

Chapter 11

The Book of the Covenant

Cynthia Edenburg

The Open University of Israel

The Book of the Covenant (or Covenant Code) derives its name from Exod 24:7, where it is reported that Moses “took the Book of the Covenant and read it aloud to the people.” This term is self-referential just as “these words” in Deut 31:1, which Moses spoke to all of Israel, comprise the instruction (*tōrâh*) that Moses wrote down “in a book” (Deut 31:9, 24). In the context of Deuteronomy the “the words” and “the instruction” supposedly comprised the body of Deuteronomic law spoken by Moses. By contrast, the object of reference in Exod 24:7 is less clear. According to Exod 24:4, Moses wrote down “all the words of Yahweh” (*dibrê yhw̄h*). Thus, one would expect that these words in written form constitute “the Book of the Covenant”, and that they comprise the covenant obligations that bind Israel to Yahweh (cf. Exod 19:5). However, Exod 24:3 distinguishes between “all of Yahweh’s words” and “all of the rules” (*kol hamišpāṭim*), and Moses conveyed both to the people orally. This distinction is also borne out by the fact that both the Decalogue and the *mišpāṭim* are headed by separate introductions (Exod 20:1 “God spoke all these words;” 21:1 “These are the rules you will set before them”). Since Exod 24:4 echoes the wording of the introduction to the Decalogue, it implies that the Decalogue comprises the “Book of the Covenant” that was set down in writing. By contrast, the text as it stands does not make the same claim for the rules (*mišpāṭim*), which are only pronounced orally (21:1, 24:3).

Notwithstanding, this confusion is most likely the result of editorial growth. Exod 24:9 reports executing the command given in v. 1 with the identical wording of the command itself (“go up with Aaron, Nadav and Abihu, and seventy of the elders of Israel”), but this could signal use of resumptive repetition after the addition of new material. It is long recognized that the narrative incoherence of the Sinai pericope follows from extensive reworking by a series of scribes, each whom sought to recast this key episode according to their own conception. If narrative continuity and coherence provide the primary criteria for analysis, then it is possible to reconstruct a greatly limited core narrative that comprises Exod 19:2-11, 16-19, 20:18, 24:1, 9-11. This narrative revolves around a non-verbal, and primarily visual

theophany experienced during the Israelite's pilgrimage to the mountain of God. Both the Decalogue and the *mišpāṭim* have been artificially introduced into the narrative by later scribes who wished to recast the theophany as a foundational covenant between Yahweh and Israel. The various introductions and framing devices employed to ease the integration of both the Decalogue and the *mišpāṭim*, as well as the mention of both the "words" and the "rules" in 24:3, obviously stem from a late stage in the editing of the Sinai pericope in which an attempt was made to harmonize the two separate blocks of legal material and present both as providing the basis for the Sinai covenant. Hence, it is not unlikely that the scribe responsible for the title, "the Book of the Covenant", in 24:7 did not intend to evoke a specific body of law, but rather thought of a combination of both the Decalogue and the *mišpāṭim*, just as Medieval Rabbinic exegetes understood it.

Nonetheless, the term "Book of the Covenant", and particularly its alternate designation as the "Covenant Code," has become the title employed in modern critical scholarship to indicate the non-Priestly and non-Deuteronomic law collection that is relayed in the Sinai pericope. Albeit, the use of a canonical term to indicate a scholarly construct leads to some difficulties in delimiting the boundaries of the collection. The maximal limits are marked off by the speech introduction in 20:22, "Yahweh said to Moses," which is followed by instructions, rules and peroration until the next speech introduction in 24:1. Accordingly, Exod 20:22-24:1 represents a discrete literary unit within the final form of the Sinai pericope. At the same time, 21:1 marks the beginning of a discrete collection with the superscription, "These are the rules (*hamišpāṭim*) that you will set before them." The end of this collection is marked by the transition from the last of the rulings (22:19) to a section of instructions (22:20-23:19). These instructions in 22:20-23:9 represent a discrete section that is framed by the inclusio: "A resident alien you will not oppress [...] for you were resident aliens in the land of Egypt" (22:20, 23:9). Similarly, the cultic instructions in 23:10-19 are marked off as a separate section by the two regulations dealing with the fruits of the field at its beginning and end (23:10, 19). Accordingly, it is clear that the "Book of the Covenant" of the canonic biblical text comprises several discrete collections. However, the nature of the relations between these collections remains to be determined, both from the diachronic and the synchronic perspective.

Structure, content and composition

The casuistic *mišpātim* are set into a concentric frame. The outer frame consists of cultic instructions in Exod 20:23-26, 23:13-19. The frame opens with the prohibition of divine images (20:23) and altar building (22:24-26), which is paralleled in the closing of the frame by the demand of exclusive fidelity to Yahweh (23:13), accompanied by instructions for the offerings due to the divine overlord (23:10-19).

A second frame is distinguished by the six-seven theme that governs the debt slave's release in the seventh year (21:2-11), as well as the instructions in 23:10-12 for the fallow, seventh year, along with the seventh day, when all, including the slave and dependent, have rest from labor. So too, the instruction in Exod 23:9 prohibiting the oppression of resident aliens, "since you were aliens in the land of Egypt," is conceptually related to the law that limits the term of service of the debt slave (21:2-11). Finally, the body of casuistic rulings is framed by two series of capital offences cast in participial formulation (21:12-17, 22:17-19; Schwienhorst-Schönberger 1990, 23-37).

The casuistic laws are grouped into sections according to topic, although in some places the associative arrangement has been disrupted. These topics comprise: debt-slave laws, 21:2-11; homicide, 21:12-14; repudiating parental authority, 21:15, 17; abduction with the intent to sell into slavery, 21:16; bodily injury and manslaughter, 21:18-27; damages resulting from negligence, 21:28-36, 22:4-5; theft and loss of securities, 21:37-22:3, 6-14; seduction of an unbetrothed virgin, 22:15-16; sorcery, 22:17; bestiality, 22:18; sacrifice to other gods, 22:19.

A lengthy series of loosely organized instructions follows the body of casuistic laws (22:20-23:9). For the most part, the instructions in this section are formulated as prohibitions (22:20-21, 24, 27-28, 30, 23:1-3, 6-9), with but a few instances of positive formulation (22:25, 28b-29, 23:4-5). Most of these instructions revolve around social justice, and demand protection for the disenfranchised (23:20-23); fairness in loans (22:24-26); false witness and fairness in judicial proceedings (23:1-3, 6-8); and the injunction to extend aid, even to one's enemy (23:4-5). By contrast, the instructions in 22:27-30 take up divine prerogatives and those owed to divinely sanctioned leaders.

Scholars are divided on the question how the diverse contents and forms, arranged in blocks that are set within concentric frames, relate to the composition history of the Book of the Covenant. On the one side are those who hold that the symmetry of the concentric frames

is evidence of compositional unity, whether the body of the Book of the Covenant was compiled from diverse independent sources, or whether it was composed in whole by a single author who *imitated* the forms and structure of other law collections. For example, Otto (1994, 186-89) holds that the pre-Deuteronomistic Covenant Code was compiled from four independent collections comprising the *môt yûmât* laws (21:12-17), laws of bodily injuries (21:18-32), the restitution (*šallēm*) laws (21:33-22:14), and the court rules (23:1-8). The redactor responsible for compiling the whole employed bracketing, chiasm and concentric structure as editorial techniques for imposing structural unity upon diverse materials, and also as a means for integrating revisions to older rulings. Wright (2009) also attributes the concentric structure of the Covenant Code to its basic composition, but he extensively argues that the Covenant Code as a whole is the product of a single author who based his composition upon the structure of the Laws of Hammurabi, with occasional reference to other Ancient Near Eastern sources as well. According to Wright, the various peculiarities in the structure of the Covenant Code stem from the ways the author manipulated his sources. (compare also Van Seters 2003).

On the other side are those who view the various frames as evidence for extensive redactional growth. For example, Schwienhorst-Schönberger (1990, 284-86) distinguishes four discrete stages in the formation of the Covenant Code. The earliest kernel of the Covenant Code is found in the casuistic collection in 21:12, 18 – 22:14, and it is headed by the most severe case of homicide, which was emphasized by means of participial formulation. This kernel was subsequently expanded with Proto-Deuteronomistic elements, characterized by I-you address, and these include, among others, the altar law (20:24-26); the debt slave law (21:1-11); the rule of asylum and capital cases (21:13-17, 22:17-19); the seduction of unbetrothed virgin (22:15-16); instructions for social protection and fair justice (22:20, 22b, 24a, 25, 23:1-7); various cultic instructions, along with the seventh year and the seventh day (22:27-29, 23:4-19, 23:10-12). This expanded Covenant Code further underwent Deuteronomistic revision, characterized by the use of the second person plural, and in this stage Deuteronomistic motifs were added, such as the prohibition of images (20:23), the prohibition of selling debt slaves to foreigners (21:8), the prohibition of serving gods besides Yahweh (22:19b), exhortation to protect orphans and widows (22:20-24), as well as instructions directed towards preserving justice (23:13). Finally, the independent Covenant

Code was combined with the Decalogue by a Priestly redactor (compare also Kratz 2000, 140-42).

In evaluating the different positions, it must be noted that diversity of material and form should not automatically be held as an indicator of redactional growth of biblical legal texts, since ancient Near Eastern law collections also display diverse content. For example, the law that regulates the maximum term for debt servitude in LH § 117-18 occurs in a section dealing with loans, deposits, debts and losses (LH §§ 111-126), and this section is bracketed by laws dealing with *ugbaltu*-priestesses (LH § 110, 127). Some of the cuneiform collections also occasionally mix casuistic, prescriptive, decree and instruction forms (see LE §§14-16, 18A, 48, 51-52; LH §§ 36-40, 187; MAL A § 40; HL 48, 50-52, 54-56, 178, 181-86).

Notwithstanding, the cuneiform law collections notably do *not* employ direct second person address, even in non-casuistic passages. Instead, second person address is found in other genres, such as instructions, treaties and loyalty oaths (Weinfeld 1973; Morrow 1994; cf. Gerstenberger 1965). In the casuistic *mišpāṭim* of Exod 21-23 there is very limited and sporadic use of the second person address (21:2, 14, 23, 22:17), while the *mišpāṭim* as a whole are encased by two continuous blocks of second person instructions and prescriptions (20:23-26, 22:20–23:19). All this evidence is accounted for best by positing that the Covenant Code originated as a more limited collection of casuistic rulings that was later edited and expanded, especially by the addition of new material at both ends.

Original extent of the Covenant Code and its growth

Three of the ancient Near Eastern law collections, which are well preserved at their beginnings, attest to the convention of opening law collections with the most serious crime of homicide (LU § 1, Hittite Laws §§ 1-5, cf. LH § 1, which deals with unsubstantiated accusation of homicide). In this way they establish the first principles for regulating society. Thus, there is good reason to suppose that the homicide law in Exod 21:12-14 initially came right after the superscription in 21:1, and that all the material preceding it was subsequently added. It is possible that the homicide law was initially cast in standard casuistic formulation (כי יכה איש), and was modified later in order to accommodate the addition of the other participial laws in 21:15-17 (Weinfeld 1973, 63; cf. Schwienhorst-Schönberger 1990, 69, 226-34).

The participial laws themselves are comprised of a protasis and apodosis, just like the

body of casuistic laws (Weinfeld 1973, 63; Wright 2009, 423-24). Furthermore, nearly all of the participial laws in 21:15-17, 22:17-19 have a casuistic counterpart the ancient Near Eastern collections.¹ Nonetheless, they differ significantly from the casuistic laws in their lack of an initial conditional particle. Thus, while the casuistic laws discuss hypothetical cases, the participial laws present definite eventualities. If we add the homicide law in 21:12, which has been recast in participial form, then a series of seven participial laws has been used to frame the body of the casuistic laws. The topics of the participial series deal with basic prohibitions for maintaining normative social order, namely, homicide, striking and repudiating one's parent, abduction (with intent to sell into slavery), sorcery, bestiality, and serving other gods. While the body of the casuistic law in the Covenant Code revolves around negotiated settlements and compensation, the participial laws focus completely on upholding the basic social norms and they dictate execution for any who abrogate them. These formal and conceptual differences between the casuistic laws on the one hand and the participial laws on the other hand, are indicators of separate purpose and origins. The way the participial laws frame the body of casuistic law calls to mind the framing function of the programmatic prologues and epilogues of the cuneiform collections "promulgated" by royal figures, like Ur-Nammu, Lipit-Ishtar and Hammurabi, since these preambles and epilogues also differ in genre, style and purpose from the legal provisions which they frame. Legal formulae and provisions were indeed compiled and transmitted within scribal tradition independently from the frameworks that claimed royal promulgation (Westbrook 1985, 250-51; Hurowitz 1994). Since material evidence does show that cuneiform casuistic collections originated separately from their frames, it is justified to conclude that the casuistic *mišpātim* also originated separately from their successive frames, the first of which being the participial laws.

Several of the apodictic prescriptions have counterparts in the cuneiform law collections, but in most instances the prescriptions are cast in casuistic form.² Only the topic of preventing

¹ Compare 21:15 // LH §195; 21:16 // LH § 14, HL § 19-21; 21:17 // LH §192-93; 22:17 // LNB § 7, MAL A § 47; 22:18 // HL §§187-88, 199. Only 22:19 prohibiting sacrifice to other gods is without parallel in the cuneiform collections.

² For Exod 22:24-26 (fairness in loans) cf. LH §§ 48, gap u-z; for Exod 22:27 (cursing a prince and blasphemy) cf. MAL A § 2; MAL B § 3; MAPD §§ 10, 14, 17; for Exod 23:1-3, 6-8 (false accusation or testimony and fairness in judicial proceedings) cf. LU §§ 13-14, 28; LL §§ 17, 33; LH §§ 1-4, 11,

the oppression of widows, orphans and the disenfranchised (Exod 22:20-23) occurs in non-casuistic form in cuneiform collections.³ Nevertheless, despite the similarity of topic, there is a critical formal difference in the way it is employed as a general injunction in Exod 22:20-23, in contrast to the first person account in royal prologues and epilogues. The collections that are attributed to royal figures do not enjoin the people as a whole to protect the weak and vulnerable in society; instead, they employ this topos in order to depict the king as the source of justice for all in his realm.

An alternate literary context for the origin of the apodictic prescriptions can be found in the genre of instructions (Gerstenberger 1965; Weinfeld 1973). This is suggested by the syntactic similarity between instructions such as Prov 20:20, 22:22–23:20, 30:8-14, 31:9 and the apodictic prescriptions and prohibitions of the Covenant Code, particularly those in Exod 22:20-23:9. Furthermore, although the topic of defending the poor and disenfranchised from oppression is absent from the cuneiform casuistic laws, it does occur in wisdom instructions in Prov 22:22, 31:9 and in Egyptian Instructions. In fact, the Egyptian material provides the broadest base for comparison with the apodictic prescriptions of the Covenant Code.⁴

The two self-contained collections—the casuistic laws (Exod 21:12-22:19) and the apodictic instructions (22:20-23:9)—are bound together by a frame constructed upon the six-seven scheme (21:2-11, 23:10-12). The fallow year and Sabbath provisions echo various catchwords in the apodictic section in 22:20-23:9, such as the poor man (אֲבִיּוֹן 23:6, 11), the concern for the welfare of the ox and donkey (23:4-5, 12), and the resident alien (22:20, 23:9, 12), while the mention of the slave girl harks back to the debt slave law (אִמָּה 21:7, 23:12). The interweaving of connective references is a typical editorial device for integrating new materials, in this case the fallow year and Sabbath provisions (23:10-12).

So too, the debt slave law in 21:2-11 differs fundamentally from the body of the casuistic

127, MAL A §§ 18-19; MAL N § 2); and for Exod 23:4-5 (returning another's stray beasts of burden) cf. LE § 50.

³ LU prologue A iv 162-68, C ii 30-39; LH prologue col. i:27-49 (*ana ḥulluqim dannum enšam ana la ḥabālim* “to prevent the strong from oppressing the weak”); LH epilogue col. xvii:59-62.

⁴ For example, compare Exod 22:21 with Merikare 47 (COS, p. 62); Exod 22:24 with Amenemope 16, 5 (COS, p. 119); Exod 22:28 with Merikare 65-66 (COS, p. 63); Any 3.4; 7.12 (COS, p. 111, 113); Exod 23:1, 7-8 with Amenemope 16, 1 (COS, p. 119); Exod 23:3, 6 with Merikare 61 (COS, p. 63); Amenemope 21, 1-4 (COS, p. 120).

laws that follows in 21:12-22:16. On the form-critical side, the “if-you” (כי תקטל) incipit in 21:2 is unparalleled in the casuistic section, which is almost entirely addressed in the third person, in marked contrast to the instructions in 20:23-26, 22:17-19 that abound with address in the second person. Such use of the “if-you” formulation is “pseudo-casuistic” and frequent in Deuteronomy (Gilmer 1975), but out of place in the Covenant Code. Content-wise, the laws in 21:12-22:16 focus on criminal offences and torts that are redressed by penalties or compensation, while the debt slave law regulates limiting the length of debt servitude. Even though a similar provision does occur in LH § 117-119, there it is cast in standard casuistic formulation and blends into its context, which deals with distraintment in cases of financial claims, obligations and debts (LH §§ 114-116). Hence, the debt-slave law appears to be secondarily appended to the original beginning of the casuistic laws in order to unite the casuistic laws and moral instructions within a framework that evokes the memory of being dependent clients and slaves in Egypt. This frame, with its “if-you” incipit and its motive clauses dealing with alleviating the hardship of the poor, points to the influence of Deuteronomy, where both the ‘if-you’ form and similar motive clauses are frequent.⁵

Finally, the entire collection is framed in Exod 20:23-26, 23:13-19 by cult instructions formulated in a first person divine voice⁶ and addressed to a singular or plural “you”. Notably only the first instruction of both the opening and closing blocks (20:23, 23:13) is drafted in the second person plural address, while the remaining instructions are in the singular (20:24-26, 23:14-19). Although second person singular/plural variation is hardly a fail-safe criterion for distinguishing compositional layers, here the plural is placed at the head of both sections in exhortations and prohibitions that echo the Deuteronomistic polemic against silver and gold images and “other gods”.⁷ The second person plural introductory exhortations serve to

⁵ See the “if-you” incipits in Deut 13:13, 17:14, 20:1, 19, 21:10, 22:8, 23:10, 22, 25, 26, 24:10, 19, 20, 21, 26:12; and the “hardship” motive clauses in Exod 23:11, 12b, cf. 22:24, 23:6; Deut 15:4, 7, 9, 11, 24:12, 14-15.

⁶ Outside the cult instructions in Exod 20:23-26; 22:28, 30; 23:13-15, 18, the first person divine voice is found in editorial expansions to the asylum law (21:13, 14) and in motive clauses in the apodictic section (22:23, 26).

⁷ Silver and gold of divine images recurs only in Deut 7:25, cf. Deut 29:16. The expression “other gods” occurs eighteen times in Deuteronomy compared to only twice more in the Pentateuch (Exod 20:3, 23:13).

redirect the focus of the cult frame, with its basic instructions regarding altar construction, offerings and the festive calendar, towards marking the distinction between proper and improper objects of cult veneration.

The first person divine voice of the cult frame recalls the first person discourse of preambles and epilogues of the cuneiform collections that are attributed to a royal figure, but with Yahweh taking the place of the human king. Even so, the similarity is limited to the framing function of the royal/divine speech, since the cuneiform preambles and epilogues employ third person address, in contrast to the second person of the Covenant Code cult instructions. A better parallel for the first person voice and second person address of the Covenant Code's cult instructions is provided by the formulation of the stipulations in Neo-Assyrian loyalty oaths (Weinfeld 1973, 69-70).⁸ Thus, the framing cult instructions play a central role in shaping a "covenant code" from the loose collection of casuistic laws and apodictic instructions.

Evidence for Ongoing Revision within the Body of the Covenant Code

The series of frames discussed above provides evidence for the stages by which the various materials were brought together in Exod 20:23 – 23:19 from a central kernel outwards. A different question is that of revision within the independent casuistic and apodictic blocks. Notwithstanding Westbrook's claim that ancient Near Eastern law was primarily static, and that the law collections were composed as academic treatises, which neither proposed reform or revision (Westbrook 1994), there are empiric indications that the transmission of legal provisions and rulings could entail rewriting and revision, even if the law collections were not prescriptive, but rather scholarly enterprises. Strong evidence for revision within corpora is provided by the New Hittite "Late Parallel Version" of the Hittite laws that was produced about two hundred years after the initial Old Hittite composition of the laws.⁹ The late version not only changes penalties, but also introduces more nuanced contingencies that were not included in the Old Hittite version. For example, in the laws of bodily injury, the late rewriting introduces distinctions lacking in the earlier version, including the distinction between intent and accident and between temporary and permanent

⁸ Compare particularly the Zakutu Treaty (Text 1) and the Text 4 in Parpola 1987

⁹ Westbrook does not refute this, but rather seeks to downplay the import of the Hittite evidence, and see Westbrook 1985, 255-56; 1994, 25-27.

injury (Old Hittite §§ 7, 11; Late Parallel §§ V, X). In another instance the late version combines and rewrites two different paragraphs in the Old Hittite version that deal with lost or derelict property (Old Hittite §§ 45, 71; Late Parallel § XXXV). The new “conflated” version is both more concise and more explicit than the separate paragraphs in the Old Hittite version. The old version ruled that the finder who did not secure witnesses for the find would be considered a thief if the owner identified his property, but the ruling did not clarify the penalty. This ambiguity is removed in the new version by stating that the finder shall pay threefold compensation.

While the Hittite laws are unique since two separate and diachronically distinct versions have survived, there is internal evidence for revision within other law collections as well. Thus, in both LH §§ 1-3 and MAL A § 17-18 we find that cases adjudicated by ordeal are adjacent to separate provisions in which accusations must be substantiated by material evidence or witnesses, in which the burden of proof is placed upon the accuser. In LH §§ 1-3, the case of the man who must undergo the river ordeal in order to refute the charge of witchcraft is framed by two principle cases that emphasize that accusers must substantiate accusations with evidence. So too, MAL A §§ 17-18 presents two separate rulings to the same case of a potentially slanderous claim for which there is no evidence or witnesses; in the first case the matter is decided by ordeal while in the second case the onus of proof lies on he who made the claim. In both collections, the early laws that prescribe judgment by ordeal when lacking witnesses or evidence (LH § 2, MAL A § 17) were overwritten with new provisions which asserted the principle that accusers must substantiate accusations with evidence (LH § 3, MAL A § 18). This use of revision is particularly significant in Hammurabi since the first four paragraphs of the collection have been edited in order to establish the importance of evidence as a ruling principle in adjudication (Abusch 1989, 87-90).¹⁰

A few cases in the Covenant Code might reflect this type of revision.¹¹ The asylum provisions in Exod 21:13-14 suddenly introduce a divine first person voice addressing a second person audience,¹² even though the first person voice seems at odds with the third

¹⁰ For further discussion of revision in ancient Near Eastern legal material see Otto 1994; Morrow 2004.

¹¹ For further discussion of revision in the Covenant Code see Levinson 2008a.

¹² “I will assign *you* a place to which he can flee [...] *you* shall take him from *my* altar”.

person mention of Elohim in v. 13a. More specifically, the change of voice and addressee occurs in the apodoses (vv. 13b, 14b), which speak specifically of sanctuary asylum,¹³ while the protases that distinguish between involuntary homicide and murder are drafted in proper casuistic style. This could indicate that the apodoses have been rewritten in order to introduce the topic of asylum, which is unparalleled in ancient Near Eastern legal literature, although it is documented in Hellenistic texts (Greenfield 2001, 322-26; Weinfeld 1995, 121-24).¹⁴ Furthermore, there is evidence that vv. 13-14 were drafted along the prior model of Deut 19:4-5, 14 (Anbar 1999), which would indicate that the asylum section is a Deuteronomistic or post-Deuteronomistic elaboration. Nonetheless, since the topic of asylum is further developed in Deut 19:1-13 and Num 35:10-34, it must have been familiar to Judean scribes prior to the Hellenistic period.

So too, Exod 21:23b suddenly switches from the third person to the second person (“you shall give life for life”) and introduces the principle of talio, which is at odds with the direct context that advances restitution for bodily injuries (21:19, 22, 26-27, 32), even in cases that result in death (Exod 21:30). The full list of injuries in the formula in vv. 24-25 has nothing to do with the governing case of the pregnant woman who is hit by one of the brawlers. Furthermore, the talionic formula prescribes the death penalty to the one who inadvertently dealt the fatal blow to the woman, even though 21:13 excludes accidental homicide from capital punishment. The principle of talio also occurs in cuneiform laws dealing with the death of pregnant woman as the result of a blow (LL § 3; LH § 210; MAL A § 50), but those laws do not detail the circumstances in which the man struck the pregnant woman,¹⁵ in contrast to Exod 21:22, which specifies a scenario in which a bystander receives a fatal blow. The talionic formula also occurs in Lev 24:17-21 where it is appended to the death sentence in

¹³ There is some debate whether 21:13 prescribes sanctuary asylum, or city asylum (Barmash 2005; Stackert 2006; Wells 2013). However the mention of “my altar” in v. 14b and the use of the term “place” (*māqōm*) in v. 13b as a *terminus technicus* for cult site, support the view of sanctuary asylum.

¹⁴ Compare Dracon’s law, which dictates exile for involuntary homicide; *Inscriptiones Graecae* Vol. I³ 104. The extant text of the law is from the end of the fifth century BCE, although it is ascribed to a late seventh century figure.

¹⁵ Given the distinction in rulings between cases of intentional beating (LH § 116) and an inadvertent blow (LH § 207), it is likely that the talionic rulings in LL § d; LH § 210; MAL A § 50 presume that the man intentionally struck the woman.

a case of blasphemy (Lev 24:15-16), and in the case of false accusation in Deut 19:19, 21b. However, only in Deut 19:16-21 does the formula follow naturally from the governing case. Thus, it is probable that the principle of talio was added as a revision to the ruling in the case of miscarriage resulting from a blow in Exod 21:22-25 and that its formula was inspired by Deut 19:19, 21b (Van Seters 2003, 109-18). This revision might reflect a scholarly reaction to the legal tradition that informed LH § 210 and MAL A § 50, which specified a talionic penalty only when the woman dies as the result of a deliberate blow. By appending the talionic formula to the case of a third party injury of an innocent bystander the scribe expressed an ideal that penalties should be commensurate with resulting injuries and damages, regardless of the offenders' intent (cf. Otto 1994, 182-86; Barmash 2005, 158-76).¹⁶

The Relation between the Covenant Code and Ancient Near Eastern Law Collections

The Covenant Code stands in close relationship to ancient Near Eastern law collections, both in form and in content, as the thorough list by Wells (2015, 238) bears out. The points of debate touch upon the nature of the relationship and the presumed distinctiveness of the Covenant Code vis-à-vis ancient Near Eastern Law.

As to the first point, does the similarity in material, form and rulings derive from general cultural diffusion throughout the ancient Near East and Levant, as held by Westbrook (1985, 1994, 2008; cf. Rothenbusch 2000, 91, 506-513, 599-601)? Or, were the scribes who drafted the Covenant Code directly acquainted with ancient Near Eastern law collections in their literary form (Malul 1990)? Can the relationship between the Covenant Code and the cuneiform collections be further characterized as one of literary dependence (Wright 2003, 2009, 2014; Van Seters 2003, Levinson 2008b, 297-99)? The close correspondence between some of the laws belies the likelihood that the similarity is the product of general diffusion of legal tradition in the ancient Near East. So too, the selective representation of laws in the collections and their degree of overlap does not properly reflect the common practice of law, but rather the scholarly study of received compendia, their adaptation and transmission (Barmash 2008).

The laws of Hammurabi, in particular, circulated within the scribal curriculum in dozens

¹⁶ For the view that 21:23b requires monetary compensation commensurate with the value of the life, see Wright 2009, 182-83; Wells 2015, 258-60.

of copies over a period of a millennium; hence, it might have been considered to provide a model or paradigm for drafting legal provisions (Westbrook 1985, 256-57). Therefore the possibility should not be discounted that subsequent collections interact with and revise specific provisions within Hammurabi (cf., e.g., LH §129, HL §§197-198, MAL A §§15, 12-14). Albeit, the hypothesis of direct cross-cultural *literary* influence is contingent upon a number of conditions. First of all, there should be evidence that a given composition existed in multiple copies that were distributed outside the cultural and geographic sphere from which it stemmed and that it was transmitted over time. Furthermore, for an Akkadian work to exert its influence upon a Hebrew-writing scribe would require that the scribe could read the cuneiform of the period and that he was familiar with Akkadian; or alternately, that he had recourse to an intermediary, such as an Aramaic translation or an oral rendition. Given that there is no evidence in support of the second option, one would have to conceive a scenario in which scribes from Judah or Israel were exposed to classic texts while acquiring a basic proficiency in Akkadian and cuneiform. The most likely social and historical context for such exposure would be during the period in which Judah and Samaria were drawn into the sphere of influence of the great powers to the east, first as satellite states and later as imperial provinces (Van Seters 2003, 30-32, 45; Levinson 2008b, 300-306; Wright 2014, 242). In the Neo-Assyrian and Babylonian periods Judean and Samaritan scribes who were involved in administration and diplomacy would have been exposed to cuneiform literary culture, and may even have received training in the basic literary forms by copying classic texts. Such a scenario provides a reasonable conduit for cross-cultural literary influence.

Even so, the question of the degree and extent of influence remains open. The argument for literary dependency rests mainly on the correspondence between the Covenant Code and the Laws of Hammurabi with regard to the order in which the laws occur (Wright 2009), since it is difficult to establish that a Hebrew text quotes and adapts a text in another language unless telltale calques can be found (Morrow 2013, 317-18). Moreover, certain laws in the Covenant Code bear greater similarity to laws in other collections (e.g. Exod 21:35-36, LE §53; Exod 22:15-16, MAL A §56). Although the order of the laws in Exod 21:28-32, 21:37-22:14 does closely follow the sequence of the corresponding paragraphs in LH §§250-71, such a correlation is not as clear-cut in the remaining CC casuistic laws. This indicates that while the Covenant Code scribes were familiar with the Laws of Hammurabi, they drew upon

it in a selective fashion and freely adapted the source material as they saw fit (Morrow 2013). More problematic is the notion that the apodictic section of the Covenant Code was also shaped along the lines of the prologue and epilogue of the Laws of Hammurabi (contra Wright 2009, 51-90), given their difference in genre and form, along with the fact that the themes they share are also found elsewhere in other compositions. Hence, there is not an adequate basis to conclude that the Covenant Code in its entirety (Exod 19:23 – 23:19) was drafted along the lines of the Laws of Hammurabi.

The Relation between the Covenant Code and Other Pentateuchal Law Collections

Classic source criticism held that the Covenant Code derived from JE, the pre-Priestly and pre-Deuteronom(ist)ic strand in the Pentateuch. On the one hand, it lacks the stylistic and the ideological characteristics of both D and P, and on the other hand, it is embedded in what was perceived as the JE narrative that runs throughout the Pentateuch. Furthermore, its laws were thought to represent an earlier stage in the development of Israelite society and religion than is reflected by either D with its legislation for cult centralization or P with its concern for the technicalities and purity of cult. Moreover, the comparison of parallel laws extant in all three sources showed that the laws in D and P build upon, elaborate and revise those in the Covenant Code (Levinson 1997, Stackert 2007).

For example, the Covenant Code's homicide law in Exod 21:12-14 is brief, while each of the versions in Deut 19:1-13 and Num 35:9-34 is successively longer and more elaborate. Every point that is stated in a general fashion in Exod 21:12-14 is fully detailed in the other versions. Thus, the briefly stated sub-cases in Exod 21:13-14 that distinguish between accidental manslaughter and intentional homicide are fully illustrated in Deuteronomy and in Numbers. Even more significant are the changes with regard to the place of asylum. According to Exod 21:13, asylum will be available at "a place" which Yahweh will appoint; but the Hebrew term *māqōm* is a *terminus technicus* for a sacred site, which is borne out in the next clause in v. 14 where it becomes clear that the "place" is a cult site with an altar. This law must presume multiple cult sites available for refuge, otherwise the concept of asylum would be ineffective. In Deut 19 the loaded term *māqōm* does not occur and instead the law instructs *the people* to appoint three cities that will provide asylum within the boundaries of Canaan (Cis-Jordan), and these should be supplemented with three more cities in the case that the utopian boundaries promised to the forefathers should be achieved. Deuteronomy seems

to rewrite the law of the Covenant Code in order to secularize the institution of asylum, in accordance with the program of cult centralization (Stackert 2006). Numbers 35 also speaks of cities, but more specifically refers to them as “cities of refuge”, and specifies at the outset that they should be six in number, three in the Transjordan and three in Canaan. Hence, Numbers 35 presumes the expansion of settlement that is presented as theoretical in Deuteronomy. Therefore one can argue that Deuteronomy rewrites the homicide law of the Covenant Code, while Num 35 further rewrites the law in Deut 19. However, this reconstruction is based upon the premise that Exod 21:12-14 is unified, even though form and literary critical considerations favor the likelihood that vv. 13-14 are an expansion that might have been inspired by Deut 19:4-5, 14.

The topics that do have parallel treatments in D, P and H all occur in sections of the Covenant Code that lie outside the frame of the *mišpāṭim*, or diverge from classic casuistic formulation by means of second person address or participial formulation.¹⁷ Significantly, most of the parallel material deals with matters related to the cult, and for that reason, comparison of the parallels played a key role in reconstructing the history of Israelite religion (Wellhausen), or of Deuteronomic, Priestly and Holiness ideologies (Otto 1996, 112-22; Levinson 1997; Stackert 2007). However, as Van Seters (2003, 4-6) points out, these reconstructions and analyses have been built upon a set of presumed pillars that may be potentially falsified, and the falsification of any one pillar will seriously weaken the entire argument for a linear development from CC to D to P and H. For example, literary and form-critical considerations undermine the presumption of the unity of various laws as well as of the Covenant Code as a whole. This realization gives rise to recognizing what Yair Zakovitz (1996) terms as “the boomerang phenomenon”, in which X influences Y, and subsequently the direction of influence rebounds with the reformulation of X in light of Y.

For example, the notion that a law collection should open by regulating the relations

¹⁷ Outside the framework of the *mišpāṭim*: site of altar and offerings (Exod 20:24-26, 23:18-19a; Deut 12; Lev 17, 19:5-8); firstlings (Exod 22:28-29, 23:19a; Deut 15:19-23, 18:4; Lev 23:10, 27:26; Num 18:13-18); dietary regulations (Exod 22:30, 23:19; Lev 11:2-31, 17:12-14; Deut 14:3b-21); festivals (Exod 23:14-17; Deut 16:1-17; Lev 23:2-43; Num 28:16-29:39). Second person address: debt slavery (Exod 21:2-11; Deut 15:12-18; Lev 25:39-46); homicide (Exod 21:12-14; Deut 19:1-13; Num 35:9-34). Participial formulation: parental authority (Exod 21:15, 17; Deut 21:18-21; Lev 19:3a); abduction with intent to sell into slavery (Exod 21:16; Deut 24:7).

between man and his god may well draw its inspiration from the structure of the law collection in Deuteronomy, which like Exod 20:23-26 opens with instructions for the proper establishment of the cult along with the demand for exclusive adherence to YHWH and the rejection of iconic representations (Deut 12-13). There is a strong literary relationship between the altar law in Exod 20:24 and the beginning of Deuteronomy's cult centralization law in Deut 12:11-12, so it is clear that one rewrites the other. The classic view associates the Covenant Code with the pre-Deuteronomistic Pentateuchal redaction, and it was thought that there was no going back to multiple cult installations once the program of cult centralization was put into effect by Josiah (or Hezekiah). However, recently the extent of the Josianic reform has been subject to reassessment. The devastation of Judah's towns during Sennacherib's invasion caused *de facto* centralization nearly a hundred years before Josiah, so the centralization laws were probably directed against Samaritan cult sites rather than the already dismantled sites in Judah. A further reevaluation involves the status of the Yahweh cult following the demise of the kingdom of Judah and the destruction of the Jerusalem temple. Judah was only partly depleted of its populace; those who did not flee to Egypt or were not deported to Babylon remained in the Shephela, the area of Benjamin and southern Judah. Propitiatory rites must have been carried out during this period that was thought to be one of divine abandonment. If the Jerusalem temple lay in ruins, it must no longer be the chosen abode of Yahweh, but that did not mean that other sites were disqualified from serving as places where appeasement rites could be carried out. Hence, it is not unthinkable that the altar law in Exod 20 is in fact later than the Deuteronomistic law of cult centralization.

Thus, the cultic frame of the Covenant Code appears to be later than the core cult centralization legislation in Deuteronomy. This stage of the overriding revision of the Covenant Code was directed to reshaping the secular-social law so it would be perceived as part and parcel of Yahweh's cult law, which, in turn, is presented as the basis for Yahweh's covenant with Israel (Exod 24:4-8, cf. Exod 34:17-20).

At the same time, it is important to realize that there is relatively little overlap between the Covenant Code and the other biblical law collections. Nearly all of Exod 21:18-22:16 deals with torts or damages, whether bodily injuries, or damage and loss of property due to negligence by a second party, and this section represents more than half of the Covenant Code. However, most of these rulings are lacking elsewhere. While Deuteronomy includes a

few cases that could deal with injuries, its rulings do not award damages (see, e.g., Deut 22:8, 25:11-12). On the other hand, Deuteronomy deals extensively with family law (Deut 21:15-21, 22:13-29, 24:1-4, 25:5-12), while this field of jurisprudence is represented in the Covenant Code by only by Exod 22:15-16, which supplements the case of the raped virgin in Deut 22:28-29 with a complementary case of seduction. This might imply that Exod 22:15-16 was added to the Covenant Code by a (post-)Deuteronomistic editor.

In sum, establishing a relative chronology for the biblical law collections is mainly dependent upon the analysis of a limited number of parallel laws. These are concentrated in the successive frames of the Covenant Code that probably were added at a late stage in the development of the collection, as well as in parts that diverge from the casuistic form of the collection's core. Given the evidence for revision within this material, it is problematic to presume a simple linear developmental relationship between the collections, since an early form a Covenant Code law might have been revised in light of the later collections, which it previously influenced (the boomerang phenomenon). Covenant Code laws that lack parallels elsewhere in the biblical law corpus are difficult to date without holding to presuppositions regarding the unity and date of the Covenant Code as a whole.

The Social and Historical Context of the Covenant Code

There are very few indications in the text that point to the social location of the Covenant Code. On the one hand, the *mišpāṭim* make no reference to the king or state officials, such as judges, and on this basis different scholars thought that the Covenant Code stemmed from a pre-monarchic context, or from the context of village life that was not regulated by a central bureaucracy (Alt 1968; Otto 1993; Morrow 2013, 326). On the other hand, there also is no reference to local authorities such as elders, in contrast to their conspicuous presence in Deuteronomic law. Only in three rather opaque instances has the history of interpretation found possible mention of judicial authorities in the *mišpāṭim* (Exod 21:6, 22:7-8 *hā'ēlōhîm*, 21:22 *pālilîm*). Surprisingly, the extensive collection of Hammurabi's laws also makes very few references to judges, officials or the king in comparison to the much shorter collection of Middle Assyrian laws,¹⁸ and yet no one would argue on this basis that Hammurabi's laws

¹⁸ Judges are mentioned six times and the king once in the course of 282 paragraphs in LH (LH §§5, 9, 13, 168, 172, 177, 129), compared to MAL with nine mentions of judges, six mentions of the king and

originated in a village context, and only were secondarily revised to reflect state institutions.

The *mišpāṭim* further seem to reflect a rather developed economy, rather than a subsistence agrarian economy based on trade in kind (Otto 1993, 20; Knight 2000, 174-79). Slaves are mentioned not only in the debt-slave law (21:2-11), but also in sub-cases regarding damages (21:20-21, 26-27, 32). Some cases, such as Exod 21:32, 34, 35, 22:16, specify payment of damages in silver, rather than in kind, and possession of silver is presumed by the deposit law (22:6). Furthermore, the debt-slave law presumes an economic system in which loans and the accruing of debts play a part. Even if the laws regarding the loan of work animals (22:9-14) and crop damages (22:4-5) could reflect an agrarian background, the socio-economic setting of the *mišpāṭim* as a whole appears to be one in which villages and urban centers exist, or previously existed, in a symbiotic relation (Otto 1993; Knight 2000). Hence, the socio-economic background of the Covenant Code is certainly not rooted in the pre-monarchic period, but it also is not necessarily limited to the period of the monarchy. In the Babylonian and Persian periods the situation in Yehud was remarkably like that reflected in the Covenant Code, with no central government or bureaucracy, and characterized by a depletion of urban centers accompanied by relocation to peripheral and rural areas (Knight 2009, 112-13). By the same token, one could also argue that conditions in the Babylonian Diaspora also fit well with the socio-economic background of the Covenant Code (cf. Van Seters 2003, 174-75). The corpus of tablets from Al-Yahudu and elsewhere shows that former Judeans were resettled in new rural communities in the Babylon-Borsippa area, where they were organized upon a local level.

A further point to be considered is that although the Covenant Code is remarkably silent on the role of official bureaucracy, it itself is the product of learned scribes who must have received training for employment by official institutions (Morrow 2013, 325-26). Could it be the case that royal scribes drafted a law collection that intentionally ignores officialdom since they intended it for a fictive literary context in the distant pre-state past? All these points lead to the conclusion that the socio-economic conditions represented by the Covenant Code do not provide a fixed point for locating the social context of this law collection.

one more mention of court officials in half as many paragraphs (MAL A §§15, 45, 47; MAL B §§3, 6, 17-18; MAL C §8; MAL E §1; MAL L §4; MAL O §5).

Implications for Future Investigation

Much of the discussion of the various issues surrounding the Covenant Code has been dominated by preconceived views regarding its origin, setting and purpose. Classical Pentateuchal criticism focused on establishing the relative chronology of the Pentateuchal documents, partly by examining comparable laws within the different biblical law collections. While it is true that literary comparison usually indicates that the comparable laws in the Covenant Code preceded their Deuteronom(ist)ic, Priestly and Holiness counterparts, the common conclusion that the Covenant Code as a whole is pre-Deuteronomic does not follow from the evidence, since only the framing sections of the Covenant Code can be compared with the other bodies of biblical law. So too, the framing sections provide the main basis for the notion that the Covenant Code represents the law of a village society based upon an agrarian economy, even though the *mišpāṭim* themselves do not support this view. Future study should further develop the view of the of the Covenant Code as a literary complex, whose different components took form, grew and evolved over time. In particular, the relations between the *mišpāṭim* and the framing instructions need further elucidation. For example, an intriguing question is whether pre-Deuteronomic cult instructions might have been transmitted separately either in Samaria or in a Diaspora setting before being taken up as a frame for the *mišpāṭim*? Future research should go beyond the question of the relationship between the Covenant Code and the known Ancient Near Eastern law collections, and further investigate how the Covenant Code relates to the practice of law as documented in Ancient Near Eastern archival material from areas that have not yet yielded exemplars of the literary genre of law collections. Particularly, consideration of the cuneiform tablets and Aramaic papyri from the Babylonian and Persian periods might shed light on the question of the social and historical setting of the Covenant Code.

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