

Thora and Customary Law

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Many think of the concept “law” as stipulations that precisely determine the permissible and impermissible. Laws are seen as determined with mathematical precision. Did the ancients regard law similarly or did they approach it differently?

Fixed Regulations

Many think of the concept “law” as a body of stipulations that precisely determine the permissible and impermissible. In such situations the law determines with mathematical precision whether we are acting legally or illegally. When someone transgresses the law and it turns into a court case, we see that the judge cites the provisions of the law of the land with precision to declare the accused guilty. In such a case, the judge is not allowed to deviate from the law.

The law is determined definitively and is demarcated as clearly as possible. It appears often to be the only source on basis of which the judge determines his judgement. The judge is not always obliged to consider the crime from a broader perspective. Thus it is possible for a judge to declare a deed not explicitly condemned in the law as legitimate. This manner of treating the law as a strict or literal provision has been applied in different European countries ever since the Middle Ages. It was also applied even earlier by the ancient Greeks and Romans.

Customary Law

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Since the middle of the nineteenth century, the majority of European countries, however, chose to base their juridical judgements on basis of the general current ethos in the society. This manner of sentencing was then called “customary law.” Now the written law no longer determined the outcome so much as it gave direction. The law now indicated the general direction in which to think it through. This new development created a situation in which the judge would no longer regard the written law as the only source. That law was now merely one of the puzzle pieces that played a role in the larger context. A judge would consider the written law of the land as well as the social norms and values, the so-called “*zeitgeist*,” of the time. Those norms and values usually found expression in myths, legends, stories, social anthropology, poetry and similar sources.

A well-known example are the fairy tales of the Grimm brothers (1812). At that time, Jacob Grimm (1785-1863) was recognized as one of the most important judges in the land. Following the example of his teacher, like many of his contemporaries, was of the opinion that a valid sentence must also fit in the framework of the values and norms of the populace. That opinion led him, together with his brother, to collect all sorts of tales that illustrated those values and norms. Also legal precedents about similar situations might be researched by the judge in order to conclude a case. Those also became part of the puzzle pieces that would help a judge to decide on his final judgement. It was this way of dealing with the law that was applied especially in the ancient Near East .

The Codex Hammurabi

The laws in the Codex Hammurabi constitute one of the oldest examples of the afore mentioned “customary law” in the ancient world. Because of the discovery of the stele² in Susa (1901),

²A **stele** ([/ˈstiːli/](#), [STEE-lee](#)) is a stone or wooden slab, generally taller than it is wide, erected in the [ancient world](#) as a [monument](#). [Grave](#) steles were often used for [funerary](#) or commemorative purposes. Stelae as slabs of stone would also be used as ancient [Greek](#) and [Roman](#) government notices or as [boundary markers](#) to mark [borders](#) or [property lines](#). (Wikipedia—accessed November 26, 2017).

historians suspect that Hammurabi's legal system was generally in effect throughout ancient Mesopotamia. Subsequent discoveries of more than fifty fragments of this legal system that date from a period lasting more than fifteen hundred years, confirm this suspicion. The striking thing here is that these fragments contain no variables in the system. Normally, one would expect variations over a millennium and a half.

This discovery has brought some experts to the idea that Codex Hammurabi was of universal canonical status in the ancient Middle East. The difficulty here is, however, that the Codex does not go into the details of specific every-day kind of situations. For example, it lacks any stipulation about inheritance. Furthermore, archeologists found the above fragments only in royal archives. Nowhere are they found in local lawcourts. Even within the thousands of juridical documents found in Mesopotamia there is not a single reference to the Codex Hammurabi. Researchers conclude from this that the Codex did not serve any direct part in court cases. At the same time, it cannot possibly be denied that there are numerous similarities between the judgements chosen by judges and the Codex. From these data it can be determined that the legal system in the ancient Near East was based largely on a customary legal system. ⁱ

Customary Law in the Bible

If customary law was used in Mesopotamia, we have to take this into explicit account with the interpretation of God's Thora. That increases the legitimacy of the critical question whether in our own time we can still characterize the Thora as law. There is then the danger that we perceive the Thora today from the perspective of our current largely static legal system and interpret it from that perspective. This is done regularly in our contemporary literature. The laws in the Bible are then interpreted as the single authoritative document in reaching a judgement. No one worries about extenuating circumstances.

Such a static approach to the law was not used in Mesopotamia, Egypt or any other nation in the ancient Middle East. Neither did Israel work with her legal system in such a manner. This becomes clear from the following:

1. The fact that the Thora addresses not only the judges, but the entire people.
2. The Thora has adopted a variety of historical narratives that also gave directions.
3. Nowhere does the Thora demand that Israel's judges base their sentences only on the written sources as the sole source of citations when announcing a judgement (see I Kings 3).

God's Principles for the People

In view of the above, a judgement in Israel was therefore not based only on *the* law. In addition to the Thora, unwritten Biblical values and norms also played a role in sentencing. The people were expected to reflect about the laws in the Thora from the above perspective. In doing so, they would achieve insight into what lived in God's heart. With that perspective, the laws served as signposts on both horizontal and vertical levels without pretending to have the last word. Thus the system of laws God gave was not complete. Usually only a few principles would come to the fore. If you seek a complete law system in the Bible, you are looking in vain. God gives people much freedom and responsibility in giving shape to His will in concrete life. We find an example of this in the royal law in Deuteronomy 17. The law here contains not only the stipulations for ruling, the main responsibility of the king. Most of the emphasis is laid on the limitations of royal power and on the importance of fearing Yahwe.

Building Blocks for God's Thora

Thus the legal system in Israel that comprises only a few hundred law and summons reflection about the “spirit of the law,” therefore differs from the legal system with its thousands of rules that we in the West are familiar with. In God’s Thora the main issue is therefore not the exact or strict wording so much as the Spirit of God and His heart that underlies it all. From its early beginning, the people of Israel realized that the core of God’s heart would become more visible for the people through His ongoing revelation. The laws in Deuteronomy, for example, function as clarification and updates of the laws in Exodus, Leviticus and Numbers. Deuteronomic laws thus did not annul or improve on the earlier version. In fact, it was forbidden to do so: once given, a text was not to be changed. The written word of Yahweh was to be guarded as faithfully (Deuteronomy 12:31) as His spoken word (Deuteronomy 13:1-6). This is the meaning of the prohibition to either add to or take away from the text.

In Deuteronomy laws are not annulled or changed, but expanded and clarified. The reason for this is that Israel had recently moved into the land of Canaan. Life is simply too complex to be expressed in one single law. That is why Deuteronomy refers several times back to earlier laws that were already laid down in other contexts (Deut. 12:21; 18:2; 24:8; compare 5:12, 16). Jeremiah 34:12-17 is an example of the laws regarding the liberation of a slave in the seventh year (compare Exodus 21:1-6; Deut. 15:12; Jeremiah 34:14) that are here tied to the liberation of the Year of Jubilee (compare Leviticus 25:10, 39-43; Jeremiah 34:15). This illustrates also that Israel was not to elevate one commandment above another. The prophets therefore never did this.

The Messiah as the Heart of God’s Thora

In the Bible the people of God are frequently called upon to connect the Thora with the heart of God. That is the core of the commandments and stories in the Thora. They reach their climax in the Messiah. He would reveal the heart of God to its maximum and demonstrate the deepest longings of God. That was the climax of

which Hebrews 1:1 testifies. Both the prophets and the apostles longed for this climax. The standard for them was not the written law as such but, rather, the heart of God underlying the legal system. This is where the Jewish-Christian legal system differs from the rigid determinations of its Greek-Roman counterpart.

ⁱ Joshua Berman, "The History of Legal Theory and the Study of Biblical Law." *The Catholic Biblical Quarterly* 76 (2014), 24-25. Bruce Wells, "What Is Biblical Law?: A Look at Pentateuchal Rules and Near Eastern Practice." *The Catholic Biblical Quarterly* 70, no. 2 (2008), 224-225. Victor A. Hurowitz, "Hammurabi in Mesopotamian Tradition," *An Experienced Scribe Who Neglects Nothing: Ancient Near Eastern Studies in Honor of Jacob Klein*, ed. Sefati Yitschak (Bethesda: CDL, 2005), 497-532. Raymond Westbrook, "Introduction: The Character of Ancient Near Eastern Law," *A History of Ancient Near Eastern Law*, eds. Raymond Westbrook and Gary M. Backman, 72 (Leiden: Brill, 2003), 21.