

Women Treated as Property: The Influence of the Ancient Near East on the Covenant Code

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Abstract

Gender discrimination is not a new phenomenon. It has been prevalent in many civilisations through the ages, including those in the ancient Near East. Prejudice against women thus found its way into legal codes, such as the Babylonian Code of Hammurabi, which introduced the idea of “an eye for an eye, and a tooth for a tooth,” according to which the killer of a woman was only obliged to pay half a gold mina as punishment to her father or husband, while the punishment for the murder of a nobleman was death. Gender discrimination was also displayed in the moral codes of the Hebrew Bible, including the Deuteronomic Code, the Covenant Code, and the Holiness Code. This article will examine how the Covenant Code relates to gender discrimination. The code, which is presented in Exodus 20–23, is an ancient legislative framework of impressive breadth. Scholars agree that the Covenant Code is an excellent barometer to reveal how women were treated in ancient Israel. While the aim of the article is not to make an in-depth exegetical study of the Covenant Code, it will examine the influence that other cultures in the ancient Near East had on Israel. Appreciating the power that pagan cultures exerted over Israel does not however excuse the negative treatment of women reflected in the Covenant Code. Nevertheless, this investigation will demonstrate how significant this influence was in allowing the negative treatment of women in Israel to persist, especially against the backdrop of Yahweh’s covenant, which stipulated that women were to be treated with dignity and respect.

Keywords: Covenant Code; discrimination; women; treatment of women; gender inequality; Old Testament



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Introduction¹

Legislation in Exodus pertaining to women is conspicuously sparse (Wildenboer 2019, 5). At one time, the sexual laws of Leviticus 20 followed Exodus 22:16, but it is also possible that the silence attests to the great age of the code, since the older the legislation, the less interference there is in familial matters, which included violence against women (De Vaux 1961, 143; Fuchs 2000, 307). The latter position is probable when one considers that the Israelites were in a transitional stage: newly arrived from Egypt, they were forced to respond to issues that had not arisen before and formulate decisions (Wilson 2006, 20). This included the practice of not naming women, in order to create a “good rhetorical effect” (Meyers 2005, 42).

Covenant Code—Historical Setting

The Covenant Code (Exodus 20–23) is dated² by some scholars to the ninth or tenth century BCE (Suelzer 1964, 125; Wilson 2006, 20–21; Hess 2007, 290).³ The diverse elements contained in the Covenant Code include the penal code. Lewy (1957, 33) posits that the Covenant Code is “apodictic, succinct and rigorous, and thus conspicuously different from the civil code in which it is embedded” (1955, 31). The apodictic penal code stems from Moses, while the civil code reflects a more settled population and may be from the period of the judges,⁴ a view that Lewy (1957, 31) and Hess (2007, 290) agree with. Suelzer⁵ (1964) also strongly concurs, based on the following assertion:

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- 1 This article is the dissemination of a PhD entitled “Disempowerment of and Violence against Women: Old Testament Perspectives,” under the supervision of Prof. D. J. Human, Department of Old Testament and Hebrew Scriptures, Faculty of Theology and Religion, University of Pretoria.
 - 2 This date can be pushed further back owing to the discovery of Mesopotamian codes, as well as a better understanding of internal evidence.
 - 3 These scholars base their view on the phrase “house of the Lord.” This could refer to Solomon’s temple.
 - 4 According to the internal data of the book of Judges, the time period that best suits both the chronological data and the ideological material is an early date when Israel did not enjoy unity and there was an internal struggle between loose confederations of tribes acting with relative independence from each other. These characteristics fit very well with the early reign of David, possibly while in Hebron during the civil war with the north, especially the house of Saul (Diffey 2013, 109). The ideology of the book indicates a negative attitude toward the tribe of Benjamin, as this is not the tribe from which a king was expected. As Peterson notes, “The political upheaval that the civil war would have engendered would have required some form of diplomatic appeal between the two sides; a reality alluded to in 2 Samuel 3:14–17. Judges thus became a propagandistic tractate promoting a unified nation under Davidic rule” (Peterson 2007, 7). This is why it is compelling to believe that the civil code reflects a settled population as during the time of the judges.
 - 5 See Eissfeldt (1965, 218). He cites several different opinions regarding both the chronological and the geographical setting. For Eissfeldt, “both its legal precepts and also its cultic and ethical commands

Despite the varying facets of the code, all the sources involved represent the same type of society: somewhat primitive, strongly familial, with vaguely defined political powers and strong religious traditions. Some parts imply a nomadic or pastoral society; others, agricultural. The combination indicates that the code was drawn up in the transitional period when the Israelites passed from semi-nomadic to sedentary life in the early days of the tribal amphictyony. (Suelzer 1964, 126)

The Covenant Code may have come from an older society (Gertz et al. 2012, 184; Ska 2006, 140; Wilson 2006, 20; Wright 2009, 3;). However, it must be said that it is overly complicated and, in many ways, has evolved through an editorial process (Wilson 2006, 20). If one considers the editorial process, the Covenant Code forms part of the non-P source, whereas the J source seems to be the older designation from which the Covenant Code is derived (Ska 2006, 140). It is noteworthy to see the calibre of scholars⁶ who are all in agreement that the Covenant Code is the oldest of all the biblical codes. However, there is a different school of scholars⁷ led by Durham (1998, 317–18) that believes that the date of the Covenant Code could be more defined. The following statement typifies this thinking:

What the Book of the Covenant does present is a wide-ranging collection of laws, drawn no doubt from Canaanite-Mesopotamian and perhaps also Egyptian and Hittite and any other available reservoirs, set deliberately into the narrative of Yahweh's Advent and Israel's response at Sinai. Whatever the respective origins of the individual laws, whatever the history of the sub-collections and layers that lie behind the collection in its present form, the Book of the Covenant must be understood primarily as an integral part of the Sinai narrative of the coming of Yahweh and the birth of Israel. (Durham 1998, 317–18)

As the oldest law code, the Covenant Code provides great insight into the type of society that Israel was. One can deduce the fact that laws pertaining to slavery (Childs 1974, 458)⁸ and the disempowerment of women formed part of this code and that slaves and women were not held in high esteem. These laws included the negative treatment of women.

readily permit the assumption that it came into being in the first centuries after Israel's conquest of the land and that it must in any case be older than Deuteronomy."

6 I am in agreement with the following scholars (school) on the dating of the Covenant Code: Gertz et al. (2012, 184), Ska (2006, 140), Wilson (2006, 20) and Wright (2009, 3).

7 See Doorly (2002, 10–11) for an exhaustive list of these scholars.

8 Childs (1974, 458) highlights the example of Exodus 21:2–11 as the parallel to the slave law in Deuteronomy 15:12–18. He concludes that based on *terminus a quo* grounds, the Covenant Code is earlier.

Societal Treatment of Women

The wording of Exodus 20:17 is significant in that it illuminates how women were treated as property: “You shall not covet your neighbour’s house; you shall not covet your neighbour’s wife.” The tenth commandment sheds light on the prevailing attitudes towards women at that time.

Women Treated as Property

The word “house” in the tenth commandment⁹ means more than a dwelling place; it includes the man’s family and belongings, that is, everything under his roof (Noth 1962, 166; Cassiday-Shaw 2002, 59–71). This means that the husband is the *ba'al* or “master” of his wife in the same way that he is *ba'al*¹⁰ of his house or field (De Vaux 1961, 26). This contributed to the disempowerment of women because it meant that a woman had no say in how she lived her life as far as her husband was concerned. Although some critics may argue that the purpose of the law was for women to be treated with respect, it cannot be denied that in practice they were regarded as property. Verse 17b¹¹ includes all the man’s possessions, beginning with the wife who was regarded as her husband’s asset along with his servants, maids, his ox and his ass (Noth 1962, 166; Roberts 2008, 18–24).

Women in Bondage

Mendelsohn (1948, 190–95) notes that a woman slave received different treatment compared with her male counterpart. According to Exodus 21:2–12: “When you buy a Hebrew slave, he shall serve six years, and in the seventh he shall go out free, for nothing’ (v.2), but in v.7: ‘When he sells his daughter as a slave, she shall not go out as the male slaves’” (De Vaux 1961, 86).

This is a clear illustration of biased treatment that reflects a negative perception of women because female slaves could not leave after six years as their male counterparts could. Furthermore, the forceful behaviour of men towards women is seen when one takes the translation¹² of “slave” to mean “concubine,” once again indicating that women were not viewed as persons. This idea of women as property and men as persons is very plausible because this section of the law is one of the oldest sections of the

9 Using the NIV translation of the Bible, I interpret it this way because the intended number ten excludes the possibility of verse 17b being another commandment. Also, the brevity of the commandments prohibits the whole of verse 17 from being the original tenth commandment.

10 See De Vaux (1961, 26). He explains that “to marry a wife” is expressed by the verb *ba'al*, the root meaning of which is “to be master.”

11 “You shall not covet your neighbour’s wife, or his manservant, or his maidservant, or his ox, or his ass, or anything that is your neighbour’s” (Exod 20:17).

12 See Rylaarsdam (1946, 996) and Meyer (2017, 762–63) on Exodus.

Covenant Code (Meyer 2017, 762; Rylaarsdam 1946, 844). Moreover, if a Hebrew man married a woman before their sale into slavery, he could take her with him upon leaving his master (Exod 21:3); if the master gave him a wife during the period of slavery, however, the wife and her children remained the property of the master upon his release as a slave (Exod 21:4). Interestingly, the children follow the mother¹³ and not the father. It would seem that the marriage bond of the slave couple assumed less priority, although some might argue that verse 3 protects the male slave and verse 4, the master. In any event, both genders are disempowered, but the woman more so because she is considered as property, either of her husband or her master.

Women's Rights Violated

In Exodus 22:16–17 of the Covenant Code, we see how women were often treated as nothing more than a possession to be paid for (Noth 1962, 179). This is illustrated as follows:

If a man seduces a virgin who is not betrothed, and lies with her, he shall give the marriage present for her father, and make her his wife. If her father utterly refuses to give her to him, he shall pay money equivalent to the marriage present for virgins. (Exod 22:16–17)

These verses are part of a longer section (Exod 22:1–17) which deals with cases of damage to property, including cattle theft. Since the woman was considered her father's property, the offender must pay the usual bridal price whether he received her or not (Wright 2009, 91). This is indicative of robbing women of their rights and reducing their status to that of a commodity. The woman was treated as damaged property because she belonged to her father (Rylaarsdam 1946, 1005). Here, concern regarding the violation of rights prioritises the owner or father rather than the woman.

Upper-class Women

Davis (2000, 213) posits that upper-class women occupied the highest-status professions. Being a priestess was the most prestigious position for women, which meant that they were the chief attendants to the gods and goddesses. Enheduanna (circa 2300 BCE) was the earliest known priestess and one of the most famous women in ancient history (Kramer 1989, 330). She was the high priestess of Inanna, the goddess of love and war, and the moon god Nanna and she lived in the Sumerian city-state of Ur. While she was appointed by her father, the ruler Sargon the Great, her ability and administration of her duties was excellent (Harris 2000, 98). As chief priestess, she presided over a large temple complex, including a library, granaries, schools, hostels and a large tract of land. The stepped mud-brick pyramidal structures were called

13 The idea of the mother's relationship to her family was regarded as nothing compared to the father's in society (Bergmann 2020, 133–34; Stalker 1962, 229).

ziggurats and could be as big as cathedrals (Marsman 2003, 1). For instance, the temple in the city-state of Lagash (circa 3000 BCE) provided daily bread and ale for more than 1 200 people. The temple to Nanna at Ur is extant. One of the chief priestess's duties was to communicate the deity's wishes to humans by way of omens (Marsman 2003, 1).

In her *Exaltation of Inanna*, Enheduanna relates how Inanna rescued the tree of life (like the biblical tree of knowledge) from the world flood and planted it in her garden. As the first known author by name, her poetry was copied and studied, greatly influencing the development of literature in the ancient Near East (ANE). There was a special dialect called "language of upper-class women" used for the speeches of women and goddesses in various genres, including love poetry. Ten royal priestesses succeeded Enheduanna over the next 500 years, each holding office for life like their predecessor. Written tablets exist recording the commercial activities of the priestesses, indicating their business acumen (Gardner 1951, 43).

There were other types of priestesses and religiously connected upper-class women, indicating the complexity of the religious practices of Sumerian culture (Meyers 2014, 39–51). It was also mainly upper-class women who composed music, used in the dances and songs performed at the religious temples. There were several communities of celibate women in the ANE, but we do not know what their religious function was. Some of these women could marry, but still wanted to maintain their virginity (Stol 2016, 73). There is an indication that poor widows gave their children to the temples to save them from starvation. Other children, including orphans, might have become slaves at these religious sites (Davis 2000, 213).

In 2 Samuel 16:21–23, we encounter the classic case of King David's son Absalom, who used sex against his father to lay claim to his throne. More astounding than this, however, is the fact that the author keeps the women in this story nameless. Moreover, Amnon, David's other son, seeks to rape his sister Tamar by trickery (2 Sam 13:2) because he is compelled to satisfy his lust. Clines (1995, 214) suggests that this kind of perfunctory and political abuse of women speaks to "masculinity being a social construct, the product of historical processes, as much a human construct as the pyramids of pewter" (Clines 1995, 214). Even though Absalom later avenged his sister's rape, the story highlights how self-reliant and autonomous men were, while women were perceived as powerless.

Lower-class Women

Lower-status women wove¹⁴ wool into cloth for sale in textile production (Ackerman 2003, 455). Apprenticeship programmes were available to them. It was the women of the highest status who were supervisors and business owners in these trades (Dever

14 "He also tore down the quarters of the male shrine prostitutes that were in the temple of the Lord, the quarters where women did weaving for Asherah" (2 Kgs 23:7 NIV).

2012, 142). The textile industry was a major source of wealth in the ANE, but little of this benefit was enjoyed by lower-class women (Trible 1984, 100–101).

Weaving was a job compatible with childcare as it could be interrupted when necessary to tend to children's needs. The perfume industry was another important employer of women in the ANE. Some lower-class women were experts at originating recipes for perfume-making. The brewing and selling of beer and wine were activities also engaged in by lower-class women.

Women as Outcasts

Women who did not fit in either the upper or lower classes were viewed as outcasts. Some of these women were forced into labour gangs to work on public projects. Others made prostitution their trade, dressing to attract male customers. Art renderings of these women were made (Davidson 2007, 54). They were often portrayed as a woman leaning out of a window. Interestingly, there was no stigma attached to prostitution¹⁵ in the ANE. Included in the written record of female professions was that of a prostitute (Stol 2016, 421). The parents of a daughter could sell her into prostitution. Part of the temple complex included sacred prostitutes. While the exact purpose of sacred prostitution is obscure, it may well have had its origin in fertility rituals. Sacred prostitutes did not sell their sexual services, but represented the goddesses and their sexual union with the king to ensure the prosperity of the kingdom (Stol 2016, 400).

Davidson (2007, 53–74) posits that prostitutes were mostly unmarried. A prostitute was referred to in relation to the other men in her life, namely her father and brothers. Just like other classes of unmarried women, such as high-class priestesses known as the *naditu*, the law code suggests that the prostitute could receive a dowry or gift from her father when she left home (Davidson 2007, 55). This was not a dowry in the traditional sense; for priestesses, the term “dowry” fits because they become symbolically married to gods, while for prostitutes, the term “gift” is more appropriate because they were not getting married. The Covenant Code distinguishes between two cases where the father either gives away his daughter to be a temple maid with no gift or he gives her a gift, explicitly stating that she can do with it as she pleases. If he made no gift, she forfeited some of the rights to her inheritance.

15 “If a father devotes a temple maid or temple virgin to God and gives her no present: if then the father dies, she shall receive the third of a child's portion from the inheritance of her father's house, and enjoy its *usufruct* so long as she lives. Her estate belongs to her brothers” (Code of Hammurabi §181).

Aberrant Sexual Conduct

Another way most women were disempowered was the manner in which they were asked to conduct themselves sexually and how they were exploited on this basis.¹⁶

In all laws relating to rape, it was stated that the injured party was the husband or the father of the raped woman, not the victim herself. The victim was obliged to prove she had resisted rape by struggling or shouting, otherwise she was found guilty of fornication or adultery (Stol 2016, 257). If the rape occurred in the countryside or another isolated place, then the rapist was guilty, not the victim (Harril 2006, 129).

Another area concerned with sexual relations had to do with incest. The Covenant Code punished incest between a mother and her son with death for both parties, but a father who committed incest with his daughter was only banished—a sure sign of double standards. These double standards in sexual relationships highlight the deliberate disempowerment of women in ANE cultures (Gardner 1951, 55–56).

Cultural Activities and Women

Women's status and economic contribution continued to decline between 1200 and 587 BCE. In the arena of cultural practices, it was no better. Cultures in the ANE allowed women freedom to some degree, but generally women were afforded less status than men. For Assyrians and Babylonians, women definitely had less status. Women could no longer own property. All respectable women had to be veiled and secluded in harems, including queens. The crime of adultery also had more severe repercussions for women.

Subordination of Women

Under the Covenant Code, a philandering wife could be excused if her husband chose to do so. If he sought to punish her, he could disfigure her face—a common practice in the ANE. Cutting off a wife's nose and female circumcision was the epitome of violence and disempowerment of women (Gardner 1951, 57).

What was the cause of this steady decline in the treatment of women in the ANE (circa 1200–587 BCE)? Garroway (2018, 23) argues that as trade and wealth increased,

16 “Lugal-melam, the son of M., has seized Ku-Ninšubur, the slave-girl of Kuguzana, brought her to a storehouse and deflowered her. After he had deflowered her, Kuguzana, her owner, appeared in the assembly of Nippur and stood before them. He said, ‘L. has seized my slave-girl, brought her into the storehouse and deflowered her.’ Lugal-melam appeared. He said, ‘I do not know his slave-girl. I have not deflowered her.’ His witnesses took the stand. They confirmed this. The assembly of Nippur appeared. They said, ‘Because he deflowered the slave-girl without (permission from) the owner, Lugal-melam must pay thirty shekels of silver to Kuguzana, her lord.’ The assembly have pronounced their verdict on this matter” (Finkelstein 1981, 359).

patriarchal attitudes were reinforced. Increased warfare and permanent kingship, in which women did not participate, further alienated women from positions of power. As the population steadily grew, war and the struggle for political dominance perpetuated the need to protect one's property, including the desire to subdue women. In tandem with the structure of society, in the religious realm, male gods took over from the more honoured position previously held by goddesses (Zevit 2001, 122–49).

Domesticated Women

Understanding female disempowerment and related social constructs has been investigated across many academic disciplines. Ackerman (2003, 468) and Meyers (2014, 225–50) strongly suggest, and I would agree, that it has played a role in humanity's division of economy, labour and social morals as modern civilisation has borrowed practices from our earliest ANE ancestors (Westbrook 2003, 361).

While conceptions of masculinity and femininity would play an important role in understanding moral and social differences between the genders, it is the aim of this study to highlight these concepts in the ANE to underscore the theme of women being disempowered. While many scholars¹⁷ are working to alleviate the imbalance of information, there is still little definition of the implications of masculine and feminine traits (Westbrook 2003, 362).

Religiosity of Women

Historically, the Jewish religion has ignored the existence of women in Iron Age Israel, circa 1200–587 BCE (Nakhai 2019, 1). Israelite society was mostly built on the responsibilities that women assumed for maintaining religious rituals and traditions. Women essentially occupied fundamental roles in Israel's religious culture. These included roles that extended from the Jerusalem Temple to undertaking responsibility for clan-based and community-based religious rituals (Ahuvia and Gribetz 2018, 9) and rites, such as pilgrimage, seasonal festivals, rites of military victory and rites of mourning (Nakhai 2015, 176–93). In addition, they fulfilled essential roles within the sphere of domestic or household religion. At home, they provided healing for all family members, as well as care for women and babies throughout pregnancy, childbirth and beyond (Dever 2012, 142–205; Faust 2012, 213–29).

In other ANE societies, women were also expected to provide spiritual oversight in the home. Even though goddesses were mythical, how they were portrayed bears some historical relevance to women's cultural status. “These portrayals of goddesses are the cultural projections of the whole society and reflect what the culture believed that

17 See Nakhai (2015, 44); Meyers (2014); Ackerman (2000); Bellis (2007).

women are and should be [seen as] divine modelling for their own roles in life” (Frymer-Kerensky 1994, 14).

The ANE’s construction of religion served as a platform to provide people with purpose and understanding in their lives. In this way, it was a mirror on society itself. For instance, the Akkadian goddess Ištar served as a central model for womanhood, particularly because she encompassed the dual aspects of femininity: she was the alluring temptress and the wife (Frymer-Kerensky 1994, 57). She was therefore viewed in a positive light, although she was not submissive and was also associated with war. Despite this strong role model, negative gender mindsets infiltrated social attitudes at the time (circa 2000–1600 BCE) that disempowered women.

Conclusion

The challenges faced by women in ANE societies, such as Egypt, Babylon and Assyria, were ubiquitous. No woman—not even an educated, high-class woman—was equal to a man before the law.

This prejudice against women spread to influence lawmakers in ancient Israel. Pentateuchal texts, including the Covenant Code, reveal the discrimination that women endured. Women were treated as the property of their fathers and husbands, to do with as they wished. Their role was often limited to reproduction, especially producing male heirs. Although it is true that Jewish law was intended to protect the rights of all Hebrew citizens—both male and female—and that many women did make valuable contributions to their society, they were not given equal or proportionate recognition. The Covenant Code portrays many unfavourable scenarios where women were disenfranchised. Examples of care of and appreciation for women, who are equally made in the image of God, are conspicuously absent from the code, an omission that needs to be addressed by modern interpreters of Scripture to effectively counter the negative attitudes it contains.

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