

THEN THE PEOPLE STOOD AT A DISTANCE, WHILE MOSES DREW NEAR THE THICK DARKNESS WHERE GOD WAS¹ - THE HEBREW CODE²

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Abstract: The biblical tradition ascertains Moses³ as the archetypal legislator, though modern research calls it into doubt⁴. The metaphor "thick darkness" could be interpreted in various ways but in legal context it could be related to the procedure of freeing slaves mentioned in the collection of texts from Elephantine⁵ in the formula "you are released from the shade to the sun"⁶. Bezalel Porten explained that "the emancipation formula was threefold, each time expanding the word "release" — "free," "from the shade to the sun," "to God/the god"⁷. Speiser acknowledged religion was the "backbone of society"⁸ in ancient Israel as it was in Mesopotamia wherefrom the biblical law suffered some forms of influence⁹. Being part of the cuneiform legal tradition, ancient Hebrew law was characterized by the authority of the written legal document and the casuistic legal formulations.

Keywords: Moses, biblical law, political institution, divine authorship, Elephantine

Speiser noticed "strong ties between the Bible and Mesopotamia"¹⁰ in its form mainly visible in the basic legal and political concepts, but hardly in its content where no "one-to-one

¹ King James Bible *The Holy Bible*, New King James by Thomas Nelson Inc 1982

² Chapter from the future volume of the author titled *When Law Was in the Air: A Transtextual Approach* work in progress

³ "Biblical law makes up about one half of the texts of the Books of Genesis to Deuteronomy, the portion of the Bible variously termed the Pentateuch, the Torah, or the Law of Moses. Traditionally, the authorship of the whole Pentateuch and the laws in particular has been ascribed to Moses, but scholarship has long disputed this claim and identified three (or four) basic literary strata within the Pentateuch" John Van Seters *A Law Book for the Diaspora Revision in the Study of the Covenant Code* OUP 2003 3

⁴ "While modern scholarship questioned the historicity of the biblical account of law-giving, it did not at first doubt that in historical times, at least during the monarchy, the laws written in the Torah were the laws of the land. Scholars soon noted, however, as in the case of CH, that the laws were never mentioned in any historical context after the settlement. Citation only appears after the Babylonian exile, under Ezra the scribe. Here, then, is another characteristic shared by biblical and Mesopotamian law" *Law from the Tigris to the Tiber: The Writings of Raymond Westbrook Volume 2: The Shared Tradition* eds Bruce Wells and Rachel Magdalene Pennsylvania State University Press 2009 321

⁵ "On the 20th of Sivan, that is day 7 of Phamenoth, year 38 of Artaxerxes the king then said Meshullam son of Zaccur, a Jew of Elephantine the fortress of the detachment of Iddinabu, to lady Tapemet by name his handmaiden, who is branded on her right hand like this: "(Belonging) to Meshullam" saying: I thought of you in my lifetime. (To be) free I released you at my death and I released Jeh(o)ishma' your daughter, whom you bo(r)e me." Son of mine or brother of mine or sister, near or far partner-in-chattel or partner-in-land does not have right to you or to Jeh(o)ishma your daughter, whom you obre (ERROR FOR: bore) me; does not have right to you, to brand you or TRAFFIC WITH you (for) PAYMENT of silver shall stand up against you or against Jeh(o)ishma your daughter, Whoever and you whom you bo(r)e me, shall give you a penalty of silver, karsh by the stone(-weight)s of the king, and you are released from the shade to the sun and (so is) Jeh(o)ishma your daughter and another person does not have right to you and to Jeh(o)ishma your daughter but you are released to God" *The Elephantine papyri in English: three millennia of cross-cultural continuity and change* Bezalel Porten, J. J. Farber . . . [et al.] Brill 1996 220-221

⁶ "Further expressions included the metaphor "you are released from the shade to the sun" and the symbolic "you are released to God/the god." The release was conditional and partial" *A History of Ancient Near Eastern Law* vol I eds Raymond Westbrook, Gary Beckman, Richard Jasnow, Baruch Levine, Martha Roth Brill 2003 874

⁷ *The Elephantine papyri* 220

⁸ E. A. Speiser, *Cuneiform Law and the History of Civilization* Proceedings of the American Philosophical Society vol 107 no. 6 1963 536-541

⁹ "To be sure, we do not know, nor do I wish to assert, that the Biblical estimate of the law as the key to a vital civilization was due to direct influence from Mesopotamia. It is significant, however, that the peak in the study of Biblical law was reached, in later times, not in Palestine but in Babylonia, and was embodied in a major work which still bears the name of the Babylonian Talmud" E. A. Speiser, *Early Law and Civilization* Canadian Bar Review 1953 31 863-877

¹⁰ "It is in the basic concepts of law and government that the strong ties between the Bible and Mesopotamia are especially prominent and significant" Speiser *Cuneiform law*

correlation"¹¹ could be found. Actually, he thought that "the biblical process as a whole originated in a resolute protest against the religious orientation of Mesopotamia"¹². Shalom thought that the Hebrew law developed "in sharp contrast to the Mesopotamian secular concept of law", having "a divine authorship"¹³. He maintained that the biblical law emerged as "an expression of the divine will", consequently crimes were viewed as sins. He admitted that the Hebrew law was "very much influenced"¹⁴ by the cuneiform law both in form and content, sharing the same legal terminology, casuistic formulations and many common laws. Shalom discerned an extrabiblical heritage present in the early Hebrew law most of it being pre-Mosaic and Near Eastern¹⁵ in its character. Regarding the form, he affirmed that the Covenant Code "betrays the influence of a threefold structure"¹⁶ being encased in between a prologue and an epilogue in true cuneiform legal fashion. In his opinion, the Covenant Code was created as a "political institution"¹⁷ and a mixture of moral, juridic and religious regulations¹⁸.

Van Seters sees the Covenant as a creation of Jewish diaspora, more like "the work of a single author" who mastered the Babylonian legal knowledge having been allowed "direct access to some Babylonian law codes and could read and imitate them for his own code"¹⁹. He is certain that this exilic unique author created his eclectic work²⁰ drawing on multiple legal codes, imitating and combining them. He rejects "the chronological priority of the Covenant Code over the other codes"²¹ suggesting that the Deuteronomy is an older creation which precedes and informs it. According to CCHAL, there are traces of a vassal treaty to be found in the Covenant Code's text: "The so-called laws in the Hebrew Bible are actually presented as the covenantal stipulations or duties that the Israelites are now required to obey as the vassal of the god Yahweh. Thus, this covenant manifests the features of a legal document— a treaty— and yet seems to consist of distinctly 'religious' content when viewed from a modern perspective"²². Powis explicitly stated that the

¹¹ "In content, then, there is nothing like a one-to-one correlation between the laws of Mesopotamia and Hittite or Hebrew law" Speiser *Early Law*

¹² "On the contrary, it is now increasingly apparent that the biblical process as a whole originated in a resolute protest against the religious orientation of Mesopotamia. But this does not imply by any means that the Biblical leaders renounced everything that stemmed from east of the Euphrates" Speiser *Cuneiform law*

¹³ Paul Shalom *Studies in the Book of the Covenant in the light of Cuneiform law* Vetus Testamentum, Supplements Vol 18 1970 100

¹⁴ "Nevertheless, the early Israelite society was attracted by the magnetism and dynamism of Mesopotamian culture and institutions. Thus it was also very much influenced by cuneiform law" *ibid* 101

¹⁵ "Thus, the legal collection of Exodus emerges as an integral component of a vast juridical canvas which extended throughout the ancient Near East. All indications point to an eclectic adaptation of native and fringe Mesopotamian legal traditions, which is a testimonial to the extent to which the earliest compilation of biblical laws was indebted to the rich heritage of its Mesopotamian forebears" *ibid* 104

¹⁶ *ibid* 27

¹⁷ "The covenant, a well-known political institution, is here adapted to a unique theological concept, the election of Israel" *ibid* 30

¹⁸ "The legal collection of Exodus, commonly referred to as the Book of the Covenant, then follows with its distinctive blending of legal, moral and cultic prescriptions (Ex. 20 :22-23 :19)" *ibid* 34

¹⁹ Van Seters 173

²⁰ "His mode of composition was a rather eclectic borrowing or imitation from the various codes, often combining elements from different sources or revising an earlier law" *ibid* 174.

²¹ *Ibid* 6

²² "The word for covenant in the Hebrew Bible, *bərît*, can identify contracts between individuals (e.g. Gen 21:27, 1 Sam 18:3) and treaties between political entities (e.g. Gen 14:13, 1 Kgs 20:34). The notion of a treaty is especially important for understanding the covenant between Israel and Yahweh because the biblical descriptions thereof imbue it with all the markings of what scholars of the ancient Near East call a vassal treaty. A vassal treaty was typically concluded between a powerful king and a much less powerful ruler, who became, for all intents and purposes, the vassal of the former. A group of people, rather than an individual ruler, could take on the role of vassal. Evidence for these agreements comes from multiple ancient Near Eastern societies (e.g. Syrian, Hittite, Assyrian, Babylonian), and they typically contain the same basic elements, which included a commitment of allegiance on the part of the vassal and a (sometimes very lengthy) set of stipulations that he (or they, as the case may be) must obey. The Israelite covenant incorporates these and other common elements, including linguistic markers that characterized such

Hebrew laws of the Covenant drew heavily on Hammurabi's Code²³ which was in effect in Palestine and Syria when the Jews settled in there during the 14th and 13th century. Tracing a parallel between the two codes, the author clarified that it was well known since the discovery of Hammurabi's Code that 35 Covenant laws out of 55 have connection with Hammurabi's legislation: "That the Code of Hammurabi was heavily drawn upon by the makers of the Covenant Code has been known for years"²⁴.

The significant difference consists in the monotheistic biblical approach. Freud discovered the origins of monotheism in Egypt in the rule of Ikhenaton and his Aton sun-god, an idea sprung out of an imperial mindset rendering a divine pharaoh governing all nations²⁵. Possibly named Tuthmoses, Moses could have fled Egypt after Ikhenaton's death, when the oppression of the monotheist religion was unleashed. According to the Freudian hypothesis, Moses was attacked and killed²⁶ during a revolt and his monotheistic religion was rejected and forgotten for a while. The Decalogue²⁷, the tables of the ten commandments uttered in the form of interdictions, were widely attributed to Moses, whose laws were supposed to regulate "interclannish and intertribal"²⁸ matters and relations bearing in mind that the tribes had mixed ethnicities and origins. Powis stated that the first Hebrew settlers in Palestine could be associated with the Habiri referred to in the letters of Tell-el-Amarna²⁹ followed by a second wave led by Moses and then by Joshua, settling in different parts of the region. Pritchard cautiously mentions the community of Habiru or Apiru, a half-nomad population, as the probable Hebrews of the Patriarchs: "The 'Apiru (formerly called Habiru) were a strong semi-nomadic people, or rather a class of population in Syria and Palestine"³⁰. In his *History of Religious Ideas*, Eliade affirmed that "it is of little significance to

treaties, and puts the Israelite people into the place of the vassal. The so-called laws in the Hebrew Bible are actually presented as the covenantal stipulations or duties that the Israelites are now required to obey as the vassal of the god Yahweh. Thus, this covenant manifests the features of a legal document— a treaty— and yet seems to consist of distinctly 'religious' content when viewed from a modern perspective", *The Cambridge Comparative History of Ancient Law* eds Humfress C, Ibbetson D, Olivelle, CUP 2024 232-233

²³ "One of the great rulers of Babylon was Hammurabi, who reigned from 2123 to 2083 B.C. One of Hammurabi's outstanding achievements was the issuance of a code of laws for his empire. This Code was in force throughout his broad domain. At that time Palestine was a part of the Babylonian empire and the Code of Hammurabi was in operation within its borders. The Hebrews, of course, having no extensive and inclusive code of their own, naturally adopted the Canaanite Code, gradually changing, modifying, and supplementing it as their experience and needs dictated", J. M. Powis Smith *The Origin and History of Hebrew Law* UCP 1960 17

²⁴ "This will be seen at once upon an examination and comparison of the two codes. That the Code of Hammurabi was heavily drawn upon by the makers of the Covenant Code has been known for years. One scholar writing in A.D. 1912 said, "It has been calculated that out of 45, or possibly 55, judgments preserved in this old Hebrew law [i.e., the Covenant Code] 35 have points of contact with the Hammurabi Code, and quite half are parallel" *ibid*

²⁵ "In Egypt monotheism had grown as far as we understand its growth as an ancillary effect of imperialism; God was the reflection of a Pharaoh autocratically governing a great world empire" Sigmund Freud *Moses and Monotheism* Hogarth Press and the Institute of Psycho-Analysis 1939 105

²⁶ "The first, discovered by E. Sellin, is that the Jews, who even according to the Bible were stubborn and unruly towards their law-giver and leader, rebelled at last, killed him and threw off the imposed Aton religion as the Egyptians had done before them" *ibid* 98

²⁷ "Decalogue." This is a translation of a Hebrew phrase meaning "the ten words" Powis 6

²⁸ "In the Hebrew group were such independent elements as the Kenites, the Kenizzites, the Jerahmeelites, various clans from around Sinai, and probably representatives of Israelites already in Canaan" *ibid* 8.

²⁹ "The Hebrews first entered Palestine, as it would seem, in the fourteenth century B.C., since they are probably to be identified with the Habiri of the Tell-el-Amarna letters. A later contingent may have come in under Moses and Joshua at some time in the latter part of the thirteenth century B.C. This group seems to have settled in the south, while the early comers probably settled in the north and in the central part of the country" *ibid* 15.

³⁰ "The 'Apiru (formerly called Habiru) were a strong semi-nomadic people, or rather class of population in Syria and Palestine. While there is much reason to identify them with the Hebrews of the Patriarchal Age, the combination still remains uncertain and cannot be made the basis for any historical inferences" *The Ancient Near East. An Anthology of Texts and Pictures* ed James B. Pritchard PUP 2011 434

know if the ancestors of the Hebrews, the Apiru, were donkey-breeders and merchant caravaners or if they were herders of lesser cattle on the way to becoming sedentary³¹. Freud thought that exiting Egypt, the Hebrews joined several tribes encountered on the way to Palestine and their god Jahve, a volcano deity of Arabian origin³².

The wide majority of biblical law is contained in the Pentateuch in the form of casuistic, apodictic and participial provisions structured in three different legal codes according to the Mesopotamian legal tradition³³: the Covenant Code, the Deuteronomic laws and the laws of Leviticus-Numbers. It also contains a collection of "storyettes"³⁴ which are viewed as a sort of narrative legal precedents. Westbrook opined that the Jewish laws emerged out of a common legal tradition closely shared by the East and partly by the West "embedded in a literary-historical account"³⁵ about searching for the ideal location to settle down. Like all the laws, it developed based both on oral and written traditions modeled by complex interactions³⁶ which can be understood only when analysing and comparing all the ancient law codes including the Mediterranean Greek and Roman ones. Westbrook thought that Moses was pictured as a "temporal and spiritual" leader and that the Mosaic law was patriarchal, allowing the household head "total jurisdiction over its subordinate members"³⁷. These patriarchs named the elders judged in front of the city gate³⁸. However, it was Ezra who established "the jurisprudential foundations of Jewish law"³⁹ in its current version.

Wright finds evidence of covenantal textual dependence on Hammurabi's Code affirming that this biblical text is a "creative rewriting of Mesopotamian sources"⁴⁰. He boldly argues that the Covenant Code "is directly, primarily, and throughout dependent upon the Laws of Hammurabi"⁴¹ which was imitated and used as a model topped up with other Near Eastern

³¹ Mircea Eliade *A History of Religious Ideas* vol 1 The University of Chicago Press 1978 172

³² "The second fact, proved by E. Meyer, is that these Jews on their return from Egypt united with tribes nearly related to them, in the country bordering on Palestine, the Sinai peninsula and Arabia, and that there, in a fertile spot called Qades, they accepted under the influence of the Arabian Midianites a new religion, the worship of the volcano God Jahve" Freud 98.

³³ "The Pentateuch contains three distinct legal corpora: the Book of the Covenant (Exod. 20:22–23:19), the laws of Leviticus-Numbers 11, and the Deuteronomic laws (Deut. 12–26) These collections have a long antecedent tradition in the ancient Near East, a tradition that goes back to the southern Mesopotamian law "codes" from Sumer and Babylon" *A History of Ancient Near Eastern Law* 976

³⁴ Ibid 979

³⁵ "They are now embedded in a literary-historical account that is set during Israel's wanderings in the desert before the settlement of the promised land. They appear to have originated, however, in an intellectual tradition that biblical Israel shared with its neighbors to the east and west alike and that can be traced back more a thousand years earlier" *Law from the Tigris to the Tiber* 390

³⁶ "First, biblicists have concentrated on the relationship between the biblical and cuneiform codes and between the biblical codes themselves. Neither can be understood, it seems to me, without taking into account all the known codes, not only from the Near East but also from the Mediterranean basin" *ibid* 331

³⁷ "The head of household would appear to have had total jurisdiction over its subordinate members (Gen 42:37), but the latter could appeal to a divine tribunal (Gen 16:6). According to the account in Exodus and Deuteronomy, the 40 years spent by the Israelites in the desert on their way from Egypt to the promised land are a seminal period, during which the laws and institutions of the later polity were established. Leadership, temporal and spiritual, is in the hands of Moses" *ibid* 300

³⁸ "The local court sat in the open space behind the city gate. It consisted of leading citizens usually referred to as elders (Deut 21:18-21; 22:13-21; 25:5-10; 1 Kgs 21:8-11; Lam 5:14)" *ibid* 306

³⁹ "The seminal figure of the period was Ezra, who came from Babylonia with an imperial commission to appoint judges to administer the community's own law (Ezra 7:25). Described as a priest and a "scribe skilled in the Torah of Moses" he may be credited with laying the jurisprudential foundations of Jewish law as we understand it today. For he and his fellow priests read "from the book, from the torah of God, with interpretation" before the assembled people (Neh 8:18). Thus the legal system became based upon the idea of a written code of law interpreted and applied by religious authorities" *ibid* 302

⁴⁰ David P. Wright, *Inventing God's Law. How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* OUP 2009 3

⁴¹ "This study proposes a profoundly new understanding of the composition and nature of the Covenant Code (Exodus 20:23–23:19). It contends that this law collection, the pinnacle of the revelation at Mount Sinai according to the story of Exodus 19–24,

additions mixed with their own customs and cultural traditions. He dates the process of the respective "textual borrowing"⁴² in the 8th or 7th century BC when Israel was under Neo-Assyrian/Mesopotamian control.

Speiser highlighted the importance of "the legal material in Old Aramaic" found in the Elephantine papyri considered "unmistakably Mesopotamian in contents and phraseology"⁴³. This paper will analyse three legal documents recorded in the 5th century BC on the Elephantine papyri titled *B14 Report of Conflict and Request for Assistance*, *B15 Recommendation to Aid Two Benefactors* and *B16 Report of Imprisonment of Jewish Leaders*⁴⁴. In the first letter, a servant tells his masters Mauziah, Jedaniah and Uriah about the hearings in court at Memphis. The second text informs us that Mauziah, a well known leader and scribe, son of Nathan, got arrested for being suspected of complicity in stealing a precious stone. His incarceration was ordered by Vidranga, Troop Commander and Guardian of the Seventh attested at the beginning of the 5th century BC, son of Naphaina. In the third one, Islah son of Nathan reported to Gaddul's son about the detention of a number of Jewish people suspected of being involved in property theft and about the arrest of six women at the gates of Thebes, carefully enumerating the names of the detainees, both males and females.

B14 Report of Conflict and Request for Assistance

From PN to Jedaniah, Mauziah, Uriah and the Troop. To my lords Jedaniah, Mauziah, Uriah, and the Troop, [yo]ur servant [PN. The welfare of my lords may the gods, all (of them)], seek after at all times. It is well for us here. Now, every day that [...] he complained to the investigators. One Zivaka, he complained to an investigator ...[...] we have since the Egyptians a bribe to them give. And from (the time) that [...] of the Egyptians before Arsames, but thievishly act. Moreover, the province of Thebes and thus say: Mazdayasna/A Mazdean is an official of the province [...] we are afraid because we are fewer by 2. Now, behold, they favored [...]. Had we revealed our presence 4 to Arsames [prior] to this, this(!) wou[ld] not [have been done to us ...] he will report our affairs before Arsames. Pisina pacifies us [... So whatever] you will find — honey, castor oil, string, rope, leather skins, BOARDS [... — send us since they are full of anger at you] Pasu son of Mannuki came to Memphis and ...[...] and the investigator. And he gave me silver, 12 staters and happy with it [am I ...] 1 Hori gave me when they detained him because of the pitcher. Tiri... said: "[...] at the order of the king and they detain them. And the damage of Arsames and the compensation of whom they detained." To (sealing) my lords Jaadaniah, Mauziah, y[our] se[rvant PN].

is directly, primarily, and throughout dependent upon the Laws of Hammurabi. The biblical text imitated the structure of this Akkadian text and drew upon its content to create the central casuistic laws of Exodus 21:2–22:19, as well as the outer sections of apodictic law in Exodus 20:23–26 (along with the introduction of 21:1) and 22:20–23:19.2 This primary use of the Laws of Hammurabi was supplemented with the occasional use of material from other cuneiform law collections and from native Israelite-Judean sources and traditions. The time for this textual borrowing was most likely during the Neo-Assyrian period, specifically sometime between 740 and 640 BCE, when Mesopotamia exerted strong and relatively continuous political control and cultural sway over the kingdoms of Israel and Judah, and a time when the Laws of Hammurabi were actively copied in Mesopotamia as a literary-canonical text" *ibid*

⁴² *ibid*

⁴³ "Another case in point is the legal material in Old Aramaic. The papyri from Elephantine, at the southern extremity of Egypt, a small island manned by a Jewish garrison in the fifth century B.C., represent legal records that are unmistakably Mesopotamian in contents and phraseology" Speiser *Cuneiform law*

⁴⁴ *The Elephantine papyri* 127-134

B15 Recommendation to Aid Two Benefactors

To my lords Jedaniah, Uriah and the priests of YHW the God, Mattan son of Jashobiah (and) Berechiah son of [...]; your servant Mauziah. The welfare of [my] lords [may the God of Heaven seek after abundantly at all times and] in favor may you be before the God of Heaven. And now, before when Vidranga the Troop Commander arrived at Abydos he imprisoned me on account of a dyer's stone which they found stolen in the hand of the merchants. Finally, Djeho and Hor, servants of Anani, intervened with Vidranga and Harnufi, with the protection of the God of Heaven, until they rescued me. Now, behold, they are coming there to you. You, look after them. Whatever desire and thing that Djeho and Hor seek from you — you, stand them so that a bad thing they shall not find about you. To you it is that Khnum known is against us since Hananiah has been in Egypt until now. And whatever you will do for Hor, for your[. . . y]ou are doing. Hor is a servant of Hananiah. You, lavish from our houses goods. As much as your hand finds give him. It is not a loss for you. For that (reason) I send (word) to you. He said to me, "Send a letter ahead of me." [...] If there is much loss, there is backing for it in the house of Anani. Whatever you do for him shall not be hidden from Anani.

B16 Report of Imprisonment of Jewish Leaders

[To my brother PN, your brother Islah. It is well for me here]. [...] And now, Report I May the gods seek after your welfare at all times. ...]PN son of PN went to Syene and did/made ...[.....]. Behold, these are the names of the men wh]o were imprisoned in [Elejphantine: Hose[a,... Berechia, Behold, ...], Pakhnum. this is the names of the women who were f]ound at the gate in Thebes" and seized as prisoners: Rami wife of Hodo, Esereshut wife of Hosea, Pallul wife of Islah, Reia [wife/daughter of PN], Tubla daughter of Meshullam (and) Kavla her sister. Greetings, your house and your children until the gods let [me] behold [your face in peace]. [To (sealing) my brother PN son of] Gaddul, your broth[er] Islah son of Nathan.

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