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Politics, Market and Social Needs in 2nd Millennium Syrian Sale Formularies: the Case of Emar

In the 13th and 12th centuries B.C. Emar, a Syrian city situated on middle Euphrates, was a vassal of the Hittite empire, subjugated to the viceroy of Karkemish. It is probable that in the century before, Emar bowed to the authority of Mitanni, and only after its demise it fell under Hittite rule. What remains today of the once thriving trading center are numerous cuneiform documents, mostly cultic and literary. But among them, also ca. 500 legal texts may be found, mostly from 13th century, though there is also a relatively small amount of earlier (14th century) and later (12th century) documents, the latest thereof written probably in the 1180s B.C.

Sale contracts are by far the most numerous legal texts originating from Emar; there are ca.175 real estate sales and 22 sales of persons. Just for the sake of comparison, the number of testaments, the second most abundant category, does not even reach a hundred. Those documents not only give us insight into the legal system of the city; they also make it possible to follow, at least partially, the development of civil law under the Hittite rule, and especially the way law would adjust to the changing reality in order to meet new needs of the community it served.

One of the most striking features of Emar sales, and also of other legal texts, is the existence of two various scribal styles, referred to in the literature as "Syrian" and "Syro-Hittite". Differences between them are both formal and material. The first and most obvious one is in the shape of the tablet – in Syrian tablets, which are narrow and longish, the text runs parallel to their shorter side, whereas the Syro-Hittite ones, much wider and shorter, are inscribed parallel to the longer side. Other differences lie in the way of sealing and the location of seals, in the paleography (similar to Old Babylonian in Syrian documents, reminding of Middle Babylonian in Syro-Hittite) and language (again, similar respectively to Old and Middle Babylonian). Last but not least, the content of the sale contracts of both styles differs significantly, and also changes with time. Therefore, before analyzing the content itself, I would like to devote a few words to the chronology of both scribal formats.

Since most of Emarite documents do not contain dates, it is very difficult to establish their chronology, relative as well as absolute, and the scholarly discussion thereof is ongoing. However, it is reasonably certain that the Syrian style is the older one, its first texts going back probably as far as the beginning of the 14th century (or even the end of the 15th), the last ones originating from the end of the 2nd dynasty of Emar rulers[1], well before the fall of the

[1] Emar, the capital of a strategically important border province, was probably ruled by two consecutive dynasties. The first one, reigning before the Hittite conquest, was founded by Ir'ib-Ba'al. The second one, probably installed by the conquerors themselves, started with Iași-Dagan, and probably (the sequence of rulers is not certain) went on with Ba'al-kabar, Abbānu, Pilsu-Dagan, Elli, Zū-Aštarti and Ba'al-kabar II. Afterwards the dynasty ended for unknown reasons, and, during a troubled period that followed, the control of the city was taken over by Hittite magistrates, the so-called "supervisors of the land", first Mutri-Tešub, then Ahī-malik. Finally, sometime in the first half of the 12th century, Emar fell victim to a wave of migrations, hunger and plague, that is to the same disaster that wiped out the Hittite empire and changed forever the political map of the whole Near East.

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city (which still existed, although not for long anymore, in the year 1185), i.e. from the end of the 13th century. In turn, the Syro-Hittite format emerged sometime during the 13th century, coexisting for a while with the Syrian one, and continuing after its disappearance, till the end of the archives due to the destruction of the town. It is not sure how long the coexistence period lasted, but it could not have been much more than the last two generations of Emar kings.

As the Syrian style was used for a longer time, its documents are much more numerous. There are 134 Syrian real estate sales and only 45 Syro-Hittite ones. Most of the Syrian texts date from the reigns of two 13th century kings – Pilsu-Dagan and Elli, and most of the SH ones – from the reign of Elli alone. Only 19 Syrian contracts, 14 of them featuring city authorities as sellers, are as old as the 14th century. Furthermore, SH documents from the last period of the site, after the end of the ruling dynasty and direct power takeover by Hittite magistrates, are not at all in abundance; only 10 out of 45 may be with some certainty ascribed to this period. On the other hand, all but one (i.e. 21) sales of persons are SH; however, they also come mostly from the time of Elli.

Differences between the legal content of sale contracts of both styles are numerous and striking. The first one is the apparent rigidness and inflexibility of the Syrian formulary, contrasting with the high variability of the SH one. It is well shown by the number of possible schemas (and variations thereof) of texts of both styles as well as of documents that might be called "atypical". In fact, there is just one main schema of Syrian sales, with little diversity, mainly due to the number of objects sold or of contrasts registered in one document. There are also two clearly atypical texts, written *ex latere venditoris* instead of *ex latere emptoris* like all the other ones. On the other hand, among the three times less numerous SH texts at least 4 schemas with a lot of variation can be distinguished, and, added to that, at least four very atypical documents. Clearly, contrarily to the S texts, very few elements were mandatory in a SH sale – probably only the names of the parties, the object of sale and its price, the verb for "buy" or "sell" and names of witnesses. Even the description of the object is left out in ca. half of the texts.

Another important difference concerns the final clauses, and especially the ways of securing the irrevocability of the contract. In Syrian texts, there is just one tool used to that end – a penal clause stating that if someone raises claims (*baqāru*) to the object of sale, they will pay 1000 shekel (in rare cases 100 or 500) mostly to either the city god Ninurta and the City each, to the city and the Palace, or to the Palace alone. In SH contracts the clauses are more numerous, and more varied too. The main formula used not only in sales, but in most types of legal documents states simply that "if someone/the parties/one of the parties raise claim, this tablet (the one on which the contract is written) will defeat (*le'û*) the claimant". It is beyond the scope of this paper to analyze the legal meaning of both clauses. However, two main points should be emphasized. First, the Syrian clause may be interpreted either as creating a contractual obligation for any claimant to pay a fine, or simply as stating the existence of a legal obligation resulting from customary or statutory law. Be it as it may, it is clear that the Syrian philosophy of preventing claims weighs heavily towards severe financial penalties, in accordance with earlier, local legal tradition. Conversely, the SH formula does not mention punishment at all, and its character is obviously declaratory, pointing to the tablet as means of proof in case of litigation. As it seems, this was not always deemed sufficient, and some documents contain a warranty against eviction, obligating the seller to answer any claim arising in future (i.e. to substitute for the buyer in the trial) and, in case of successful eviction, to pay twice the price of the object of sale as damages.

Moreover, some SH sales are not irrevocable at all, since they contain a redemption clause, allowing either family members of the seller, or simply "anybody", to pay twice the price of the real estate and take it back. No time limit is ever set, and the same goes for slave sales, although there the redemption price varies from 1 to nearly 3 times the price of the sale.

Another feature of the SH sales, and also of the whole SH style, is the importance seemingly attached to the role of the tablet. One proof thereof is the widespread use of the aforementioned clause "the tablet will defeat him", ubiquitous in all kinds of contracts. Another one may be a double clause concerning the transmission of the tablet – "the old/whole tablet of the object of sale is in the basket of its owner/is lost. If it appears, this tablet will defeat it/it will be broken". At least one of these clauses may be found in 10 SH texts (22%) and both – in 7 (15%). The numbers for Syrian texts are, respectively, 4 for the first one (2%), 14 for the second (10%) and just 2 texts for both together.

The data resumed above seem to suggest, at first sight at least, that under the Hittite rule, two scribal formats mirroring two sets of rules of customary law were in use. The Syrian style, older and deeply anchored in the local legal tradition, inflexible or even "fossilized" in a way, did not respond anymore to the needs of the developing society. Therefore another set of customary rules, and hence another scribal style emerged, the so-called SH, much more flexible and easier to adjust to the needs of a concrete transaction. However, a closer analysis of the textual material shows that such picture would be too simplified.

First of all, the Syrian style certainly does seem rigid when compared to the SH one, but it is neither inflexible nor "fossilized". All the clauses are standardized only to a certain degree and could be rephrased if necessary. The penal clause is a case in point. Not only may the fine have various beneficiaries, established according to rules so far unknown (but for the fact that if city authorities are sellers, they also receive the fine, and that the so called "Brothers", a rather shadowy group of highly respected citizens, appear as fine beneficiaries rarely and only in some transactions between private individuals), but those beneficiaries also change with time. The Palace, a new and important recipient thereof turns up (in transactions between private persons or the ones with a member of royal family as a party) only as late as the times of king Pilsu-Dagan. This development has been interpreted by D. Fleming as a sign of growing royal power and of weakening of the collective municipal authorities. In any case, if the penal clause was really only a "fossilized" relic of the past, there would be no need at all to change its phrasing.

Similarly, the "clause of the broken tablet" ("if another tablet turns up, it will be broken") is mostly formulated with no variation whatsoever, but in two cases, where obviously the parties deeply distrusted each other, a tablet turning up "in the basket (i.e. in hands of) of the sellers", named by names, is specifically mentioned[2]. It seems therefore valid to suggest that also the Syrian style was not as rigid as it seems to be, and that also the Syrian scribes tried to adjust to the changing reality while keeping up the main features of the local tradition.

An important question to ask would be how the SH style, and especially the customary law of sale it reflects were created. Of course, one can only speculate, but it is interesting to notice that each particular clause of the SH sales has a predecessor in the local legal tradition. Thus, the description of the propertyy sold, mostly identical as in S documents, is closest (in fact, mostly identical) to the formulary of Middle Babylonian texts from Terqa on the Middle

[2] In other words, the buyers suspected that the sellers might one day produce an old tablet in order to unlawfully claim ownership of the object sold; hence the need to specifically mention this possibility in the written contract.

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Euphrates. The operative section[3] was probably taken from the S style and often cut short; perhaps the scribes did not understand the full meaning of all its clauses[4]. As for the final formulae, the warranty against eviction is known from Old Babylonian and MB texts, but also from Old Assyrian documents from Kanesh and, more importantly, from the Syrian Alalakh. The redemption clause can be also found in Alalakh, and the clause "this tablet will defeat the claimant" obviously originates from Ugarit, where it appears in trial protocols. To sum up, it would seem that what is called the SH scribal (and legal) tradition is in fact a mish mash of local tradition and foreign (but never from too far away) borrowings, ingeniously put together in order to create a new set of legal rules, responding to the needs of the changing society and of the legal turnover.

Now, another problem is why this new set of rules and hence a new formulary had to emerge. Why not simply adjust the Syrian style further? To find the answer, it is necessary to analyze the sale documents of both styles with respect to the parties involved and to the objects sold.

As far as the former are concerned, two things become immediately obvious. First, only the Syrian texts feature the city authorities as sellers (described as "Ninurta and the elders of Emar"). Second, members of Emarite royal families appear exclusively in the texts of this format, either as sellers (kings or crown princes), or as buyers (other royals, especially Pilsu-Dagan's brother Iṣṣur-Dagan), and finally also as witnesses (the king with or without the crown prince and other royals). On the other hand, the new elite, connected with the Hittite rulers, seem to have taken a liking to the other style, as proven by numerous SH documents with the diviner Zu-Ba'la, a powerful man protected by the Great King himself[5], and with his male progeny. Prosopography also shows that usually people who were parties to contracts of one style, did not participate in contracts drafted in the other one, nor were they witnesses thereto, although they are sometimes enumerated among neighbors of the sold property.

From the above it becomes clear that on the one hand there was some connection between political allegiance and the preferred type of sale contract and that on the other hand people preferring one style apparently did not mix much with their fellow citizens who chose to use the other. Still, the reasons for such situation remain to be elucidated.

As for objects of sale, the first difference has been already stated – with one exception, all sales of persons are Syro-Hittite, and so are all contracts of personal antichresis (*amelūtu*)[6]. But there are also significant discrepancies in the proportions, if not the types, of immovables. The most popular kind of real estate sold in the Syrian texts are fields (59, i.e. 37% of all the immovables sold), followed by houses (40, i.e. 25%) and *kirṣitu* buildings (29, 18%; probably

[3] Part of the document registering the act of relinquishment of rights by the seller and of paying the price by the buyer. In Syrian texts usually: „Buyer from seller the object for x silver, full price, bought. The silver was received. His heart is satisfied".

[4] This might be suggested by the way they used the clause of the „full price" ("For x shekel of silver, full price, he bought it") nearly always present in the second part of the operative section of Syrian sales. In SH documents, its use seems erratic to say the least. At least 10 real estates sales are devoid thereof, and the same goes for most slave sales. Moreover, the decision whether to use it or not seems to have been an arbitral choice of the scribe, with no legal significance.

[5] To whom he successfully appealed after being unjustly (in his opinion) burdened with a tax he did not wish to pay.

[6] Contracts whereby the debtor (often together with his family) entered the service of the creditor, who cancelled his debt in exchange. The minimum service period was life (of the debtor or of the creditor). Such a contract could be advantageous for both sides: the creditor acquired servants, and the debtor had at least his survival assured (since he lived at the creditor's home), while keeping the status of free citizen.

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a kind of ruined or old house). By contrast, SH sale contracts feature mostly houses (18, 35%), then come the *kirṣitu* (12, 23%) and only 6 fields (11%).

Moreover, significant differences may be observed in the cadastral descriptions of houses in documents of both styles. In Syrian texts, houses are often irregularly shaped (10 out of 40, i.e. 25%), whereas there is just one example of such house in the SH ones. This corresponds well with archeological finds, according to which there were two types of houses in Emar – rectangle- and trapezium-shaped, the particular shape being chosen according to the terrain configuration.

Another interesting "geographical" point is connected with the location of *kirṣitu* buildings. In the SH texts, out of 8 buildings whose situation is described, 7 give on a road (kaskal); out of this number, 5 roads are named with theophoric names. On the other hand, *kirṣitus* in Syrian contracts mostly face *huhinnu* passages; only 3 front a kaskal road, and only one of those roads bears a divine name. Therefore, it might be supposed that adherents of both styles lived, at least partly, in different districts of the city.

On the basis of the material presented above, it seems reasonable to assume that the two styles were used by different groups of Emar population. Since the royal family and the city authorities obviously chose the Syrian tradition, the same might have been true for the local aristocracy. This would also explain why there are no Syrian sales into slavery – those people simply did not need to resort to such drastic means in order to survive. The same explication would be valid for the small number of Syrian real estate sales caused by indebtedness and a much larger amount of the SH ones brought about by the same reason.

On the other hand, the meager quantity of fields sold in SH texts could be interpreted as the result of the SH style being used either by people too poor to own fields and forced to sale their houses in case of necessity, or by "nouveaux riches" whose main areas of activity did not lie in agriculture, but for instance in slave trade (most buyers in sales into slavery belong to a few rich families) or divination and teaching, as it was the case of the Zu-Ba'la family. This would also correspond well with the hypothesis of S. Démare-Lafont, that the "Brothers" appearing as witnesses in S sales and testaments were in fact rich real estate owners, guarding, and by the same token limiting, the possibility to join their privileged circle. Therefore, the S style would be open only, or mostly to them and their families, whereas the SH format would be the one of the "ordinary people". As mentioned above, political allegiance also might have played a role in the developing of the latter format, perhaps even created with the cooperation of foreign scribes coming to Emar with Hittite magistrates and their entourage.

To conclude, it can be said that Late Bronze Age Emar is a very good example of how political environment provoked and influenced changes in the legal system without forcing them. The Hittites did not intervene in civil law, but their mere presence and social changes that followed (for instance emerging of new privileged groups or pauperization due to wars and duress) were sufficient for such changes to occur. Not only it forced the existent customary law to adjust, it also inspired the creation of a whole new set of customary rules, parallel to those already in use.