

How do we make sense of biblical law?

Westlake Church, 30 September 2011

(see generally Chapter One *God, Justice and Society*, which includes full references for sources cited in this handout)

*

Introduction

The 'presupposition pool' consists of the things we take for granted and which other people might not know. There are lots of things that belong to the presupposition pool of biblical Israel which the author or compiler could assume made sense to his readers but which might not make sense to us. What is in the 'presupposition pool' of biblical Israel?

If we are to understand biblical law, we need to immerse ourselves in its world. It is tempting to read biblical law as if it is like modern law but this is a mistake because it does not take account of the 'presupposition pool' of biblical Israel.

TOP TEN TEXTS IN BIBLICAL LAW

Ten important things about the character of biblical law, which we need to understand before we go any further. To read biblical law well we have to read in sympathy with its character.

(1) Biblical law is relational

Hear, O Israel! The LORD is our God, the LORD alone. You shall love the LORD your God with all your heart and with all your soul and with all your might.
(Deuteronomy 6:4-5; Moses speaking)

Biblical law is relational because:

- (1) It is given in the context of God's desire for relationship with Israel (e.g. Exodus 5:1);
- (2) Knowledge of God is a pre-requisite for following *Torah*. The giving of the law is preceded by a revelation of God's character, in the context of Israel's own experience (Exodus 20:2);
- (3) God "addresses Himself not, or not primarily, to individuals but to a people" (Harrison 1999:216);
- (4) Relationships are at the heart of practical reasoning about law in the Bible. "Eliciting the further requirements of a basic moral stance is not to be understood [*per* the Enlightenment] ... by analogy with the deductive unpacking of theorems from a set of axioms, but in terms of the extension of relationships" (Harrison 1999:220; e.g. Leviticus 19:34).

There are a number of different aspects to 'the relationships factor' and biblical law:

- (1) Individuals have to put "the interests of other parties to the relationship on a par with their own" (Harrison 1999: 218; e.g. Leviticus 19:17-18). The Israelite's attitude towards others should not be: "what is the minimum I can get away with?" but "what is important is the quality of the continuation of the relationship between us" (e.g. Exodus 22:5 [22:4 MT]);

(2) Individuals have to exercise positive concern and restraint in order to keep social relationships healthy. E.g. biblical law restrains the extent to which an Israelite can allow himself “to profit from the distress of another” (Harrison 1999:219; e.g. Leviticus 25:39-41);

(3) Israel’s vocation is to be ‘the people of God’. The sense of ‘belonging to a people’ is thus “relationship-led”, as opposed to being, say, “project-led” in which the people are asked to give their allegiance to “an overarching social project of some sort” (such as Communism or Fascism) (Harrison 1999:218)

(2) Biblical law is similar to Ancient Near Eastern law

When a man’s ox injures his neighbour’s ox and it dies, they shall sell the live ox and divide its price; they shall also divide the dead animal.

(Exodus 21:35; YHWH speaking)

We are distanced from biblical law not only by time (several millennia, at least) but also by space (the Middle East rather than ‘Middle England’). This creates an initial presumption that biblical law has more in common with ancient Near Eastern (ANE) law than it does with modern law.

Name of legal collection	Laws of King Ur-Namma (of Ur) (LU)	Laws of King Lipit-Ishtar (of Isin) (LL)	Laws of the kingdom of Eshnunna (LE)	Laws of King Hammurabi (LH)	Hittite Laws (HL)	Middle Assyrian Laws (MAL)
Estimated date of composition	c. 2100 BC	c. 1930 BC	c. 1770 BC	c. 1750 BC	c. 1650 – 1500 BC	c. 1076 BC

Table 1: Summary of main ANE legal collections in approximate order of antiquity

Cf. Exodus 21:35 with the Laws of Eshnunna (LE) §53: “If an ox gores another ox and thus causes its death, the two ox-owners shall divide the value of the living ox and the carcass of the dead ox” (Roth 1997:67). It is “the closest textual parallel between provisions in the Bible and an early near eastern rule” (Yaron 1980:34).

Biblical law does not exist in a cultural vacuum. “Generic conventions cross cultural boundaries in antiquity as well as today” (Longman 2003:177).

Some of the principal similarities between biblical and ANE law can be summarised as follows:

- (1) Both have shared social norms governing cases;
- (2) Both draw on common social customs;
- (3) Both use common legal forms, such as the use of the ‘casuistic’ form (“if... [+ consequence]);
- (4) Both are characterised by a lack of abstract conceptions or ‘legal definitions’ and by the use, instead, of case examples;
- (5) Neither ANE nor biblical law are comprehensive in scope;
- (6) Both have a broadly educational purpose;

- (7) Both have a religious and theological aspect, including the belief that the deity has ultimate authority for law;
- (8) Both have examples of civil leaders who are responsible for propagating and administering the law.

What are the implications of these parallels for the study of biblical law?

- (1) They remind us that biblical law is part of a longstanding ANE legal tradition that developed throughout the second millennium BC (see Table 1, above);
- (2) They raise the question of the relationship between biblical and ANE law. Possible answers can be ranged along a continuum of literary dependence, ranging from complete dependence to no dependence at all. Should we expect direct or indirect literary influence? To what extent are they the product of 'common sense'?
- (3) ANE law can be used to generate hypotheses regarding the meaning of biblical law, especially when the latter is unclear.

(3) Biblical law is different from Ancient Near Eastern law

Observe [the laws] faithfully, for that will be proof of your wisdom and discernment to other peoples, who on hearing of all these laws, will say, 'Surely, that great nation is a wise and discerning people.' For what great nation is there that has a god so close at hand as is the LORD our God whenever we call upon Him? Or what great nation has laws and rules as perfect as all this Teaching that I set before you this day? (Deuteronomy 4:6-8; Moses speaking)

Biblical law saw itself as different from other ANE laws. There are a number of important differences between biblical and ANE law, including the following:

- (1) Biblical law is presented as divine revelation (cf. LH). "The basic notion that Israelite law is direct divine utterance is not at all common in the ancient world" (Crüsemann 1996:15);
- (2) Biblical law presents Moses as the mediator of *Torah* (cf. Mesopotamian kings);
- (3) Biblical law emphasises the need for widespread promulgation and making *Torah* accessible to all levels of society (cf. the purely literary aim of the Mesopotamian legal collections which were geared towards the education of scribes);
- (4) Biblical law differs from ANE law in its ideology and function. Biblical law envisages practical application but there is no comparable statement of ideology and function are found in other ANE legal collections;
- (5) Following on from (4), above, biblical law contains explicit endorsements of a didactic model, which is not found in the extant ANE legal sources;
- (6) Biblical law omits a number of issues that are seen as important in ANE law;
- (7) Biblical law differs from ANE law in form as well as content (e.g. few apodictic laws in the ANE);
- (8) Biblical law differs from ANE law because of its literary context (e.g. biblical law is part of a treaty between YHWH and Israel whilst the Laws of Hammurabi, for example, are representative of a different literary genre, namely the royal *apologia*).

Beware of 'parallelomania'! There is value in comparative genre study but it needs to be handled carefully.

(4) Biblical law is not like modern law

If the thief is seized while tunnelling [through or under a wall for housebreaking] and he is beaten to death [by the householder], there is no bloodguilt in his case [that is, on the part of the householder]. If the sun has risen on him, there is bloodguilt in that case [on the part of the householder].

(Exodus 22:2-3/ MT 22:1-2; God speaking)

Biblical law is not only different from ANE law, it is also different, as we would expect, from modern law. We must 'mind the gap'!

The cognitive structures that go into reading the text of biblical law are narrative, not semantic (Jackson 2006:24-25). The dominant paradigm of 'conventional meaning' today is 'literal meaning', which is closely tied, as its name suggests, to writing (Jackson 2000:14). A literal or 'semantic' reading sees the rule as covering all cases which may be subsumed under the meaning of its words. This often amounts to paraphrasing the legal rule and substituting one set of words with another.

However, there is another way of thinking about language and about legal rules and this is to take a 'narrative' approach. 'Narrative' meaning consists of typical stories or images that are evoked by the use of words. Whereas a semantic interpretation asks: 'what is the literal meaning of the words' a narrative approach asks: 'what typical situations do the words of this rule evoke?' or, more straightforwardly, 'what does it make you think of?'

The question is no longer whether the dispute is 'covered' by the literal meaning of the words of the rule, but whether the dispute is sufficiently similar to the picture evoked by the rule to justify its use in order to resolve the problem.

Exodus 22:2-3 [MT 22:1-2] illustrates the difference between semantic and narrative approaches to biblical law. If we take a modern, semantic approach to this case then the drafting of verses 2 and 3 seems odd and contradictory. However, the text makes perfect sense if we take a 'narrative' approach (cf. Job 24:14-16 RSV "The murderer rises in the dark, that he may kill the poor and needy; and in the night he is as a thief... In the dark they dig through houses..."). There is therefore no tension with the subsequent part of the rule which contrasts the legitimate action of the householder at night with the illegitimate action of the householder by day (Jackson 2000:75-81).

As we have seen, one of the implications of this approach is that the narrative image represents the 'core' of the message. The further one departs from the typical case, the less sure we can be that the message is intended to apply or would be regarded as applicable by the audience (Jackson 1995:1767-1768).

(5) Biblical law is bound up with the story of God's involvement with humanity

You shall not oppress a stranger; you know the heart of a stranger,
for you were strangers in the land of Egypt.
(Exodus 23:9; God speaking)

Biblical law is not presented as 'codified law' but is integrated, at every stage, into the wider story of God's purposes for Israel and, beyond that, for the world. All the Pentateuch's legal collections are firmly embedded in their own narrative contexts.

One of the key turning-points in the story of God and Israel is the Exodus, in which God rescues Israel from the condition of being enslaved to Pharaoh in Egypt (Exodus 12-13). Israel's experience of the Exodus becomes the motivation for obeying the law in Exodus 23:9, quoted. There are many narrative allusions to the Exodus in biblical law:

- (1) There is an explicit narrative reference to the Exodus in the opening words of the Decalogue (Exodus 20:2; God speaking);
- (2) There is an explicit narrative allusion to the Exodus at the head of individual sections within biblical law (e.g. Exodus 23:9);
- (3) There is an implicit narrative allusion at the head of the entire *Mishpatim* itself (Exodus 21:1-2);
- (4) Slavery – and liberation from slavery – is the main organising theme of Exodus 21:2-27, which is the first section of laws in the *Mishpatim*:

A (Exodus 21:2-11)	Liberation of male and female slaves
B (Exodus 21:12-17)	Capital provisions
C (Exodus 21:18-19)	Injuries from a brawl
D (Exodus 21:20-21)	Fatal assault on one's own slave
C` (Exodus 21:22-23)	Brawl affecting pregnant woman
B` (Exodus 21:24-25)	Talionic provisions
A` (Exodus 21:26-27)	Liberation of male and female slaves

“Narrative gives moral truth an existential force which cannot be done by law” (Harland 1999:135).

(6) Biblical law is an integral part of the vocation of Israel

You shall be to me a kingdom of priests and a holy nation
(Exodus 19:6; God speaking)

Biblical law is an integral part of the vocation of Israel. This is not surprising because the story of God's involvement with humanity, which we saw was relevant to biblical law in the previous section, is, in part, the story of Israel's vocation. Israel's declared role within the purpose of God is to serve the nations by standing in the same relationship to them as a priest stands in relation to the people at the Tabernacle, or Temple, of Israel's God. Among other things, it signifies the way in which Israel is intended to be a conduit of blessing to the world, in the same way that a priest is a conduit of God's blessing to the people (e.g. Numbers 6:22-27). This vocation is in keeping with the story arc that develops throughout the Pentateuch (see Seminar 1).

The vocation of Israel is how we can understand laws such as: “You shall not hate your kinsfolk in your heart” (Leviticus 19:17; YHWH speaking). From a modern perspective, such a law seems strange because it commands an attitude. No modern Western law would be framed in those terms. We would ask: what is the point of having a law that everyone is going to break – and who is going to enforce it when it is broken? However, Leviticus 19:17 makes sense within the ‘presupposition pool’ of biblical Israel because biblical law is part of God's

call that Israel should 'be' a certain quality of people, and reflect the character of God to the nations. At one level, Israel's obedience to *Torah* is presented as being in her own best interests as a community (e.g. Deuteronomy 32:46-47) but ultimately biblical law is fulfilled when Israel carries out her mission to the nations – a mission framed not so much in terms of *going* somewhere but of *being* something.

(7) Biblical law is didactic – and incomplete

Take to heart these instructions with which I charge you this day. Impress them upon your children. Recite them when you stay at home and when you are away, when you lie down and when you get up. Bind them as a sign on your hand and let them serve as a symbol on your forehead; inscribe them on the doorposts of your house and on your gates.

(Deuteronomy 6:6-9; Moses speaking, RSV)

Biblical law is meant to be taught. This teaching is not limited merely to 'legal knowledge' but is, instead, presented as a guide to 'life, the universe and everything'. As Jethro advises Moses: "Teach them the statutes and the decisions, and make them know *the way in which they must walk...*" (Exodus 18:20; RSV; italics added). The priests' job is "to teach the Israelites all the laws which the LORD has imparted to them through Moses" (Leviticus 10:11) whilst Deuteronomy 1:5 describes how Moses "undertook to expound this Teaching (*Torah*)". *Torah* is something that needs to be understood and fully internalised.

This is all the more necessary given that biblical law, in common with ANE law, was not comprehensive. Many problems are simply not covered in biblical law – including some which were common to other ANE legal collections (see above).

Of course, our sense that law in biblical Israel was fragmentary and incomplete may be more apparent than real. At the same time, however, we know there were still serious gaps in biblical law because these gaps were acknowledged by biblical society itself (e.g. Numbers 27:1-11; Numbers 9:6-14; Numbers 15:32-36 and Leviticus 24:10-23).

Every legal system has to deal with the fact that "in many contexts, our knowledge of what constitutes appropriate behaviour depends upon a background of understandings that we could not fully articulate in advance of the situations that call them into play" (Simmonds 2002:148). Practical reasoning depends upon "a never-fully-articulable" background consensus (2002:149). Biblical law addresses this by offering rules that are limited in number but which are designed to promote wisdom. This means that whilst biblical law is incomplete its purpose is to teach wisdom, which is complete.

(8) Biblical law relies upon rhetoric and literary art to convey meaning

If there is among you a poor man, one of your brethren, in any of your towns within your land which the LORD your God gives you, you shall not harden your heart or shut your hand against your poor brother, but you shall open your hand to him, and lend him sufficient for his need, whatever it may be.

(Deuteronomy 15:7-8; Moses speaking)

Biblical law is also characterised by the use of rhetoric and sophisticated literary structure.

(1) Biblical law is rhetorical in the strict sense of the term because it is ‘persuasive speech’. Biblical law is presented as having originally been delivered in oral form;

(2) Biblical law is also characterised by sophisticated literary structure. ‘Holy writ’ is brilliantly writ. It is frequently the case that the way in which biblical law is structured, and organised internally, determines the meaning of its content. The biblical texts are craftily assembled; both at the level of metanarrative and the detail of individual pericopes. This is the art of biblical law.

Some of these literary units are simply structured, such as Exodus 21:28-31 where four cases involving a goring ox are structured according to the declining social status of the victim:

A	Exodus 21:28	When an ox gores a <i>[free] man or a woman</i> to death.	SOCIAL STATUS
B	Exodus 21:31	if it [the ox] gores a <i>[free] man’s son or daughter</i> ..	
C	Exodus 21:32	If the ox gores a <i>slave</i> , male or female...	
D	Exodus 21:35	When one man’s ox hurts <i>another’s [ox]</i> ...	

Table 2: Literary arrangement of Exodus 21:28-31 (Jackson 2006:286)

Other literary arrangements can be more complex (e.g. the chiasmic structure of Exodus 21:2-27, noted in Table 1, above, which is centred upon slavery). A very complex chiasmus can be found in Leviticus 24:13-23 (Jackson 2006:448).

(9) Biblical law receives new expressions as God does more for Israel

If a fellow Hebrew, man or woman, is sold to you, he shall serve you six years, and in the seventh year you shall set him free. When you set him free, do not let him go empty-handed.

Furnish him out of the flock, threshing floor, and vat, with which the LORD your God has blessed you. Bear in mind that you were slaves in the land of Egypt and the LORD your God redeemed you; therefore I enjoin this commandment upon you today.

(Deuteronomy 15:12-15; Moses speaking)

Biblical law is dynamic:

(1) Because it is integrated into the story of God’s involvement with Israel and the world – and this story keeps on developing. Because biblical law is embedded in a story arc, we must keep a constant eye on such things as plot, character and setting. We need to know where we are ‘in the story’ to be able to interpret biblical law.

Deuteronomy 15:12-15 differs from the previous law on the release of slaves in Exodus 21:1-7 because Deuteronomy 15:12-15 enjoins generosity whilst Exodus 21:1-7 does not. The change in setting – a series of military victories that have led the Israelites to the entrance to the promised land – means that the Israelites have experienced much more of God’s bounty than the previous generation (Deuteronomy 2:24-3:22). Moreover, they are going to experience much more of God’s generosity when they enter the land. As a result, more is expected of them than the previous generation.

(2) Because it is incomplete, it keeps getting added to. E.g. the case of the daughters of Zelophehad (Numbers 27:1-11). The daughters' appeal is emphatically vindicated by God:

The plea of Zelophehad's daughters is just: you should give them a hereditary holding
(Numbers 27:6)

Nor is that the end of the matter (see Numbers 36) where the concern of the Josephites (family heads of the clan to which Zelophehad belonged; Numbers 36:1) is also legitimated by God in somewhat similar terms to the daughters (Numbers 36:5-6). Biblical law is, in this sense, 'up for grabs'. God is portrayed as having new words to speak in view of life's ongoing twists and turns.

The case of the daughters of Zelophehad provides an unusual insight into the process by which legal innovations are received into the prevailing corpus (Jackson 2006:426-427).

(10) Biblical law is an expression of wisdom

"The teaching of the LORD (*Torat YHWH*) is perfect, renewing life; the decrees of the LORD are enduring, making the simple wise (*mahkhimat*)".
(Psalm 19:8; David speaking)

Biblical law is an expression of wisdom (*hokhmah*). One-sentence descriptions of the meaning of 'wisdom' in the Bible usually fail to capture the diversity of *hokhmah* which "covers a wide range of attributes that constitute wisdom in particular contexts" (Dell 2000:1). This includes: "the skill needed to win a war or complete a technical enterprise; the cleverness and shrewdness required in government or administration; the hidden secrets and knowledge of prophets or magicians; the prudence required to deal with difficult situations; the ability to make ethical... decisions, and ultimately the ability to discern God as the one who created the world through wisdom and who is the fount of all knowledge and understanding" (*ibid.*). There are a number of connections between biblical law and wisdom:

(1) There are numerous "sapiential counterpart[s]" to biblical law in the book of *Proverbs*, for example (Brown 2005:255). E.g. Exodus 23:8 and Deuteronomy 16:19 could be said to be 'more proverbial than *Proverbs*';

(2) One of the functions of wisdom is to provide practical guidance for daily living. Cf. use of 'self-executing rules' in biblical law (e.g. Exodus 21:35).