

Biblical and ancient Near Eastern law

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Abstract

Biblical law has had a profound influence on Western culture, but it must be understood in its historical context. It arose in the context of the tradition of Mesopotamian law, where scribes exhibited their flair for justice by writing statutes on a repertoire of traditional cases, of which the most outstanding example is the Laws of Hammurabi. Rarely did legal texts explicitly discuss legal principles. Three collections of formal legal statutes are found in the Hebrew Bible. The Book of the Covenant is most like Mesopotamian law in dealing with disputes arising in an agrarian society. The priestly law consists of two sources, the priestly source that aims at protecting the welfare of the people by the performance of sacred rituals and the Holiness source that seeks to sanctify the everyday activities of the people. Deuteronomy aims at ritual and social reforms. Among the most debated issues in scholarship today is biblical law's view of women.

1 | INTRODUCTION

Every society must find a way to resolve disputes. This was true long before writing was invented, and among the first sets of written documents extant are texts that settle disputes. Royal inscriptions and hymns recounting social reforms and legal records of court cases from Mesopotamia (ancient Iraq) demonstrate that a sophisticated and reflective legal culture was already in operation in the earliest human history recorded. Ancient Israel arose in the midst of this long-standing legal culture, and biblical law cannot be understood without a comparison to the law of the ancient Near East.

We must be careful to distinguish between law as practiced in a society and the written documents that address legal matters. While the earliest written documents from the ancient Near East touching on legal matters already address socio-economic inequality, it is not clear whether those reforms were actually promulgated. Those declarations might be no more than royal rhetoric. Furthermore, whether the law collections, which are composed largely of lists of formal statements prescribing how specific offenses were to be remedied, were applied in the actual practice of law has been hotly debated (Wells, 2008). A similar question arises regarding the biblical legal texts:

Are they records of amendments and additions to the unwritten common law or were they theoretical compositions that only after the Pentateuch was canonized had legal force? A middle position can be possible: While they did not serve as legislation modifying the law, they did reflect legal rules and procedures (Westbrook, 1989).

Biblical and ancient Near Eastern law encompassed more than just dispute resolution. It attended to issues of socio-economic inequality, legal procedure, offenses against individuals and society, and biblical law also addressed the relationship between God and the Israelites, whether on the individual or corporate level, including rules on ritual practices such as sacrifice and impurity. Mesopotamians also had cultic regulations, but those were not subsumed in the lists of formal statements cataloging how specific offenses were to be remedied.

The legal records extant deal with determining the facts of a case, and the formal statutes articulate abstract legal principles very rarely. There are only two texts from biblical and ancient Near Eastern law in which legal principles or issues of law are the subject of debate. In the Nippur Murder Trial, a model case used in scribal education, the members of the Assembly debate whether the victim's wife is as culpable as those who killed the victim (Barmash, 2005; Jacobsen, 1959; Roth, 1998). In Jeremiah 26, those judging Jeremiah debate whether the statements he has uttered amount to an offense worthy of the death penalty. In neither case are the facts of the case in dispute. The killers have been identified in Nippur, and Jeremiah does not deny that he has uttered that particular prophecy. In the Nippur Murder trial, the victim's wife kept silent about her husband's death, and the assumption is that anyone, man or woman, who knows of a crime must report it to the authorities (e.g., Laws of Hammurabi 109). Two members of the Assembly defend her by arguing that she had diminished capacity because she was a woman, a member of the weaker sex: Even if she had joined into the plot, what could she do as a woman to prevent the murder? Her defenders try to gain the sympathies of the assembly, but the defense is denied.

(6-14) After Lu-Inanna, son of Lugal-uru-du, had been put to death, they told Nin-dada, daughter of Lu-Ninurta, wife of Lu-Inanna, that Lu-Inanna, her husband, was killed. Nin-dada, daughter of Lu-Ninurta, did not open her mouth and covered it up ... (35-41) Shuqalilum, the Erin-gal-gal, sergeant of Ninurta, and Ubar-Enzu, the orchard man, addressed (the assembly) as follows: "Nin-dada, daughter of Lu-Ninurta, may have killed her husband, but what can a woman do in (such a matter) that she is to be killed?" they said. (42-52) In the Assembly of Nippur, (the assembly) addressed them as follows: "A woman who does not support her husband may give information to his enemy and thus (the enemy) may (be able to) kill her husband. That her husband is killed, (the enemy) may let her hear—why should he not thus make her keep silent about him?—she (more than anyone else) killed her husband. Her guilt is greater than (of those) who killed a man," they said.

The victim's wife is held to a harsher standard: She is deemed more guilty than the killers. She participated in the cover-up after the crime, and her participation in the plot is imputed to her solely because as the victim's wife, she had special access to him and could have betrayed him. It does not matter whether she dealt the *coup de grace*: Because she could have violated her husband's trust as an insider in his home, her guilt is deemed to exceed those who actually killed her husband.

In Jeremiah's case, two possible deeds may be his offense: He may be accused of not being authorized by God to prophesy, or he may be accused of prophesying destruction for the city of Jerusalem. He is portrayed as defending himself by affirming that he has been authorized by God that the prophecy threatening destruction can be averted by remorse and a change in behavior and that putting him to death would be shedding innocent blood and therefore result in punishment. His arguments are portrayed as being accepted when the people declare that he does not deserve death (Westbrook, 2007). The text also notes that a number of elders subsequently put forth the argument that an earlier prophet was permitted to prophecy against the city with impunity and that a royal officer protected Jeremiah: This may indicate that Jeremiah's argument was not as effective as portrayed.

A number of recent published resources are especially useful in the study of biblical and ancient Near Eastern law: Westbrook (2003), Westbrook and Wells (2009), Barmash (2014b), Strawn (2015), Russell (2016), Gane (2017), and Morrow (2017).

2 | ANCIENT NEAR EASTERN LAW

While it must be noted that while biblical law comes from the ancient Near East because ancient Israel was geographically and culturally part of the Near East, the term “ancient Near Eastern law” usually refers to the law from the rest of the ancient Near East, especially from Mesopotamia.

2.1 | Mesopotamian and Hittite law

Legal records of a variety of types, such as contracts, debt notes, and verdicts of court cases, have been recovered in archeological excavations, both legal and illegal, from Mesopotamia in great number (Barmash, 2015). Legal matters are also referred to in correspondence and royal inscriptions. Of great interest is extraordinary appearance of the law collections, texts incorporating formal statutes providing remedies for offenses, and setting rates for services, even though they may have had only a tenuous connection to the actual practice of law (see Table 1).

The law collections manifest characteristics that demonstrate that they are part of a scribal heritage in which a scribe would demonstrate his legal talent and skills by revising, reworking, redrafting, and revamping a repertoire of traditional cases learned during his education (Barmash, 2005). The tradition of the law collections began in the late third millennium BCE in Mesopotamia, and one law collection, the Laws of Hammurabi, gained such prestige that it was recopied for over a millennium. This tradition continued outside of Mesopotamia in ancient Israel and the Hittite empire, and it has been argued that it reached ancient Greece and Rome (Westbrook, 2015).

The law collections were structured in the form of a royal inscription exalting the king and justifying his authority to both gods and human beings, and they may have been set up as monuments (stelae), as the Laws of Hammurabi was. The Stela of the Laws Of Hammurabi furnished an individual who felt he has been wronged in a court case a place to turn in prayer and offer blessings to the (deceased) king, finding solace in a moral victor (Roth, 2002). Its purpose was not to aid the wronged individual in a successful lawsuit. The formal statutes included in law collections were formulated as case law expressed in conditional sentences in which the protasis lays out the circumstances of the offense and the apodosis lays out the remedy. Some law collections, most notably the Laws of Eshnunna, contain a limited number of statutes regulating economic matters in apodictic form, reminiscent of royal edicts.

Kings were portrayed as regulating the economy and society through reforms that, in general, addressed social and economic problems. Whether the texts recounting royal reforms referred to actual edicts or were only royal propaganda is arguable, and the relationship between the royal edicts and the law collections has been disputed because no legal record or letter ever refers to a law collection (Charpin, 2010). Finkelstein (1961) argues a reform that was not promulgated through an official text with elaborate details: Only at a later date was the text of a reform edict compiled, and later than that, a law collection was issued including the reforms and a justification of the king's rule. Veenhof holds that royal decrees were promulgated at the accession of a king to the throne and that a king also issued regulatory decrees, for which we do not possess textual evidence, in which breach of contract and similar

TABLE 1 Mesopotamian Law Collections

Name of law collection location	Language	Date	
Laws of Ur-Namma	Sumerian	ca. 2100 BCE	Ur
Laws of Lipit-Ishtar	Sumerian	ca. 1930 BCE	Isin
Laws of Eshnunna	Akkadian	ca. 1770 BCE	Eshnunna
Laws of Hammurabi	Akkadian	ca. 1750 BCE	Babylon
Hittite laws	Hittite	ca. 1650–1500 BCE	Hattusha (new recension, ca. 1500–1180 BCE)
Middle Assyrian laws	Akkadian	ca. 1076 BCE	Assur
Neo-Babylonian laws	Akkadian	ca.700 BCE	Sippar

types of misbehavior were regulated. This second type of regulations was restricted only in subject matter, not in duration, and Veenhof (1997) argues that this second type was incorporated into law collections.

Resources for the study of Mesopotamian and Hittite law: Roth (1997), Hallo and Lawson Younger Jr. (1997–2003), Hoffner Jr. (1997), Greengus (2011), and Kitchen and Lawrence (2012).

2.2 | Egyptian law

Legal documents of law from Egypt are exceedingly rare. A few inscriptions from temples, monuments, and tombs touch on legal matters. Legal papyri and ostraca are also sparse. There is somewhat more material extant from the Hellenistic period, but the fragmentary data make analysis challenging (Eyre, 1992; Manning, 2012; Westbrook, 2003).

3 | BIBLICAL LEGAL TEXTS

The Pentateuch contains three collections of formal law, the Book of the Covenant, the priestly law, and Deuteronomy. The Decalogue, or Ten Commandments, serves more as a guide to ethical behavior rather than law. Narrative passages in the Pentateuch address law. Other biblical texts address law as well, such as those in which prophets issue warnings or proverbs offering legal advice. Legal records, such as contracts or conveyances, from ancient Israel have not been recovered archeologically because ancient Israelites wrote them on perishable material. A letter written on a potsherd, the Yavneh Yam or Mešad Hashavyahu letter, records a laborer appealing to an administrator over the confiscation of his garment (Ahituv, 2008), and a text expressing concern for those marginalized in society has been excavated from Khirbet Qeiyafa (Becking & Sanders, 2011).

3.1 | The Book of the Covenant

Exod 21:1–23:33 has been identified as a legal text and has been called “the Book of the Covenant” or “the Covenant Code,” based on Exod 24:7. Its placement as the initial law collection in the Pentateuch should not be taken as an indication that it was chronologically the earliest law collection. Its date is disputed: Certain features, such as the lack of mention of a king or state officials, have been taken as reflecting a tribal period date (ca. 1200–1000 BCE), while other features, such as freeborn persons forced into self-slavery, are seen as a sign of social stratification more likely during the monarchy (Morrow, 2017; Otto, 1993). An argument can be made that the circumstances of the Israelites in Babylonia fit the Book of the Covenant, but this ignores the evidence of linguistics and intrabiblical interpretation (Van Seters, 2003). Certain passages in Deuteronomy are clearly dependent on texts from the Book of the Covenant, and therefore, a relative dating can be proposed for those passages vis-a-vis the Book of the Covenant (Levinson, 1997). The Book of the Covenant manifests successive frames, a sign that it had a complex redactional history.

The Book of the Covenant addresses disputes that arise in agrarian conditions, such as the rental of farm animals (22:13–14) and crop damage (22:4–5). The placing of laws on slavery at its beginning suggests a concern for ameliorating the conditions of slavery.

The relationship of the Book of the Covenant to Mesopotamian law has been the subject of many studies: It uses conditional sentences to express cases, and certain cases appear to be on the same topics as those in Mesopotamian law collections. Wright (2009) has contended that the author of the Book of the Covenant derived its order and topics directly from the Laws of Hammurabi. Barmash (2005) argues that the author was educated in the Mesopotamian scribal tradition.

Resources: Paul (1970), Propp (2006), Jackson (2006), and Dozeman (2009, 2017).

3.2 | The priestly sources

The legal texts in the second half of the book of Exodus and the books of Leviticus and Numbers have been identified as stemming from priestly circles. They have been divided into two sources, the priestly source (P), roughly Leviticus 1–16 plus sections from Numbers, and the Holiness source (H), roughly Leviticus 17–26 and sections from Numbers. For much of the history of critical academic scholarship, it was assumed that H was earlier than P, but in the last 25 years, Knohl and Milgrom have argued that H was chronologically later and that it reworked P materials. (Knohl, 1995; Milgrom, 1998, 2000, 2001) The date of P and H has been hotly debated. Scholars have been deeply divided over whether the most accurate criteria is linguistic or the putative development of legal institutions or historical setting (Blum, 2016; Gesundheit, 2016; Hurvitz, 1982; Joosten, 2016; Mizrahi, 2016; Römer, 2016; Schniedewind, 2016; Wöhrle, 2016).

P addresses matters of ritual and only deals with other legal matters, such as civil law, insofar as it has an impact on the cult. H, by contrast, covers both cultic offenses and civil and community misdeeds because both violate the holiness that the community is to take on, according to H's theology.

It is not clear that P comprises a single source: They may be a collection of texts from a single viewpoint. P ordains a cultic system detached from the general population. The priesthood alone takes responsible for the spiritual welfare of the whole nation through the performance of the sacred rituals. The relationship between God and human beings is greatly limited. God speaks directly only with Moses, and Moses never speaks to God but listens and transmits divine commands. Anthropomorphism is suppressed, and God is never depicted as speaking in the first person. When describing the divine presence, P prefers the more ambiguous word *ד-ע-י*, "to meet," in place of *נ-כ-ש*, "to dwell." Emphasis is placed on the transcendence of God. P employs the term *עדות* for covenant, based on Neo-Assyrian suzerainty treaties or loyalty oaths, in contrast to the eternal *ברית* between God and humanity.

H puts forth a radically different conception and delineates unmediated contact between God and human beings. God is portrayed speaking in the first person to human beings, and the people are to strive to be holy like God. They are rewarded for even the observance of minor details, and socio-moral commands are intermixed with cultic instructions. A covenant exists between God and Israel.

Resources: Levine (1993, 2000), Knohl (1995), Milgrom (1998, 2000, 2001), Watts (2007), and Wells (2008).

3.3 | Deuteronomy

The book of Deuteronomy is placed in the mouth of Moses, but it manifests an outlook of reform and revision. It conveys an implicit date of origin during the hegemony of the Neo-Assyrians (ca.700–612 BCE), when Deut 28:49 envisions the enemy menace as coming from afar and speaking a language unknown to the Israelites (and displaying a winged solar disk as a standard akin to a swooping eagle), far different from the border skirmishes with the Israelites' neighbors during the first half of the monarchy. The ghastly portrayal of exile is far different from that which actually ensued to the southern kingdom in either 597 or 587/6 BCE.

The events narrated in 2 Kings 22:1–23:30, a reform promulgated by Josiah, most likely has a connection to Deuteronomy; both mandate the centralization of ritual, but the book as we have it also incorporates social reforms that demonstrate that the reform embodied in Deuteronomy may have initially developed independently. Centralization of the cult may have had a start during the reign of Hezekiah at the end of the eighth century BCE (2 Kings 18:22). Deuteronomy was most likely composed in stages and has a complex redactional history.

The overall structure of the book bears a marked resemblance to Neo-Assyrian vassal treaties or loyalty oaths, with history in chapters 1–11, laws in 12:1–26:15, mutual obligations in 26:16–19, and blessings and curses in chapters 27–28. It is particular striking that Deut 28:23–35 contains curses in the same order as the Vassal Treaty of Esarhaddon, where the gods Sin and Šamaš are invoked to threaten the disloyal with leprosy and blindness. Deuteronomy does diverge from the Neo-Assyrian texts by incorporating blessings as well as curses and mutual obligations.

Resources: Achenbach (1991), Cook (2016), Levinson (1997, 2016), and Weinfeld (1972, 1995).

4 | WOMEN IN BIBLICAL AND ANCIENT NEAR EASTERN LAW

Because of the place of the Bible in Western society, it has been seen as having influenced the social and legal standing of women both negatively and positively. It is a topic that attracts great attention, and a heated debate has ensued over the status of women: Was the subjugation of women an essential feature of biblical law and culture, or did it aim at ameliorating the subjugation of women, and therefore, the concern for women should be highlighted? The evidence is perplexing and nuanced. Adding a comparison to ancient Near Eastern materials complicates the picture even more. Yet the interest in the question in general is positive: It corrects the narrow view of biblical culture that long ignored or misconstrued half of the Israelite population (Anderson, 2004; Lafont, 1999; Levine, 1999).

Women had a subservient status in comparison to men, and their need for protection under the law was provided for. This is part of the general program of protection for the marginalized in society, along with the widow, the fatherless, and the resident alien. Yet, despite the subservient status of women, biblical texts bear witness to individual women wielding personal influence and managing to improve their status (Barmash, 2014a; Weisberg, 2004). Women are depicted as being actors with the ability to marshal the resources to protect themselves. They are characters of significance. Even levirate marriage, often the subject of scorn in critiques of the Bible, is depicted as desired by women in the Bible.

The biblical text does not supply a complete set of procedures and laws for marriage and divorce. Nonetheless, some features are clear. The man appears to be the active party in constituting a marriage, and the verbs employed reflect this. What the husband gained was a right to marriage, not ownership of his wife. The husband had an exclusive relationship with his wife in a way that she did not have vis-a-vis her husband. Yet marriage is termed a covenant, ברית, implying a greater amount of mutuality, in Mal 2:14; Ezek 16:8; and Prov 2:17 (Kalluveetil, 1982). Wives had rights in a marriage, and whether one of those rights was conjugal rights has been contested, partially because the Hebrew phrase is difficult (Levine, 1999; Paul, 1970). It is striking that a wife was partly enfranchized.

Divorce was available to women only under unusual circumstances, but only in unusual circumstances was a man restricted in his right to divorce a wife (Exod 21:10–11; Deut 22:13–29; 24:1–4; Toeg, 1970). The amelioration of slavery finds special expression in the case of the female slave. In the Book of the Covenant, Exod 21:7–11, she was either to be redeemed or married to her master or master's son because releasing her without family resources would leave her vulnerable. In Deut 15:12–18, the female slave was to be released in the same way as the male slave because the process of release has been altered: The manumitted slave is to receive resources from the master, and therefore, the female slave was not released in a more vulnerable state than a male slave (Bennett, 2002; Levinson & Sherman, 2016; Wagenaar, 2004).

The case of the slandered bride in Deut 22:13–21 has elicited debate over the differing punishments decreed for the slandering husband versus the bride. If the husband accused his wife of not being a virgin at the time of marriage and was proven to have falsely accused her, the text ordains that he was to be flogged, forced to pay a fine to her father, and not permitted to divorce her. However, if the charges were found to be true, the text decrees that she was to be put to death. Those punishments are unequal, and they also do not follow the rules about false accusation given in Deut 19:16–21, which decrees that the false accuser should suffer the same penalty as wrongdoer would have suffered. The husband, therefore, should suffer the same fate as the slandered wife, the death penalty, but the text prescribes a lighter punishment. The inequitable punishments and contradictions between the passages have been construed in different ways. It could be that the inequity in punishment between husband and wife is due to the inequality between men and women in biblical law: The husband receives a lesser punishment because his right has been diminished by her misbehavior. However, Alexander Rofé argues that the texts are from different hands and are contradictory (Rofé, 1987). Deut 22:28–29 offers yet another contradiction: The unbetrothed virgin who has been raped and whose husband was not informed about it would suffer the same penalty as a betrothed virgin who was adulterous. A number of scholars contend that the husband has not made a formal accusation and has disparaged her in front of the community (Matthews, 1998; Pressler, 1993). In contrast, Wells (2005) argues that the husband was not seeking his wife's death but compensation from the wife's father and divorce from the wife, resulting in

humiliation for the wife and her family and therefore the husband's punishment fits the rules on false accusation. The wife's punishment was at the husband's discretion, Wells argues, as in Mesopotamian law, and he could choose a lesser penalty. But the husband's discretion is not indicated in the biblical text and must be extrapolated.

Adultery, defined as the extramarital affair of a wife, is an offense against the morals of the community, and both the wife and her paramour were to pay with their lives (Lev 20:10; Deut 22:22). The husband could not ameliorate his wife's punishment, as in Mesopotamian law, because she was not his property: He could not demand financial compensation nor do the biblical statutes address any extenuating circumstances. Biblical texts outside the legal corpora intimate that an adulterous wife could be dismissed from a marriage with a bill of divorce in Isa 50:1–2 and Jer 3:8 and that a husband could accept monetary compensation as implied in Prov 6:35.

What is striking in Mesopotamian law are marriage contracts in which both the husband and wife suffer the same fine if they divorce the other, implying that both men and women had the right to divorce. At the same time period and in the same territory, a marriage contract in which women who divorce their husbands are subject to the death penalty. It may be surmised that women and their families of origin who agree to the second type of contract may have been in an inferior financial position vis-a-vis the husband. On rare instances, a single woman, generally in the limited number of occupations open to women (e.g., priestesses, innkeepers, wetnurses, or prostitutes), acted as an autonomous household. Women did have the legal capacity to act on their own, but social custom dictated that they functioned in coordination with a husband, adult son, or brother. They rarely served as witnesses to contracts, although they did offer witness testimony in trials. Sasson (2003) urges caution in using legal texts as evidence for the status of women because non-legal texts, such as literary texts and letters, mirror a more extensive role for women in the public sphere. Sasson suggests that modern scholars of antiquity have tended to moralize as well when dealing with sexual matters.

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