



JUSTICE IN ANCIENT MESOPOTAMIA

Introduction

Any study of justice in the Bible must begin with ancient Mesopotamia because the concept and the vocabulary of biblical justice are rooted in that culture. To uncover these roots, this chapter will explore justice in ancient Mesopotamia from the Sumerian culture to the Neo-Babylonian. Although the scope of this chapter seems ambitious, its purpose is limited. The structure of judicial power and the general administration of justice in these cultures will not be treated here.¹ This chapter restricts itself rather to the analysis of certain aspects of justice: the problem of the poor and the oppressed, the action of the government in response to them, and the reflection of such a problem in popular piety.²

The concept of justice in ancient Mesopotamia embraces a broader meaning than our concepts of commutative, distributive, or social justice. It is not enough for the governor to promulgate good laws and supervise the keeping of these laws; in order for justice to have its place in the Mesopotamian world, he must also issue decrees of mercy that allow the restoration of a destabilized equality.

This chapter studies the texts in chronological order. After an overview of early social and economic development in ancient Mesopotamia, it analyzes the first of social reforms undertaken there. It then goes on to consider the various Mesopotamian law codes, the decrees of mercy (“justice”), and the religious texts that reflect the situation facing the underclasses of Mesopotamia.³

¹For a study of the characteristic structures of judicial power as well as the administration of justice in general within the societies of ancient Mesopotamia, see Hans J. Boecker, *Law and the Administration of Justice in the Old Testament and Ancient East* (trans. J. Moiser; Minneapolis: Augsburg, 1980).

²This chapter takes a point of view similar to that taken by Léon Epzstein, *Social Justice in the Ancient Near East and the People of the Bible* (London: SCM, 1986), even though Epzstein does not undertake a conceptual analysis of the texts, or examine the “decrees of mercy,” or refer to religious texts in connection with the question of justice.

³In Mesopotamian texts the decrees of mercy embrace acts of liberative justice. See below, §5.

1. Mesopotamia before social reforms

An earlier generation of scholars held that as long as the national religious socialism of ancient Sumer existed, there were no major problems that would have moved the governors to undertake social reforms. According to this view, the political and economic system orbited around the temple in the old city-state of the Sumerians. The temple owned the land and the *ENSI* (Sumerian for governor or king of the city) was its administrator. The citizens would serve their gods by cultivating their assigned fields for the granary, and they would draw from the grain reserves of the temple.⁴ Recent investigations have somewhat changed our understanding of the Sumerian situation.⁵ It is possible that at the beginning, the first Sumerian settlers owned the land in a communitarian form; but very soon thereafter, with economic development, the land passed into the hands of three owners: the temple, the most powerful families, and the *ENSI*. The *ENSI*, besides securing his political power by establishing a dynasty, increased his economic position primarily through the control of commerce and the collection of taxes. Later on, he added another source of wealth, namely, the exploitation of the land that belonged to the temple, which the *ENSI* arrogated as his own property. This economic development produced a rich class that prospered, thanks to the work of the poor. Social conflict soon appeared. The complaints were directed against the *ENSI* and the wealthy members of society. Complaints were raised against the *ENSI* because he was illegally expropriating land that belonged to the temple and was imposing excessive tributes. Similar complaints were raised against the wealthy because they were oppressing the poor and seizing their properties. When social conflict began to threaten the stability of the dynasty, the ruling class felt the need to introduce social reforms.

2. The social reforms of Entemena, Urukagina, and Gudea

The oldest social reform known goes back to the year 2420 B.C.E. Entemena, governor (*ENSI*) of the state-city of Lagash, undertook it. He is celebrated in a text that says: “He [Entemena] restored the mother to her own son; restored the son to his own mother; freed [the population] of [oppressive] interest rates.” Entemena extended the reestablishment of social order beyond the limits of his own city and glorified himself by “having given liberty” (*ama-gi, e-gar*) to other cities dependent on Lagash.⁶

⁴See H. W. F. Saggs, *The Greatness That Was Babylon* (New York: Hawthorn, 1962), 38–47, 157–63.

⁵See the second, revised edition of Saggs, *The Greatness That Was Babylon* (London: Sidgwick & Jackson, 1988), 41–43.

⁶M. Lambert, “L’expansion de Lagash au temps d’Entéména,” *RSO* (1972): 1–22; Niels P. Lemche, “*Andurārum* and *Mīšarum*: Comments on the Problem of Social Edicts and their Application in the Ancient Near East,” *JNES* 38 (1979): 16.

The expression “having given liberty,” in the context of Entemena’s reform, designates a legal act that, in general, can signify the restitution of lost liberty, and in particular, can include the legal emancipation of a citizen reduced to slavery by insolvency, the return of confiscated property, the abolition of debts to the state, and the derogation of oppressive taxes. The purpose of Entemena’s action was the reestablishment of just order. To do this he issued an act of liberation that in the future turned out to be very important, since it became the starting point a legal institution, designated in Akkadian with the terms *mīšarum* and *andurārum*.

Fifty years later in Lagash, around 2370 B.C.E., another social reform took place, this time under Urukagina.⁷ Even though noble families saw Urukagina as a usurper, history views him as a great social reformer.⁸ An accomplished politician and man of decision, Urukagina appealed to the values of his society at that time in order to legitimize his authority and to strengthen his power. As such, he appealed to Sumerian legal tradition and used a theological argument in his appeal to Ningirsu, protective god of Lagash. He substantiated his declarations with deeds promoting prosperity, order and peace.⁹ In the same way, he showed religious and social sensitivity by giving primacy to his divine mission of legally protecting the oppressed and forsaken. Thus, referring to his reforms, Urukagina says of himself in his inscriptions:

He [Urukagina] cleansed the domiciles of the habitants of Lagash of usury, hoarding, famine, robbery, and the aggressions and established [their] liberty [*ama-gi_i-bi e-gar*]. He made Ningirsu to seal the declaration that he [Urukagina] would not put the widow and the orphan in the hands of the rich. . . . [When Urukagina] received the royal dominion of Girsu, he established liberty [for the inhabitants of Lagash].¹⁰

Those inscriptions refer to a liberty that is probably an exemption granted from the payment of taxes and amnesty from debts. In his reform, Urukagina proposed reestablishing the order of Ningirsu, an order revealed by his Sumerian gods, by which society had to integrate itself into the harmony of the cosmos.

⁷ See Boecker, *Law*, 53–54; M. Lambert, “Les ‘réformes’ d’Urukagina,” *RA* 50 (1956): 169–84; Alexander Scharff and Anton Moortgat, *Ägypten und Vorderasien im Altertum* (Munich: F. Bruckmann, 1950), 241–45.

⁸ Ferris J. Stephens, “Notes on Some Economic Texts of the Time of Urukagina,” *RA* 49 (1955): 129–36.

⁹ Some elements of Urukagina’s reform are worth mentioning. He was, for instance, zealous in his efforts to preserve the traditional theocratic structure of Sumerian society, insisting that land was neither the property of the king, nor of the queen, but of the god of the city. In his effort to “establish freedom,” Urukagina followed the example of Entemena. To that end, after assuming office, he freed the population from the oppressive taxes that had been previously imposed on them. He likewise reduced governmental fees, especially those exacted when marriages were solemnized, writs of divorce obtained, or funerals celebrated. He decreed that public officials should be satisfied with the remuneration they received, and he forbade them from demanding direct compensation from the citizenry. Moreover, he prohibited noblemen from confiscating the crops of the peasants and the catch of the fishermen. See Lambert, “Reformes,” 169–84; Scharff and Moortgat, *Ägypten*, 241–45.

¹⁰ Lambert, “Reformes,” 183.

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According to this revelation and in agreement with the myth of *Atrahasis*, humanity had been created to substitute for subordinate deities in the service of the divine world. They served by obeying the will of the gods in their private and civil lives,¹¹ and above all, by celebrating religious feast days and by performing rituals.¹² In the light of these objectives of creation, the primary obligation of the Sumerian governors was to create conditions of life that would facilitate the service of the community to the divine world. By keeping this service, society was integrating itself into the cosmic harmony and also was acquiring solidarity. In this context, the law's ultimate purpose was to make integration possible, and as the *ensi*, it was the king's duty to promulgate and execute the law. This was how the king executed the integration of society into universal harmony.¹³ In this case universal harmony does not include the modern cosmic concept in which internal laws of nature rule over the unity and harmony of the whole. Here, the harmony imagined is that which is imposed over chaos by the will of the gods.

Urukagina's reform was brief; it lasted just seven years, and ended with his death. But his reforming reign was not simply a shooting star. It demonstrates, rather, the traditional tendency to create and reform legal structures so that citizens can easily fulfill their purpose in life, which was to serve the divine world. Urukagina's reform was fleeting, but it made a permanent contribution to the culture of the ancient Near East: it reinforced the tradition to give justice a legal base, so that all citizens might have a healthy and prosperous life.

A few centuries later, again in Lagash, towards the middle of the twenty-first century, another reformer ascended the throne—Gudea, “the shepherd elected by Ningirsu.” An excerpt of Gudea's Cylinder B may be translated as follows:

He [Gudea] removed (all) injustice in (their) households. He gave care to the laws of Nanshe and Ningirsu. To the orphan, the rich man could do no evil. To the widow, the powerful man could do no evil. In a household without male heir, the daughter came to be the heir. He [Gudea] made justice to shine [and thus] the Sun god (Utu) crushed iniquity.¹⁴

¹¹ It was a common conviction in ancient Mesopotamia, as Bottéro has noted: “Just as all social restrictions came forth from the royal will and received their obligatory strength and, if needed, their sanctions from it, all the imperatives of life, both communal and individual, received their value from the fact that they represented the explicit will of the gods.” See Jean Bottéro, *Mesopotamia: Writing, Reasoning, and the Gods* (trans. Z. Bahrani and M. Van De Mierop; Chicago: University of Chicago Press, 1992), 227.

¹² Important parts of the liturgical celebrations and rites celebrated in the temples included processions with the statues of the gods, various recitals of cosmogonic and anthropogonic myths, sacred marriages, sacrifices of animals and agricultural produce, libations and the daily offerings in order to feed the gods, and the careful and expensive care of the statues. In order to sustain this onerous cult it was necessary that the community be prosperous. The active participation of all the members of the community was required for the common good. See Bottéro, *Mesopotamia*, 225–26; Georges Contenau, *La civilisation d'Assur et de Babylone* (Paris: Payot, 1951), 90–123.

¹³ See Franco Pintore, “La struttura giuridica,” in *L'Alba della Civiltà* (3 vols.; ed. S. Moscati; Turin: UTET, 1976), 1:420.

¹⁴ M. Lambert and R. Tournay, “Cilindre B de Gudea,” *RB* 55 (1948): 534.

Utu was the Sumerian sun god; Nanshe and Ningirsu were the protective divinities of Lagash. According to this text, chaos and darkness rule when the powerful exercise iniquity against the humble. By contrast, the sun of justice reigns when iniquity is crushed and when the order presided over by Utu and revealed by Nanshe and Ningirsu is reestablished. The sun of justice shines brightest when the orphan and the widow are protected and when relations between the powerful and humble remain fair.

3. The codes of Ur-Nammu, Lipit-Ishtar, and Eshnunna

The Sumerian king Ur-Nammu (2064–2046 B.C.E.), contemporary of Gudea and founder of the third dynasty of Ur, left us the oldest known legal code. In the royal inscriptions it is said of him that “by the firm judging of Utu, he [Ur-Nammu] has made the light advance and has established peace.”¹⁵

The code of Ur-Nammu, originally written in the Sumerian language, is known to us only through fragments of a copy made at the time of Hammurabi (1728–1686 B.C.E.). To judge from the fragments we have today, the code consisted of a prologue that contained theological, ethical, and historical considerations and a body of at least twenty-two articles.¹⁶ This code describes its purpose in the prologue: “The orphan was not delivered up to the rich man; the widow was not delivered up to the mighty man; the man of one shekel was not delivered up to the man of one *mina*.”¹⁷

The code of Ur-Nammu was once considered the oldest legal document written in conditional form. In legal texts written in the conditional form, every article has a protasis and an apodosis; the protasis is introduced by the conditional particle *if* and describes a concrete situation either in the present or in the past. Although the situation envisioned in the protasis is concrete, its description takes typical and essential elements extracted from particular cases. It is a generalization of the particular. The apodosis that follows is put in the future tense and determines what must be the juridical consequences of such an action. The connection between the apodosis and the protasis is based on legal custom or on the explicit will of the authority.¹⁸ An example is the following article: “If a man, in the course of a scuffle, smashed the limb of another man with a club, he will pay one *mina* of silver.”¹⁹

¹⁵ George A. Barton, *The Royal Inscriptions of Sumer and Akkad* (New Haven, Conn.: Yale University Press, 1929), 273.

¹⁶ See “The Laws of Ur-Nammu,” translated by J. J. Finkelstein (*ANET*, 523–25). For commentary, see Boecker, *Law*, 56–78.

¹⁷ “The Laws of Ur-Nammu” (*ANET*, 524). A *mina* is equivalent to sixty shekels. The text contrasts the one who possesses sixty shekels to the one who possesses only a single shekel.

¹⁸ Bottéro, *Mesopotamia*, 170–73.

¹⁹ “The Laws of Ur-Nammu” (*ANET*, 524).

Since the translation of texts found at Ebla (Tell Mardikh, Syria) following its discovery in 1968, Ur-Nammu's code is no longer considered to be the oldest known legal text written in the conditional form. The archives of Elba, dated between the years 2400 and 2250 B.C.E., also present conditional formulations of legal norms.²⁰ In addition, as J. Bottéro has observed, the conditional style is not only found in juridical collections but also in the treaties of divination and medicine. It seems as though the conditional style was the way ancient Mesopotamians thought about such matters, and the way they expressed what they deduced from reality, or the steps they had to take to confront the situation. It has been said that conditional formulations were to ancient Mesopotamians what the syllogism was to the ancient Greeks. Ancient Mesopotamians gave primacy to the observation of concrete reality, and from this they would deduce analogous models of conduct and judgment.²¹

The articles from these codes do not really contain universal imperative rules for social conduct, imposed and sanctioned by the legitimate authority. Rather, they are solutions for concrete cases. These are not laws that emanate from the legislator but rather judgment sentences that presuppose a universal law. The ancient compiler has not constructed a code of laws; his work is, instead, an anthology of jurisprudence.²² The attribution of a code to a specific king may suggest that the collection reflects the practice of jurisprudence during his reign, though the degree to which these "law codes" were used as a basis for actual jurisprudence is debated.²³ The collection offers a model of jurisprudence following the spirit of reform that the king had decided to establish.²⁴

A few centuries after Ur-Nammu, another code appeared in the Sumerian language. It was promulgated by Lipit-Ishtar, who reigned in the Sumerian city of Isin between the years 1875 and 1865 B.C.E. This code presupposes a society in which the Akkadians have already assimilated themselves to the Sumerian civilization and are living with them. In the prologue, King Lipit-Ishtar calls himself a "wise and humble shepherd" and declares that his purpose is that the Akkadians and the Sumerians have a happy life:

²⁰See Reuven Yaron, *The Laws of Eshnunna* (Jerusalem: Magnes and Leiden: Brill, 1988), 106–13.

²¹Bottéro, *Mesopotamia*, 35, 130–37, 158, 170–79.

²²Bottéro, *Mesopotamia*, 161–69.

²³Since these law collections were not comprehensive, the term "code" may be misleading. See Samuel Greengus, *CANE*, 471–72.

²⁴The role of the king in the formulation and codification of Mesopotamian law is much debated. Some scholars are inclined to think that the law codes are collections of traditional norms. This is the position taken by Roland de Vaux, *Ancient Israel* (2 vols.; New York: McGraw-Hill, 1965), 1:145. Other scholars allow for more influence on the part of the king in the formulation of the laws. This influence would show in the modification and in the abrogation of traditional norms, as well as in the introduction of new norms. According to this opinion, the codes would then be the result of such a reformation. So Jacob. J. Finkelstein, "On Some Recent Studies in Cuneiform Law," *JAOS* 90 (1970): 243–53. Bottéro leans more toward the second opinion.

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When Anu (and) Enlil had called Lipit-Ishtar . . . to the princeship of the land in order to establish justice [*níg-si-sá*] in the land, to banish complaints, to turn back enmity and rebellion by the force of arms, (and) to bring well-being to the Sumerians and Akkadians, then I, Lipit-Ishtar . . . [estab]lished [jus]tice [*níg-si-sá*] in [Su]mer and Akkad in accordance with the word of Enlil. Verily, in those [days] I *procured* . . . the [fre]edom [*ama-ar-gi₄*] of the [so]ns and daughters . . . of [Sum]er (and) Akkad *upon whom* . . . *slaveship* . . . *had been imposed*.²⁵

The administrative action of Lipit-Ishtar is described with traditional Sumerian concepts: to do justice is to free the members of society from the burdens and bonds that prevent them from having a healthy and prosperous life in the service of the gods.

Lipit-Ishtar's code reflects a society that is controlled by an economy of private property and is composed of the enslaved and the free, and those who are free are divided between patricians and plebeians.²⁶ It is interesting to observe that the code balances two aspects of private property. On the one hand, it protects property from possible violators; but, on the other hand, the code also defines the responsibilities of the owners. According to the code of Lipit-Ishtar, any legitimate use of property must take into account its effect upon one's neighbors.²⁷

Approximately one and a half centuries after Lipit-Ishtar, and a few years before Hammurabi (1728–1686 B.C.E.), the first code in the Akkadian language appeared, the code of Eshnunna. This code is very similar to those of Sumer. Like them, the code of Eshnunna does not offer a systematic and complete group of laws; rather, it contains a loose collection of precedents and ordinances.

The similarities among ancient Mesopotamian codes are many. These similarities appear because, in ancient Mesopotamia, as F. Pintore says, "there existed a patrimony of statements and solutions, permanent through time and space, tenacious but flexible, whose context was the oral tradition."²⁸ Justice was

²⁵ "Lipit-Ishtar Lawcode," translated by S. N. Kramer (*ANET*, 159).

²⁶ The Sumerian law codes make no reference to resident aliens, but it is certain that they did not enjoy the same rights as citizens. Aside from the prisoners of war, who were subjected to perpetual slavery, the Sumerians took a pragmatic attitude toward resident aliens. In spite of their inveterate prejudices against them, the Sumerians tolerated them because they needed them as mercenaries or because they facilitated trade relations. For such services the diplomats received them favorably. It is important to note, however, that in Sumer, aliens could absorb the language and the culture of the region and thus become citizens, a possibility that did not exist in ancient Egypt. See Henri Limet, "L'étranger dans la société sumérienne," in *Gesellschaftsklassen im Alten Zweistronland* (ed. D. O. Edzard; Munich: Verlag der bayerischen Akademie der Wissenschaften, 1972), 123–38.

²⁷ Boecker, *Law*, 58–59.

²⁸ Pintore, "Structura giuridica," 1:440. This patrimony of law and legal decisions is, according to E. A. Speiser, one of the major factors that contributed to the unification of the diverse Mesopotamian cultures, in spite of differences in language, distances in space and time, and political divisions. This unifying factor allows cultures as diverse as those of Sumer, Babylon, and Assyria to be considered part of the greater Mesopotamian civilization. See Ephraim A. Speiser, "Authority and Law in Mesopotamia," *JAOSup* 17 (1954): 14.

transmitted from generation to generation and was assimilated by the peoples who integrated themselves into the life of Mesopotamian cities.

Both codes, that of Eshnunna and that of Hammurabi, assume a society divided into three classes: that of *awilum* (patrician), that of *muškēnum* (plebeian), and that of *wardum* (slave). The *awilum* enjoyed the fullness of liberty with all the rights that the city could give; the *muškēnum*, since he had originally been emancipated or a foreign slave, enjoyed some degree of liberty, but his rights were limited: he could not become a state employee.²⁹ The society that the code of Eshnunna reflects is essentially agricultural. But, in this society, an economy based on the notion of payment in kind is beginning to give way to an economy based on currency (silver). The code, on the one hand, establishes a relation between currency (silver) and merchandise (barley), which was traditionally used as a medium of exchange; on the other hand, it fixes maximum prices for the basic consumer goods, establishes low salaries, and freezes leasing and interest rates.³⁰ These measures, designed to respond to an economy of inflationary tendencies, manifest the governor's preoccupation with social well-being. This preoccupation tends to protect the less powerful and to relieve the poor.

4. The code of Hammurabi

At the beginning of the third millennium, when the Akkadians began to settle themselves in cultivated land, they assimilated the Sumerian patrimony to their own concept of justice, bringing, as one might expect, the characteristics of their own traditions. In the same way later on, at the end of the third millennium, when the Amorite tribes infiltrated Mesopotamian cities, they assimilated, along with the culture, the Sumerian-Akkadian juridical patrimony. In the process of infiltration and assimilation, one of those Amorite tribes succeeded in establishing itself in Babylon. Hammurabi (1728–1686 B.C.E.) was a distinguished descendent of this tribe. Thanks to his unstoppable tenacity and his unique political sagacity, Hammurabi extended his dominion to other Mesopotamian cities and created an empire that would survive for more than a millennium until it lapsed into political decadence.

From the earliest years of his reign, Hammurabi was preoccupied with the issues of internal stability of his dominion and the reinforcement of his own power. From this preoccupation, his famous code developed.³¹ One purpose Hammurabi had in this work, as H. J. Boecker says, was to give a uniform law to the

²⁹See Sabatino Moscati, *Ancient Semitic Civilizations* (London: Elek Books, 1957), 70; Guillaume Cardascia, "Les droits cunéiformes," in *Histoire des institutions et des faits sociaux des origines à l'aube du Moyen Age* (eds. R. Monier et al.; Paris: Montchretien, 1956), 17–68.

³⁰"The Laws of Eshnunna," translated by Albrecht Goetze (*ANET*, 161–63); Yaron, *Eshnunna*, 223–56; Boecker, *Law*, 59–64; Epzstein, *Social Justice*, 8.

³¹"The Code of Hammurabi," translated by Theophile J. Meek (*ANET*, 163–80). For text with annotations, see André Finet, *Le code de Hammurabi: introduction, traduction et annotation* (Paris: Cerf, 1983).

empire he had created through his political and military actions.³² A group of specialized jurists must have worked on the code, and poets from the court probably composed the prologue and the epilogue. Toward the end of his reign, once he had finished the composing the code, Hammurabi, king of Sumer and Akkad, finally promulgated it for his empire.

We tend to talk of the code of Hammurabi but, as in the case of the other Mesopotamian codes already mentioned, it is not strictly a code; it is, rather, jurisprudence, a collection of judicial sentences given for particular cases, founded on a universal law and inspired by the spirit of equity that had guided Hammurabi in his governing. The code is intended to be Hammurabi's legacy. As the epilogue of the code says: "[These are] the laws of justice [*dīnāt mīšarim*], which Hammurabi, the efficient king, set up, and by which he caused the land to take the right way and have good government."³³

This code presents a new synthesis of the cultural juridical patrimony of Sumerian–Akkadian traditions. Hammurabi makes this synthesis by appropriating to himself the royal Sumerian title "shepherd and elected of Enlil" and by claiming to have been inspired, as the prologue to his code says, by his god Marduk, the god of the state of Babylon, as well as by Enlil, the chief god of the Sumerian pantheon.³⁴ In addition to the political reasons for its composition, Hammurabi's code was motivated by social concerns. In the prologue, as well as in the epilogue, Hammurabi glorifies himself for having established justice in his empire. The epilogue, for example, says "In my bosom I carried the peoples of the land of Sumer and Akkad; they prospered under my protection . . . In order that the strong might not oppress the weak, that justice might be dealt the orphan (and) the widow."³⁵ He finishes by stating on the stone column into which his code was carved "I wrote my precious words on my stela . . . to give justice to the oppressed."³⁶ The protection of the weak is thus an important motive in the context of the code. Examples of such motives are articles referring to the small farmer, the salaries of manual workers and day laborers, and the fixing of interest rates. However, as N. Lohfink observes, the body of the code makes no reference to the widow or the orphan.³⁷

The code reflects a monarchical political structure, because this supposedly represents the immutable divine cosmic order. In this structure, as in the code of Eshnunna, society was divided into the three social classes of the *awīlum* (patrician), *muškēnum* (plebeian), and *wardum* (slave). The *awīlum* could be a dependent of the monarch, occupying a position in the bureaucracy, the army, the clergy, or the administration of finance, justice, and commerce. He could also be

³²Boecker, *Law*, 73.

³³"The Code of Hammurabi" (*ANET*, 177); Bottéro, *Mesopotamia*, 164.

³⁴"The Code of Hammurabi" (*ANET*, 164).

³⁵*Ibid.*, 178.

³⁶*Ibid.*, 178.

³⁷Norbert F. Lohfink, "Poverty in the Law of the Ancient Near East and of the Bible," *TS* 52 (1991): 43.

an independent professional, such as a doctor, architect, or craftsman. The *muškēnum* were an intermediate class between the patricians and the slaves, but closer to the former than to the latter so that there was no legal impediment preventing them from ascending to the category of the *awīlum*. But in fact, the *muškēnum* constituted a part of the population exploited by the nobility and the powerful. The *wardum* (slave) could have been originally a prisoner of war or a free person subjected to slavery because of insolvency. Debt-slaves only served for a limited period of time. Article 117 of this code states that a slave of this kind must be declared free after the fourth year of service.³⁸ All slaves could marry free citizens and have free children.³⁹

The code offered protection to the weak, such as the *muškēnum*, defended the small farmer against the exploitation of the landowner, determined an equitable salary for craftsman and laborers of different kinds,⁴⁰ and fixed tolerable rates of interest as well.⁴¹

It is important to observe that in all these administrative measures, social class determines the way in which the person is treated: “If a seignior [*awīlum*] has destroyed the eye of a member of the aristocracy [*awīlum*], they shall destroy his eye.”⁴² But, “if he has destroyed the eye of a commoner [*muškēnum*] . . . he shall pay one mina of silver” and “if he has destroyed the eye of a seignior’s slave [*wardum*] . . . he shall pay one half his value.”⁴³ This kind of justice implies that equity does not mean all persons have the same rights, but rather individuals enjoy rights appropriate to their own social level.

The efforts of Hammurabi to overcome abuses and establish justice can be seen in his official correspondence. Hammurabi’s letters to Sin-Idinnam illuminate his efforts. Sin-Idinnam was a vassal-king who occupied positions of high authority during the reign of Hammurabi. Much of the correspondence that survives refers to the administration of justice. The king supervised not only the cases treated in Babylon but also the decisions in the courts in the other large cities within the empire. Additionally, this correspondence shows that it was possible for a private citizen to appeal directly to the king. Hammurabi considered cases of appeal with the effort proper to an impartial judge who had no tolerance for corruption on the part of state employees. In cases of perjury or extortion, Hammurabi instructed Sin-Idinnam to examine the cases and send the guilty parties to Babylon, where they would be duly punished. Thus, for instance, was the case of Ani-Ellati, a shrewd money-lender, who advanced a person named Lalum money for sowing and harvesting, and charged him usurious rates of interest that were more than the farmer could pay. Ani-Ellati’s purpose was to gain control over the harvest of his debtor. In considering Lalum’s appeal, Hammurabi

³⁸ “The Code of Hammurabi” (*ANET*, 170–71).

³⁹ Finet, *Le code*, 12.

⁴⁰ “The Code of Hammurabi” (*ANET*, 177, §§273–77).

⁴¹ *Ibid.*, 169–70, §§88–102.

⁴² *Ibid.*, 175, §196.

⁴³ *Ibid.*, 175, §§198–99.

declared the contract null and void, ordered Ani-Ellati's to forfeit the money that he had advanced, and sentenced him to punishment.⁴⁴

In the prologue of his code, Hammurabi sums up what he had wanted to accomplish during his regime with the phrase "to establish *kittum u mišarum* in the land." It has been often repeated that *kittum* represents the epitome of cosmic and unchanging truth, a divine order, established in the world in which Shamash, the sun god, exercises his divine hegemony. The king is not the owner of this order but its administrator, and his authority is made legitimate by his being loyal to the norms revealed by the gods throughout the law. The function of the king is to apply the law equally. He achieves this through a process called *mišarum*. This process requires that the king have an attentive supervision of the political, economic, and social situation within his kingdom. This supervision can require that a situation be adjusted or corrected; it can also require that traditional norms be adapted to new necessities.⁴⁵

H. Cazelles has persuasively argued that this conception of the bipartite phrase, *kittum u mišarum*, makes, for the most part, a reference to Babylonian royal ideology. According to this ideology, kingship descended from the heavens after the great flood (of the myth of Atrahasis) as a gift from the gods. The purpose of this divine gift was to help human beings fulfill the task that had been imposed on them at creation, a task to act as substitutes for the subordinate deities in serving the divine world. To make this task possible, the king is supposed to bring about those conditions in which the subjects could have a healthy, prosperous, and long life. This is not a speculative theory that safeguards some sort of established cosmic order but a practical activity, insofar as it makes it possible for human beings to prosper in peace and harmony and to have a happy life. In developing this practical activity, the king integrates society into the cosmic order.⁴⁶

To develop this activity and fulfill his commitment, the king received the gift of being strong and faithful, as well as the ability to create strength and fidelity. *Kittum* was the technical term for signifying the justice expressed by the king who had this gift and ability.⁴⁷ In addition, the king received the capacity to create the conditions that make the community's prosperity and progress possible, a capacity to place the life of the community in the direction of prosperity and harmony. The object of this capacity was expressed by the term *mišarum*.⁴⁸ The king

⁴⁴Leonard W. King, *The Letters and Inscriptions of Hammurabi* (3 vols.; London: Luzac, 1898–1900), 3:23–25.

⁴⁵Speiser, "Authority," 12–13.

⁴⁶Henri Cazelles, "De l'idéologie royale," in *Gaster Festschrift* (ed. D. Marcus; JANESCU 5; New York: ANE Society, 1974), 61–62, 73.

⁴⁷*Kittum*, as Cazelles has observed ("Idéologie," 61), derives from *kānu*, a term that "evokes firmness, solidity and duration." So too Bottéro, *Mesopotamia*, 182–83.

⁴⁸The word *mišarum* derives from *ešerum*, which signifies "to walk rightly" or "to be in harmony." It refers to the order by which each thing occupies its own place according to its nature and function. According to this concept, "equity" would be a good translation of *mišarum*. As an extension of its basic meaning, *mišarum*, as related to *ešerum*, could indicate an action of reestablishing harmony, as in the decrees of mercy. See Bottéro, *Mesopotamia*, 182–83.

was legitimate or just (*šar mišarim*) insofar as he put his abilities into practice to permit the community to enjoy the benefits of *kittum u mišarum*.⁴⁹ The special responsibility of royal power was to attend to and protect the disadvantaged, who were the poor, the orphans, and the widows. The bipartite phrase *kittum u mišarum* was extended from the Babylonian royal ideology to the Syrio-Palestinian region, where it took the west Semitic form of *šdk-m(y)šr* and in biblical Hebrew became *mišpāt-šedeq* (“law” and “justice”).⁵⁰

Hammurabi glorifies himself for having provided for his citizens a life of prosperity, harmony, and equity or, as he himself says, for “having established *kittum u mišarum*” in his reign. His work outlasted his reign. It was inscribed in his code, a monument of jurisprudence that circulated in Babylon and other countries for as long as ten centuries after the fall of his dynasty. So, for instance, there are numerous copies of the Code of Hammurabi in the library of Assurbanipal (668–627 B.C.E.). As G. Cardascia has noted, the widespread dispersal of the code cannot be explained solely from literary and linguistic motives. There must have been practical legal interest.⁵¹

5. Proclamations of mercy

There is an aspect of Hammurabi’s code that deserves special attention. This code, like Eshnunna’s code, opposes the practice of charging exorbitant rates of interest, which was a difficult practice to eradicate. This difficulty, among others, moved the kings periodically to promulgate decrees that annulled debts or obligations that had become otherwise impossible to pay.⁵² These periodic proclamations are sometimes referred to as “decrees of mercy” or “proclamations of remission,” or even “edicts of grace.” No one single word in English captures the full range of meaning of the Akkadian *mišarum*. Hence, H. Petschow has observed that in the chronicles, legal writings, letters, and royal inscriptions of ancient Mesopotamia, there are reference in places like Isin, Babylon, Larsa, Eshnunna, or Hana, to the king’s having “created justice in the land” and “destroyed the sealed documents and the tablets of debts.”⁵³ The word “justice” in the phrase “he created justice in the land” is a translation of the Akkadian term *mišarum*. The expression “he created justice,” in connection with the action of the king who had destroyed the tablets of debts, signifies

⁴⁹ Cazelles, “Idéologie,” 60–68.

⁵⁰ Ibid., 60–73.

⁵¹ Guillaume Cardascia, “La transmission des sources cunéiformes,” *RIDA* 7 (1960): 31–50.

⁵² Jean Bottéro, “Désordre économique et annulation des dettes en Mésopotamie à l’époque paléo-babylonienne,” *JESHO* 4 (1961): 113–64; Fritz R. Kraus, *Ein Edikt des König Ammi-saduqa von Babylon* (Leiden: Brill, 1958), 17–43; Kraus, “Ein Edikt des Königs Samsu-iluna von Babylon,” in *Studies in Honor of Beno Landsberger* (AS 16; Chicago: Chicago University Press, 1965), 225–31.

⁵³ H. Petschow, “Gesetze,” *RIA* 3:269–70.

without doubt a real act of justice. This favor included the remission of debts or other obligations, the return of property to the original owner, and liberation from debt slavery.

The significance of liberating justice given to the word *mīšarum* had its antecedents in the Sumerian tradition in which the equality that the king restored by decree was called *nīg-si-sá* (“justice”). This can be seen in the code of Lipit-Ishtar. Parallel to *mīšarum* is another ancient technical term, *andurārum* (“liberty, liberation”), which was applied especially to the emancipation of slaves. This term had its antecedent in the Sumerian *ama-ar-gi*,⁵⁴ as can be seen in the texts of the reform of Urukagina.⁵⁴

It was the king’s duty to promulgate decrees of mercy. The rationale for the exercise of liberating justice was founded on the notion that royal power, in accordance with Mesopotamian royal ideology, was a divine gift to human beings to help them with the work that had been entrusted to them when they were created as substitutes for inferior divinities.⁵⁵ It was essential that everyone could participate actively in this labor, according to his or her social status. The exercise of liberating justice was considered so important that Mesopotamian kings, following Hammurabi’s example, gave themselves the title of *šar mīšarim* (“king of justice”) or they called themselves “lover of justice” (*rā’im mīšari*); in these phrases, justice included an action of support for the weak and of liberation for the oppressed.⁵⁶

Antecedents of social proclamations of mercy appear very early in ancient Mesopotamia.⁵⁷ Urukagina, the last king of Lagash from the first dynasty of Ur (mid-twenty-fourth century B.C.E.) was known for having canceled unpaid taxes and interest. One of his predecessors, Entemena, glorified himself for having restored liberty to citizens and canceling tax debts. Lipit-Ishtar of Isin (1875–1865 B.C.E.), in the prologue of his code, alludes to decrees that he had issued both to liberate the habitants of Nippur, Ur, and Isin and to create justice in Sumer and Akkad. Scholars of the period have good reason for thinking that besides Lipit-Ishtar’s code, the codes of Ur-Nammu, Eshnunna, and Hammurabi incorporated into their texts clauses from the edicts of *mīšarum* that earlier kings had promulgated.

Hammurabi introduced the practice of promulgating at the beginning of one’s reign a declaration of justice or liberation (*mīšarum*). He issued an edict that was to be repeated at the will of the king, without the existence of any law by

⁵⁴With respect to the relationship between *andurārum* and *mīšarum*, R. Westbrook specifies that while the first term designates a specific act of liberation or amnesty, the second term refers to a general decree in which a king includes various liberating acts referring to groups or classes of people, rather than individuals. See Raymond Westbrook, *Property and the Family in Biblical Law* (JSOTSup 113; Sheffield: JSOT Press, 1991), 45.

⁵⁵Cazelles, “Idéologie,” 62; Speiser, “Authority,” 8–15.

⁵⁶See Lemche, “*Andurārum*,” 11–22. Lemche cites important texts, one of which reads: “[He] who is the guardian of justice, the lover of justice, he who gives comfort, he who comes to comfort the invalid” (15).

⁵⁷Lemche, “*Andurārum*,” 13–17.

which to determine how often such decrees should be promulgated.⁵⁸ The only substantially complete text of this kind of edict is that of Ammi-Saduqa (1582–1562 B.C.E.), who was the tenth successor of Hammurabi to the throne of Babylon.⁵⁹ In this edict, Ammi-Saduqa canceled debts that the Akkadians and Amorites had had with the state and declared free those who had been made slaves by their creditors. When the text talks particularly of the emancipation of slaves, it uses the term *andurārum*, and when it includes the diverse measures of mercy shown by the king, it uses the word *mīšarum*.⁶⁰ Hence, the word *mīšarum* recurs frequently in the refrain: “Because the king has established liberating justice [*mīšarum*] in the country.”

A similar edict preserved, albeit in fragmentary form, was first promulgated by Samsu-iluna (1685–1648 B.C.E.), Ammi-Saduqa’s great grandfather.⁶¹ With this edict, the king established liberty for Sumer and Akkad. In this decree, the terms *mīšarum* and *andurārum* are found with a similar content to that of the edict of Ammi-Saduqa.

Liberation edicts continued to be promulgated in Babylon even after the city fell under Kassite rule. Thus, the Kassite king, Kurigalzu II (ca. 1345–1324 B.C.E.), glorifies himself for having issued an edict of liberating justice for the Babylonians. The promulgation of these social edicts also occurs in the time of the Assyrian empire. Sargon II (721–705 B.C.E.) and Esarhaddon (680–669 B.C.E.) mention having made such decrees for parts of their empires.⁶² A reference that may be purely literary is found in the Neo-Babylonian period, during Neriglissar’s reign (559–555 B.C.E.), one of whose inscriptions says: “I permanently established *mīšarum* for the country (and) I let graze permanently in peace my far-extended people.”⁶³

⁵⁸ See Kraus, “Samsu-iluna,” 225–31. For a study of the periodic practice of debt-forgiveness and manumission, see Westbrook, *Property*, 44–52; Jeffries M. Hamilton, *Social Justice and Deuteronomy: The Case of Deuteronomy 15* (SBLDS 136; Atlanta: Scholars Press, 1992), 48–72; Yairah Amit, “The Jubilee Law: An Attempt at Instituting Social Justice,” in *Justice and Righteousness: Biblical Themes and their Influence* (ed. H. G. Reventlow and Y. Hoffman; JSOTSup 137; Sheffield: JSOT Press, 1992), 47–59.

⁵⁹ “The Edict of Ammisaduqa,” translated by J. J. Finkelstein (*ANET*, 526).

⁶⁰ Kraus, *Ammi-saduqa*, 17–43.

⁶¹ Kraus, “Samsu-iluna,” 225–31.

⁶² See Lemche, “*Andurārum*,” 20–21.

⁶³ See Lemche, “*Andurārum*,” 14. The words *mēšārīm* or *mīšôr* and *dērôr* found in the Hebrew Bible are cognate to the Mesopotamian terms *mīšarum* and *andurārum*. The words *mēšārīm* or *mīšôr* occur, e.g., in Pss 96:10; 98:9; 99:4; Isa 11:4, while the word *dērôr* is found in Lev 25:10; Jer 34:8; Isa 61:1; Ezek 46:17. It is worth noting that in the Hebrew Bible *dērôr* is used in connection with the Jubilee year but not with the sabbatical year. For the sabbatical year the Bible uses the term *šēmitṭâ* (Deut 15:2, 9; 31:10). Since the Hebrew *dērôr* is cognate to the Akkadian *andurārum* or *durāru*, it has been suggested that the biblical Jubilee should be correlated to the Mesopotamian proclamations of mercy. The difficulty with this opinion lies in the fact that the Hebrew *dērôr*, although part of the description of the Jubilee year (*yôbēl*), is never used as a technical term to designate a general and periodic remission of obligations. See de Vaux, *Ancient Israel*, 1:173–77; Niels P. Lemche, “The Manumission of Slaves—the Fallow Year—the Sabbatical Year—the Jubel

The practice of starting a new regime with an edict liberating debts, besides having a probable social and political motivation, also had a theological motivation. At the beginning of a king's reign, the monarch actualizes the primitive myth of creation, establishing order in a world imprisoned by chaos with an edict of liberation. But perhaps the social and political motivations were more relevant because it was important for the new king to ingratiate himself to the people and to secure the support of the masses. For this there was nothing better than to clear the debts owed to his predecessor and to restore the lost rights of the citizens. With this the king could boast of "having established equity [*mīšarum*] in the land."⁶⁴

6. Texts of faith in the protective divinities of justice

In the ancient Mesopotamian world, the concept of social justice and the aspiration for equity in society are found not only in legal texts but also in religious texts. These religious texts show that, in spite of the declarations made by the governors in favor of justice, there were people who found that justice was hard to obtain. These people would find in their religious faith refuge and support. In the following selections, we will see hymns and prayers that reflect an absence of trust in governors and a need to appeal to divinity.

One Sumerian hymn that survived was dedicated to Utu, the solar god and god of justice, who presides over the order of the universe. His Semitic counterpart was Shamash.

Utu, you are the god of justice,
Utu, (you are) the shepherd, the father of the "dark headed" (people).
Utu, (you are) the principal judge of the land (of Sumer).
Utu, to give judgment is in your power (right).
Utu, to give decisions is in your power (right).
Utu, justice is in your power (right).
Utu, to lead in truthfulness and justice is in your power.
.....
Utu, the destitute girl, the forsaken woman (?) are in your power (care).
Utu, to provide justice to the widow is in your power.
Utu, if you do not come out (var., without you), no judgment is given, no decision is decided.⁶⁵

In hymns such as this one, humble Sumerians, frustrated or uncertain of the efficacy of the authorities, appealed to the divine world as the primary source of order and justice. For them Utu was the primary divine representative of justice.

Year," *VT* 26 (1976): 38–59. On the Jubilee year, see Christopher J. H. Wright, "Jubilee, Year of," *ABD* 3:1025–30. See also the analysis of the Jubilee year below, ch. 4, §5.3.

⁶⁴Bottéro, "Désordre," 159.

⁶⁵Giorgio R. Castellino, "Incantation to Utu," *OrAnt* 8 (1969): 1–57, especially 9.

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But the Sumerians also had a feminine representative of justice with outstanding maternal attributes in the goddess Nanshe. A Sumerian hymn acclaims the goddess Nanshe of Lagash as the mother of the orphan, the support of the widow, and the defender of the poor and the weak. According to S. N. Kramer, this hymn “includes some of the more explicit moral and ethical affirmations ever found in Sumerian documents.”⁶⁶ The text describes Nanshe in the following terms:

Who knows the orphan, who knows the widow
Knows the oppression of man over man, the orphan’s mother,
Nanshe, who cares for the widow,
Who seeks out (?) justice (?) for the poorest (?).
The queen brings the refugee to her lap,
Finds shelter for the weak . . .
To comfort the orphan, to make disappear the widow,
To set up a place of destruction for the mighty,
To turn over (?) the mighty to the weak, . . . ,
Nanshe searches the heart of the people.⁶⁷

The Sumerians had a king from the third dynasty of Ur, who was deified as the prototype of the wise and just king. His name was Shulgi of Ur. The humble appealed to him in their sufferings. In his hymn the supplicant asks the divine Shulgi:

Wise ruler, hero, come!
Give rest unto the land!
A faithful hero, a sun-god, who art just . . .
Who brings favor to man?
Who brings justice?
Who is like thee
By whom the broad weapon is carried?⁶⁸

A Babylonian hymn to Ishtar from the middle of the second millennium acclaims the attributes of the goddess: she is not only the patron of fertility and war; she is also the goddess of justice who protects the poor and oppressed. A passage of the hymn says:

You are the one who pronounces judgments over your subjects with right and justice.
You look at the oppressed and afflicted; you restore him every day.
(Grant me) your grace, Queen of heaven and earth, Shepherd of the multitudes.⁶⁹

⁶⁶ Samuel N. Kramer, “Sumerian Theology and Ethics,” *HTR* 49 (1956): 58.

⁶⁷ Kramer, “Sumerian Theology,” 58; see also Kramer, “‘Vox populi’ and the Sumerian Literary Documents,” *RA* 58 (1964): 148–56.

⁶⁸ George A. Barton, *Miscellaneous Babylonian Inscriptions* (New Haven: Yale University Press, 1918), 27–28. Barton calls Shulgi, the second king of the third dynasty of Ur, by the name of Dungi, because this is how Sumerologists of the first half of this century read Shulgi’s name. See, in this respect, Thorkild Jacobsen, “New Sumerian Literary Text,” *BASOR* 102 (1947): 16.

⁶⁹ Marie-Joseph Seux, *Hymnes et prières aux dieux de Babylone et d’Assyrie: introduction, traduction et notes* (Paris: Cerf, 1976), 189. See also, 383–85.

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From the Assyrian-Babylonian period, there is a hymn to Shamash, the Semitic sun god who was equivalent to the Sumerian god Utu. The hymn praises him for his beneficent action on the earth and in the underworld. The praise alternates with proclamation expressing the interest that the solar god has in justice and righteousness. The hymn contains phrases such as the following:

Thou dost hold back the evildoer . . . by the true judgment, O Shamash, which thou hast spoken . . .
The horn of the perpetrator of abominations thou dost destroy . . .
The unrighteous judge thou dost make to see imprisonment
The receiver of a bribe who perverts (justice), thou dost make to bear punishment . . .

In his hollow voice the feeble man calls out to thee;
The miserable, the weak, the mistreated, the poor man comes before thee faithfully with psalms (and) offerings.⁷⁰

In the Babylonian epoch, Marduk, chief of the Babylonian pantheon since the eighteenth century, god of light, and conqueror of the monster of chaos in the Mesopotamian epic poem of creation, conquered the trust of the poor and forsaken. Marduk unites in himself the attributes that create hope in chaotic times, when those who suffer most are the poor: he was the supreme representative of justice and possessed the invincible power of the cosmogonic hero. A prayer of Marduk says:

You, like Shamash, illuminate their darkness.
Each day, you do justice to the oppressed and afflicted.
You reestablish the disinherited, the widow, the one who moans and the one who cannot sleep.
.
My lord, come near me today, and hear my prayer,
Give a sentence for me, and pronounce a decision for me.⁷¹

Conclusion

It is worth noting that, in spite of changes in demography, in language, and in religion, a basic concept of justice with a strong liberating dimension developed over the centuries in Mesopotamia. In the social reforms, in the legal codes, and in the decrees of mercy, the mission of the king was to remove injustice from his territory and to liberate the oppressed and the forsaken so that they might render service to the gods. But, the reiteration of reforms, the promulgation of new codes, and the periodic announcement of decrees of mercy demonstrate how difficult it was to eliminate exploitation and oppression and to establish justice and equity. In addition, the texts of popular piety show how elusive justice was

⁷⁰“Hymn to the Sun-God,” translated by Ferris J. Stephens (*ANET*, 387–89).

⁷¹Seux, *Hymnes*, 445, 447.

and how almost inaccessible it was to the humble class. In spite of the difficulties, the Mesopotamian tradition kept the king's obligations alive with respect to justice: he was obliged to control the excesses of the state and the power of the oppressor and to reestablish violated rights; he was obliged to free his people from unsupportable and counterproductive obligations and burdens; he was obliged to protect those who, like the orphans and the widows, were forsaken for various reasons and who lacked the capacity to sustain themselves in society.

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