MAARAV 7 (1991): 91–100

A NOTE ON THE *MUŠKĒNUM* AS A "HOMESTEADER"

GIORGIO BUCCELLATI

UNIVERSITY OF CALIFORNIA, LOS ANGELES

Within the purview of this note[1] I will argue for a particular meaning of the term *muškēnum*[2] from the point of view not of lexical, but rather of broader historical considerations. I will do this by reconstructing

1. The present article is part of a broader research on the history and geography of Khana, on which I have a number of articles in course of publication. Of these, one contribution ("The Rural Landscape of the Ancient Zor," in B. Geyer, ed., *Techniques et pratiques hydro-agricoles traditionnelles en domaine irrigué. Approche pluridisciplinaire des modes de culture avant la motorisation en Syrie.* Vol. 1 [Paris: Librairie Orientaliste Paul Geuthner, 1990]: 155–169) deals more closely with issues relating to fields and field nomenclature in the ancient *zor*, i. e. the strip of irrigable land along the Euphrates of which Mari and Terqa were the two major urban centers. I will discuss more fully the issues of land tenure in an article (in preparation) on "The People of Terqa and Their Names," and then in a fuller reworking of the entire material in book form.

It gives me pleasure to dedicate these lines to Stanley Gevirtz, with whom I was associated as one of his students in Chicago and then as a colleague in Los Angeles, a pleasure greatly tempered by the regret of what further collegiality his untimely death has unfortunately denied us.

2. I will not review here the literature on the *muškēnum*. Suffice it to refer to the extensive treatment by F. R. Kraus, *Ein Edikt des Königs Ammi-Ṣaduqa von Babylon* (Studia et Documenta 5; Leiden: E. J. Brill, 1958): 144–155, and idem, *Vom Mesopotamischen Menschen der altbabylonischen Zeit und seiner Welt* (Mededelingen der Koninklijke Nederlandse Akademie van Wetenschappen, Afdeling Letterkunde, No. 36/6; Amsterdam: North-Holland Publishing Co., 1973): 92–125, with a review of the literature up to that date. My understanding of the *muškēnum* as a "homesteader" is essentially in agreement with the conclusion forcefully argued by Kraus—that the term *muškēnum* refers not to the dependents of the palace, but rather to the entire free population of the state. My own argument adds some concrete criteria that serve as the minimum denominator for identifying on the one hand the *muškēnum* and on the other the *awīlum*, namely the criteria of, respectively, homesteading and speculative land ownership. In this

a certain distributional array pertaining to Old Babylonian land tenure, with particular reference to data from Terqa.[3] In this array, the term *muškēnum* is not opposed directly to *awīlum* or, for that matter, to any other term denoting a social class; rather, it is associated with a set of terms which together refer to an institutional phenomenon juxtaposed to a corresponding, contrasting phenomenon, for which a correlative set of terms obtains. I will adduce no direct proof for my argument, but only an inferential reasoning, which rests on the distributional correlation of certain phenomena. In other words, the correlation between sets of terms is not lexical, but functional; it is based not on the definition of lexical items, but rather on an effort at ascertaining the interlocking reality of functions which are assumed to have obtained in the social system. In the course of the argument, I will also propose a specific meaning for an enigmatic word which occurs only in the Khana texts, i. e. *nasbum*,[4] and will propose a more nuanced definition for the verb *baqārum*, generally translated as "to vindicate, to claim."

My suggestion is that the Old Babylonian social system recognized a fundamental distinction between two coexisting types of land ownership. The first type vested an inalienable[5] title to real property in the family unit, whereby houses and fields were owned for subsistence purposes; the other type instead vested an alienable title to real property in an individual, whereby houses and fields were owned for speculative purposes. From this point of view, a *muškēnum* would be a "homesteader," i. e. an individual whose subsistence depended (minimally) on his family's inalienable right to a subsistence property; an *awīlum* on the other hand would be a "speculative landlord," i. e. an individual who owned a number of parcels of real estate in addition to his own

respect my understanding of the term *awīlum* is somewhat broader than it is for Kraus, who limits the membership in the *awīlum* class to the high officers of the palace.

3. For the texts from Terqa see O. Rouault, *Terqa Final Reports, No. 1. L'Archive de Puzurum* (Bibliotheca Mesopotamica 16; Malibu: Undena Publications, 1984 [=*TFR* 1]); G. Buccellati, A. H. Podany and O. Rouault, *Terqa Data Bases, 1: Old Babylonian Texts through the Fourth Season* (Cybernetica Mesopotamica: Texts, Disk 1, Version A; Malibu: Undena Publications, 1987).

4. In this respect my argument builds on the one proposed by J. Lewy, "The Biblical Institution of *deror* in the Light of Akkadian Documents," *Eretz Israel* 5 (1958): 24*, esp. n. 33.

5. Inalienability would not be absolute, because "inalienable" property could in fact be transferred, but on conditions limiting the title and favoring the eventual return of the property to its original owner. An important related issue which I cannot consider here is that pertaining to inheritance rights.

homestead property. Alternatively, we may say that every *awīlum* was a *muškēnum*, whereas obviously not every *muškēnum* was an *awīlum*.

Terms that may be taken to refer to homestead property are: *ṣibtum*[6] which has the generic meaning of "possession, property, holding"; *bīt abi*[7] which has the generic meaning of "father's house or estate"; *eqlum dūrum*[8] which has the generic meaning of "perpetual(ly held) land," and might possibly have the specific meaning of "inalienable land." But these terms may have been used in a descriptive, rather than in a strict technical sense. Thus a homestead property may also be simply referred to by means of the paraphrase *eqel muškēnim*[9] "field of a homesteader." Such an apparent lack of precise and consistent terminology might have derived from the fact that homestead properties were not generally the object of sale transactions, and thus there was seldom a need to refer to them in contractual clauses (as was instead the case with non-homestead property).

I will review now five different expressions which, in my view, may be taken to describe the title to a property as being free and clear of liens, including the primary encumbrance of homesteading.

(1) I understand the term *baqārum* to refer, inter alia, to the exercise of just such a right: "to claim one's prerogative to repossess a homesteaded property." More generally, the term may be understood as referring to an attempt to invalidate the title which somebody has temporarily acquired to some property—not because of an impropriety, but rather because of an inherent limitation in the title itself. Hence it is that the term is

6. See, e.g., *ABB* 4 43:5′: *eqlētini, ṣibitni labiram, ša abbūni īkulū* "our fields, our ancient possession, (of) which our fathers ate (the yield)," see also l. 14′. The term is discussed, and interpreted in a more generic manner, by M. D. Ellis, *Agriculture and the State in Ancient Mesopotamia. An Introduction to Problems of Land Tenure* (Occasional Publications of the Babylonian Fund, 1; Philadelphia: The University Museum, 1976): esp. 13, 19 (where it is related to *šukussu*, understood as subsistence allotment, given in return for a service), 64–67. Given the association with the concept of "ancient possession," the reference to the "fathers eating (from its yield)" may mean that it was their source of *subsistence*, rather than referring, as is usual with this formula, to a situation of usufruct.

7. See Ellis (N 6): 23–25. See also the text cited in the preceding note.

8. Discussed by I. M. Diakonoff, "On the Structure of Old Babylonian Society," H. Klengel (ed.), *Beiträge zur Sozialen Struktur des alten Vorderasien* (Berlin: Akademie Verlag, 1971): 22–23.

9. See for example ARM 10 151:19.25, where the *eqlēt muškēnim* are contrasted to fields cultivated by an *ikkarum* (*eqel ramānīšu* "a field belonging to him personally," i. e. as non-homestead property, l. 15) and to the *eqel ekallim ša ramānīya mala maṣū* "field of the palace which belongs to me personally at my full discretion" (26–27; for *mala maṣū* see below, N 17).

frequently used in pre-emptive clauses which exclude a priori, at the time the contract is drawn up, the possibility of any limitations on the title: an *eqel lā baqrim*[10] is a field which is declared to have a title clear of limitations. On the other hand, a technical impropriety in the drafting of the contract, a perceived illegality in the transaction, or any type of adversary claim arising from the dissatisfaction of one of the parties, is expressed by the term *ragāmum* "to lodge an illegality claim, to sue." The exclusion of the possibility of a suit cannot be used as a qualification for a type of property, hence we do not have an **eqel lā ragāmim*.[11] Viewed differently, we can say that *ragāmum* does not govern an inanimate object (one cannot say **eqlam ragāmum*), as is instead the case with *baqārum*.[12] Thus *baqārum* "to claim" means, more fully, "to claim from somebody the title to his property (on the basis of conditions inherent to the title itself)," whereas *ragāmum* "to sue" means more fully "to bring a complaint against somebody (on the basis of a perceived condition of illegality)."

It is for this reason that, once a title has been declared officially clear of liens, encumbrances or limitations of any type, any one who still comes forward with a title claim is automatically viewed as guilty. The point is not whether or not his claim is right; precisely assuming that he is right, the claimant's fault lies in having sold the property under pretense that the title was clear, and then claiming liens which had been left undisclosed at the time of the sale. The standard formula is *bāqir ibaqqiru*,[13] literally "the claimant who claims," or, more specifically, "any individual who has reason to lodge a title claim and actually brings forth a title repossession claim (once the title has been transferred)." As is well known, such an individual was treated in the harshest terms,

10. See for instance *TFR* 1 3:21–22: *eqlum nasbum ša lā baqrim u lā andurārim*. See presently for *nasbum* and *andurārum*.

11. The expression *ṭuppi la ragāmim* (see *AHw* 941b) is quite different, since the construct *ṭuppi* is not the object of the construent *ragāmim* but rather refers to a pledge "not to renew the litigation." See R. Yaron, *The Laws of Eshnunna* (Jerusalem: Magnes Press, 1969): 81.

12. With an ablative adjunct for the person, e.g. *ABB* 4 43:5′–7′: *eqlētini ... rēdū ibtaqrūniāti* "the soldiers have claimed title to our fields from us."

13. See, e.g., *TFR* 1 3:23. This formula is not a redundant expansion of a simpler formula with either the single participle or the single relative clause. A single participle (*bāqiru* "a claimant") might leave open the question as to whether the claim is actually brought forth at this point in time, and a single relative clause (*ša ibaqqaru* "the one who claims") might leave open the question as to whether the subject of the claim has the right to do so. The derived noun *bāqirānu* (see *AHw* p. 105) is the technical equivalent of this formula (much as *nādinānum* is the equivalent of *nādin iddinu* in CH §21, 9 and 19–20).

if we go by what is said in the Khana texts: he was subject to an extremely high fine payable to the palace[14] and to the drastic corporal punishment of hot asphalt poured on his head.

(2) The next formula aimed at guaranteeing the nature of a title is the one which states that the title is immune from the applicability of the procedure known as *andurārum*.[15] Generally understood as "remission of debts," the term has as one of its meanings a specific reference to a situation whereby a repossession claim may be invoked at an earlier time than envisaged in the original contract, namely as the result of a royal edict that so stipulates. An *eqlum ša lā andurārim* is one which is explicitly protected against such an eventuality: it is "a field that cannot be repossessed as a result of a royal edict pertaining to remission of debts."

(3) While the expressions *lā baqārim* and *lā andurārim* are negative, there are also, I submit, positive expressions which refer to the same legal concept. In my understanding, the word *nasbum*, exclusive to Khana usage, refers in positive terms to just such a more desirable type of property: "a property guaranteed by a clear title." Combined with the negative terminology which is aimed at pre-empting particular types of lien, the full formula *eqlum nasbum ša lā baqrim u lā andurārim* may then be translated as "field with a clear title (i.e. unencumbered by liens, including homesteading rights), for which no repossession right may be recognized,[16] whether as a result of private or state intervention."

(4) Other formulae found in the Old Babylonian texts from the South may also be taken to describe in positive terms the same legal status. Such may be the case, for instance, when reference is made to the "complete" price paid for a purchase, as already proposed by Lewy in the article mentioned in N 4.

(5) Finally, the clause *mala maṣū* may also be understood as a formula referring to the title. While it is normally understood in the sense of "as far as it extends,"[17] this translation leaves open the question as to what might be the meaning of its converse: if the contract would be so intended that it did not cover the land as far as it extended, then what

14. Almost 20 times the initial cost of the property in *TFR* 1 3:20 and 26.

15. For a sample formula see, e.g., above, N 10. For a discussion see Lewy, cited in N 4.

16. For the potential function of *ša* followed by the genitive of a noun of description or an infinitive see G. Buccellati, "On The Use of the Akkadian Infinitive after *ša* or Construct State," *JSS* 17 (1972): 1–29.

17. *CAD* M1, 345–346.

exactly would it cover? Only a portion thereof? Instead, the expression may best be understood as an abbreviation of the formula *mala libbi maṣū* "equal to whatever is in (the owner's) heart," i.e. "at the full discretionary power of the owner." A preliminary review of pertinent documents seems to suggest that this clause is in fact mutually exclusive with the use of clauses making allowance for repossession (with the verb *baqārum*).

The distributional array pertaining to these various types of legal action which would have affected land ownership, and their correlation to the proposed social status of the individuals who enjoyed either type of ownership, may be represented in tabular form as follows (a plus indicates that the condition is applicable, a minus that it is not):

		TYPE OF CLAIM		
		baqrum "repossession"	*andurārum* "debt remission"	*rugummūm* "illegality claim"
TYPE OF LAND TENURE				
muškenūm "homesteader"	*eqel muškēnim* "homesteader's field" *ṣibtum* "possession" *bīt abim* "paternal estate" *eqlum dūrum* "inalienable land"	+	+	+
awīlum "speculative landlord"	*eqlum nasbum* "unencumbered field" *mala maṣū* "at the owner's full discretion"	−	−	+

The reconstruction proposed is based on contracts and letters. The law codes do not address the issue of the legal status of the *muškēnum*'s property rights (possibly because they were not in dispute). Yet, the Code of Hammurapi raises a set of parallel issues in those laws which deal with certain types of property which cannot be sold. The code states that the service encumbered property (*ša ilkim*) of people in the military and of "revenue producers" (*nāši biltim*) cannot be sold (§36f), nor willed to female members of the family (§38); on the other hand, personal property owned by the same individuals may be sold or willed

(§39), and service encumbered property held by other individuals may also be sold (§40). Leaving aside here a fuller discussion of the situation envisaged by these laws, the relevant point for my general argument is simply the distinction between two types of property, alienable and not. Such a distinction seems clear and central to the rationale for these particular laws. That the *muškēnum*'s property is not mentioned in these laws does not mean that the concept of inalienability did not apply to them; on the contrary, it may simply be that the inalienable character of the *muškēnum*'s property was assumed as the standard of reference for all inalienable land, and as such it was thought to require no special legislation.

In the particular case of the Code, the applicability of the restrictive clauses to individuals who come from military ranks may be explained in terms of the reassignment to Babylonian soldiers of property confiscated from the *awīlū* of the conquered territories. As I see it, the evidence indicates that homestead property was safeguarded even for "foreign" homesteaders[18] at the very time that new land was parcelled out to new Babylonian owners in the person of such individuals as the "soldiers"[19] of whom mention is made in the Code. The conquest was used as means of allowing upward mobility for the Babylonian homesteaders (*muškēnū* serving in the Babylonian army) by providing them with land taken from the capital holders (*awīlū*) of the conquered territories.

In this perspective we may obtain a better understanding of the *nāši biltim*,[20] literally "bearer of revenue." In contradistinction to the homesteader viewed as surviving on a mere subsistence level, the *nāši biltim* is a capital producing individual who is one rank above mere subsistence level, though still tied by the specific service encumbrance attached to the property and limited in the way in which he may dispose of it.

18. See e.g., for Larsa, *ABB* 4 43:16′–18′: *ṣibissunu labiram kīma ṣabtū-ma lū ṣabtū* "they will hold on to their homestead (lit., ancient possession) just as they have been holding on in the past."

19. The text cited in the preceding note indicates that the Larsa homesteaders (i.e. the people who claimed "ancient possession" to their land) complain because "the soldiers" claim title to their land.

20. Here too I am in substantial agreement with the position of F. R. Kraus. See especially "Der 'Palast', Produzent und Unternehmer im Königreiche Babylon nach Hammurabi (ca. 1750–1600 v. Chr.)," E. Lipiński (ed.), *State and Temple Economy in the Ancient Near East*, 2 vols. (Leuven: Departement Oriëntalistiek, 1979): 2.429–431, where the *nāši biltim* is understood practically as a "tax-payer." Differently Ellis (N 6): 12–13, 167–168, who considers the *nāši biltim* as lower rank state personnel.

While a *muškēnum* produces no revenue and simply survives on the basis of an inalienable family estate, barely sufficient for his subsistence,[21] a *nāši biltim* (besides owning his own subsistence land, inasmuch as he is at the same time a *muškēnum*) produces a surplus yield from property which is also encumbered and inalienable, but on different terms than those applicable to the homestead. In other words, a *nāši biltim* is a capital producer, somebody who produces a capital yield shared with the state, a *muškēnum* who has been provided with the means to go beyond subsistence level through a mechanism that yields a revenue for the king at the same time that it provides the beginning of a capital for the individual himself. One step beyond, the *awīlum* is a capital holder who owns real estate which is neither encumbered nor inalienable: just as a *nāši biltim* would normally be in the first place a *muškēnum* as well, so an *awīlum* might be all three—a *muškēnum* by virtue of owning his own homestead, a *nāši biltim* to the extent that he may own inalienable and encumbered state property, and finally an *awīlum* proper to the extent that he owns fully alienable real estate. The three categories are thus not mutually exclusive, but rather progressively and reciprocally more inclusive. They do define the individuals not on the basis of qualities intrinsic to them as individuals, but rather on the basis of their status vis-à-vis land ownership. Their respective relationship may be summarized as follows, where ditto marks indicate that the characteristics of the previous category are not incompatible with those of the present category:

	title is limited by homestead rule; land is inalienable and personally held; yield is for subsistence only	title is limited by state participation; land is inalienable and service encumbered; capital yield is shared with the state	title is clear and free; land is alienable and personally held; capital yield is fully owned
muškēnum "homesteader"	+	−	−
nāši biltim "revenue producer"	"	+	−
awīlum "capital holder"	"	"	+

21. For an interesting calculation of minimum field sizes needed for a standard family see G. Komoróczy, "Zu den Eigentumsverhältnissen in der altbabylonischen Zeit: Das Problem der Privatwirtschaft," in Lipiński (N 20): 2.418–419.

Obviously, the more desirable real estate was the one that fell in the last category, the fully alienable property which could be disposed of at will, and it is natural that it is primarily about this category that we hear in the contracts, since speculative land ownership was the major avenue for capital building in terms of real estate. Homesteading, on the other hand, was a way to secure a minimum subsistence level by guaranteeing that essential family lots be inalienable. Viewed in a positive sense, the *mušķēnum* was one who enjoyed this privilege. Viewed negatively, he was someone who had little more than this privilege: if he was nothing more than a homesteader, he was living on a subsistence basis and therefore could not command financial resources beyond such subsistence—hence the meaning "poor" which came to be associated in time with the term *mušķēnum*. On the other hand anybody who had resources beyond such a minimum (poverty) level would be called an *awīlum*, and it is in this respect that this term came to have a wider semantic range than *mušķēnum*—from "man" in general (i. e. anybody above poverty level) to a member of the upper class or even the king himself. The laws address primarily the *awīlum* because, one of their goals being the protection of the weak against the mighty, they stress that penalties are applicable to all, including specifically the men of means.

The opposition with *awīlum* shows how the specific semantic value of the various terms may be gauged depending on the binary opposition in which they stand, explicitly or implicitly, with each other.[22] Some such pairs of opposites may be tabulated as follows:

22. This principle, stated very clearly by A. Goetze, *The Laws of Eshnunna* (AASOR 31; New Haven: Dept. of Antiquities of the Government of Iraq and ASOR, 1956): 51, has been eloquently developed by Kraus, *Vom Mesopotamischen Menschen* (N 2): 97–99.

LOGICAL NODE	PAIR OF OPPOSITES SUBSUMED UNDER NODE	
legal person[23]	public: *ekallum*	private: *muškēnum*[24]
group ascription[25]	tribal: *Hanū*[26]	territorial: *muškēnum*
social standing	upper class: *awīlum*	lower class: *muškēnum*
land tenure	speculative: *awīlum*	homesteading: *muškēnum*
economic productivity	capital yield: *awīlum /nāši biltim*	subsistence: *muškēnum*

The determination as to who, in a concrete situation, belonged to which class would depend on the degree to which one might be able to identify the terms of such relationships. For instance, a private archive such as the one of Puzurum,[27] indicates that one and the same individual was able to purchase a number of encumbrance-free fields, and this would qualify him as an *awīlum*. The identification as *awīlum*, *nāši biltim* or *muškēnum* may presumably not have been an outwardly pervasive dimension in matters of daily life: not based on physical characteristics (like age or sex), nor on skills (like professions), nor on precise rank (like bureaucratic classes), nor on group solidarity (like ethnic groups), the distinction would have emerged primarily in legal and contractual situations. You might or might not have been able to distinguish a *muškēnum* from a *nāši biltim* simply by meeting one on the street—unless, of course, you happened to be the tax collector!

23. This may be either a single individual or the human group viewed as an organizational structure, acting through some representative that assumes its interests (and imposes thereby his leadership—typically, the king): "public" means that an activity derives from, or pertains to, the human group so understood, while "private" means that an activity derives from, or pertains to, a single individual as a person distinct from the group.

24. For references see F. R. Kraus in the publications cited above, N 2 and N 20.

25. By this I mean the criteria according to which individuals are differentially ascribed to the human group, e.g. through assumed genetic descent, as in a tribal setting, or though territorial contiguity. For some remarks on the notion of "tribe" understood in this light see G. Buccellati, " 'River Bank,' 'High Country' and 'Pasture Land': The Growth of Nomadism on the Middle Euphrates and the Khabur," in S. Eichler, M. Wäfler, D. Warbuton (eds.), *Tell al-Hamidiyah 2* (Göttingen: Vandenhoeck & Ruprecht, 1990): 87–117.

26. See ARM 3 81:5–6 for an example of juxtaposition between Haneans and "homesteaders."

27. Whose house we presume to have excavated at Terqa; see G. Buccellati, with M. Kelly-Buccellati and J. Knudstad, *Terqa Preliminary Reports, No. 10. The Fourth Season: Introduction and the Stratigraphic Record* (Bibliotheca Mesopotamica 10; Malibu: Undena Publications, 1979): 40. On the house of Puzurum see now the doctoral dissertation by Mark Chavalas ("The House of Puzurum: A Stratigraphic, Distributional and Social Analysis of Domestic Units from Tell Ashara/Terqa, Syria from the Middle of the Second Millenium B.C.," Ph. D. Thesis U.C.L.A., 1988) who first asked the question as to whether Puzurum might be considered an *awīlum* or a *muškēnum*.