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# *The Laws of Hammurabi: At the Confluence of Royal and Scribal Traditions.*

## By Pamela Barmash. Oxford: Oxford University Press, 2020. Pp. 336. $99.00 (cloth); $97.99 (digital). ISBN: 9780197525401.

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Pamela Barmash's *The Laws of Hammurabi: At the Confluence of Royal and Scribal Traditions* is a terrifically energetic new engagement with some very old legal material. This latest work from her is important insofar as it offers new exposition of the Laws of Hammurabi, reinterprets their character in their immediate context and their legacies, and has important implications for other scholarly thinking about ancient Near Eastern law and biblical law. Barmash is a significant expert on biblical law, who has published major reference works,[1] but with this book, she expands the reach of her scholarly contribution in ways that matter not just to scholars of ancient Near Eastern law and biblical law but also anyone interested in legal history within the Western tradition generally. She delves many centuries earlier than Roman law to demonstrate the beginnings of sophisticated legal thinking in an earlier phase of history than often realized, and this is the genuinely groundbreaking dimension of the book.

Barmash builds this significant contribution gradually through the course of the book. In her introduction, she hints at some of her aspirations, notably offering a "*histoire totale*" (3) of the Laws of Hammurabi, and considering the text's origins, immediate reception, and later impacts. Barmash asserts from the outset the claim that the Laws of Hammurabi bestrides a royal tradition of exalting the monarch and a scribal tradition in which it became a classic text ultimately contributing within a tradition of legal thought. She uses the bulk of the introduction to situate her claims within prior accounts of the Laws of Hammurabi, surveying past views that have ascribed a statutory interpretation, a reading of it as pure scholarly literature, a reading of it as royal propaganda, and views that have tried to integrate various past views (6–11). In the later pages of the introduction, Barmash skillfully sketches the argument to come: the Laws of Hammurabi start within a royal tradition and become a classic legal text.

In chapter 1, Barmash introduces the physical stela containing the Laws of Hammurabi, offering a helpful introduction for those new to the subject and highlighting the literally

[1] See, for example, Pamela Barmash, ed., *The Oxford Handbook of Biblical Law* (Oxford: Oxford University Press, 2019).

monumental character of the imagery and text. With chapter 2, she contextualizes the subject matter within the concept of royal legitimization: the monarch claims legitimacy by appropriating acts that establish justice. The Laws of Hammurabi have some parallels with other royal inscriptions and law collections of the era in containing significant equity-oriented elements, though the presence of those elements in the preamble is distinct from what Barmash identifies as the more statutory form of the law collection itself. In chapter 3 she dives deeper into the discussion of the genre of the Laws of Hammurabi, arguing that it takes the form of a royal inscription to a significant degree and that the statutes "ground and give meaning to the royal inscription" while "the royal inscription format gives authority to the statutes by affirming that they are exempla of truth and equity" (132).

Here, there is a major turning point in the argument. In chapter 4, Barmash opens up the argument to suggest that the Laws of Hammurabi manifest scribal innovation and thus a degree of innovative legal conceptualization. First, Barmash argues that the parallels between the Laws of Hammurabi and the Laws of Lipit-Ishtar and Laws of Eshnunna show that scribes were recording a received set of standard cases in a casuistic form, consisting of *if-then* statements concerning the legal consequences of particular combinations of facts. Second, however, she argues that there is an innovation in form in the Laws of Hammurabi: the organization takes the form of "incremental variants, in which multiple statutes are grouped together, and incorporated minimal variations on a case in order to express legal principles" (147).

Barmash shows that this approach, using multiple variants, is in contrast with the Laws of Eshnunna's approach of showing two maximal variants that are binary opposites. Here, Barmash might have been slightly more thorough by emphasizing that the Laws of Lipit-Ishtar (which she had mentioned previously but does not include in this discussion) simply seem to lack much structure other than being a set of casuistic statutes without particular relationships from one to the next, something readily observable by anyone reading these different law codes in the increasingly accessible forms in which they are available in translation.[2] She shows that the Laws of Hammurabi thus have a distinctive form to their statutes, even within the common casuistic form, and that casuistic form implicitly conveys underlying legal concepts in powerful new ways, showing a richer systematization of legal concepts. Indeed, later in the chapter, Barmash shows select instances in which parts of the Laws of Hammurabi even contain explanations of particular statutes, thus demonstrating deeper underlying principles.

Barmash's methodology of engagement with the statutes in the Laws of Hammurabi must be thought provoking for those engaged with biblical law. Scholars of biblical law have been increasingly ready to engage with law as a less univocal genre and shown readiness to think about different ways of reading parts of scripture containing law.[3] Barmash's approaches offer worthwhile synergies with such work. At the same time, her approaches suggest grounds for caution: some recent approaches are too inclined to label as wisdom literature any law collection made up of caustic statements that do not constitute a complete code and are not cited as a legal authority.[4] Barmash shows ways in which a set of casuistic statutes

[2] See, for example, Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, 2nd ed. (Atlanta: Society of Biblical Literature, 1997).

[3] See, for example, William S. Morrow, *An Introduction to Biblical Law* (Grand Rapids: Eerdmans, 2017).

[4] While I do not wish to oversimplify or overstate their conclusions, a sort of culmination of this direction is found in John H. Walton and J. Harvey Walton, *The Lost World of the Torah: Law as Covenant and Wisdom in Ancient Context* (Grand Rapids: IVP Academic, 2019). Compare also, Michael LeFebvre, *Collections, Codes, and Torah: The Re-characterization of Israel's Written Law* (New York: T&T Clark, 2006); Jonathan Vroom, "Law, Authority, and Interpretation in the Ancient World: The Origin of Legal Obligation in Early Judaism" (PhD diss., University of Toronto, 2017).

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can nonetheless manifest deeper underlying principles of a legal character. While a full exposition of such implications, taking account of the different context of biblical law, would be a much larger project than possible within a book review, it is certainly apparent that Barmash's book could have profound implications for some ongoing scholarly debates about biblical law.

Although Barmash's conclusion in chapter 5 about the incremental variants approach in the Laws of Hammurabi is appropriately cautious—that "[t]he scribe who drafted the statutes in the Laws of Hammurabi advanced toward the systematic analysis of legal issues" (200)—it nonetheless breaks new ground. Barmash offers a method of reading the Laws of Hammurabi as legal text that seeks to be free from anachronistic concepts (and thus in chapter 6 she explains that the legal authority of the Laws of Hammurabi is not to be sought in seeking citations to them in judgments) and that ends up enabling other readers to read them and appreciate their systematization and conceptualization. For example, in a discussion in the later parts of chapter 4, Barmash suggests that the various penalties are oriented to a sort of "poetic justice," showing a relationship between offense and retributive penalty (186, 191, 234). She may be right, but she also offers a methodological structure for others to use in approaching the Laws of Hammurabi—something they must do if certain scholarly arguments are to be on solid ground.

In an important article in the *Oxford Journal of Legal Studies* on sentencing issues, Justice Morris Fish of the Supreme Court of Canada tried to read the *lex talionis* of the Old Testament ("eye for an eye, tooth for a tooth") against the background of prior law collections, including "Hammurabi's Code," arguing that contrary to modern revulsion at the *lex talionis* principle, the Old Testament's *lex talionis* reflected a straightforward development of greater leniency.[5] However, if, as Barmash argues, the Laws of Hammurabi reflected a poetic justice that was not to be literally applied but that was to inform a sense of justice, Justice Fish's argument would need to be redeveloped in altered ways and perhaps with altered conclusions. Barmash's approach highlights the importance of not reading the Laws of Hammurabi simplistically when reading them as context to texts that one tries to read in more sophisticated forms.

After a brief unnumbered chapter, "Excursus: Scribes and Scribal Education," which is fascinating background in its own right, in chapter 5 Barmash returns to her main argument, engaging further with the law of adoption set out in the Laws of Hammurabi, showing how the method of incremental variants can shape whole areas of law in sophisticated ways, and again illustratively showing how others could now engage with the contents of the text.

In chapter 7, Barmash opens the discussion of the legacies of the Laws of Hammurabi. As a classic text that is studied, the Laws of Hammurabi offer a new direction for scholarship: seeking to learn about legal concepts and a sense of justice by engaging with classic texts in various ways, including by developing formal commentaries on them. While there are intriguing parallels with elements of later Greek and Roman law, Barmash is cautious about suggesting any direct influence, pointing always to counter-indications, but she also implicitly makes a powerful case for commencing the study of the history of Western law earlier than Roman law. Barmash's book should be of very broad interest, for while Barmash's approach matters to scholarly debates on biblical law, she shows important ways for others to engage in reading the Laws of Hammurabi. There is a much broader significance to her intense study that makes Barmash's *Laws of Hammurabi* a profoundly important book. Engaging in a "histoire totale" of the Laws of Hammurabi in the way Barmash has done makes clear that the Laws of Hammurabi are, much more than often realized, a necessary

[5] Morris J. Fish, "An Eye for an Eye: Proportionality as a Moral Principle of Punishment," *Oxford Journal of Legal Studies* 28, no. 1 (2008): 57–71.

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part of a total history of Western law. Indeed, Barmash's contribution helps support a view that for a fuller understanding of the Western legal tradition, one must start in Mesopotamia, in the ancient Near East more broadly, and in Israel before turning to Rome and, eventually, the common law. The implications for legal education, legal scholarship, and legal practice are thus far-reaching indeed.

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