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JUSTICE IN WESTERN ASIA IN ANTIQUITY, OR: WHY NO LAWS WERE NEEDED!

Niels Peter Lemche*

Law seemingly plays a great role in the Old Testament. The central part of the Pentateuch, the five Books of Moses, consists of several collections of legal material, among which we could mention the Book of the Covenant, Exod. 21:23, and the so-called Holiness Code, Lev. 17-26. And again, in Deuteronomy, the fifth Book of Moses, we find another extensive collection of laws ranging from chapters 12 to 26. So, how on earth can any person be induced into believing that no laws were needed?

A close look at the laws of the Old Testament will immediately change this perspective, as it becomes clear that only a limited part of the laws can be called laws in the typical sense of the word. Thus in the first collection, the Book of Covenant, only the first part (Exod. 21:2-22:16) contains what will be strictly juridical laws; the second part (Exod. 22:17-23:16) is devoted to religious rules and laws, if I may say so. Or, as it has often been maintained: the first part of the Book of Covenant belongs in the realm of jus, the second part represents fas.

Whether this distinction is absolutely clear—or was clear to people in antiquity may, of course, be questioned, but a fundamental difference of style between the laws of the first part and the religious regulations of the second cannot be disregarded: Apart from the very first law, that about the Hebrew slave (Exod. 21:2-11) which opens with “When you purchase a Hebrew as a slave,” the laws of the first section are all in the third person singular, and all of them should, according to the usual usage, be styled simple casuistic laws. They open with a description of the case, and the second part prescribes the consequences to be drawn. Thus the above mentioned law of the Hebrew Slave continues “he will be your slave for six years.” At the end, a special stipulation is attached to the simple law: “in the seventh year he is to go free without paying anything.”

* Department of Biblical Studies, University of Copenhagen, Købmagergade 44-46, DK-1150, Copenhagen K, Denmark.

In comparison, most of the laws or rules of the second part are phrased in the 2nd person singular or plural, and their form is less uniform than was the case in the first part. We thus find casuistic formulated law in this section, but perhaps more dominant are the so-called apodictic laws: No case is mentioned, only the prohibition against doing or accepting something. For example: "You must not revile God, nor curse a chief of your own people" (Exod. 22:28)—a style strictly related to the form of the Ten Commandments.

The two other large collections already mentioned, the Holiness Code and Deuteronomy, both contain religious regulations. Deuteronomy, however, also regulates the office of the king (Deut. 17:14-20), of the judge (Deut. 16:18-20; 17:8-13), and the functions of the court (Deut. 19:14-21). These must be reckoned laws in the strict sense. Deuteronomy, however, also contains passages much closer in style and content to ordinary law, for example, laws—or rules, regulations—concerning marital life and norms (thus Deut. 24).

In spite of this, it is my thesis that written law did not play any role in Western Asia, and the presence of such law material as we find in the Old Testament does not disprove my thesis. This can be based on the following observations: First it should be stressed that, apart from the Old Testament, no laws have survived from Palestine in antiquity. This verdict should, perhaps, be modified in one respect: The "Temple Scroll" found among the Dead Sea Scrolls in many respects can be compared to the law collections of the Pentateuch, especially the religious regulations. Various explanations have been put forward to explain this similarity in style and content between the Pentateuch and the Temple Scroll—among the more fanciful of which is the proposal that the Temple Scroll was composed to be part of the canonical laws of Moses. This is not a completely unlikely explanation. We, however, do not need to present in this article a reasonable and exhaustive explanation for this; but we may only need to say that the Temple Scroll and its laws should be evaluated alongside the religious regulations of the Old Testament, and not as an independent witness of a written law tradition in Western Asia.

Neither has, to this day, any law turned up in the documents of Western Asia, either in the form of single laws or as collections of laws. To the contrary, it is an astonishing fact that none of the rather

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ample archives of the Bronze Age Syrian states of Ugarit and Alalakh have so far contributed to our knowledge of written law in Western Asia—or perhaps more correctly: they have indeed contributed to our knowledge by indicating that written laws did not exist. It remains our task to explain why it was so, especially because it is obvious that these societies were not lawless bandit societies. How could the people of those days survive in their fairly complicated societies without a recourse to fixed rules which could be referred to in case of dispute among the members of the small Syrian and Palestinian states? That they were quarrelsome becomes evident from reading their letters, local as well as international. Can the missing law texts be attributed to only a lack of archaeological luck, or would it be possible to indicate another way to explain this absence?

I believe that a case can be made for the suggestion that the absent laws do in fact reflect a certain attitude to law present in these societies, and that this attitude is also reflected by the content of what is really preserved as law texts from the Ancient Near East.

Now, in Mesopotamia there are quite a few collections of laws mostly kept in a casuistic style much like the one in the biblical Book of Covenant, ranging from the beginning of the second millennium B.C.E. (even earlier specimens may exist) and down to Neo-Assyrian and Neo-Babylonian times. The collections of King Lipit-Ishtar of Lagash (nineteenth cent. B.C.E.) and of Hammurabi of Babylon (eighteenth cent. B.C.E.) are among those best preserved, as also is the anonymous law collection from Eshnunna, which is probably just a little earlier than Hammurabi’s collection. Altogether they provide the student of ancient law with important material and give indications about the principles of redactions within these laws.

The famous Code of Hammurabi should attract special attention; it leaves the impression that we have here a law code which was in use in the days of this important Mesopotamian king. A number of topics are taken up and dealt with in these laws: simple crimes, family matters, slave laws, etc. And a certain—if not altogether conspicuous—arrangement also seems to lie behind the compilation. Would any-

3. Although, it could certainly be argued that most bandit societies have laws of their own, and these laws are not normally written down, but nevertheless would be followed by the members of the society in question.

4. All of these three collections are easily available in translation in JAMES B. PRITCHARD, ANCIENT NEAR EASTERN TEXTS RELATING TO THE OLD TESTAMENT, (ANET) Princeton: Princeton University Press 1953, at 159ff., as are collections from Assyria and the Hittite kingdom. Quotations from the Code of Hammurabi will follow THEOPHILE J. MEEK’s in ANET, at 164ff.
thing suggest that this collection could not have been the manual of a judge?

In fact, I think two cases can be made for rejecting this collection as a genuine collection of laws to be followed in court. The first argument—indeed an old one—is based on the long established fact that among the thousands of juridical documents from Hammurabi's time, not a single definite reference to the laws transmitted by the Codex can be found. Although this argument is certainly not absolute, as it must be said to belong among the more taciturn arguments—the *argumenta ex silentio*—it may be one of the instances where you may feel provoked to ask whether the "ex silentio" part simply comes from the nature of these questions. If the basic assumption is wrong, according to which, for example, the Codex Hammurabi contained laws in the modern sense of the word, then one cannot disprove this by referring to missing references to the Codex. Some may argue that this shows only the limited extension of these laws' influence on actual jurisprudence in Hammurabi's time. In this way, it may be argued that the Codex could be compared not to modern comprehensive collections valid for countries and states as such, but rather to, for example, European local law collections of the Middle Ages, such as in my own country the "Law of Jutland."6

This counterargument is neutralized, however, by a reference to the Mesopotamian tradition of issuing such law collections, as we should at least expect in some place a reference to a collection, which need not be Hammurabi's. If this is not the case, and I have no knowledge of such references, it would probably be best to adhere to the viewpoint of F.R. Kraus: that these laws are not laws, but rather deci-


6. A royal decree of justice issued at the beginning of the thirteenth century C.E., and only valid for a limited part of the kingdom of Denmark, whereas at the same time comparable collections of law were issued to be valid in other parts of the kingdom. In fact, Denmark was not to have a common law valid for the whole country before the end of the seventeenth century A.D.: King Christian V's so-called "Danske Lov" (Danish Law, or rather: The Law of Denmark).
sions of the court collected by the king to prove his claim to be the just
king.

The second argument for such an understanding of the codes from Mesopotamia could be the limited number of laws which they contain—not a very strong one, as it could easily be answered by referring to the fact that even Mesopotamian society was fairly basic compared to anything comparable in modern times. A non-complicated society, mostly agricultural, will need uncomplicated laws, and so we should not be surprised by the limited extension and scope of even a fairly large collection of laws such as to be found in the Code of Hammurabi. While this is certainly true, it does not explain the actual content of the laws, where indeed something is missing, if they were to provide juridical guidelines for the enactment of laws.

A casual glimpse at the beginning of the laws of Hammurabi will tell why this is so. The first law states: “If a seignior accused another seignior and brought a charge of murder against him, but has not proved it, his accuser shall be put to death.” This is understandable, as false accusations and false witnesses are surely factors against which any court must know how to address and defend itself. As a matter of fact, this paragraph introduces a small section of the code devoted to false accusations, some that will lead to capital punishment, others that have less severe consequences for the offender. However, at least one law is missing: The Codex does not dictate, as any decent collection of laws should, what happens to a person who has killed another person. Why is this so? Probably because every judge of the kingdom of Hammurabi knew in advance how to deal with a simple murder; he was in no need of the guidelines of a written law. The murderer would have to be put to death, or so the “law”—the accepted general opinion of that time—would tell the judge.

If I am right in maintaining this, I may at the same time have indicated that we hereby obtain an impression of how the law tradition proceeded even in Mesopotamia. The judges of that society must have had some source of knowledge about how to judge. This source would be either written tradition such as the law codes—but we just realized that these codes did not play any advisory role to ancient Mesopotamian courts—or unwritten law tradition. A third possibility

7. This should be understood literally. Traditional societies of the Middle East had a percentage of more than 90% of the population engaged in the production of food. In Western Asia, the percentage would be even higher.
8. We shall later deal with examples from the social anthropological literature where the answer may not be as simple as that.
would be that the future judges were trained in written law, just as in modern law schools, and that the tradition of law codes originated with the demand of the educational system for "school texts."  

**Western Asia**

I am not going to continue with the Mesopotamian situation, but will instead turn my attention to the situation in Western Asia. Because the societal situation in Western Asia was less complicated than in Mesopotamia, it may better teach us something about the general conditions of the enactment of justice in ancient Near Eastern societies.

On one very specific point there was absolute agreement between the ideology of justice in Western Asia and in Mesopotamia: Both traditions understood the king to be a righteous and just judge, who was considered the highest institution of appeal to all his subjects, the one who would distribute law and righteousness among ordinary human beings. This was, of course, part of the royal propaganda as found in any corner of the territory, and in itself not very interesting, as probably nobody would imagine the king to be unjust. It is only in the very late biblical account of the Hebrew kingdom that a pronounced criticism of the king as righteous can be found, in the introduction to the period of the kingdom in 1 Samuel 8:10-18, according to which it was not to be expected that the king would act as a just father of his country. To the contrary, the king would reserve for himself the right of taxation, and he would force his subjects—men and women alike—to work for him.

This evaluation of the king's role can only be understood as the prologue to the highly tendentious description of the Hebrew kingdom's history that follows in 1 Samuel to 2 Kings. The description runs counter, on one hand, to another description of the king's right, in Deut. 17:14-20, which could be considered the positive counterbalance to 1 Sam. 8:10-18, and on the other, to expectations pronounced in some Psalms of the Old Testament, expressing the expectations of the righteous rule of the king, especially Ps. 72, according to which

9. Cf. on this ECKART OTTO, Aspects of Legal Reforms (cf. n.5), at 62-63 (including literature).

God shall give his laws to the king that the king may provide for the welfare of his people:

God, endow the king with your own justice,
his royal person with your righteousness,
that he may govern your people rightly
and deal justly with your oppressed ones.
May hills and mountains provide your people
with prosperity in righteousness.
May he give judgment for the oppressed among the people
and help the needy;
may he crush the oppressor.\(^{11}\)

The parallel between these verses and the prologue to the Code of Hammurabi is striking, and shows that the idea of a human law, written down and used as a guide by the judge in court, was foreign to the mind of the population of the Ancient Near East. Justice was divine business given to man from the Gods and effectuated by their representative on earth, the gracious king. To such a view, a human law would, in practice, be almost blasphemy, i.e., to formulate a written law as if it could substitute for the divine law would be considered an encroachment on the prerogatives of the Gods. What could be written down would only be the practical interpretations of the divine law, showing that the divine principles have been or will be followed.

Now, a king is not a very practical figure in daily life. The ideology of the just king may be a kind of social myth explaining why it should be expected that the enactment of law and order is *per se* just and righteous, rather than an explanation of the social placement of justice in an ancient society of Western Asia. The ideology of the righteous king not only legitimates kingship as such, but also legitimates the practice of law, irrespective of the societal level on which the practice should be sought. The king is, on the other hand, almost never part of ordinary court cases, these being something that are referred to in the administrative documents from Ugarit or in the traditions of the Old Testament. Not even his administration seems to interfere in the decisions of the court if the case in question can be handled on a lower—local—level.

It is true that we in the Old Testament have a story like the one in 1 Kings 3:16-28, narrating the famous incident of the two women fighting for one and the same child. The story is obviously not a reflection of any decision of Solomon but is used to stress the importance of the king as—ideologically—the just ruler. The concluding note to this in-

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incident: "When Israel heard the judgment which the king had given, they all stood in awe of him; for they saw that he possessed wisdom from God for administering justice." Again the king relied on his godly overlord to provide him with the means for judging correctly.

Apart from romances such as 1 Kings 3:16-28, most reflections of the practice of law in the Old Testament point to the fact that law was local business, and not the business of the royal court. Thus, to study the background of the missing written laws from Western Asia—and probably also Mesopotamia—we should focus our interest on the local level of society in order to investigate the conditions of law here. Outside the Old Testament, very little, if anything, is revealed by administrative documents mostly coming from royal administrations and reflecting the relations between the royal palace and the local community, or involving cases of interest only to the local community, which would never have involved the palace because the case was settled among the inhabitants of a certain village. The biblical information is of a different kind, partly because it is not official, coming from some archive of a state, and partly because it can hardly be styled reports of an eyewitness. It is a rather narrative reflection of the practice of law and order on the local level, and as such it may distort or mold the evidence of real life, not according to the needs of the real world, but rather those of the biblical writers themselves.

But when this limitation of the biblical material is taken into consideration, the Old Testament has probably a lot more to tell about locally administered justice than the official documents of the ancient Near Eastern states. It also sometimes provides what actually may be reckoned to be a kind of running commentary to rules expressed in other Near Eastern sources.

Thus, the above mentioned "law" of Hammurabi, the Codex Hammurabi § 1, addressing false accusations for murder, finds a commentary in Deut. 19:16-19:

When a malicious witness comes forward to accuse a person of a crime, the two parties to the dispute must appear in the presence of the Lord, before the priest or the judges then in office; if, after a careful examination by the judges, he is proved to be a false witness
giving false evidence against his fellow, treat him as he intended to
treat his fellow. You must rid yourselves of this wickedness.

Although the text probably expresses the opinion of some part of the
Jewish society of the Persian or Hellenistic periods, there is in fact
no reason to see the reference to the evil and wickedness as foreign to
the understanding of a text like the one in the Code of Hammurabi.
Without this original distinction between good and evil, Oriental law
would have lacked a legitimization, be that in the Israel of the Old
Testament, or in the historical societies of Syria or Mesopotamia.

Thus, it may also be valuable information as to the importance of
witnesses, when it is prescribed in Deut. 19:14-15 that no case can be
decided on the evidence of only one witness; at least two or three are
needed. This case concerns a murder which has been committed in the
countryside, although the murderer cannot be found. In Deut. 21:1-9,
a special ritual is prescribed for the cleansing of the inhabitants of the
village closest to the place of a crime.

Now, we are still looking for the social foundation of the distribu-
tion of law and justice on the basic level of society, as it must be, to my
mind, on this level that an explanation can be found for the missing
written law tradition.

It is a stereotype in biblical scholarship that although judges were
officially appointed (however, by whom?), there was no official police
force to secure the enactment of a decision in court. Neither did an
official body exist which would safeguard the interest of the poor and
destitute. And finally, but not least: Access to court was limited to full
citizens. No case was brought before a judge on behalf of the society
or state. Such a thing like "The State of California v. O.J. Simpson"
would be unheard of. The state did not interfere in the lives and
whereabouts of ordinary man; it did not protect its unfortunate citi-
zens from being maltreated or mishandled by more influential mem-
bers of the society. Therefore, the pages of the Old Testament abound
with admonitions that the rich should care for the poor, and that
judges should neither accept nor be offered bribes.

13. Cf. on this below.
14. This is not the place to discuss this "Israel." It will suffice to say that a number of Old
Testament scholars today distinguish between different "Israels": The historical Israel, i.e., the
state called Israel (alias Bit Humriya or Samarina), which existed in central and northern Pales-
tine between, say 950 and 720 B.C.E., the biblical Israel, i.e., the Israel as narrated by the Old
Testament, and the ancient Israel, i.e., the concoction of the historical and the biblical Israel
which has been created by biblical scholars. On this distinction, see PHILIP R. DAVIES, IN
Sometimes the scholarly reconstruction of justice sounds like a scene from Hans Christian Andersen (or his Californian “translator,” Mr. Walt Disney). We are confronted by a small scale society where the judge—once appointed by the king, his master, so to speak—resides in court as an independent member of the local society, as he is paid by his superior officers of the state administration and does not have to think of his daily outcome as member of the local society in which he is active. Before him people of all sorts—or their representatives—will bring their case aspiring for a fair and just decision made by this independent instance of the court.

This picture has, however, hardly anything to do with the actual distribution of law in an ancient Oriental society. And again, the explanation is that the royal administration would not have shown any interest in interfering with local business if it was not for tax affairs or other cases where its own interests were at stake. Why should the royal court be interested in a simple murder, where one destitute peasant had killed another poor peasant? It would have been reckoned a totally unrewarding enterprise by the officers of the royal court, and the local community would have understood it as an illegitimate encroachment on its right to direct its own affairs.

Now, the usual way to proceed would be to describe the forces which were operative in such a society. Where are we to look for the decisive institutions of such a society? In the family or somewhere else?

Let’s start with the family, because there we are confronted with another stereotype of orientalistic scholarship, according to which the most important part of the socio-political structure on the local level—that is the level under the official level of the state—would be the family. It is thus suggested that law and justice at the local level should be a matter of the family oriented society. This is, however, a rather loose definition, as the term “family” is itself rather loose. In itself, it says very little about the real centers of power in small scale societies, but we will have to look for these centers as the places where we should seek the foundation of the administration of law and order.

The term “family” is, however, in itself rather meaningless, for what is intended by the term: The nuclear family, or a greater entity? This is not a reflection on Oriental usage, but rather a demonstration of how imprecisely the traditional Orientalist is able to express himself—or herself. To start at one end, the traditional Oriental family
is—contrary to the general opinion—not very large. At the present, according to social anthropologists, it is between 4.5 and 7 persons, and we have indications that the average nuclear family in the Ancient Near East may not have exceeded the upper limit.\textsuperscript{15} It is obvious that such a tiny group does not represent any kind of power or economical and juridical security. The family as such is much too weak for this. The nuclear family is technically speaking a residence group—people living together—but it is not economically, politically or juridically autonomous. It cannot guarantee the welfare of its members but will have to leave this to a higher level of integration, such as the clan and the lineage, two concepts which have often been misunderstood.\textsuperscript{16}

Anthropologists have often considered the lineage to be the important political and economic group in traditional Middle Eastern societies—although it says something about the level of sociological understanding among professional orientalists that we most often have to look in vain for this term in modern studies of ancient Near Eastern societies. Lineage only roughly squares, however, with the much less precise term, extended family, which is supposed to number as many as twenty or more persons.\textsuperscript{17} A limited number of nuclear families will normally form one lineage. It will be headed not so much by a chosen leader, but rather by some family member who, because of his prestige, in practice is considered to be the head of his lineage.

It has often been described that, in juridical matters, the lineage becomes important, since it is reckoned to be the level on which such matters can be decided without the interference of state officials. The extension of the authority of the lineage in this respect is amazing, and might include even crimes that normally would draw capital punishment upon the offender.

\textsuperscript{15} Cf. Niels Peter Lemche, Early Israel: Anthropological and Historical Studies on the Israelite Society before the Monarchy, Supplements to Vetus Testamentum 37, Leiden: Brill 1985, at 231-232. In general the description of the traditional Oriental family structured society will follow what has already been said in this volume, especially at 202-224.

\textsuperscript{16} The lineage is, according to the popular anthropological definition, a kinship group consisting of relatives with a fair knowledge of how the single members of the lineage are attached to it. The genealogy of the lineage should therefore be clear to all genuine members of one and the same lineage. A clan, by contrast, is also considered a group based on the notion of kinship. However, the single members of the clan may not know in detail how they relate to the clan itself, or how other members of their clan relate to it. Personally, I have never found this explanation of the difference very useful, as it seems to indicate either good or bad memory, rather than a completely different organization, as the criteria for making the distinction.

\textsuperscript{17} Some stereotypes talking about up to a hundred persons are, however, more fantasy than reality.
Even a murder may be resolved by the lineage. Here it is interesting that in the traditional Middle Eastern society of today, the word of the Qur’ān would normally be praised indicating that a murderer should die. This rule is accepted but not followed in many places, as everybody can see that such a demand could easily lead to blood vengeance and destructive vendettas. Instead, according to anthropologists’ testimony, such serious cases are solved on the level of the local society to avoid the break-up of the society itself due to the criminal acts of one of its members.\footnote{Emrys L. Peters has, in Aspects of the Family Among the Bedouin of Cyrenaica, in Meyer F. Nimkoff, Comparative Family Systems, Boston: Houghton-Mifflin 1965, at 121-146, described the devastating effects that may result when such mediating forces are not at work.}

According to these authorities, in reality this would say that in the case of manslaughter, the leaders of the lineages involved will meet—eventually in the house of some chosen arbitrator acknowledged by both lineages—to settle the matter. The claim would be that the murderer (or a close male relative of his) should die to reestablish the broken balance between the lineages belonging to the same village. That two persons should die is, however, from the perspective of the village, an undesirable consequence, so another solution must be found. Therefore, negotiations start, trying to establish the value of the deceased and the amount of compensation to be paid by the offender’s lineage. In general, or so we are induced to believe, such a solution will be found, after which the tranquillity of the village is reestablished.

In general, anthropologists are not specialists of law, and their description of how the juridical system works in traditional societies may lack detail and precision. However, they indicate that such societies have no use for a written law. In general, people know what is going to happen to a murderer; there is no need to have this in writing. On the other hand, the demands of the unwritten “law” may only occasionally be followed, which for its part says that the unwritten law in this case is best considered a “metaphor” rather than a practical guideline for how to act.

If even a murder could be solved without resort to anything written, most juridical cases would also be solved in the same fashion. Thus in traditional Middle Eastern society, it is likely that it was rather uncommon for the state authorities to be involved in local affairs if public interest was not directly involved. Furthermore, the stable character of such local communities would normally have made it
absolutely unnecessary to introduce changes to what may have been a very simple unwritten law code, consisting of just a few practical guidelines which would perhaps not be followed slavishly, but which at least indicated a level of compensation.

Here, we have finally found the background of the missing written laws of Western Asia in ancient times. On the local—village—level, where the majority of the population was located, no written law was ever needed. Life was simple and so were the basic rules of the society. The lack of written indications for how to behave when even a severe crime was committed was not seen as a hindrance to the enforcement of a type of retribution, whether this consisted of the direct punishment of the offender or resulted in compensation paid by his lineage.

As such, a hypothesis like this should suffice to explain the character of the administration of justice among ninety to ninety-five percent of the populace of an ancient state. However, was this the only explanation, or should it be broadened, and—finally—was it true that the lineage was considered the decisive level of the distribution of justice? How, for example, would such a system guarantee the welfare of the orphan, the widow, and the poor, as so often mentioned in the juridical language, not only of the ancient Near East—Mesopotamian as well as Western Asiatic sources—but also frequently in Old Testament quotations?19

Against a too positive attitude toward the lineage, two observations should be called upon. First, it should be stressed that, in general, the lineage does not seem to care for the economic welfare of its members. An astonishing fact, often referred to, is that poor lineage members could normally find only very limited (if any) support among their relatives.20 Second, lineage members may not live together. Thus it is not unusual to observe that the members of the same lineage can be distributed among more than a single village. Segments of the same lineage may dwell in different villages within the same region. It is even known that such segments may not even share the same occupation: some may be nomadic, some peasants. Nevertheless, they are still, from a genealogical point of view, members of the same lineage. Other examples indicate a distribution of a lineage in a single

village, in which case the lineage seems to be segmented between different parts of the village.

**Patronage**

Such observations indicate that another power system may be operative in these societies, a power system that does not necessarily follow the lines of kinship, in which case the talk about kinship may be more a metaphor than reflecting the realities of the living world of the people embraced by this ideology.

Many years ago, a note struck me as important in a study on a Lebanese village community by the well-known American social anthropologist, John Gulick. After having, in the style of the day, explained the social structure of his village, in the end he had to give up and confess that, although it should be supposed that this social structure would also mark out the village's power structure, there were indications that the real power structure was different from the social structure. He was, however, not able to trace the details.21

To me, it seems likely that Gulick was blocked from doing further observations by the infamous *omertà*, an expression well-known from Sicily, meaning—according to Cassell's Italian-English Dictionary—"connivance"; my Italian-Danish Dictionary has it as "solidarity between criminals." But it is a well-known Mafia expression often translated as "the obligation not to talk," meaning that the members of a certain "family" should not disclose the secrets of their organization to outsiders.

Now, the Mafia is of course a criminal organization, but at the same time, it is well-known that in its present form, it is the result of a special socio-political development which took place in Sicily over the last two centuries. Before the eighteenth and nineteenth centuries, its basis was already present but had not yet developed its modern criminal tendencies. The system developed out of what has sometimes been termed the "Mediterranean social system," according to which the population is split between the patrons and their clients. The system also seems to be almost omnipresent in the Mediterranean world, reaching from the Middle East right through North Africa, embracing

also (of course) Italy, the islands of Sicily, Sardinia and Corsica, and even France, at least before the revolution of 1789.  

As a matter of fact, it seems to be almost omnipresent and should be looked after, according to the definition of the sociologist S.N. Eisenstadt, in societies that are not simple tribal societies but rather embryonic states with only a rudiment of bureaucracy. In fact, bureaucracy is described as the biggest enemy of the system. Whenever a well-functioning bureaucracy appears with officials who cannot be bribed, as is the case, if nowhere else, at least in Northern Europe, and the Scandinavian countries, this alternative power system seems either to disappear or to lose its importance.

To be short, we are here speaking about the patronage system as perhaps the most important power organization in traditional Middle Eastern society. The basis of the system is the fundamental division of the population in such societies between a wealthy and independent segment, in short the "patrons," and a far bigger poor and destitute segment, in short the "clients." In pre-industrialized times, a third class never existed, for example in the form of an influential class of bureaucrats running the society on behalf of their king.

It may be premature to present the full lay out of such a system; the presence of which is almost uniformly overlooked, although the


24. This may be questioned as far as the Hellenistic-Roman period is concerned, since in the enormous cities of that time, such a segment must of course have been present. Its importance may, however, have been restricted to the Greek speaking cities of the Near East, whereas in the countryside, still mostly unfamiliar with Greek, this class could easily have acted as local patrons. Parallels from modern Syria are well-known where, for example, rich people from Aleppo may turn out as the local patrons in villages in the countryside. Cf. Louise E. Sweet, Tell Toghaan, a Syrian Village, Anthropological Papers No. 14, Ann Arbor: University of Michigan 1960, and the commented review in my Early Israel, supra note 15, at 171-173. It should, on the other hand, not be overlooked that the practical Romans turned the system into a fully developed and acknowledged element in their state organization to such a degree that it has sometimes been maintained that the system is a Roman invention. See, for example, on this the classic description in Ronald Syme, The Roman Revolution, Oxford: Oxford University Press 1939, at 369-386 ("The Working of Patronage").

25. An exception is the Italian Assyriologist Mario Liverani, who seems always to have been aware of its presence and importance for molding the ideology of the ancient societies of Western Asia. See thus his Prestige and Interest: International Relations in the Near East ca. 1600-1100 B.C., History of the Ancient Near East, Studies 1, Padova: Sargon, 1990.
concept of patronage has begun to gain importance especially in bibli-
cal studies in recent times. The basic problem for the poor is simply
to survive in an inhospitable environment. In general, the Middle East
is unkind to its inhabitants. Only comparatively small stretches of land
are suitable for agriculture, and rainfall is always haphazard. Droughts
are common and leave ordinary men almost defenseless in times of
stress. In spite of the official propaganda of ancient times, no "Scandi-
navian" welfare system was ever called into existence. So, belonging
to the hapless group of ordinary beings, how is one to survive in a time
of crisis?

As already mentioned, the support to be drawn from family
members, i.e., from the lineage—and here the nuclear family is unim-
portant—would hardly be enough to save a person from servitude,
well-known to be the ultimate way of saving one's life in antiquity.
Therefore, admission to some "benevolent" person might be neces-
sary if the poor person wanted to survive. It is therefore my thesis that
the ancient societies of Western Asia were in fact patronage societies,
and that patronage played an extremely important (but of course not
exclusive) role in maintaining the welfare of this region's inhabitants.

The system was never described in any detail in any source dating
back to antiquity, probably because it was too well-known. But its
effects and especially its ideology are almost omnipresent. In the Old
Testament, it appears in the most unexpected places. Thus, the central
biblical concept of the covenant between God and Israel should prob-
ably be interpreted in light of patronage ideology (and it is hardly due

26. In the field of New Testament studies, the importance of the concept has been stressed
by BRUCE J. MALINA, in his THE NEW TESTAMENT WORLD: INSIGHTS FROM CULTURAL AN-
I have dealt with the issue in lectures reaching back to 1989. To be published are the following
lectures: KINGS AND CLIENTS: ON LOYALTY BETWEEN THE RULER AND THE RULED IN ANCIENT "ISRAEL,"
(SEMEIA), as well as POWER AND SOCIAL ORGANIZATION: SOME MISUNDERSTANDING AND SOME PROPO-
SALS: OR IS IT ALL A QUESTION OF PATRONS AND CLIENTS?, and THE RELEVANCE OF SOCIAL-CRITICAL EXEGESIS
FOR OLD TESTAMENT THEOLOGY (to appear in THOMAS L. THOMPSON WITH FREDERICK H. CRYER
AND NIELS PETER LEMCHE, CHANGING PERSPECTIVES IN BIBLICAL INTERPRETATION: FROM AN-
CIENT ISRAEL TO BIBLICAL ISRAEL, THE COPENHAGEN INTERNATIONAL SEMINAR, Sheffield:
Sheffield Academic Press). A monograph on this subject by the present author is in the stage of
preparation.

27. On this, cf. the comprehensive study by GREGORY C. CHIRICHIGNO, DEBT-SLAVERY IN
ISRAEL AND THE ANCIENT NEAR EAST, JOURNAL FOR THE STUDY OF THE OLD TESTAMENT

28. In fact, ancient sources never systematically address social or political structure, al-
lowing for a concise picture of the organization of society to be reconstructed. Thus we do not
know a single word from Western Asia to be translated as "peasant," or "nomad," probably
because there was no need to find a specialized word covering at least 95% of the total popula-
tion. Everyone was assumed to be a peasant (or a nomad) if nothing else was said about them.
to a coincidence that in the Mafia the *capo di capi* is called the "Godfather"!\(^{29}\)

When we, however, return to the subject of this Article, the missing laws of Western Asia in antiquity, we may have some clue as to how the administration of justice took place. As mentioned above, it was the duty of the rich to care for the welfare of the widow, the orphan, and the poor; in short, the poor and destitute. Generally, this has been taken to mean persons who had not obtained juridical status, simply because they were either without a father or a husband to defend them in court, or without land possessions, and therefore not fully recognized citizens of the state.\(^{30}\) Consequently, they could not carry a complaint against a full citizen before a judge if they were not supported by a full citizen, who would take it upon himself to safeguard their rights.

This may be the grim background of the life of ordinary man in ancient times. Where a person was not an adult male owning his own land, this person would not be considered a full citizen of his community, and therefore would be helpless if accused or attacked by one of the "seigniors" of his society. There was no help to be found, no court of appeal if this person felt himself injured or his rights infringed upon by a landlord. There was in fact only one possibility left to the poor, either to bow your neck to the inevitable, or to find a patron who would protect you, and in practice, "own" you.

The difference from proper debt-slavery may have been marginal and probably hardly recognized at all, and the terminology would most likely be the same. As is well-known, the Hebrew word *ebed* (the Akkadian counterpart is *wardum*), normally translated as "slave," also means "dependent," i.e., a person in dependence of another person. Thus it is obvious from, for example, the international correspondence of the Late Bronze Age, that any high officer of the king would term himself an *ebed* (or *wardum*) when directing his message to his lord, the king. To this officer, the king would be reckoned not only his superior but, as a matter of fact, his most important and ultimate patron (apart from the Gods).


30. The so-called "seignior," in ANET, *supra* note 4, THEOPHILE E. MEEEK's translation of the Akkadian *awilum*, according to CAD A/2, at 48ff., is to be translated as either 1. "human being," 2. "grown man, male," or 3. "free man, gentleman"; it may here denote the patrons only, or at least the land-owing part of the population.
It is just as important that the monarchs of the same period generally used familial terms when addressing each other. Thus, monarchs of the same standing, for example, the imperial rulers of Egypt and Hatti—the Hittite Kingdom of Asia Minor—would use the term “brother,” and a mightier king would be likely to call another king, not quite in his own class, “son” (and vice versa, “father”).

Whatever it was, simply to survive, a tie must be established between the poor and the rich, between the client and the patron. There is no need to proceed with the details in this place.

PATRONAGE AND LAW

When we return to the place of the administration of the court and consider the basic societal structure, we open an avenue to a better understanding of quite a few problems attached to jurisprudence in the Ancient Near East. In Deut. 16:18-20 we read:

In every settlement which the Lord your God is giving you, you must appoint for yourselves judges and officers, tribe by tribe, and they will dispense true justice to the people. You must not pervert the course of justice or show favour or accept a bribe; for bribery makes the wise person blind and the just person give a crooked answer. Justice, and justice alone, must be your aim, so that you may live and occupy the land which the Lord your God is giving you.

This quotation is, of course, embedded in the ideological phrasing of the editors of this part of the Old Testament, the so-called Deuteronomistic movement. It is their ideology that carries the day. On the other hand, not even the Deuteronomistic “welfare-theology,” as it has often been styled (the Deuteronomists being especially concerned about the poor and weak members of the Jewish society), can hide the

31. Cf. on this the above mentioned study by Liverani, Prestige and Interest, supra note 25, especially at 197-202 (The Ideology of Brotherhood).

32. Basically my studies from the 1970s, “The Hebrew Slave,” supra note 1, at 129-144, The Manumission of Slaves-the Fallow Year-the Sabbatical Year—the Jobel Year, Vetus Testamentum 26, 1976, at 38-59, and Andurarum and Misharum, Comments on the Problem of Social Edicts and their Application in the Ancient Near East, Journal of Near Eastern Studies 38, 1979, at 11-22, will still be valid in this connection, although the interpretation of the Akkadian term hupshu—Hebrew hophsht, as “client” (see the “Hebrew Slave”) may be too broad (cf. Chirichigno, Debt-Slavery, supra note 27, at 210ff.). But it is obvious that the term must have denoted a person in a special relationship to his former master—whether client in the technical sense or something else.

33. Again, this is not the place to discuss Deuteronomism and whatever is attached to this phenomenon. Suffice to say that it is most likely a Jewish intellectual movement of the Persian and Hellenistic periods—probably the forerunners of some of the later Jewish parties of the Hashmonean period—which left its impression on large stretches of the Old Testament. Other scholars would place them in the late pre-exilic period (roughly the 7th-6th centuries B.C.E.), but this is immaterial in this connection.
fact that the person to whom they address their admonition, the “you,” is not himself a poor person, but a representative of the influential citizens—or simply this group as a whole. Without mentioning it expressly, it is therefore the obligation of this group to care for the administration of justice, and it is their duty to appoint judges who can be trusted as impartial, righteous, and who do not accept bribes.

Now, does this make a judge independent—as should be the mark of honor on every judge in this world? Can it be assumed that this judge should decide against the interests of the group that appointed him to his office and side with the weak? This is a totally unlikely suggestion, and probably never happened, or the judge would be thrown out of office.

However, this perspective is distorted: the judge would never go against the interests of the group that supported his appointment, as there would be no occasion for this to happen. No poor man could drag his seignior before the judge and ask for justice, only a seignior could bring accusations against another seignior. This is the fundamental and all-important principle of justice. The judge is therefore not a judge in the usual sense of the word, he is an arbitrator chosen by the patrons to act as an intermediary whenever a problem arises between two or more patrons or patronage groups. The safety of the poor and destitute can only be guaranteed inside this system, as only the personal allegiance between a patron and his clients will provide the protection needed in order to survive.

It is also obvious why it is stressed in the quotation from Deuteronomy that the judge should be impartial and fair, for only an arbitrator whom both parties can trust will be able successfully to mediate between the patrons and their clientelae. For his sake, a patron standing behind the appointment of a certain person to this job as arbitrator must, for the sake of the survival of the system as such, accept the risk that the decision may occasionally go against his interest. The integrity of the office of the arbitrator must by all means be safeguarded, or it will be valueless.

Now, the risk that the decision would go squarely against the interest of one patron may not have been as great as such. After all, most cases were handled in “court” by means of negotiations, headed by the arbitrator, the “judge.” So whenever possible, and to avoid societal disruptions, a compromise would be looked for and found, even when in the technical sense, a severe crime was committed. If we return to our “case study” of the murderer who was not killed but fined
an indemnity, this murderer might of course have been an important person to be protected. It is most likely that in other instances, when the offender belonged to a lower class group, he would have lost his life as well, as it was not worth paying for his survival.

All of this, however, shows—and I hope in a sufficient way—why written laws were not needed in traditional communities as found in Western Asia in ancient times. Such laws would have been a hindrance to the administration of justice, as they would have created an obstacle to the smooth function of the power system. No laws were needed to inform a patron about his rights and duties, for in principle he decided himself what was right and what was wrong. No one could intrude upon his rights, unless the intruder was himself a patron of an even higher standing, ultimately the king, the top patron of a state—but as everybody knew, the king was most unlikely to interfere if his own interests were not at stake.

Thus, there is no reason to wonder why no written laws have survived—there was simply no use of such laws. What was needed was in fact only a general attitude towards what was considered right and just. Here a collection of “rules” like “The Ten Commandments” would be a sufficient expression of the basic rules of this general attitude. This “code,” printed twice in the Old Testament, in Exod. 20 and Deut. 5, is introduced by some religious admonitions to be connected with the specifics of the Jewish religion. They do not need to occupy us in this article. Neither is the intermediary admonition important—although it is basic to the societies in question: “Honor your father and your mother.” The next five (according to some counting six) categorical prohibitions will tell us all we need:

Do not commit murder.
Do not commit adultery.
Do not steal.
Do not give false evidence against your neighbor.
Do not covet your neighbor’s household.

Probably most of the “laws” to be found in collections such as the one by Hammurabi will somehow have to do with either of these five aspects or principles of what is right and wrong in a traditional society: manslaughter, adultery, simple theft, false testimony, and trespass. Most likely such “prohibitions” were, in one form or another, known to every member of the traditional societies of the ancient world, and there is no reason to explain why the Old Testament is the only place where they were written down. They represent common knowledge
and common sentiments; everyone knew them, and there was absolutely no reason to write them down.

Only one issue remains, the Book of Covenant: How does the existence of this collection square with the argument in this article? Do we or do we not have here a case of written law from Western Asia—although this “Western Asia” is of course confined to the Old Testament?

In spite of the neverending attention from biblical scholars to this part of the Old Testament and its relation to the Babylonian tradition of law codes,34 the presence of the secular laws of the Book of Covenant in Exod. 21:2-22:16 does not prove or indicate that any written law ever existed in Western Asia. First of all, we cannot forget the problems of the Babylonian law codes, whether or not they were collections of laws or something else. The same can be said about the rules of the Book of Covenant: Were they ever intended to be laws or were they just a collection of court decisions, arranged so that they now look like a judicial commentary on the five mentioned prohibitions in the Ten Commandments, which are placed just before the Book of Covenant—hardly a coincidence. Or, were they simply composed to form such a commentary on the Ten Commandments? And how far does the Book of Covenant represent an independent biblical—say Israelite—tradition?

To deal properly with these questions would carry us right through the field of Old Testament studies as it appears today: Hardly a promising perspective at this point, and moreover quite unnecessary. Here it is only needed to note that the part of Old Testament scholarship to which this author belongs in general favors post-exilic dates of composition of Old Testament scripture. The Old Testament was not an old Israelite book with a written history going back to the beginning of the 1st millennium B.C.E., rather, it was a late composition brought about at the beginning of Jewish history, which cannot predate the formation of Judaism as a religion and as an ethnic term—a

thing that certainly did not happen before the Babylonian exile. Most likely we have to look for a much later date.\textsuperscript{35}

In this light, a new conception of the presence of a composition like the Book of Covenant seems likely, according to which it is not a reflection of ancient Israelite society, but rather is attributed to the knowledge among exiles—or in any case among former exiles—of the Babylonian law tradition. Being brought up in Mesopotamia, the sons of the exiles simply, during their education, became acquainted with the Babylonian codes, or better with the tradition of writing down such codes—a peculiarity of the Babylonian tradition. At some stage during the composition of the Old Testament scripture, they simply chose to introduce such a collection into their religious tradition as proof of the importance of law and order for keeping the covenant of the God of Israel, in fact very much like Hammurabi, who by collecting his code, tried to demonstrate that his reign had been lawful and righteous. In this way, the Book of Covenant does not so much belong in the tradition of law and order in Western Asia, as in the Babylonian tradition. References in the Book of Covenant, which have been understood to be reflections of very old practices in Israel, but which are also very close to Babylonian tradition,\textsuperscript{36} should rather be looked upon as “Babylonian” literature in a Jewish disguise, and not as reflections of Israelite tradition, inherited by late post-exilic Jews.

\textsuperscript{35} In favor of an exilic date is John Van Seters. Ever since his Abraham in History and Tradition, New Haven: Yale University Press 1975, a post-exilic date in the Persian Period has been proposed by various members of the so-called 2nd Temple Group, sponsored by the Society of Biblical Literature, among others by Philip R. Davies, in Search of Ancient Israel, supra note 14. A Persian date was also figured out by my Copenhagen colleague, Thomas L. Thompson, in his Early History of the Israelite People: From the Written and Archeological Sources, Studies in the History of the Ancient Near East 4, Leiden: Brill 1992, who is now, however, siding with this author in that the Hellenistic Period may provide an even more promising background of the biblical literature. See my The Old Testament—a Hellenistic Book?, Scandinavian Journal of the Old Testament 7, 1993, at 163-193.

\textsuperscript{36} Cf. among the more glaring examples the law of the goring ox, Exod. 22:28-32, and the commentary in J.J. Finkelstein, “The Ox that Gored,” TAPhS 71, 1981, at 1-89. Among such contributions, the author’s the “Hebrew Slave” should also be reckoned. Cf., however, the criticism against the argument that the law of the Hebrew slave should reflect 2nd millennium language, leveled by Oswald Loretz, Habiru-Hebräer, Beiheft Zeitschrift für die alttestamentliche Wissenschaft 160, Berlin: De Gruyter 1984, at 259-60. It is difficult to escape the conclusion that Loretz is right.