triumphant declaration in Ps. 118:17: "I shall not die but live, and relate the deeds of God."

We can sum up briefly: the three sections of LE are the only law texts that employ the negated antonymic parallelism *imāt ul iballu²*. Parallels (from Mari and Neo-Assyrian letters as well as from the Bible) are all from lay contexts. Our data justify the assumption that the phrase has its roots in lay language (oral and literary).³³ Even in LE it lacks a specific legal import.

31. The reading *lō² tiḥyeh*, "shall not live," may be preferable, but in the present context this need not be pursued.

32. Cf. vv. 42–44; and note VT 8 (1958), 432–33.

33. Cf. on legal language in the Bible, I. L. Seeligmann, "Zur Terminologie für das Gerichtsverfahren im Wortschatz des biblischen Hebräisch," SVT 17 (1967), 251–78; Hebrew version in *Studies in Biblical Literature*, ed. Avi Hurvitz et al. (Jerusalem, 1992), 246–68.

There is no need to deny that negated antonym parallelisms may be forceful and eloquent, even elegant. As an example one might compare and contrast very similar ideas expressed in the fairly plain phrasing of Ps. 146:3–5 and the concise elegance of the negated antonym in Isa. 31:3. The former reads: “Put not your trust in princes, in the son of man, in whom there is no help. His breath goes forth, he returns to his earth; in that very day his thoughts perish. Happy is he that has the God of Jacob for his help, whose hope is in the Lord his God.” The latter, opposing reliance on Egypt, proclaims, in two brief antonym phrases that impress themselves on the mind of the hearer or reader: *ūmiṣrayim ʾādām welōʾ ʾēl wesūsēhem bāsār welōʾ rūaḥ*, “But Egypt is man and not God, and their horses flesh and not spirit. . . .”³⁴ The negated antonym parallel is just not at home in the sphere of law, it does not belong there.

We have seen how *kī ʾēn (nābōt) ḥay kī mēt* and *kī mēt ʾattā welōʾ tiḥyeh*, Hebrew equivalents of *imāt ul iballuṭ*, occupied the attention of a leading medieval exegete and a Talmudic midrashist.³⁵ The results of their efforts are quaint and can hardly be regarded as meaningful interpretations. Similarly unconvincing are modern efforts (including, at one stage, my own) to endow LE’s *imāt ul iballuṭ* with a meaning. At present I find myself cast in the somewhat incongruous role of the child who cannot see the emperor’s new clothes. Perhaps Westbrook, undespairing, does see them.

Sed tu, Yochanan amice, ave atque vale.

34. See also Zech. 4:6: *lōʾ behayil welōʾ bekōaḥ kī ʾim berūḥi* . . . , “not by might, nor by power, but by my spirit (says the Lord of hosts).”

35. See nn. 27 and 28.