

SHORT REMARKS ON OATH (*SHVUÀ*, *NEDER*) IN THE BIBLE*

Francesco Lucrezi
(University of Salerno)

Indice

1.- Oath and trial in ancient near East legal systems.....	1
2.- Calling God as witness.....	2
3.- Possible historic evolution of the oath.....	2
4.- Different kinds of oath.....	3
6.- Judicial oath of defendant and plaintiff in private trail.....	3
7.- Judicial oath of the accused in criminal judgment-ordeal.....	5
8.- Judicial oath of witnesses.....	6
10.- Forgiving the false oath.....	7

1.- Oath and trial in ancient near East legal systems.

Oath appears in several legal systems of Near Ancient East as a basic instrument for the realization of the justice. It has been supposed that the same foundation of the legal trial is strictly connected with the oath. The trial needs a faithful agreement involving the divinity, and this takes the form of the oath.

The founding of the trial, for example, in the old Babylonian tradition, has been connected with the myth of Etana, the eagle and the snake.

Etana was the king of Kiš, in the first period of Babylon story, around 2750 B.C, but the sources narrating the myth are later and belong to the medium- or neo-Assyrian age.

This myth had a very wide diffusion and a large fame.

From the royal Sumerian list we know that Etana became king after a deluge, and ruled about 1500 years. He was very sad because his wife could not become pregnant, and some diviners told him that, to be able to have a child, she should eat a special plant, that did grow only in the sky. So Etana prayed Šamaš, the god of sunshine and justice, who accorded him his help.

Out of the town of Kiš there was a tree, on which the eagle had put his nest, while the snake had found its shelter in the roots. Both the eagle and the snake had their little ones and had the necessity to go away to get some food without leaving them without protection. So the snake had this idea: himself and the eagle should pronounce a solemn oath in front of Šamaš: when one of them should go away to catch food, the other one should take care to the little ones of both of them.

The oath was pronounced at the presence of the god and was respected for a while. But once a time

the eagle violated the oath and gave the little snakes to be eaten by the little eagles. When the snake came back, it understood immediately the eagle's fault, and had to choose among two options: to make revenge by itself or to ask justice to the god Šamaš.

The snake decided to ask justice, through a punishment of the eagle. The eagle was punished, but it asked to be forgiven, and obtained mercy.

The myth is considered the foundation of the trial and shows that it is strictly connected with the oath. The true fault of the eagle was not the killing of the little eagles, but the violation of the oath. The first mission of Šamaš, the god of the justice, was to oblige to respect the oath, and to punish whom who violates it.

The respect of the oath seems to be considered the main purpose of the justice and of the trial. And the same teaching appears several times also in other Ancient Near East Civilizations, as the Babylonian, Sumerian, Hittite, Nuzi ones.

2.- Calling God as witness.

In the Biblical language and tradition we find two different words and concepts of oath: *shvuà*, to ensure, in name of God, that what we say is true, and *neder*, to promise, in name of God, that we shall really do what we promise to do.

The first word and concept is focused on the past, the second one on the future. Both of them assume a typical function, related to the specific kind of Hebrew monotheism.

In the several books of the Bible, the words have different meanings, and it would be wrong to intend their concept, in the different contests, in the same way.

As well known, the various biblical books have been written in different places and times, and in each of them are present different sources and literary traditions.

Generally, it can be assumed that the concept of *shvuà* means to call God as witness of the truth of what is said by anyone.

A lie pronounced at the presence of the Lord, called as witness of what is said by anyone, represents a sum of three different sins:

- a) The proof of the evil that has been made, and that the responsible has denied to have done;
- b) The lie that has been pronounced;
- c) The call of the Lord as witness of a lie.

And when God is invoked as witness, he becomes also arbiter of the truth of what has been said, and after that judge of the good faith of those who have pronounced the oath (Gen. 31.44-52).

But people are not allowed to invoke the Lord as witness for everything. Although it is not specified in the holy texts, it must be considered that the possibilities of the oath are a *numerus clausus*, and so they have been intended by the rabbinic literature. But this may be questionable.

3.- Possible historic evolution of the oath.

At the ground of the *shvuà* there are three different beliefs;

- a) The faith, by all the parts involved, in God as witness and as judge;
- b) The acceptance, by all the parts involved, of the consequences of the false oath, intended as an offence against God as witness and judge;
- c) The fear of the consequences of the false oath, as cause of God's anger and human punishment.

It would be believable that these consequences should be hard and serious. And probably so it should have been in the ancient times, until the fall of the First Temple, and even later.

But the situation seems to have changed in the next times, when the oath has been considered a kind

of normal judiciary instrument, and the sanction for its violation has become consequently less heavy. In the ancient times, the oath seems to have been used as a practice of uttering a curse, but this practice seems to have fallen in desuetude, and an oath in disclaimer may have taken its place.

4.- Different kinds of oath.

Two further questions must be pointed out:

- a) what does mean to call the Lord as witness and judge?
- b) what is intended as 'Lord'?

The Bible allows us to distinguish four different kinds of oath. Some of them are testified also after the fall of the Second Temple, in the Jewish communities of the diaspora, some other disappear together with the end of the autonomous criminal persecution by Jewish authorities.

- a) Judicial oath of defendant and plaintiff in private trial;
- b) Judicial oath of the accused in criminal trial-ordeal;
- c) Judicial oath of witnesses;
- d) Oath as instrument of politic agreements in war and peace.

But the difference between private and criminal trial is different between Jewish law and Roman law.

5.- Fear of God.

As an offence against God, the oath functions on the basis of the fear of the Lord. Therefore, it cannot be separated by the faith in God and the sense of the justice. It cannot be considered significant if pronounced by an evil man, who has no fear of the anger of the Lord:

Qohelet 9

1 All this I took to heart, and my heart saw it all: that the upright and the wise and their works are in the hand of God; and men may not be certain if it will be love or hate; all is to no purpose before them.

2 Because to all there is one event, to the upright man and to the evil, to the clean and to the unclean, to him who makes an offering and to him who makes no offering; as is the good so is the sinner; he who takes an oath is as he who has fear of it.

3 This is evil in all things which are done under the sun: that there is one fate for all, and the hearts of the sons of men are full of evil; while they have life their hearts are foolish, and after that--to the dead.

6.- Judicial oath of defendant and plaintiff in private trail

A defendant in private trial who denies the debt must support his denial by an oath. If he refuses to wear, he must pay. But he can request the court to pronounce a *herem* against any person bringing unfounded claims against him and can also require the plaintiff to swear that he says the truth about the debt.

Both defendant and plaintiff must say to be sure about their declarations, the claim and the denial must be certain, not doubtful. In case of opposite oaths, there is a *bedikah*, "investigation", usually through a cross-examination.

In the judiciary disputes regarding deposit, trust, theft, damn, hired work and debt, oath seems to be considered a normal instrument of private trial, necessary to achieve a sentence according with God's

will.

It seems to have been generally used as a kind of oath in disclaimer. It was usually incumbent upon the defendant, who needed to defend himself from an accuse moved against him.

It was taken voluntarily by the fellow who was supposed to be cognizant or responsible of facts matter of the trial. If the oath was pronounced, no compulsory process of adjuring witnesses should be permitted.

The bailee who fails to return the deposit on due demand, is quit if the deposit was stolen. But he must swear about this.

Exodus 22

7. If a man puts money or goods in the care of his neighbor to keep for him, and it is taken from the man's house, if they get the thief, he will have to make payment of twice the value.

8. If they do not get the thief, let the master of the house come before the judges and take an oath that he has not put his hand on his neighbor's goods.

9. In any question about an ox or an ass or a sheep or clothing, or about the loss of any property which anyone says is his, let the two sides put their cause before God; and he who is judged to be in the wrong is to make payment to his neighbor of twice the value.

10. If a man puts an ass or an ox or a sheep or any beast into the keeping of his neighbor, and it comes to death or is damaged or is taken away, without any person seeing it

11. If he takes his oath before the Lord that he has not put his hand to his neighbor's goods, the owner is to take his word for it and he will not have to make payment for it.

12. But if it is taken from him by a thief, he is to make up for the loss of it to its owner.

13 But if it has been damaged by a beast, and he is able to make this clear, he will not have to make payment for what was damaged.

The bailee must swear that his pleading is true and that he did not tamper with the depositor's goods. The loss of the good depends on the behavior of a thief, but he is not the bailee.

In such cases, oath is used to let a suspected person to be released by the suspicion to have stolen something.

It appears as a kind of instrument to disclaim a responsibility, and it seems to have functioned in this way for a long time.

It may be said that it seems a shorter way to avoid the proof of the liability, and that it is based on the common acceptance of the fear of God. It is not easy to admit that somebody can pronounce a false oath.

1 Kings 8

31. If a man does wrong to his neighbor, and has to take an oath, and comes before your altar to take his oath in this house:

32. Then let your ear be open in heaven, and be the judge of your servants, giving your decision against the wrongdoer, so that punishment for his sins may come on his head; and, by your decision, keeping from evil him who has done no wrong.

Oath seems to have also been largely used in private arbitrations, out of judiciary trial. The person who refused the oath was considered looser in the arbitration, and the trial took place only in case of double oath, or in absence of oath.

The hired worker who claims for the due payment may be invited to swear that he has not been paid (Maim., *Mishne Torah*, *Hiring* 11.9), although it is not testified in the Bible.

Surely the use of oath has become larger in the diaspora times, also in consideration of loss of national

sovereignty of the Jewish people. In the lack of autonomous Jewish judicial courts, oath allowed to avoid a judicial trial, that not always was possible.

Sometimes, but not always, it is testified that the oath must be given in a particular procedure. The person who requires an oath of a Jew should go with him to the synagogue, and the Jew who has to swear should place his hands on the Torah or the Scroll of the Law. A usance that has been largely followed, for many centuries, in the Christianity.

7.- Judicial oath of the accused in criminal judgment-

ordeal. In criminal judgment, oath seems to be connected

with ordeal.

A typical case is the judgment regarding adultery, “the first crime”

Numbers 5

11. And the Lord said to Moses,

12. Say to the children of Israel: If any man's wife does wrong, sinning against him

13. By taking as her lover another man, and keeps it secret so that her husband has no knowledge of it, and there is no witness against her, and she is not taken in the act;

14. If the spirit of doubt comes into her husband's heart, and he has doubts of his wife, with good cause; or if he has doubts of her without cause:

15. Then let him take her to the priest, offering for her the tenth part of an ephah of barley meal, without oil or perfume; for it is a meal offering of a bitter spirit, a meal offering keeping wrongdoing in mind.

16. And the priest will make her come near and put her before the Lord;

17. And the priest will take holy water in a pot and put in it dust from the floor of the House;

18. And he will make the woman come before the Lord with her hair loose, and will put the meal offering, the offering of a bitter spirit, in her hands; and the priest will take in his hand the bitter water causing the curse;

19. And he will make her take an oath, and say to her, If no man has been your lover and you have not been with another in place of your husband, you are free from this bitter water causing the curse;

20. But if you have been with another in place of your husband and have made yourself unclean with a lover:

21. Then the priest will put the oath of the curse on the woman, and say to her, May the Lord make you a curse and an oath among your people, sending on you wasting of the legs and disease of the stomach;

22. And this water of the curse will go into your body, causing disease of your stomach and wasting of your legs: and the woman will say: So be it.

23. And the priest will put these curses in a book, washing out the writing with the bitter water;

24. And he will give to the woman the bitter water for drink; and the bitter water causing the curse will go into her.

25. And the priest will take from her hand the meal offering of doubt, waving it before the Lord, and will take it to the altar;

26. And he will take some of it in his hand, burning it on the altar as a sign, and then he will give the woman the bitter water.

27. And it will be that if the woman has become unclean, sinning against her husband, when she has taken the bitter water it will go into her body, causing disease of the stomach and wasting of the legs,

and she will be a curse among her people.

28. But if she is clean she will be free and will have offspring.

29. This is the law for testing a wife who goes with another in place of her husband and becomes unclean;

30. Or for a husband who, in a bitter spirit, has doubts in his heart about his wife; let him take her to the priest, who will put in force this law.

31. Then the man will be free from all wrong, and the woman's sin will be on her.

Which may be the historic roots of the “bitter water” ritual? Does it belong to the story of religion, or of magic or sorcery? The matter is under discussion.

8.- Judicial oath of witnesses

Oath has largely used in testimonial declarations. Witnesses usually cannot give their declarations without pronouncing an oath. But several sources show that it is not always considered obligatory. But, if the witness refuses to take a testimonial oath, his declaration may be excluded by the trial and not examined by the court.

The *Shul'han Aruk* of Rav Moses Isserles (1520-1572) formulates the rule that the *Bet Din* may require the testimonial oath if, in his opinion, the circumstances warrant it (*Hoshen Mishpat* 28.2). But in the Bible it is not considered obligatory, as well in the later rabbinic jurisprudence. A witness can testify also without oath, and it can be supposed that there was also a kind of resistance against a common use of testimonial oath. God cannot be invoked for everything, and it would be wrong to consider that human words, without oath, have no value.

In criminal trial the accusation must be based on the word of two (o three) witnesses-accusers, who must swear about the truth of their declaration.

Deut. 19.15: *At the mouth of two... or three witnesses shall a matter be established.*

Against the double (or triple) accuse, the defendant cannot swear his innocence, probably until the Maccabean times. But he can swear against the word of only one witness-accuser. One witness-accusers is sufficient to oblige the accused to the oath.

It has developed a rabbinical discussion about the persons considered incompetent to testify and swear: Maimonides enounce that they belong to ten classes:

Mishne Torah, *Evidence* 9.1: *ten are the classes of persons incompetent to testify: women, slaves, minors, mentally defectives, deaf-mutes, blinds, transgressors, self-abased (usual sinners, transgressors of religious observance, vicious and dishonest fellows), kinsmen, interested witnesses. Ten in all.*

But this classification does not belong to the Bible.

9.- Oath in politic agreements in war and peace.

In war oath (*neder*) seems to be used as a political and military instrument. It appears at the beginning of the history of the Jewish people, in the peace accord between Isaac and Abimelech, who were before enemies:

Gen. 26

26-31: *And Isaac said to them: “Why have you come to me, seeing that in your hate for me you sent*

me away from you? ". And they said: "We saw clearly that the Lord was with you: so we said, Let there be an oath between us and you, and let us make an agreement with you. That you will do us no damage, even as we put no hand on you, and did you nothing but good, and sent you away in peace: and now the blessing of the Lord is on you".

Then he made a feast for them, and they all had food and drink. And early in the morning they took an oath one to the other: then Isaac sent them away and they went on their way in peace.

Conditions of victory, defeat and peace may be subscribed by oath, that can never be violated.

God condemns also his people if it violates the oath, even if against the enemies of Israel.

This can perhaps be considered a duty of acceptance of the defeat: revenge is impossible because the oath does not allow it.

Ez. 17

13. Then he selected a man of the royal line with whom he made a covenant, binding him under oath, while removing the nobles of the land,

14. so that the kingdom would remain a modest one, without aspirations, and would keep his covenant and obey him.

15. But this man rebelled against him, sending envoys to Egypt to obtain horses and a great army. Can he prosper? Can he who does such things escape? Can he break a covenant and still go free?

16. As I live, says the Lord God, in the home of the king who set him up to rule, whose oath he spurned, whose covenant with him he broke, there in Babylon I swear he shall die!

17. When ramps are cast up and siege towers are built for the destruction of many lives, he shall not be saved in the conflict by Pharaoh with a great army and numerous troops.

18. He spurned his oath, breaking his covenant. Though he gave his hand in pledge, he did all these things. He shall not escape!

19. Therefore say: Thus says the Lord God: As I live, my oath which he spurned, my covenant which he broke, I swear to bring down upon his head.

20. I will spread my net over him, and he shall be taken in my snare. I will bring him to Babylon and enter into judgment with him there over his breaking faith with me.

21. All the crack troops among his forces shall fall by the sword, and the survivors shall be scattered in every direction. Thus you shall know that I, the Lord, have spoken.

10.- Forgiving the false oath.

Despite the gravity of the sin, the pronounce of a false oath may be forgiven, if the responsible recognizes his fault. This seem to demonstrate the current use of the oath as a kind of normal judiciary instrument.

Lev. 5

4. if someone, without being aware of it, rashly utters an oath to do good or evil, such as men are accustomed to utter rashly, and then recognizes that he is guilty of such an oath;

5. then whoever is guilty in any of these cases shall confess the sin he has incurred,

6. and as his sin offering for the sin he has committed he shall bring to the LORD a female animal from the flock, a ewe lamb or a she-goat. The priest shall then make atonement for his sin.

7. "If, however, he cannot afford an animal of the flock, he shall bring to the LORD as the sin offering for his sin two turtledoves or two pigeons, one for a sin offering and the other for a holocaust.

8. He shall bring them to the priest, who shall offer the one for the sin offering first. Snapping its

head loose at the neck, yet without breaking it off completely,

9. he shall sprinkle some of the blood of the sin offering against the side of the altar. The rest of the blood shall be squeezed out against the base of the altar. Such is the offering for sin.

10. The other bird shall be offered as a holocaust in the usual way. Thus the priest shall make atonement for the sin the man committed, and it will be forgiven.

11. "If he is unable to afford even two turtledoves or two pigeons, he shall present as a sin offering for his sin one tenth of an ephah of fine flour. He shall not put oil or frankincense on it, because it is a sin offering.

12. When he has brought it to the priest, the latter shall take a handful of this flour as a token offering, and this he shall burn as a sin offering on the altar with the other oblations of the LORD.

13. Thus the priest shall make atonement for the sin that the man committed in any of the above cases, and it will be forgiven. The rest of the flour, like the cereal offerings, shall belong to the priest."

But the complexity of the ritual, necessary to forgive the violation, seems to demonstrate that it had a sacral nature, and needed a sacral expiation.

The function given in the ceremony to the birds is object of discussion, and belongs to the complex field of the animals-symbolism in the Bible and generally in the ancient cultures.

But to forgive the false oath it is necessary to restore the damn or the theft. This restoration seems to demonstrate a function of the oath as normal judiciary instrument.

Lev. 5

20. The Lord said to Moses,

21. "If someone commits a sin of dishonesty against the Lord by denying his neighbor a deposit or a pledge for a stolen article, or by otherwise retaining his neighbor's goods unjustly,

22. or if, having found a lost article, he denies the fact and swears falsely about it with any of the sinful oaths that men make in such cases,

23. he shall therefore, since he has incurred guilt by his sin, restore the thing that was stolen or unjustly retained by him or the deposit left with him or the lost article he found

24. or whatever else he swore falsely about; on the day of his guilt offering he shall make full restitution of the thing itself, and in addition, give the owner one fifth of its value.

25. As his guilt offering he shall bring to the Lord an unblemished ram of the flock of the established value. When he has presented this as his guilt offering to the priest,

26. the latter shall make atonement for him before the Lord, and he will be forgiven whatever guilt he may have incurred."

Which can be considered the prevalent function of the oath? The sacral and religious one, or the judiciary and procedural one?

The question allows different answers, but the possibility of restoration and forgive seems to show a prevalence of the second one, probably already before the scripture of the Exodus and Leviticus books.

So it can be supposed that, over the time, the oath has in substance lost its original sacral function, to get a new judiciary and procedural function. The sources maintain the remembrance of the ancient holy function, but this does not reflect the true historic evolution of the instrument.

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SOMMARIO

Il diritto antico ha lasciato in eredità il modello di forme internazionali di governo, che costituiscono il presupposto dell'organizzazione e riorganizzazione degli Stati nei loro successivi raggruppamenti, in periodi di pace e di guerra. Si tratta di accordi di amicizia e alleanza, fino a quelli di difesa, cooperazione e integrazione, per cui l'idea del progresso, legato alla trasformazione politico-sociale, ha creato nuove forme e riforme di rapporti fra Stati, da cui nasce il diritto moderno e contemporaneo.

ABSTRACT

Ancient law has left a legacy of international forms of government, which are the basis for the organisation and reorganisation of countries in their successive formations, in times of peace and war. These included agreements of friendship and alliance, as well as those of defence, cooperation and integration, whereby the idea of progress, linked to socio-political transformation, created new forms and reforms of relations between states, from which modern and contemporary law emerged.

PAROLE CHIAVE

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