

**Book of Exodus, Session 7**  
**The Book of the Covenant**  
**Exodus 21–23**

The Decalogue is followed by the so-called Book of the Covenant in chapters 21–23. These two groups of laws are different in kind. The Decalogue is apodictic law: it consists of absolute commandments or (more often) prohibitions, with no conditional qualifications: “you shall not murder, steal,” and so on. The Book of the Covenant, in contrast, is mostly casuistic law, of the type “if x, then y.” There was a long-standing legal tradition in the ancient Near East, reaching back to the end of the third millennium B.C.E. Famous law codes were associated with the names of the Mesopotamian kings Ur-Nammu (twenty-first century B.C.E.), Lipit-Ishtar (twentieth century) and Hammurabi (eighteenth century). These great law codes are made up primarily of casuistic laws. At one time it was thought that apodictic law was distinctively Israelite, but this position cannot be maintained. The apodictic form seems to be well suited to proclamation in a cultic setting. The casuistic law is more indicative of the actual practice of law.

The casuistic laws in the Book of the Covenant qualify the apparent absolute character of the apodictic laws. For example, we are given several cases where killing is permissible, or even commanded, despite the apparent finality of the sixth commandment. It is apparent that these laws were formulated in a settled, agrarian, community; they are not the laws of nomads wandering in the wilderness. We do not know exactly when they were formulated. They are clearly presupposed in Deuteronomy, but could have originated either in the premonarchic tribes or in the early monarchy. Various scholars have argued that these laws should be associated with the setting up of the northern kingdom by Jeroboam I in the late tenth century B.C.E., or with the reform of

King Hezekiah of Judah in the late eighth, but such suggestions, however plausible they may seem, are only conjectures.

We cannot comment on all these laws, but can discuss a few illustrative cases. The first issue raised may surprise the reader in the context of the exodus: "when you buy a Hebrew slave. . . ." If Israel had its origin in liberation from slavery, how could buying a Hebrew slave be condoned? But in fact slavery is taken for granted, and remains a problem in varying degrees right through the biblical corpus, including the New Testament (see the Epistle to Philemon). The most common cause of enslavement in the ancient world was debt: people who could not pay their debts were forced to sell their children, or themselves, into slavery. Prisoners taken in battle were also often sold into slavery. From early times, people in the ancient Near East saw the need to set some limits to debt slavery. Babylonian kings traditionally proclaimed an act of "justice" or "equity" at the beginning of their reigns, and at intervals of seven or more years thereafter, remitting debts and causing landholdings to revert to their original owners. We have an example of such a proclamation in the Edict of Ammisaduqa, a king of Babylon in the seventeenth century B.C.E. (*ANET*, 526-28). It includes a provision for the release of slaves who had sold themselves or their families into slavery. It goes on to state that this does not apply to people who were born in servitude. The law in Exodus is more systematic, insofar as it is not a one-time liberation at the pleasure of the king, but provides that the service of Hebrew slaves be always limited to six years. No such limit is imposed in the case of foreign slaves. Moreover, if the master gives the slave a wife, she and her children remain the master's property, and the slave may decline his liberty because of his family ties. The biblical law, then, is only a modest advance over the Near

Eastern precedent. Moreover, women who have been sold into slavery are not granted the same right of liberation after six years. They are granted rights, however, and are entitled to their freedom if these rights are denied. These laws on slavery are revised and liberalized somewhat in Deuteronomy 15 (the distinction between men and women is erased), but the institution of slavery is not questioned.

The rights of slaves are again at issue in Exod 21:20. An owner who beats a slave to death is liable to punishment, but only if the slave dies immediately. Here, as in the laws just discussed, there seems to be an attempt to balance the rights of the slave with the interests of the slave owners. The casuistic form of the laws suggests that they resulted from a process of negotiation. There is an evident concern for the rights of slaves and other people who are vulnerable in society, but there are also compromises with the conventions of society. We do not know how far these laws were ever enforced, but they are designed to be realistic and practical in the society of their time; they are not purely idealistic.

In general, the laws of Exodus stand in the legal tradition of the ancient Near East. The classic example is the case of the ox that gores (Exod 21:28). Laws on this subject are found in the codes of Eshnunna (§§53-54) and Hammurabi (§§250-51) in the early second millennium B.C.E. The Mesopotamian codes differ from the biblical one in placing greater emphasis on monetary compensation. The biblical law requires that an ox that kills a person be stoned and its flesh not eaten, as if the action of the animal had made it taboo. If an ox kills another ox, the price of the live ox and the meat of the dead ox must be divided (Exod 21:35). This prescription corresponds exactly to the Code of Eshnunna §53.

Several laws in this collection deal with the consequences of violence. The most famous is undoubtedly that found in Exod 21:22-25. The first part of this law relates to the case where people who are fighting injure a pregnant woman so that she suffers a miscarriage. This law was later interpreted as prohibiting abortion, but it actually only addresses the accidental killing of the foetus. The Bible is silent on the subject of abortion, although the procedure was certainly known in the ancient world.

The discussion in Exodus goes on to enunciate a general principle: "if any harm follows, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe" (21:23-25). This law has often been derided for inculcating a spirit of vengeance. In the Sermon on the Mount in the Gospel of Matthew, Jesus cites this law as an example of the old order that he is superseding: "But I say to you, Do not resist any evildoer, but if anyone strikes you on the right cheek, turn the other also" (Matt 5:38-39). But Jesus was enunciating a moral ideal; he was not legislating for a community. Taken in context, "an eye for an eye" is not vengeance, but moderation. The point is that you may not kill someone who knocks out your eye. In the words of Gilbert and Sullivan's *Mikado*, the object all sublime is to make the punishment fit the crime.

The modern reader cannot fail to be struck by the frequency with which the death penalty is prescribed in these laws. Examples include striking father or mother, or cursing them. It is unlikely that the death penalty was enforced in all these cases, but the laws project a sense of severity. The Jewish historian Josephus, writing at the end of the first century C.E., was proud of this severity, and claimed that it showed the superiority of Jewish law to that of the Greeks. Modern reformers who reject the death penalty find no

support here, but this is only one of many examples that could be given of the gulf that divides ancient and modern sensibilities on ethical issues. It is noteworthy, however, that the Bible does not invoke the death penalty for property crimes.

Several other laws require a brief comment. Exodus 22:16 stipulates that if a man seduces a virgin, he must pay the bride-price for her and make her his wife. The woman is not consulted as to her feelings. The issue is primarily an economic one. A woman who has been defiled would not be able to find another husband (compare the story of the rape of Dinah in Genesis 34).

Exodus 22:21 forbids Israelites to oppress a resident alien, "for you were aliens in the land of Egypt" (so also 23:9). The appeal to the experience in Egypt is exceptional in the Book of the Covenant, but is typical of Deuteronomy. The law protecting the poor from their creditors (22:25) is also similar in spirit to Deuteronomy, but there is no reason why such sentiments could not also be found in the older law code. Compare the commands to help the animal of one's enemy in Exod 23:4-5.

Exodus 22:28, "you shall not revile god," uses the Hebrew word *elohim*, which is a plural form, for "God." The Greek translators rendered it by the plural "gods." The philosopher Philo of Alexandria, writing in the first half of the first century C.E., inferred from this that Israelites were forbidden to revile the gods of other peoples, lest the Gentiles be incited to revile the God of Israel in return.

One of the most striking commandments is found in Exod 22:29, "the firstborn of your sons you shall give to me." The context is the need to give thanks to God, by offering the firstfruits, whether of the harvest or of the womb. It is quite clear that sacrifice is involved: "you shall do the same with your oxen and with your sheep: seven days it shall

remain with its mother; on the eighth day you shall give it to me.” In Exod 34:20 this commandment is qualified; the firstborn son must be redeemed by offering something else in his place. This qualification is not found in Exodus 22. It is difficult to believe that any society would systematically require the sacrifice of the firstborn sons, but it may have been proposed as an ideal in early Israel. Abraham does not hesitate to comply with the demand that he sacrifice his only son in Genesis 22. The prophet Micah envisions a person deliberating whether he should offer his firstborn as atonement for his sin (Micah 6:7).

The need to give thanks by giving back to God underlies the cultic regulations in Exodus 23. The Sabbath law is spelled out in 23:12. The motivation that is given is practical: so that people and livestock may be refreshed. Similarly the land is to be allowed to rest every seventh year. The law in Exodus should be interpreted in terms of rotation of fields—not all the land need lie fallow at the same time. Later, however, this law is clearly taken to refer to a general practice in fixed years.

The cultic calendar in 23:14-17 specifies three major feasts. These were occasions when the males were to "appear before the Lord" by going to a sanctuary. The Hebrew word for such a pilgrimage feast is *chag*, which is related to the Arabic name for the Muslim pilgrimage to Mecca, the *haj*. The first is the Festival of Unleavened Bread (*matsot*), which marked the beginning of the barley harvest. The new bread was eaten without leaven, that is, without anything from the harvest of the previous year. It should be noted that this festival was not yet linked with the Passover in the Book of the Covenant. Passover was not a pilgrimage festival, but was celebrated in the home. The second festival is here called the harvest festival, and is related to the wheat harvest. It is

later known as the Feast of Weeks. Finally the third festival was that of Tabernacles or Sukkoth in the fall. This was the most important and joyful of the three festivals. In Leviticus it is called simply "the feast of YHWH." In Exodus 23 it is called the festival of ingathering. This was the celebration when all the produce of the fields had been gathered in, including the grapes that were used to make wine.

This cultic calendar will be developed and modified in later biblical law codes. Here we need note only the preponderantly agricultural character of the festivals. Each of them is an occasion for giving thanks to God after a harvest. This is not the calendar of tribes wandering in the desert, but of an agricultural people, settled in their land.

One final law must be noted, because of its far-reaching effect on later Jewish life: "you shall not boil a kid in its mother's milk" (23:19). It is because of this law that Jews do not combine meat and dairy products in the same meal. No reason is given for the prohibition. Some scholars have speculated that it was intended to reject a Canaanite ritual, and a text from Ugarit was thought to lend support to this view, but it is now clear that the text does not refer to cooking a kid at all. The most plausible explanation of the commandment is the intuitive one: to cook a kid in its mother's milk is unnatural, and violates the life-giving character of mother's milk. In this case, as in the laws protecting aliens and the poor, the Covenant Code shows a humane spirit that we will find amplified later in Deuteronomy.

**Questions for Reflection**

1. What is the Biblical attitude to slavery?
2. Why does the Bible appeal so often to the death penalty?
3. How should we understand the principle, an eye for an eye?
4. What does the Bible say about abortion?
5. Can we discern any principles underlying this collection of laws?

**Basic Reading**

Brueggemann, “The Book of Exodus,” 855-75.

Childs, *Exodus*, 440-96.

**Further Reading**

D. Patrick, *Old Testament Law* (Atlanta: John Knox, 1985) 63-96.

R. Westbrook and B. Wells, *Everyday Law in Biblical Israel. An Introduction* (Louisville: Westminster, 2009).

D. Wright, *Inventing God's Law. How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* (Oxford: Oxford University Press, 2009).