Comparing the Code of Hammurabi with the Covenant Code

In comparing the Code of Hammurabi with the Pentateuchal laws the fact of the priority of the Code (by well over 300 years) has disposed of some untenable theories and given rise to others. For instance, the old critical view that detailed codes of laws like those found in the Pentateuch are anachronistic for so early a period has been exploded by the discovery. Again, higher critical views which have placed the origin of many of the laws ascribed to Moses in the ninth, eighth, or seventh century BC (or even later), have had to be drastically revised or entirely rejected.

On the other hand, the discovery of the early extra-biblical legal material has led many to adopt an equally faulty view that Hebrew legislation is merely a selection and adaptation of Babylonian law. The valid position, which a careful study of the two bodies of material will disclose, is that the Mosaic code is neither borrowed from nor dependent upon the Babylonian, but is divinely given, as it claims to be, and unique in those features that met Israel's peculiar need as an elect, theocratic nation. [But to say that the covenant code is ‘divinely given’ seems to imply no human authorship, and obviously the code consists of numerous legal-decisions made by Israeli judges across the centuries from the time of Moses through the time of the Judges. And this is also to overlook the claims in Lipit-Ishtar and the Code of Hammurabi that their legislation was also ‘divinely given’–see the prologues to these two codes, as well as the epilogue of Hammurabi’s code.]

1. The resemblances between Mosaic Laws and the Code are clearly due to similarity of antecedents and general intellectual and cultural heritage: It is only natural that in codes dealing with peoples in somewhat similar conditions, related racially and culturally, there should be some likeness in the incidents leading to litigation and likewise in the penalties imposed for infringement of common statutes. Striking differences, however, even in cases where there is similarity in the matter at issue, demonstrate that there is no direct borrowing and that the Mosaic is not dependent on the Babylonian. The biblical law of divorce (Deuteronomy 24:1), for instance, permits the man to put away his wife, but does not extend the same right to the wife, as the Babylonian code does. [We think this observation is correct; the code of Hammurabi is much more concerned with women’s rights than is the covenant code.]

Early Israelite laws were quite clearly divided into two groups, civil laws of customary origin (Hebrew: mishpatim), which are mainly contained in the Book of the Covenant (Exodus 20:23-23:33), and moral and ethical injunctions. As might naturally be expected, most of the former resemble similar laws in force among Israel's precursors and neighbors throughout the Near East, whereas the latter are a distinct product of the high moral and spiritual standards of Yahwism, which might be paralleled elsewhere singly but never in wholesale fashion.

Exodus 21:23-25 and Deuteronomy 19:21 state concisely the same principle of retaliation upon which a number of Hammurabi’s laws are based: "Life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe." This, the Lex Talionis, is a Semitic custom that naturally would be expected to be reflected in various Semitic legal codes. A thing to bear in mind about the Lex Talionis is that it was not harsh by their standards (although at first reading it may seem so). Rather, it served as a limiting factor: a person could not be made to suffer any more harm than he had done. In other words, if you stole a loaf of bread, you were not to be drawn and quartered. You simply had to repay the bread!
2. The Mosaic and Hammurabi Codes are different in content:

The Hebrew code contains many purely religious injunctions and ritual regulations. The Code of Hammurabi is civil. However, the priestly laws of *Leviticus* contain many points of contact with corresponding priestly ritual and practice in Western Asia, whether in Canaan and Phoenicia or in Mesopotamia. But the divine institution on Israelite ritual practice made direct borrowing unnecessary. In some cases similar cultic practice among surrounding people was divinely given to Israel and at the same time invested with special significance for the worship of Yahweh.

3. The two codes regulate different types of society:

Hammurabi's laws are adapted to the irrigation-culture and the highly commercialized urban society of Mesopotamia. The Mosaic injunctions, on the other hand, suit an agricultural, pastoral people of a dry land like Palestine, much less advanced in social and commercial development, but keenly conscious in all phases of their living of their divine calling.

4. The two codes are different in their origin:

The Babylonian code is alleged to have been received by Hammurabi from the sun god Shamash. Moses is said to have received his laws directly from Yahweh. Hammurabi, despite his purported reception from Shamash, takes credit for the laws in both the prologue and epilogue of the Code. He, not Shamash, established order and equity throughout the land. Moses, in contrast, is only an instrument. The legislation is, "thus says the Lord." [We think this is overstatement, and that Hammurabi clearly is dependent on the Gods Anum, Enlil, Shamash, and Marduk, Who commissioned him to guide the people aright–along with many other Gods, whom Hammurabi mentions by name. Hammurabi says in the epilogue, "with the insight that Enki allotted to me, with the ability that Marduk gave me...I promoted the welfare of the land...The great Gods called me, so I became the beneficent shepherd whose scepter is righteous." The difference here is not in claiming divine origin, but the basic difference between monotheism and polytheism.

5. The two codes differ in their morality:

From the ethical and spiritual standpoint the Mosaic legislation, as would be expected, offers a considerable advance over the Babylonian code. For instance, Hammurabi's laws name at least ten varieties of bodily mutilation for various offences. If a doctor performs an operation that is unsuccessful, his hand is to be cut off. There is, though, one instance of mutilation in the law of Moses: *Deuteronomy 25:11-12*.

In the Hebrew laws a greater value is generally placed on human life, and the place of women is much better than in the rest of the Ancient Near East, or even the present Near East (under Islam). Slaves are treated amazingly better than in any other Near Eastern country. Moreover, the Babylonian code has nothing in it corresponding to the twofold golden thread running through the Mosaic legislation: love God and love your neighbor (*Matthew 22:37-40*). [This is a Christian understanding of the teaching of Moses, and these two phrase, love and love your neighbor are not found in the covenant code.]
It can be summarized this way (thanks to Alfred Jeremias):

a. There is no control of lust.
b. There is no limitation on selfishness.
c. There is nowhere to be found the postulate of charity.
d. There is nowhere to be found the religious motif which recognizes sin as the destruction of the people because it is in opposition to the fear of God. In the Hammurabi Code every trace of religious thought is absent; behind the Israelite law stands everywhere the ruling will of God; the Mosaic legislation bears a religious character.

In fact, this last point differentiates everything in the Old Testament from the rest of Ancient Near Eastern literature and society: the monotheism and the stress on love for God and love for neighbors. This is absolutely unique in world history. (There is nothing outside the Bible like Deuteronomy 6:4-9, for instance).

Examples of Hammurabi's laws:

# 21 If a man made a breach in a house, they shall put him to death in front of that breach and wall him in.

# 25 If a fire broke out in a man's house and a man, who went to extinguish it, cast his eye on the goods of the owner of the house and has appropriated the goods of the owner of the house, that man shall be thrown into the fire.

# 110 If a hierodule, a "lady of a god", who is not living in a temple, has opened the door of a wineshop or has entered a wineshop for a drink, they shall burn that woman.

# 127 If a man pointed the finger at a "lady of a god" or the wife of another man, but has proved nothing, they shall drag that man into the presence of the judges and also cut off half his hair.

# 129 If the wife of a man has been caught while lying with another man, they shall bind them and throw them into the water. If the husband of the woman wishes to spare his wife, then the king in turn may spare his subject.

# 132 (Compare Numbers 5:11-31) If a finger was pointed at the wife of a man because of another man, but she has not been caught while lying with the other man, she shall throw herself into the river for the sake of the husband. (The word River has the determinative for deity, indicating that the river--the Euphrates--was being called upon to act as a judge).

# 192 If the adopted son of a chamberlain or the adopted son of a votary has said to his foster father or his foster mother, "You are not my father," "You are not my mother", they shall cut out his tongue.

# 193 If the adopted son of a chamberlain or the adopted son of a votary found out his parentage and came to hate his foster father and his foster mother and so has gone off to his paternal home, they shall pluck out his eye.
Deuteronomy

Authorship

Probably upon no other book of the Bible have the discoveries of archeology been so helpful. The recovery of certain texts of the Ancient Near East have helped us gain a full understanding of the Book of Deuteronomy, an understanding which had been forgotten.

The traditional view concerning the Mosaic authorship of Deuteronomy had as a corollary the understanding that the book was a unified literary whole. In recent scholarship, however, it is commonly held that the unity of the book marks a late stage of its development and that it may be possible to discern the component parts that underlie the formal unity. In general terms, there are two reasons for this kind of approach to the study of the unity of the work:

1. If Deuteronomy, as a finished work, is believed to be essentially a product of the 7th century BC, then it is natural to attempt to discern older material which might have been incorporated in the work during the 7th century.

2. There are, in the view of most scholars, internal clues which might provide a means of discerning different strands in the composition of the book. The evidence employed might consist of data such as the following:

   a. the duplication of headings or introductions (e.g. 1:1, 4:44ff, 6:1, and 12:1)
   
   b. the alternation in the use of number (2nd singular / plural) in verbs and pronouns
   
   c. various types of literary analysis (e.g., form-critical studies of particular passages within the book).

   The first reason, above, is clearly the primary one in significance, for if an argument is made for the antiquity of the book, then the second reason (internal evidence) appears in a somewhat different perspective.

   The analysis of the internal textual material has been undertaken in recent years (the last 100 or so) by means of form-criticism, with the current emphasis turning toward redaction-criticism. This last method, redaction-criticism [which attempts to discover editorial layers], is in principle more positive, but it presupposes to a large extent the work of earlier analysis and reflects the view that Deuteronomy is not a product of the period it describes.

   There have continued to be a number of scholars who, for a variety of reasons, have argued for the essential unity of Deuteronomy as a whole. They have been a minority, and the differences they have maintained against a growing consensus have been based, to a large extent, on a very positive assessment of the early (Mosaic) period of Israelite religion. Given a positive assessment of the early period of Israel’s history, the radical doubt of the authenticity of Deuteronomy in its early setting is to a large extent removed.

   Current biblical scholarship, as one part of Western thought, has as its working principle radical doubt, which probably finds its roots in the epistemology of Descartes. Epistemology deals with theories of knowledge--how we know that we know--examining the degrees of certainty
and probability in knowledge and the difference between knowing with certainty and believing without being certain. In modern thought, the two main competing epistemological orientations are: rationalism (Descartes), which stresses the role of reason in providing certainty, and empiricism, which stresses the sense of perception. These two schools are not necessarily mutually exclusive.

Treaty Format

In the last two or three decades, however, there has been an important new direction in Old Testament research, which is of great significance for the study of Deuteronomy. A number of scholars have argued convincingly that there is a relationship in form between the Hebrew covenant and the Ancient Near Eastern vassal treaty (see G.E. Mendenhall, K. Baltzer, and D.J. McCarthy, along with M.G. Kline, K.A. Kitchen, J.B. Payne and J.A. Thompson). The thesis was applied initially to texts describing the formation of the covenant at Sinai and also to various passages describing the renewal of the covenant (for example, Joshua 24). Subsequently, the insights of this new thesis were applied to Deuteronomy, initially with reference to particular passages within the book (for example, chapters 4 and 28), but then on a larger scale which encompassed virtually the entire book.

Among the first to apply this approach to all of Deuteronomy were M.G. Kline and K.A. Kitchen.

1. In its classical form, the Ancient Near Eastern vassal treaty has the following component parts:

1. Preamble ("These are the words...")
2. Historical Prologue (antecedent history: events leading to and forming the basis of the treaty. (Explains why we're here)
3. General Stipulations--statement of substance concerning the future relationship, which
   a) is intimately related to the antecedent history, and
   b) summarizes the purpose of the specific stipulations.
4. Specific Stipulations
5. Divine Witnesses (various deities are called to witness the treaty)
6. Blessings and cursings (relating respectively to the maintenance or breach of the covenant).

There are, in addition, a number of other sections in certain texts which deal with the deposition ['depositing'] of the treaty, its public reading, ceremonies of oath, and various formal procedures.

The vassal treaty was employed within the Ancient Near East when a great power (the suzerain king) imposed certain conditions of vassaldom on a smaller state (the vassal), which
would normally have been conquered by the more powerful state in battle. The treaty explained
the reasons for imposition and the nature of the conditions imposed on the smaller state, and
made certain provisions relating to the maintenance of the treaty. The same basic type of treaty
seems to have been employed throughout the Near East, and there is evidence of its use, in
simpler form, in Mesopotamia as early as the 3rd millennium. In Egypt, there is some evidence to
suggest that the treaty form was employed not only in relation to external vassal states, but also in
relation to foreign labor groups within Egypt.

The Hebrews adapted the treaty form for their own use in order to express the nature of
their relationship to God. For many years they were in effect vassals to Egypt, but that old
bondage was brought to an end in the exodus from Egypt. Being liberated from bondage to an
earthly power, they then submitted themselves in the Sinai Covenant to become vassals of God,
the one who had liberated them from Egypt. The nature of this new submission, expressed in the
covenant, finds its dramatic expression through the utilization and adaptation of the treaty form.
While other small states might serve Egypt or the Hittite Empire as vassals, the Israelites owed
their allegiance only to their suzerain God. This treaty form, in which their covenant was set, finds
striking expression in the **Book of Deuteronomy** as a whole: in broad outline, the treaty form of
the book may be described as follows:

1. Preamble (1:1-5) “These are the words which Moses addressed to all Israel...)
2. Historical Prologue (1:6-4:49)
3. General Stipulations (5-11)
4. Specific Stipulations (12-26)
5. Blessings and Cursings (27-28)
6. Witnesses (see 30:19, 31:19, 32:1-43)

The last two points can be expressed more broadly to encompass the whole work:

5. Cursings and Blessings, with exhortation (27-30)
6. Provisions for the continuity of the covenant and a successor for Moses (31-32)

This overall structure of the **Book of Deuteronomy** suggests that it can be regarded
essentially as a unity. The book is thus a literary account of the renewal of the covenant with God
on the plains of Moab. The literary (treaty) pattern may be more than merely a literary device; it is
possible it reflects also the ceremony during which the covenant was renewed and a successor to
Moses was appointed.

The covenant at Sinai was not a once-and-for-all event that had only historical significance.
It inaugurated a continuing relationship (which had already been anticipated in the earlier
covenants) between God and his people; because it was a continuing relationship, the covenant
was to be renewed regularly, but in each renewal the event at Sinai was recalled. The renewal of
the covenant was undertaken, not because God changed, but because each generation had to
recommit itself regularly in love and obedience to the Lord of the covenant. In the address of
Moses, the most powerful exhortation is used to move the people to new and wholehearted
commitment to God. The tendency to view the covenant as a legal contract automatically binding
man to God had to be countered; the nature of the covenant, as an expression of a living
relationship, demanded of people not a legalistic acquiescence, but a loving commitment to God.

6
The treaty structure of the covenant was a reminder to the people of their liberty in this world and of their total commitment to God. They had been in bondage, vassals to the worldly power in Egypt, but God's intervention in history at the exodus had freed the Israelites from that human vassaldom; in the encounter with God at Horeb, they had submitted to a new vassaldom under God. In the old servitude, Israel had served a worldly master and had no freedom to worship God (Exodus 8:1); in the new covenant, Israel had freedom to worship God and was servant to no worldly state. The domination of Egypt had been exchanged for the Kingdom of God (Exodus 15:18), who had broken the fetters of the old bondage.