

Biblical Law: The Three Legal Corpora of JE (Exodus), P (Leviticus and Numbers) and D (Deuteronomy)

Lecture 10 Transcript

<https://oyc.yale.edu/religious-studies/rfst-145/lecture-10>

Overview

This lecture introduces biblical law in a comparative approach that identifies similarities and differences between Israelite law and other Ancient Near Eastern legal traditions, such as the Code of Hammurabi. Distinctive features of Israelite law are explained as flowing from the claim of divine authorship.

1. The Initiation of God's Laws, Rules and Ordinances at Sinai

[1] *Professor Christine Hayes:* So as we saw last week, before we stopped to talk about the priestly materials and the Holiness Code — as we saw last week, the covenant ceremony at Sinai included God's announcement of and Israel's agreement to certain covenantal stipulations. So Exodus 24:3 and 4, describe this agreement as follows:

[2] Moses went and repeated to the people all the commands of the lord and all the rules; and all the people answered with one voice, saying "All the things that the lord has commanded we will do!" Moses then wrote down all the commands of the Lord.

[3] So the covenant concluded at Sinai is the climactic moment in the Pentateuchal narrative. And it came to be viewed as the initiation of God's articulation of the laws and rules and ordinances and instruction by which the ancient Israelites were to live. And so later editors consequently inserted law collections from later times and circles into the story of Israel's meeting with God at Sinai, and subsequent sojourn in the wilderness. This was done in order to lend these collections an air of high antiquity and to give them divine sponsorship. The conclusion of biblical scholarship is that a number of separate bodies of law have gravitated to the story of the 40-year period of Israel's formation into a people. So that's the period of the covenant at Mount Sinai and then the journey towards the Promised Land. All

Israelite law is represented in the biblical account as having issued from that time, that 40-year period of intimate contact between God and Israel.

[4] So on your handout [*appended to this transcript*], I've given a division, a rough division, of the different legal collections that we have in the Pentateuch. The laws that scholars will often refer to as the JE laws, since they sort of are introduced by that narrative — some people think it's best to just think of these as separate legal collections — those occur in Exodus. And so they tend to be dated tenth-ninth century in their written form. The laws of the priestly material are mostly going to be found in Leviticus and Numbers, and those will be formulated somewhere from the eighth to the sixth century. Same period of time roughly we have the laws of D, which are found, obviously, in Deuteronomy. But these sources themselves are clearly drawing upon much older traditions. Some of the individual laws are clearly quite ancient. They have a great deal in common with Ancient Near Eastern legal traditions, generally of the second millennium. The laws of Exodus, for example — some of them bear such similarity to the Code of Hammurabi that we can really assume that they are drawing upon a common legal heritage: Canaanite law or what would have been known as a legal tradition in Canaan. So whatever their actual origin, however, the bible represents these materials as having been given at Sinai or during that 40-year period after.

[5] So given at Sinai, now this is on your sheet, you have the Decalogue — not very well translated as the Ten Commandments — we'll come back to that. Covenant code, so that's a chunk of material, three chapters in Exodus. Then we have a small passage referred to as a ritual Decalogue — we'll come back to that — you have priestly legislation — a little bit in Exodus about the cult, obviously, then on into Leviticus and some Numbers. According to the biblical narrative then, the following materials were given in the 40 years after Sinai, as the Israelites are encamped in the wilderness on their journey toward the land of Israel. So those are presented as supplements in Numbers, but also the Deuteronomic code.

2. *The Decalogues*

[6] Let's talk a little bit now about the Decalogue. There was a scholar by the name of Alt, A-L-T. Albrecht Alt, a German scholar who examined the legal material of the Bible in general. And he noticed that there were really two forms of law. Yeah — these things I forgot to write down [writes on white board]. There's conditional law and apodictic law. Conditional law is case law, casuistic law. And then there's absolute or apodictic law. He noticed these two forms. Casuistic law is the common form that law takes in the Ancient Near East, and you've seen it in the Code of Hammurabi. It has a characteristic if/then pattern. Casuistic law tells you, for example, if a person does X or if X happens, then Y will be the consequence. It can be complex. It can be quite specific. If X happens, Y is the consequence, but if X happens under these different circumstances, then Z is the consequence. And it can be quite detailed giving three or four sub-cases with qualifications.

[7] Absolute or apodictic law, by contrast, is an unconditional statement of a prohibition or a command. It tends to be general and somewhat undifferentiated. You shall not murder. You shall love the lord your God. And absolute law, apodictic law, is not unknown as a form in other Ancient Near Eastern cultures, but it seems to be most characteristically Israelite. You find a great deal more of it in our legal collections in the Bible than anywhere else. The provisions of the Decalogue — and again, the translation Ten Commandments is actually a very poor translation; in the Hebrew, it simply means ten

statements, ten utterances — the ones that are in some sort of legal form, are in absolute or apodictic form. The Decalogue is the only part of God's revelation that is disclosed directly to all of Israel without an intermediary. But its directives are couched in the masculine singular. So it seems to be addressing Israelite males as the legal subjects in the community. And the Decalogue sets out some of God's most basic and unconditional covenant demands. The division into ten is a bit awkward. It probably should be seen as an ideal number, an effort to find ten statements in there. Because, in fact, there are really about 13 separate statements. And we see the fact that ten doesn't work very well in a very interesting phenomenon, which is that the so-called commandments are actually numbered differently by Jews and by Christians and then even within the Christian community, different Christian denominations number the commandments one through ten quite differently from one another. They disagree about what is number one and what is number two and so on.

[8] The first statements, either one through four or one through five depending on your counting, but the first group of statements concern Israel's relationship with her suzerain, with God. She's to be exclusively faithful to God. She's not to bow down to any manmade image. She may not use God's name in a false oath, to attest to or swear by a false oath. She is to honor God's Sabbath day, and honor parental authority, which is arguably an extension of God's authority. The remaining statements then concern Israel's relationship with her fellow vassals, if you will. And they prohibit murder and adultery and robbery, false testimony and covetousness. It's important to realize that the Pentateuch contains three versions of the Decalogue. And there are differences among them. The Decalogue is going to be repeated in Deuteronomy, chapter five. And there are some minor variations. Specifically, you'll see that the rationale for observing the Sabbath is different. God's name in Deuteronomy 5 is not to be used in a vain oath as opposed to a false oath. There are differences in the meaning. And there are some more differences too in language. So what are we to make of this?

[9] One scholar, Marc Brettler, whose name I've mentioned before, he says that what we learn from this, these variations, is something about the way ancient Israel preserved and transmitted

sacred texts. They didn't strive for verbatim preservation when they transmitted biblical texts. And they didn't employ cut and paste methods that might be important to us in the transmission of something. Texts were modified in the course of their transmission. Verbatim repetition was not valued in the way that it might be for us. So that even a text like the Decalogue, which is represented as being the unmediated word of God, can appear in more than one version.

[10] There's a more surprising variation that occurs, however, in Exodus 34. After smashing the first set of tablets that were inscribed with the Decalogue — the tablets in Exodus 20, those are smashed after the golden calf incident — Moses is then given a second set of tablets. And the biblical writer emphasizes in the story at that point that God writes on the tablets the words that were on the former tablets that were broken. The same words. So we expect now a verbatim repetition of Exodus 20. And yet we don't have it. The Decalogue that follows in fact has very little overlap with the earlier Decalogue. There's really only two statements that even have the same content. And even those, which do overlap in content, vary in wording. This Decalogue, which is often called the ritual Decalogue, so it's listed on there [the handout] in Exodus 34, bans intermarriage with Canaanites lest they entice the Israelites into worship of their gods. It has other terms that give commandments about the observance of the festivals, various festivals, the dedication of first fruits to God, the dedication of first-born animals to God and so on; things that were not in the Exodus 20 Decalogue.

[11] So evidently, there were different traditions regarding the contents of the Decalogue. And the story of the golden calf and Moses' destruction of the first set of tablets is a brilliant narrative strategy for introducing this second Decalogue tradition. Also surprising is the fact that the Decalogue in Exodus 20 doesn't stand completely unchallenged in the Bible. Exodus 20, verses 5 through 6, contain explicitly the principle of inter-generational punishment. God is said to spread punishment for sin out over three or four generations. This is understood as a sign of his mercy. It's reducing the punishment on the actual sinner by spreading it out and limiting the consequences to only three or four generations, in contrast to what is said in the next verse, that kindness he spreads out over thousands of generations. Right? So it's seen as

merciful mode of operation. But the notion of intergenerational punishment is something that some segments of the community or perhaps later in time was rejected? Some segments of the community rejected this notion. And so in Deuteronomy 7, we see that quite pointedly. "God punishes only those who spurn him, and does so instantly." Ezekiel, when we get to Ezekiel, we'll see that he will also very adamantly reject the idea of intergenerational punishment. The children do not suffer for the sins of the father, only the father. So what are we to make of this?

[12] Again, Marc Brettler concludes that the Decalogue or Decalogues did not originally possess the absolute authority that is so often claimed for it even today. Later religious traditions have elevated the Decalogue in Exodus 20 to a position of absolute authority. A position that's not completely justified given the Bible's own fluid treatment of the wording, the Decalogue's text, and its content, and its later objection even to one of its terms. So the claim that God's revelation of the Decalogue was fixed in form — the words that we see in Exodus 20, for example — and immutable in substance is not a claim that's really native to or even justified by the biblical text. It's a later ideological imposition upon the text.

3. Biblical Law in Comparison with Ancient Near East Legal Collections

[13] And I want to talk a little bit more about biblical law's connection with the legal patrimony of the Ancient Near East. Because certainly biblical law shares in that patrimony, even if sometimes it's clearly reforming it. So it's helpful and it's instructive to compare it with other ancient law collections. And I hope you've had time to sit and read — there was a study guide posted on the website and I hope you had time to work through these materials. They're fascinating. And we'll see that there are certain key features that distinguish Israelite law from the other Ancient Near Eastern legal collections. I've also put on the handout for today just a list of those collections: the Laws of Ur-nammu, the Laws of Lipit-Ishtar, the Laws of Eshnunna, the Code of Hammurabi, which is CH, the Hittite laws, the youngest laws would be the middle Assyrian laws, giving you rough dates and so on. So you

have that to refer to for the information about these particular collections.

[14]I should also say that we would do better to understand these materials as legal collections and not codes. I know the word code gets thrown around a lot, Code of Hammurabi and so on. But they really aren't codes. Codes are generally systematic and exhaustive and they tend to be used by courts. We have no evidence about how these texts were used. In fact, we think it's not likely that they were really used by courts. But they were part of a learned tradition and scribes copied them over and over and so on. They are also certainly not systematic and exhaustive. So for example, in the Code of Hammurabi, we don't even have a case of intentional homicide. We only have a case of accidental homicide. So we really don't even know what the law would be in a case of intentional homicide. We can't really make that comparison with the biblical law.

[15]Now, in a very important article that was written nearly half a century ago now, it's hard to believe, by a man named Moshe Greenberg — he's a biblical scholar and he argued that a comparison of biblical law with other Ancient Near Eastern collections reveals the central postulates or values that undergird biblical law [Greenberg 1976]. I'll be drawing extensively on Greenberg's work in this presentation as well as other scholars who have picked up some of his ideas and have taken them in other directions. But it was really Greenberg who was the one who I think made the first foray into this kind of comparative approach, and since then others have taken advantage of that idea.

[16]There is, Greenberg says, an immediate and critically important difference between Ancient Near Eastern collections and the Israelite laws as they're presented by the biblical narrator. And that's a difference in authorship. So if you look, for example, at the prologue to the laws of Ur-nammu: An and Enlil gave kingship to Ur-nammu, but Ur-nammu is said to establish equity and the laws. If you look at Lipit-Ishtar, both the prologue and the epilogue: An and Enlil, the gods, give kingship to Lipit-Ishtar, but Lipit-Ishtar establishes justice. He refers to the laws as "my handiwork" in the first person. Or the prologue to the Code of Hammurabi. Again, lofty Anum and Enlil established for him an enduring kingdom. They name him "to promote the welfare of the people...cause justice to

prevail... When Marduk commissioned me... to direct the land" and now it continues in first person speech: "I established law and justice in the language of the land...At that time, (I decreed): the laws of justice," the laws that the efficient King Hammurabi set up. "I wrote my precious words on my stela," which you can go and see at Sterling Memorial Library [Yale University's main library] "and in the presence of the statue of me, the king of justice, I set [it] up in order to administer the law of the land, to prescribe the ordinances of the land, to give justice to the oppressed." And he refers to it as "my justice," "my statutes," no one should rescind them. "My inscribed stela," "my precious words." Do not alter the law of the land which "I" enacted; I, I, I throughout [see note 1].

[17]By contrast in biblical law, authorship is not ascribed to Moses, ever. It is attributed always to God. So you see in Exodus 24:3 and 4:

[18]Moses went and repeated to the people all the commands of the lord and all the rules; and all the people answered with one voice, saying "All the things that the lord has commanded we will do!" Moses then wrote down all the commands of the Lord.

[19]It's the repetition that makes you feel that the biblical writer here is not accidentally saying these things, trying to drive home a very strong point. Exodus 31:18: "When he [God] finished speaking with him on Mount Sinai [with Moses on Mount Sinai], He gave Moses the two tablets of the Pact, stone tablets inscribed with the finger of God."

[20]So Greenberg, and since him, Brettler, and many others, have argued that the principle of divine authorship has certain very important implications. First, it has a significant effect on the scope of the law. Ancient Near Eastern and biblical law differ concerning the areas of human life and activity that fall within the concern of the law. That doesn't mean they don't fall within the concern of humanity; they just fall within concern of the law. That's an idea I'll come back to in a minute. Israelite law will contain more than just rules and provisions that fall within the scope of the coercive power of the state to enforce. More than what would fall under the jurisdiction of law courts, for example, or legal decisors. It is holistic. The scope of the law is holistic. It's going to contain social and ethical and moral and religious prescriptions,

and very often they're going to be couched in an authoritative, apodictic style, particularly the things that aren't enforceable in a court of law. They will tend to be the ones that are backed up by the authority of God directly: you shall do this, I the Lord am your God. Notice how many times that refrain is used. And it's almost always used with those unenforceable kinds of things. Love your neighbor as yourself, you know, I the Lord am your God. It's me who's watching out for this one, not the court, okay?

[21]The extra-biblical law collections deal almost exclusively with matters that are enforceable by the state. That doesn't necessarily mean they were. We don't know how these were used. But they don't tend to deal with matters that we would call, we would call, matters of conscience or moral rectitude. So you'd be very hard pressed in the extra-biblical collections to find a law like Exodus 23:4 and 5:

[22]When you encounter your enemy's ox or ass wandering, you must take it back to him. When you see the ass of your enemy lying under its burden, and you would refrain from raising it, you must, nevertheless, raise it with him.

[23]Or Leviticus 19:17 and 18: "You shall not hate your kinsfolk in your heart." Can you imagine Congress passing a law like that? "You shall not hate your kinsfolk in your heart. Reprove your kinsmen, but incur no guilt because of him." And don't carry around a grudge. Reprove him, tell him what's wrong, clear the air. Don't carry around a grudge. "You shall not take vengeance or bear a grudge against your countrymen. Love your fellow as yourself: I am the Lord." That refrain always comes after those kinds of statements.

[24]So the Bible includes norms for human behavior set by the divine will, even though enforcement has to be left to the individual conscience. And in the Torah, therefore, life is treated holistically in the realm of law. One's actions aren't compartmentalized, and that's why the legal materials to us can sometimes seem like an indiscriminate mix of laws concerning all areas of life. And it's one of the things that makes people confused. Because a lot of moderns have gotten the idea that the Bible only deals with what we call morality. And so they don't understand all this other stuff that's in there, right? And sometimes if we tell ourselves, well,

this is a legal collection, then we don't understand why there's all this moral-looking stuff in there. It is a mixture because it's holistic. It is the will of God, and God has something to say about all areas of life.

[25]And so in Exodus 23, you're going to have a law that tells you not to oppress a stranger because you were a stranger. It tells you to not plow your land in the Sabbath year immediately following that to let the poor and needy eat from it. It tells you to observe the Sabbath day rest. You shall not mention any other gods. It tells you how to observe the three pilgrimage festivals and rules of ritual offering and then there are also civil laws. Same thing in Leviticus: 18 through 20. We have incest laws, we have ritual laws, we have civil laws and we have moral laws all together.

[26]Now, a second implication — another idea that flows from the fact that this law is divinely authored — so a second implication of divine authorship, according to Greenberg, is this connection between law and morality so that in the biblical, legal framework, every crime is also a sin. Every crime is also a sin. Law is the moral will of God and nothing is beyond the moral will of God. So what's illegal is also immoral, and vice versa; what's immoral is also illegal. Law and morality are not separate, as we moderns tend to think they are and ought to be, right, in our society. Offenses against morality in the biblical world are also religious offenses. They're also sins because they are infractions of the divine will. So the fusion of morality and law, Greenberg argues, is the reason that biblical law not only expresses, but legislates a concern for the unfortunate members of society, for example; orphans, strangers, widows, as well as respect for the aged. From the Priestly source, this is Leviticus 19:32, we read, "You shall rise before the aged and show deference to the old; you shall fear your God. I am the Lord." Again, that refrain always has to come with this kind of a statement.

[27]The extra-biblical codes certainly exhibit concern for the rights of the poor. This is very important, particularly in their prologues. We've read some of these prologues. You know, my [the legislator's] desire was to help the orphans, the strangers and so on. But when you look at the content of the laws, as in our society, they don't legislate charity. They don't legislate compassion. It's likely that these were

considered acts of, who knows, personal conscience, religious conviction, something that was between the individual and society and their God. I don't know, but they were outside the domain and jurisdiction of the court. That doesn't mean that charity and compassion were not present in other Ancient Near Eastern cultures. The point is that law is not understood as being the appropriate vehicle for the expression of those values. There were other sorts of texts that might do those sorts of things and urge people to charity and compassion. But law, the legislation, is not understood to be the appropriate vehicle for the expression of those values. So again, I'm not trying to say that in Ancient Near Eastern society, everybody was mean, I'm trying to say that [in biblical Israel] law, because of its divine authorship, suddenly takes on a scope, a holistic scope and a fusion of law and morality that are kept separate in other cultures and very much in our own.

[28] So the two, however, are combined. And law is understood to be the appropriate vehicle to legislate compassion, for example. So in Leviticus 19:9, verse 10, legislating charity,

[29] When you reap the harvest of your land, you shall not reap all the way to the edges of your field, or gather the gleanings of your harvest. You shall not pick your vineyard bare, or gather the fallen fruit of your vineyard. You shall leave them for the poor and the stranger: I, the Lord am your God.

[30] Again, from the Holiness Code, Leviticus 19:14, "You shall not insult the deaf, or place a stumbling block before the blind. You shall fear your God: I am the Lord." Again, always has to back it up because this is not something the courts can back up, right? This is a question of your morality. Or Leviticus 20:18 [correction: 19:18] "Love your fellow as yourself. I am the Lord."

[31] Leviticus 19:33-34: "When a stranger resides with you in your land, you shall not wrong him. The stranger who resides with you shall be to you as one of your citizens; you shall love him as yourself, for you were strangers in the land of Egypt: I, the Lord, am your God."

[32] Deuteronomy 22:6: "If, along the road, you chance upon a bird's nest, in any tree or on the ground with fledglings or eggs and the

mother sitting over the fledglings or on the eggs, do not take the mother together with her young. Let the mother go, and take only the young, in order that you may fare well and have a long life," meaning God will reward you. So again, this is enforceable by God.

[33] Furthermore, Greenberg argues that the fact that every crime is also a sin lays the ground for certain acts to be viewed as absolutely wrong, and transcending the power of humans to forgive. Absolutely wrong and they transcend the power of humans to pardon or forgive. Take for an example, adultery. Deuteronomy 22:22: "If a man is found lying with another man's wife, both of them — the man and the woman with whom he lay — shall die. Thus, you will sweep away evil from Israel." And murder is the other one. Numbers 35:16, "...the murderer must be put to death..." "You may not accept a ransom for the life of a murderer" [this is now verse 31] "who is guilty of a capital crime; he must be put to death." In the view of the biblical text, adultery and murder are absolutely wrong. They must always be punished regardless of the attitude of the offended parties. So a husband can't say "Oh, that's okay, I don't want to punish my wife; let them have their fun. It's no big deal; I don't mind." Alright? And the family of a murder victim can't say, "You know, Joe was such a pain in the neck anyway, you've really done us a favor, you know? Just pay the funeral costs, we'll call it quits." You can't do that. These are absolutely wrong. These deeds, as infractions of God's will, and God's law, they're always wrong. They transcend the power of human parties to pardon or forgive or excuse.

[34] And you compare that with the extra-biblical collections and you see quite a difference. In the Code of Hammurabi, number 129, adultery is considered a private affair. "If the wife of a seignor" — and I have to — this terminology is just wonderful. Seignor. This comes, I think, from French feudalism. These have to do with class distinctions. And so the translators of this particular translation chose these feudal — very meaningful to you I'm sure — these feudal categories. Essentially what's going on here is the underlying Akkadian words, I guess, are *awilum*, *mushkenum*, and then a third category, slave. When the three — when they appear together, *awilum* tends to refer to an upper-class person, *amushkenum* to a commoner. *Awilum* can just mean an ordinary citizen, but when it's

in juxtaposition with the other terms, it's clearly someone of a higher social class. So we'll use aristocrat, which is where we get the French feudal seignor, and then we'll use commoner and slave. So in the Code of Hammurabi, "If the wife of a citizen has been caught while lying with another man, they shall bind them and throw them into the water. But if the husband of the woman wishes to spare his wife, then the king in turn may spare his subject." It's up to the husband. He's the offended party. It's a private matter. He decides.

[35]The middle Assyrian laws on Tablet A numbers 14 to 16. Again, it's a crime against the property of the husband, and so it's within his power to either prosecute or not. "If a seignor," an awilum has lain with the wife of another, either in a temple brothel or in the street knowingly," knowing that she was a wife, "then they shall treat the adulterer as the seignor orders his wife to be treated." Okay? So whatever he does to her, they do the same thing to the male. But if he was innocent, he didn't know that she was a married woman, "the seignor shall prosecute his wife, treating her as he thinks fit." It's up to him. "If... the woman's husband," more ifs and thans, but here's a case of "if... the woman's husband puts his wife to death, he shall also put the seignor to death, but if he cuts off his wife's nose, he shall turn the seignor into a eunuch" — I guess this is considered equivalent — "and they shall mutilate his whole face. However, if he let his wife go free, they shall let the seignor go free."

[36]Again, it's a private matter. In the Hittite laws as well, Tablet 2, 197-198, the husband can decide to spare his wife,

[37]If he brings them to the gate of the palace and declares: "My wife shall not be killed" and thereby spares his wife's life, he shall also spare the life of the adulterer and shall mark his head. But if he says, "Let them die both of them!" ...[then] the king may order them killed, [but also], the king may spare their lives.

[38]And we see the same sorts of distinctions in murder cases. We'll come back to them later.

[39]A third implication or consequence of the divine authorship of biblical law, according to Greenberg, is that the purpose of the law in Israelite society is going to be different from the purpose of the law in other societies. So in non-

Israelite society the purpose of the law is to secure certain sociopolitical benefits. Think about the preamble of the American Constitution, which states the purpose of the law. It reads almost exactly like the prologues to these ancient collections. You can pick out words that are identical. The purpose of the law is to "establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty."

[40]So when you see the prologue of Ur-nammu, the purpose of the law: "establish equity," protect the underprivileged, promote the common weal and welfare, basically. The Laws of Lipit-Ishtar in the prologue: "establish justice... banish complaints," I like that one, "bring wellbeing" — promote the common weal and welfare. Same again with the Code of Hammurabi's prologue: to promote the welfare of the people, good government, the right way, prosperity.

[41]But for Israel, the law does include these benefits, but is not limited to these benefits. The law also aims at sanctifying. A concept we dealt with at great length in the last lecture. Sanctifying, rendering holy or like God those who abide by its terms. So the laws that are presented in the Holiness Code are introduced with this exhortation, which you don't find in other places. Leviticus 19:2: "You shall be holy for I, the Lord your God, am, holy." And then the laws begin; "You shall each revere your mother and father,... keep my Sabbath," etcetera, etcetera. But the introduction, "You shall be holy for I the Lord your God am holy" — being holy in imitation of God is emphasized repeatedly as the purpose of the laws in the Holiness Code especially.

[42]The holiness motif is represented as being present at the very inception of the covenant. When Israel is assembled at Mount Sinai, that opening speech that God makes in Exodus 19:5 and 6, "Now then, if you will obey Me faithfully and keep My covenant, keep my laws, you shall be My treasured possession among all the peoples. Indeed, all the earth is Mine, but you shall be to Me a kingdom of priests and a holy nation." These are the rules that demarcate you as dedicated to me; i.e. holy.

4. Radical, Characteristic Features of Israelite Law

[43] Now, there are lots of general and specific similarities and parallels between Israelite and Ancient Near Eastern laws. Lots of goring oxen, lots of pregnant women who are in the wrong place at the wrong time and getting struck and accidentally miscarrying. But we're going to look at some of the formal and stylistic differences between Ancient Near Eastern and biblical law. And we can assume just a tremendous amount of common ground, okay? And some of these are pointed out by Greenberg and some by other scholars. But I've listed them there under "features."

[44] One distinguishing feature of Israelite law is the addition of a rationale or a motive clause in many of the laws. Which again is not something that's really featured in the genre of law writing in these other collections. It's not a part of the genre of writing those. It doesn't mean they didn't have a rationale, but it wasn't how it was presented. So we find this in the Bible particularly in what we might refer to as the humanitarian laws. And on the whole, these rationales will appeal to historical events like the exodus or creation.

[45] Here are a few laws that express the idea that the experience of slavery and liberation should be the wellspring for moral action. It should be the impetus for moral action. Exodus 22:20: "You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt." 23:9: "You shall not oppress a stranger, for you know the feelings of the stranger, having yourselves been strangers in the land of Egypt." And Leviticus 19 contains a similar exhortation not to wrong a stranger who resides with you, but "love him as yourself for you were strangers in the land of Egypt." Likewise, in Deuteronomy 5 — this is the Decalogue in Deuteronomy — which is talking about Sabbath observance, and ensuring that all in your abode rest "...you, your son or your daughter, your male or female slave, your ox or your ass, or any of your cattle..." [any] "stranger in your settlements, so that your male and female slave may rest as you do. Remember that you were a slave in the land of Egypt and the Lord your God freed you from there." Also [Deut 10:17-19], "For the Lord your God is God supreme and Lord supreme, the

great, the mighty and the awesome God who shows no favor and takes no bribe [bribe]." Takes no bribe also! But takes no bribe [correction: bribe is the correct word] "...but upholds the cause of the fatherless and the widow, and befriends the stranger, providing him with food and clothing. [So] you too must befriend the stranger, for you were strangers in the land of Egypt."

[46] We have two rationales there; one is the explicit rationale of *imitatio dei*. This is what I do and this is what you should do. And there are more. Many of them referring to the exodus in Egypt and others referring to the notion of *imitatio dei*.

[47] So it's also illuminating to compare the Ancient Near Eastern and the biblical legal materials in terms of the concern for the disadvantaged, the elimination of social class distinctions, and a trend toward humanitarianism.

[48] Greenberg notes that the Torah's concern for the disadvantaged of society is quite marked in the actual laws themselves. Many of the extra-biblical legal collections pay homage to this idea in their prologues. It doesn't always seem to be appearing, however, in the actual terms of these collections. Now, these collections are incomplete. We don't have everything. And again, it may be another literary genre that accomplished some of that work in that culture. The Torah laws — And also, the laws in those collections very often, despite the prologues' rhetoric that they bring justice to the disadvantaged and so on, many of the laws clearly serve the interests of an upper class. Okay, that's the more important point. They clearly serve the interests of an upper class.

[49] The Torah laws do not contain all the same distinctions of social class among free persons as the contemporary laws — the Laws of Eshnunna, the Laws of Hammurabi. These [latter] laws distinguish between punishments for crimes committed against upper class and lower-class persons, not to mention slaves. So if we look at the Code of Hammurabi, there's a stretch of laws numbering 195 to 208 something. And they're — very interesting to read them all in a row. I'll hit some highlights. So if an upper class person, if an aristocrat has destroyed the eye of a member of the aristocracy, they destroy his eye. If he breaks his bone, they break his bone. But as you move down to 198, if he destroys the eye of a commoner or breaks the

bone of a commoner, he pays one mina of silver. And if it's a slave, he pays half the value of the slave. On to 200 and 201: If he knocks out an aristocrat's tooth, they knock out his tooth. But if it's a commoner's tooth, he pays a third of a mina of silver, and so on.

[50]The Hittite laws too: there are different amounts fixed by class in the miscarriage laws, 95 and 99. The middle Assyrian laws also distinguish between the awilum, the mushkenum and the slave. Leviticus 24:17-22 — we have, there, laws of personal liability; bodily injury, assault and battery or bodily injury. And we find a clear and explicit statement to the effect that there shall be one standard for citizen and stranger alike. This is known as the principle of talion; *lex talionis*. So reading from Leviticus,

[51]"If anyone maims his fellow." "If anyone maims his fellow, as he has done so shall it be done to him: fracture for fracture, eye for eye, tooth for tooth. The injury he inflicted on another shall be inflicted on him... You shall have one standard for stranger and citizen alike: for I the Lord, am your God."

[52]This was a radical concept in its day, evidently. The punishment should fit the crime, no more and no less for all free persons — granted slaves are not included — regardless of social class. Equality before the law. And this casts the principle of talion, I hope, in a new light. The law of talion, which is essentially the principle that a person should be punished according to the injury they inflicted, it's been decried as a primitive, archaic reflex of the vengeance or vendetta principle. The notion of "an eye for an eye" is usually cited or held up as typical of the harsh and cruel standards of the vengeful Old Testament God. But when you look at it in a comparative light in its legal context, we see that it's a polemic against the class distinctions that were being drawn in antecedent and contemporary legal systems, such as the Code of Hammurabi.

[53]According to the Bible, the punishment should always fit the crime regardless of the social status of the perpetrator on the one hand or the victim on the other. All free citizens who injure are treated equally before the law. They're neither let off lightly nor punished excessively. If you read the middle Assyrian laws, don't want to do that on an empty stomach. A.20, A.21 and F1 — you have multiple punishments that are

carried out. Someone who causes a miscarriage: they have a monetary fine, they have to pay two talents and 30 minas of lead. They're flogged 50 times and then they have to do *corvée*, forced labor for the state for a month. Multiple punishments. For sheep stealing, that's even worse. You're flogged 100 times and they pull out your hair and there's a monetary fine, and you do *corvée*, forced labor, for a month.

[54]So are these ideas — is this idea that the punishment should be neither too little nor too much, it should match the crime, that all free persons are equal before the law, that one standard should apply regardless of the social status of the perpetrator or the victim — are these ideas really primitive legal concepts? In addition to asserting the basic equality before the law for all free citizens, the Bible mandates concern for the disenfranchised. We've already seen that a little bit in the laws of Leviticus 19:9-10, which says that you have to leave, you know, don't go over your fields picking every little last bit. You know, just go through, get what you need, but leave a little bit behind and let the poor and the stranger glean there. Deuteronomy is a little less generous. They substitute the phrase "the widow, the orphan and the stranger" in that law where Leviticus says the poor. Deuteronomy 24:20-22:

[55]When you beat down the fruit of your olive trees, [or gather the grapes of your vineyard; see note 2] do not go over them again. That [which remains on the tree] shall go to the stranger, the orphan [see note 3] and the widow... Always remember you were a slave in the land of Egypt, therefore do I enjoin you to observe this commandment.

[56]So Leviticus supports outright charity for the poor in the form of gleanings. Kind of a welfare system. Deuteronomy has more of a workfare system in mind; they actually never mention the poor. It's only Leviticus that mentions the poor. For Deuteronomy, it's those who really can't provide for themselves: the widow, the orphan and the stranger who may not be able to find employment. The poor should be working. But you can assist them with loans, according to Deuteronomy. And these should be generous. Here's Deuteronomy's admonition to loan money to the poor even if it means potential loss to yourself because the seventh year is imminent; the sabbatical year. In the sabbatical year, all debts were released, cancelled. Okay?

Sort of an economic corrective to restore people to a more equal economic situation. So in the sixth year, some people will feel ‘I don’t really want to lend money out. It’s going to be cancelled next year. I won’t get my money back.’ Loans must be made even if the debt will be cancelled, for the simple reason that the problem of poverty is a terrible and persistent problem.

[57]Deuteronomy 15:7-11: If there is among you a poor man, one of your brethren, you shall not harden your heart or shut your hand against your poor brethren, but you shall open your hand to him and lend him sufficient for his need whatever it may be. Beware lest you harbor the base thought, ‘the seventh year, the year of debt release is approaching’ so that you are mean to your poor kinsman and give him nothing. You shall give to him freely, and your heart shall not be grudging when you give to him, for the poor will never cease out of the land.

[58]Alright, the poor will always be with you. This is where it comes from, but it gets misquoted later. It’s taken to mean the poor are always with you, so you don’t have to do anything. That’s not what it means here in Deuteronomy. Lend to them because the poor will never cease out of the land,” therefore I command you, open wide your hand.”

[59]Get busy, give charity. It’s a problem that never goes away, so you can never rest.

5. Reversing the Code: Sanctity of Human Life

[60]Connected with this is the biblical trend towards humanitarianism. And there is, of course, much in biblical legislation that offends modern sensibilities. There’s no point in pretending that there isn’t. For example, as in the rest of the ancient world, slavery existed in Israel. It did. Even so, and this is not to apologize for it, there is a tendency toward humanitarianism in the laws concerning slavery. The Bible is equivocating on this institution. In some societies, in their legal systems, it’s clear that slaves are the chattel, the property of the master. The Bible, again, equivocates on this question. They affirm some personal rights for the slave, but not all. In contrast to, for example, the middle Assyrian laws, where a master can kill a

slave with impunity, the Bible legislates that the master who wounds his slave in any way, even losing a tooth — which is understood to be a minor thing, because it’s not in any way an essential organ — so even if he knocks out a tooth, right, he has to set him free. That’s in Exodus 21:26-27. Moreover, the slave is entitled to the Sabbath rest and all of the Sabbath legislation. And quite importantly, a fugitive slave cannot be returned to his master. That’s in Deuteronomy 23:16-17:

[61]You shall not turn over to his master a slave who seeks refuge with you from his master. He shall live with you in any place he may choose among the settlements in your midst, wherever he pleases; you must not ill treat him.

[62]This is the opposite of the fugitive slave law, actually in this country in the nineteenth century, but also in Hammurabi’s Code. Right, Hammurabi’s Code, 15, 16 through 19: “If a citizen has harbored in his house either a fugitive male or female slave belonging to the state or private citizen and has not brought him forth at the summons of the police, that householder shall be put to death.”

[63]The term of Israelite, Israelite slavery, that is to say an Israelite who has fallen into service to another Israelite through, generally, indebtedness — that’s a form that slavery took in the ancient world and in the biblical picture — the term was limited to six years by Exodus, by the Covenant Code. In the Priestly code, it’s prohibited altogether. No Israelite can be enslaved to another Israelite. So it’s actually done away with as an institution altogether. In general, the Bible urges humanitarian treatment of the slave, again, ‘for you were once slaves in Egypt’ is the refrain.

[64]Other evidence of the trend towards humanitarianism is the lack of legalized violence in the Bible. Here if you compare the Middle Assyrian laws, you’ll see something quite different. There, the middle Assyrian laws explicitly authorize inhumane treatment of a deserting wife — you can cut off her ears; legalized violence in the case of a distrainee, a distrainee is a pledge, someone who has been placed in your house because of a debt and is working for you. The citizen may do what he wishes as he feels the distrainee deserves. He may pull out his hair. He may mutilate his ears

by piercing them. The middle Assyrian laws also legalized violence against a wife. “When she deserves it” a seignor may pull out the hair of his wife, mutilate or twist her ears. There’s no liability attaching to him.

[65] Legal systems often express their values by the punishments that are posited for various transgressions. And here, Moshe Greenberg has done something very interesting, a little controversial, not everyone agrees with this. But he’s pointed out that the Bible differs from the other extra-biblical codes in the value that it places on human life. And you consider the crimes that are punished by capital punishment, and the crimes that are punished by monetary compensation, and he feels this is quite revealing.

[66] So I’ve put this very handy little chart on the board for you listing codes on one side. And you’ll see the kinds of things that are punished by monetary fine or compensation. In the Hittite laws, homicide — you pay a certain amount of money to compensate for the death. Personal injury, bodily injury, you pay a certain amount of money. In the middle Assyrian laws also, homicide — it’s up to the family. They can decide how they want this to be punished, but they can take money. Code of Hammurabi, we only have an accidental homicide case, we don’t have an intentional homicide case, so we don’t know, but bodily injury when it’s between equals, then the principle of talion applies. But when it’s not between equals, monetary payment and so on. Death, on the other hand, is the punishment for certain property crimes instead of personal injury and homicide crimes. Death for theft in the Hittite laws and for bestiality. In the middle Assyrian laws, also theft and in the Code of Hammurabi, theft and cheating. I’ll go over some of these in a little more detail.

[67] So Greenberg is going to argue that the Bible reverses the view of the other codes, he says, because in those, life is cheap and property is highly valued. So Hammurabi’s Code imposes the death penalty for the theft of property, for assisting in the escape of a slave, which is its master’s property, for cheating a customer over the price of a drink. Middle Assyrian Laws: there’s death to a wife if she steals from her husband and death to any who purchased the stolen goods. The Bible never imposes the death penalty for violations of property rights — personal property rights, private property rights.

Only for intentional homicide, and certain religious and sexual offenses, which are seen to be direct offenses to God. Greenberg argues that in so doing, the Bible is expressing the view that the sanctity of human life is paramount in its value system. The Bible states explicitly that homicide is the one crime for which no monetary punishment can be substituted. You cannot ransom the life of a murderer. He must pay with his life.

[68] Numbers 35:31-34: “You may not accept a ransom for the life of a murderer who is guilty of a capital crime; he must be put to death. Nor may you accept ransom in lieu of flight to a city of refuge.” Remember if it’s an accidental homicide, there is a leniency in the law that that person can run to a city of refuge and remain there until the death of the high priest. The shedding of his blood purges the land of “blood guilt,” if you will, because this is a religious crime. But you can’t pay money instead of running to the city of refuge. “You shall not pollute the land in which you live.” There’s a notion here of blood guilt, of pollution.

[69] ...blood pollutes the land, and the land can have no expiation for blood that is shed on it, except by the blood of him who shed it. You shall not defile the land in which you live, in which I myself abide, for I the Lord abide among the Israelite people.

[70] And outside the Bible, we really don’t have that absolute ban on monetary compensation for murder. Greenberg has argued that for the biblical legislators, human life and property are simply incommensurable. Crimes in the one realm cannot be compensated by punishment in the other realm. A crime in the realm of life/personal injury has to be compensated in the same realm. In the same way property crimes are not punished by death.

[71] Also in the bible there’s no, what I call, literal punishment. You’ll sometimes see people refer to this as vicarious punishment. I don’t think it’s vicarious punishment. I call it literal punishment. Literal punishment: for example, in the Code of Hammurabi, where someone’s ox kills a child, then the ox owner’s child is killed. That’s not vicarious. You’re not substituting. It’s literal. The legal subject is the father; he has lost a child. So I have to suffer the literal punishment, as a father, I have to lose my child.

Right? It's not a substitution; it's a literal punishment for what you did to the other.

[72]And the Bible explicitly rejects that idea. In Exodus 21, it explicitly says that the owner's child is not to be put to death, is not killed. Deuteronomy 24:16 states that, "Parents shall not be put to death for children, nor children be put to death for their parents: a person shall be put to death only for his own crime." The equal value of human life and limb is also protected by the principle of talion that we discussed above. In the Code of Hammurabi, an aristocrat can simply pay money for injuring an inferior. That's not going to be much of a hardship to a wealthy person, and it certainly reflects the low value that's placed on the life and limb of a member of the lower class. Talion only applies between social equals in the Code of Hammurabi. In the Bible, the extension of talion to all free persons, regardless of class, expresses the notion that all persons are of equal value. In the case of rape, the rapist's wife is not raped, as happens in the middle Assyrian laws. Again, a literal punishment.

[73]Other biblical values are reflected in the emphasis on laws that deal with the plight of the poor, the slave, the alien, the rights and dignity of debtors and so on. I've reached just about the end of my time. Just one last statement, because I don't want to leave you with the impression that the biblical materials speak with one voice — they don't. I mean, Greenberg has tried to pull out some common values. Biblical legal materials contain provisions that contradict one another. Later versions of the law, particularly in D for example, will update and revise earlier versions of the law. Leviticus takes issue with the whole institution of Israelite slavery that's accepted in the covenant quoted in Deuteronomy and says just no, that can't happen. All Israelites are servants of God; none of you can be servants to another. So in these laws — there is contradiction.

[74]Nevertheless, I think what Greenberg is trying to say is that it is still fair — even though the materials contain contradictions — it's still fair to say that they sound certain common themes. They express certain important principles and values, which include: the supreme sanctity of human life: that's pretty consistently maintained among the codes; the value of persons over property: pretty consistently maintained; the

equality of all free persons before the law: consistently maintained; the importance of assisting the disadvantaged in society: very consistently maintained; the integration and the interdependence of all aspects of human life all coming within the will of God to legislate: very consistently maintained. When we come back on Monday, I just want to say a little bit about the narrative context in which the laws are found before we move on into Deuteronomy. Monday evening will be the time at which the midterm exam will be posted on the website, and that'll be at 6:00 pm Monday evening. You'll have a 24-hour period of time in which to find — I forget what I said — 30 or 40 minutes? It'll be clear on the instructions. To just sit and treat it as if you're in an in-class exam situation, and write your essay.

[75][end of transcript]

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[76]Notes

[77]1. All citations of the Ancient Near Eastern legal texts throughout this lecture are taken from the translations found in *Ancient Near Eastern Texts Relating to the Old Testament*, ed. James B. Pritchard Princeton: Princeton University Press, 1950, 1955.

[78]2. This clause appears in the next verse.

[79]3. JPS translation has "fatherless."

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[80]References

[81]Unless otherwise noted, all biblical citations have been quoted from "Tanakh: The New JPS Translation According to the Traditional Hebrew Text." Copyright (c) 1985 by The Jewish Publication Society. Single copies of the JPS biblical citations cited within the transcripts can be reproduced for personal and non-commercial uses only.

[82]Greenberg, Moshe. 1976. *Some Postulates of Biblical Criminal Law*. In *Yehezkel Kaufman Jubilee Volume*. Jerusalem: Magnes Press, 1960. Reprint, *The Jewish Expression*, ed. Judah Goldin. New Haven: Yale University Press.

RLST 145 -- Introduction to the Old Testament/Hebrew Bible

Study Guide for lecture on Wednesday, October 11

Biblical Law

Readings in Ancient Near Eastern Law Codes:

Laws of Lipit-Ishtar (LI) – on line; course packet

Laws of Ur-Nammu (UN) -- on line; course packet

Laws of Eshnunna (LE) -- on line; course packet

Code of Hammurabi (CH) -- In ANET pp. 138-167. Skim the code, but read carefully the following sections -- prologue, paragraphs 6-10, 21-25, 108-109, 129, 192-214, 229-231, 250-252, epilogue

Middle Assyrian Laws (MAL) -- on line; course packet. Read carefully -- Tablet A: 3-4, 10, 14-16, 20-21, 24, 44, 50-55, 59; Tablet B:2.

Hittite Laws (HL) -- on line; course packet. Read carefully -- Tablet I:1-5, 7-8, 93-95; Tablet II: 123, 166-167, 187-188, 199-200.

As you read through the Ancient Near Eastern and Biblical Codes try to identify points of similarity and difference. **The following points will be discussed in lecture.**

1. Who is the author of the laws? (See especially Ex 24:3-4, 31:18, 34:29-35. UN prologue [lines 24-168]; LI prologue and epilogue; CH prologue [on handout].)
2. What are the implications of the divine authorship of biblical law in terms of
 - (a) scope: do the ANE and biblical law systems differ in scope (i.e., what areas of human life and activity fall within the concern of the laws)? (See especially Ex 23:4-5, 9-19, Lev 18-20.)
 - (b) the relationship between law and morality: do you perceive a distinction between ANE and biblical law regarding the relationship between law and morality? (See especially Lev 19:9-10, 14, 17-18, 29, 32, 33-34; Dt 22:1-3, 6.)
 - (c) the purpose of the law: what is the purpose of the law in ANE and biblical society (i.e., what are the "benefits" it is designed to achieve)? (See especially UN prologue, LI prologue, CH prologue; Ex 19:1-6, Lev 18:24-30; 19:1-4; 20:7-8.)
3. Are there formal or stylistic differences between ANE and biblical law? (See especially Ex 22:20, 23:9; Lev 19:33-34; Dt 20:19-20, 24:17-22.)
4. Compare ANE and biblical law in terms of concern for the disadvantaged, humanitarianism and the distinctions based on social class. (See especially, UN 14, 22; CH 15, 16, 19, 195-208; MAL A24, A44, A59; HL I 1-8, 17-18, 95, 99; Ex 21:2-6, 18-21, 26-32; Lev 24:17-22, 25:35-46; Dt 15:1-18, 20:1-9, 23:16-17, 23:16-17, 24:19-22.)
5. What is the value placed on human life in the two systems. (Consider which crimes are punished by capital punishment and which by monetary compensation; see especially UN 15-19; CH 6-10, 21-25, 108-109, 129, 192-199, 201, 206-208, 210, 212, 229, 230; MAL A3, A7-10, A20, A53, A55, B2; HL I 1-18, 37-38, 126, II 105-107, 123, 187-188, 199-200; Ex 21:12-14; Lev 24:17-22; Num 35.)

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Laws represented as having been given at Sinai --

1. The Decalogue or 10 commandments
 2. Covenant Code (civil and religious law)
 3. A Ritual decalogue
- Priestly legislation
3. Cultic instructions

4. Laws of sacrifice and ritual purity
 5. The Holiness Code
 6. Priestly supplements (miscellany)
- Ex 20:1-17
Ex 20:22-23:33
Ex 34:10-26

Ex 25-31 (fulfilled
in Ex 35-40)
Lev 1-18, 27
Lev 19-26
Num 1-10

Laws represented as having been given in the 40 years after Sinai as the Israelites sojourned in the wilderness and journeyed toward the land of Israel --

7. Priestly supplements (miscellany)
 8. Deuteronomic Code
 9. Laws sanctioned by a curse
- Num 28-31,33-36
Dt 12-26
Dt 27

Ancient Law Collections

Ur-Nammu. 2112-2095, founder of the 3rd dynasty of Ur; Sumerian language, known from scribal copies dating to 1800-1700. Prologue but no preserved epilogue.

Lipit-Ishtar. 1980-1970 BCE. 5th ruler of Isin Dynasty. Sumerian Language. Originally on stele but we have 7 clay tablets. Prologue and epilogue.

Eshnunna. Early 2nd millennium, 1900? Amorite controlled state. Akkadian language. No prologue or epilogue.

CH -- 1792-1750, 6th of 11 kings of the Old Babylonian (Amorite) Dynasty. Akkadian language. On diorite stele with bas-relief showing Hammurabi receiving commission to write the law-code from the god of justice, the sun-god Shamash. Carried to Susa by

Elamite raiders; prologue and epilogue.

Hittite Laws -- 2nd millennium? Hittite language in Akkadian script. 2 Tablets in a series, though there may have been a third. Contains updating. No prologue or epilogue.

Middle Assyrian Laws May go back to the 18th c., BCE. Akkadian language; preserved in clay tablets, some badly broken and dating to the time of TiglathPileser of 12th c BCE. May have had short introduction.

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