

Reformation Fellowship Notes • March 12, 2017
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Handout #21
Exodus 21:1-27

I. Introduction

A. Setting

1. God presenting his covenant to the people of Israel
 - a) God audibly pronounced the ten commandments to the people.
 - b) The people were so terrified they asked that God not speak to them directly.
 - c) Moses is charged with being the intermediary.
 - d) Moses climbs the mountain into the cloud to receive the rest of the covenant.
 - e) The next three chapters records what God spoke to Moses.

B. What we will do today

1. Nature of these laws vis-à-vis other ANE [Ancient Near East] laws
2. Organization of these laws
3. Begin marching through the laws

II. Introduction to Covenant Code

A. Where did name come from?

1. Exodus 24:4,7
2. Moses wrote down all the words of the Lord.
3. “Then he took the *book of the covenant* and read it in the hearing of the people.”

III. Nature of these laws vis-à-vis other ANE laws

A. Code of Hammurabi

1. Dates to about 1750 BC
2. 282 laws
3. From Babylon
4. Most frequent point of comparison

B. How these laws are different

1. From God directly; not from a king
2. More humane in some respects
3. Numerous laws without a penalty given
4. Sometimes gives a reason for a law

C. How they are similar

1. They assume a common code.

- a) As a law code, they are very incomplete.
- b) A shared understanding of basic laws was transmitted culturally.
- 2. Just adjustments or instructions with respect to the common code
- 3. Largely case law
 - a) Examples of wise judgments with respect to various issues
 - (1) In other cultures, judges sometimes issued a judgment directly contrary to one of the case law examples
- 4. No systematic order of presentation
 - a) This is consistent with ANE culture.
 - (1) A culture of lists
 - (2) Animals, vocabulary lists, products, places
 - b) But even lists can have some elements of order.
 - (1) There is some order in the covenant code.
 - (2) Analogy and association (Cassuto)

IV. Order of Presentation in the Covenant Code

A. Why the title “Covenant Code”?

- 1. From Exodus 24:4, 7

B. Description by Sarna in *Exploring Exodus*, p. 172:

“We must begin our inquiry with a rather prosaic comment that all the *mishpatim*, the rules and the provisions of the legislation contained within the first section of the Book of the Covenant, Exodus 21:2–22:16 [verse 17 in our Bible], fall within the scope of the coercive power of the state and come within the jurisdiction of the law courts. The second part of the collection, however, is quite different. Exodus 22:17 [verse 18 in our Bible]–23:19 consists of a miscellany of social, ethical, moral, and religious prescriptions that are predominantly couched in the concise, apodictic style of the Ten Commandments with their magisterial, authoritative tone. They come under the rubric of *devarim*, ‘the commands’, mentioned in Exodus 24:3, and they constitute normative standards for controlling human conduct, standards imposed by a transcendent divine will. Apart from the first three prohibitions outlawing sorcery, bestiality, and sacrificing to other gods, their enforcement is left to the individual conscience, not to political institutions.”

C. Organization of presentation of the laws

- 1. Exodus 21:1–22:17 (*mishpatim*)
 - a) Major harm
 - (1) Punishments listed
- 2. Exodus 22:18–23:19 (*devarim*)
 - a) Lesser offences
 - (1) No punishments
- 3. Exodus 23:20–23:33
 - a) Warning against assimilation

D. Organization of the *mishpatim*

1. Concerning slavery
2. Murder and other serious crime
3. Non-fatal personal injury
 - a) By a human
 - b) By an animal
4. Injury to livestock
5. Theft and negligence

V. **Slavery (Exodus 21:1-11)**

A. Concerning slavery

1. Particularly important
 - a) We will talk about this more in conclusion.
2. The word used for slave in this passage is *'eved 'ibhri*.
 - a) Related to the word Hebrew
 - b) Designated a social class
 - c) “But the actual sense of the verse in this paragraph, which is undoubtedly very old, corresponds to the conditions of life obtaining in early times and uses the expression ‘Hebrew slave’ in its primary signification, which included not only Israelite slaves, but a wider category of bondmen.” (Cassuto, p. 265)
3. The word for slave has several meanings.
 - a) Foreign slave (usually taken captive in war)
 - b) Israelite slave (usually for seven years)
 - c) Contract worker
 - d) Concubine
4. Not the brutal institution that it became later in some parts of the world
 - a) Some important constraints
 - (1) Even slaves were to rest on Sabbath and celebrate feasts
 - b) The ancient solution to the problem of bankruptcy

B. Laws regarding slavery

1. What should happen after an Israelite has served his six years:
 - a) He does not have to pay any fee.
 - (1) Deuteronomy 15:12-15 amends this: owner needs to give him enough to start his life on his own.
 - b) If he comes without a wife, he leaves without a wife.
 - c) If he comes with a wife, he leaves with a wife.
 - d) If he is married to another slave while he is a slave:
 - (1) It was a common practice for owners to marry foreign slaves to single-men slaves to produce slave children.
 - (2) Children and wife remain slaves.

- (3) Or he can remain a permanent slave
 - (a) An official process to make sure it is understood and voluntary
- e) If a woman becomes a man's slave:
 - (1) Poor men would sometimes sell their daughters to wealthy families to make sure they were cared for.
 - (a) In such cases, the girl is destined to be the wife of either the owner or his son.
 - (i) Had to be sold before she was 12.
 - (ii) Girl had to consent to the deal.
 - (2) His concubine
 - (a) If the master does not want her for a concubine, and she wants to go, she must be allowed to be redeemed.
 - (3) His son's concubine
 - (a) Treated the way any daughter-in-law would be treated
 - (4) His concubine, but he marries a wife.
 - (a) She must continue to be treated as a wife.
 - (5) If owner doesn't do these three things, she goes free.
 - (a) Two options:
 - (i) Either marry her, give her to his son, or allow her to be redeemed.
 - (ii) Food, clothing, quarters

VI. Capital Offences (Exodus 21:12-17)

A. Murder

- 1. Distinction based on intent
 - a) Unintentional murder not punished
 - (1) Flee to city of refuge
 - b) Intentional murder gets death penalty.
 - (1) Even if he takes refuge at YHWH's altar
- 2. Existing cultural norm
 - a) Blood feud
 - (1) Family responsible to avenge death to a member
 - (a) Whether killing was intentional did not matter
 - (b) This would often set off a series of killings and retaliations.
 - (2) This was important for tribal survival in a lawless world.
 - (3) Hard to break
 - (a) Requires trust in the system
 - (b) The system has to prove itself over a long period of time.
- 3. Code of Hammurabi §229 calls for death penalty even for unintentional death.

B. Abuse of a parent

- 1. Physical abuse
 - a) Put to death
 - b) Hammurabi
 - (1) Only father mentioned

- (2) Hand cut off
- 2. Verbal abuse
 - a) Insulting a parent (curse, humiliation)
 - b) This also gets the punishment of death
- 3. Dishonoring parents is a very serious crime.
 - a) Height of rebellion
 - b) Undermines family
 - c) Undermines society
- C. Kidnapping
 - 1. Usually done to get money
 - 2. Code of Hammurabi treated it as an economic crime.
 - a) Different penalties depending on social status of victim
 - b) Monetary compensation
 - 3. Torah sees it as a serious violation of the victim's personhood.
 - a) Death penalty

VII. Personal Injury (Exodus 21:18-27)

- A. Personal injury as a result of a quarrel
 - 1. Injury is not premeditated
 - 2. Not unto death
 - a) Pay all expenses
 - (1) Lost wages
 - (2) Medical costs
 - 3. No mention of permanent injury
- B. Injury to a slave
 - 1. Masters were allowed to punish slaves.
 - a) With a rod (not causing serious injury)
 - 2. If a slave dies, master will be punished.
 - a) Death?
 - b) There is no such provision in other ANE laws.
 - 3. If he does not die, no punishment to master
 - a) He is the property of the master.
 - (1) On one hand, this is viewing the slave as something less than a person.
 - (2) On the other hand, it is viewing the slave as something the master does not want to lose.
- C. Collateral damage to wife of one of two fighting men
 - 1. A very specific scenario is envisioned in this command.
 - a) Two men are fighting.
 - b) The wife of one of the men tries to break up the fight.
 - c) She gets hit by the other man.

2. This scenario shows up in other ANE law codes. This is summary of Cassuto's presentation, p. 273-4:
 - a) Sumerian
 - (1) Perpetrator pays a small fine if the woman is just injured.
 - (2) Perpetrator pays a larger fine if the woman miscarries.
 - b) Babylonian (Code of Hammurabi)
 - (1) If the woman is a noble
 - (a) For a miscarriage, perpetrator pays a fine.
 - (b) If the woman dies, the perpetrator's daughter is killed.
 - (2) If the woman is a commoner
 - (a) A monetary penalty for miscarriage or death to woman
 - c) Assyrian
 - (1) If the woman is a noble
 - (a) Fine, flogging, and labor
 - (b) No mention of what happens if the woman dies
 - (2) If the woman is a commoner
 - (a) Whatever the woman suffers, perpetrator's wife suffers.
 - (b) If the fetus dies, the perpetrator dies (text is not entirely legible).
 - d) Hittite
 - (1) For miscarriage, fine
 - (2) No mention of what happens if the woman dies
3. If this results in an induced birth
 - a) It is not clear from the Hebrew whether the fetus dies or lives.
 - (1) Literally "if any mischief happens"
 - b) The perpetrator must pay
 - (1) Husband offers a suggestion for fair compensation
 - (2) Judge approves the amount
4. "Eye for an eye"
 - a) This is a set expression that is ancient and well-known.
 - (1) This principle is part of the Code of Hammurabi.
 - b) It expresses the idea of the need to match the punishment with the crime.
 - (1) Apparently, this was originally applied literally.
 - (2) Only later was it applied abstractly.
5. What innovations and amendments are being introduced here?
 - a) No differentiation is to be made on the basis of the social class of the woman; all human beings are equal.
 - b) The punishment is to be inflicted only on the man who causes the injury, but not on any one else; his daughter or his wife is not to be punished for his deed as the Mesopotamian laws ordained.
 - c) The penalty of the offender is to be determined according to the Torah principles. (Cassuto, p. 274-5)
6. Injury to a slave
 - a) Why is this passage here?
 - (1) By association
 - (a) Mention of "eye" and "tooth"

- b) Typically, there was no penalty for injuring a slave in ANE.
 - (1) Slaves were considered property.
 - (a) It would be like doing damage to one's own house.
- c) In Torah, a slave has value as a person.
 - (1) An injured slave is given freedom.

VIII. Conclusion

- A. There is built-in tension (Westbrook, *Everyday Law in Biblical Israel*)
 - 1. The slave is in some ways a fellow Israelite and in some ways property.
 - a) Breaking down class distinctions is one of the innovations of these laws.
 - b) The more foundational elements of the law undermine social distinctions.
 - (1) Sabbath celebrated by all
 - (2) Frequent reminders that Israelites were slaves in Egypt
 - c) This tension was destined to lead to doing away with slavery.
 - d) This was what God intended.
 - 2. Why did the Covenant Code begin with instructions about slaves?
 - a) From an essay by Jonathan Sacks:

“Why begin here? There are 613 commandments in the Torah. Why does Mishpatim, the first law code, begin where it does?”

“The answer is equally obvious. The Israelites have just endured slavery in Egypt. There must be a reason why this happened, for God knew it was going to happen. Evidently He intended it to happen. Centuries before He had already told Abraham it would happen:

‘As the sun was setting, Abram fell into a deep sleep, and a thick and dreadful darkness came over him. Then the Lord said to him, “Know for certain that for four hundred years your descendants will be strangers in a country not their own and that they will be enslaved and mistreated there’. (Gen 15:12-13)

“It seems that this was the necessary first experience of the Israelites as a nation. From the very start of the human story, the God of freedom sought the free worship of free human beings, but one after the other people abused that freedom: first Adam and Eve, then Cain, then the generation of the Flood, then the builders of Babel.

“God began again, this time not with all humanity, but with one man, one woman, one family, who would become pioneers of freedom. But freedom is difficult. We each seek it for ourselves, but we deny it to others when their freedom conflicts with ours. So deeply is this true that within three generations of Abraham’s children, Joseph’s brothers were willing to sell him into slavery: a tragedy that did not end until Judah was prepared to forfeit his own freedom that his brother Benjamin could go free.

“It took the collective experience of the Israelites, their deep, intimate, personal, backbreaking, bitter experience of slavery — a memory they were commanded never to forget — to turn them into a people who would no longer turn their brothers and sisters into slaves, a people capable of constructing a free society, the hardest of all achievements in the human realm.

“So it is no surprise that the first laws they were commanded after Sinai related to slavery.”

3. Why didn't God just end slavery at this time? Jonathan Sacks essay continued:

“If God does not want slavery, if He regards it as an affront to the human condition, why did He not abolish it immediately? Why did He allow it to continue, albeit in a restricted and regulated way? Is it conceivable that God, who can produce water from a rock, manna from heaven, and turn sea into dry land, cannot change human behaviour? Are there areas where the All-Powerful is, so to speak, powerless?”

“In 2008 economist Richard Thaler and law professor Cass Sunstein published a fascinating book called Nudge. In it they address a fundamental problem in the logic of freedom. On the one hand freedom depends on not over-legislating. It means creating space within which people have the right to choose for themselves. [...]

“That is exactly what God does in the case of slavery. He does not abolish it, but He so circumscribes it that He sets in motion a process that will foreseeably, even if only after many centuries, lead people to abandon it of their own accord.”

(<http://rabbisacks.org/covenant-conversation-5771-mishpatim-gods-nudge/>)

4. This corresponds to our analogy.
 - a) The Israelites were required to create a good model of God's understanding of reality.
 - b) What was commanded at one time, may not be required of them at a later point in time.
 - c) God envisioned the construction of this model being a project over a period of time.
 - (1) He made new revelations over a long period of time.
 - d) The analogy might be more like the adoption of a foster-child.
 - (1) Israel entered into the arrangement with some habits and concepts already in place.
 - (2) God chooses to address those over time rather than instantly.
5. The laws that God gave to Israel were not a radical departure from the laws of the surrounding cultures.
 - a) He could have; but he didn't.
 - b) He wanted a more profound transformation.
 - (1) In education, an idea that a student has to work hard to learn is more fully a part of that student's thinking.
 - (2) He wanted his people to “earn” truths.