Prof. David P. Wright

Brandeis University

Prof. David P. Wright is Professor of Bible and Ancient Near East at Brandeis University. He received his Ph.D. from the University of California, Berkeley and he is author of *Inventing God’s Law: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* (2009),  *Ritual in Narrative: The Dynamics of Feasting, Mourning, and Retaliation Rites in the Ugaritic Tale of Aqhat* (2001), and *The Disposal of Impurity: Elimination Rites in the Bible and in Hittite and Mesopotamian Literature*(1987).

How Exodus Revises the Laws of Hammurabi

The author of the Covenant Collection in Exodus knew the Laws of Hammurabi and revised them to fit with Israelite legal and ethical conceptions. This is clear when we compare their laws of assault in each.

[Prof. David P. Wright](https://www.thetorah.com/author/david-p-wright)



The Code of Hammurabi at the Champollion Museum, Wikimedia

Following the revelation of the Decalogue (20:1–14), Moses alone approaches YHWH on the mountain and receives a collection of laws (20:19–23:19),[1] which scholars refer to as the Covenant Code or Covenant Collection (henceforth CC). Afterward, Moses presents these laws to the people in a covenant ceremony in which they agree to observe its precepts (Exod 24:3–8).

In 1901, archaeologists working in Susa[2] uncovered a 7.5-foot basalt stone stela, upon which the sixth king of Old Babylon, Hammurabi (1792–1750 B.C.E.), had a set of laws carved. The Laws of Hammurabi (henceforth LH) were translated into French by Jean-Vincent Scheil (1858–1940) and published the following year. The similarities between many of these laws to CC in substance and style was so striking that scholars ever since have speculated about the relationship between the two.[3]

Most contemporary scholars have concluded that LH and CC are only indirectly and distantly related. The texts either arose independently out of common parent legal traditions, or Mesopotamian legal traditions became part of scribal and legal traditions in Syria-Canaan and were eventually inherited by biblical scribes.[4]

Nevertheless, CC’s correlations with LH are sufficiently numerous to suggest that the relationship is direct.[5] Moreover, recent scholarship on inner-biblical exegesis and hermeneutical innovation in source-dependent texts[6] shows that even the notable differences between CC and LH may arise out of intentional transformation.[7] When compelling explanations can be provided that differences have come about through such a process, certain differences may actually become evidence for dependence.[8]

The assault laws of Exodus 21:12–14, 18–32, especially the laws about miscarriage, talion (i.e., “an eye for an eye, a tooth for a tooth”) offer a strong demonstration of how intricately CC is dependent upon LH, even while adjusting its content and style.[9]

Aggravated Miscarriage and the Problem of Vicarious Punishment

The Laws of Hammurabi present two cases in which a man strikes a pregnant woman (209–210):

209 If a man strikes a daughter of a man (*mārat awīlim*) and he causes her to miscarry her fetus, he shall weigh out ten shekels of silver for her fetus.

210 If that woman dies, they shall kill his daughter.

According to this, if the pregnant woman survives the blow, the penalty is purely financial. If she does not, the assailant is punished vicariously, namely his daughter is killed. The CC has the same two cases, but it then moves in a different direction:

Miscarriage law 1 (fine for killing the fetus)

שמות כא:כב וְכִי יִנָּצוּ אֲנָשִׁים וְנָגְפוּ אִשָּׁה הָרָה וְיָצְאוּ יְלָדֶיהָ וְלֹא יִהְיֶה אָסוֹן עָנוֹשׁ יֵעָנֵשׁ כַּאֲשֶׁר יָשִׁית עָלָיו בַּעַל הָאִשָּׁה וְנָתַן בִּפְלִלִים.

Exod 21:22 If men struggle and they knock a pregnant woman and her fetus comes out but (the woman) suffers no misfortune, he shall be fined as the husband of the woman exacts from him and he shall pay *bpllm* (for the fetus?).[10]

Miscarriage law 2 (bridge to talion)

כא:כג וְאִם אָסוֹן יִהְיֶה וְנָתַתָּה נֶפֶשׁ תַּחַת נָפֶשׁ.

21:23 If (the woman) does suffer misfortune, you shall pay life for life.

*Lex Talionis*[11]

כא:כדעַיִן תַּחַת עַיִן  
שֵׁן תַּחַת שֵׁן  
יָד תַּחַת יָד  
רֶגֶל תַּחַת רָגֶל.  
כא:כה כְּוִיָּה תַּחַת כְּוִיָּה  
פֶּצַע תַּחַת פָּצַע  
חַבּוּרָה תַּחַת חַבּוּרָה.

21:24 Eye for eye,  
tooth for tooth,  
arm for arm,  
leg for leg,  
21:25burn for burn,  
injury for injury,  
wound for wound.

CC’s laws deal with the same topics as LH in the same order. The first laws (A) treat miscarriage alone, and the second laws (B) add the death (or injury) of the mother. The chief difference is in the second laws. LH 210 has a penalty of vicarious punishment. Because the victim of the assault was the “daughter of a man,” the daughter of the assailant is to be put to death. CC lacks this punishment and sets down instead a punishment of “life for a life,” followed by the law of talion.

Talion: A Replacement Penalty in the Covenant Code

CC’s talion law reads in this comparative context as a replacement for Hammurabi’s penalty of vicarious punishment. That it is a replacement is partly indicated by the artificial attachment of CC’s talion law. It looks as if it has been imposed in its context, abruptly shifting the topic of legal conversation. It begins with a second person verb (“you shall give”), rather than a third person verb consistent with the context otherwise. Its list of talion dyads (“X for X”) also covers two and a half verses (vv. 23a–25).[12]

The goring ox law a few verses later provide support for this interpretation. This says that if a child is a victim of goring, the case is to be handled like the foregoing case, i.e., the case for an adult (Exod 21:31; see the appendix), explicitly rejecting vicarious punishment through the perpetrator’s child.

Further evidence that CC’s talion law is a replacement is the fact that LH itself has a set of talion laws just a few paragraphs before its miscarriage laws. CC’s talion law has substantial correspondences with these and looks as if it drew from them to craft its replacement penalty.

Hammurabi’s Talion Laws

LH’s talion laws deal with three cases, blinding an eye, breaking a bone, and knocking out a tooth (196–201). These cases are then subdivided depending on the social class of the victim:

196If an*awīlum* (a free man), blinds the eye of a member of the *awīlum* class, they shall blind his eye. 197If he breaks the bone of an *awīlum*, they shall break his bone.

198If he blinds the eye of a *muškēnum* (one economically obligated to the palace)[13]or breaks the bone of a *muškēnum*, he shall weigh out one mina (sixty shekels) of silver.

199If he blinds the eye of an *awīlum*’s slave (*wardum*; a slave held as property) or breaks the bone of an *awīlum*’s slave, he shall weigh out half of his value.

200If an *awīlum* knocks out the tooth of an *awīlum* of the same rank, they shall knock out his tooth.

201If he knocks out the tooth of a *muškēnum*, he shall weigh out one third mina (twenty shekels) of silver.

LH’s talion laws differ in several ways from those of CC.

* Long-form/short-form—LH’s laws are fully formulated, with clauses setting up the cases followed by clauses prescribing the penalties, whereas CC’s are merely schematic dyads “eye for eye, tooth for tooth, etc.”
* Social classes—LH has three social categories: *awīlum*, *muškēnum,*and*wardum*, a free person, a person economically obligated to the palace (later a poor person), and a chattel slave. By contrast, CC has two classes in the larger context: free persons in the main law of Exod 21:22–25 and slaves in the following verses dealing with talion as related to slaves (vv. 26–27).
* Number of cases—LH deals with only three bodily parts or injuries (eye, bone tooth), whereas CC has eight (life, eye, tooth, arm, leg, burn, injury, wound).

Nevertheless, the similarities are striking and the differences do not necessarily mean that CC was composed independently of LH. First, some of these differences can be explained exegetically. For instance, while CC’s eye and tooth in verse 24 reflect the same body parts in LH 196 and 200, CC’s arm and leg are interpretations of LH, bifurcating and disambiguating the “bone” in LH 197.[14] (For the burn, injury, wound in CC, see below.) The lack of a three-tiered social class division can be explained by adaptation to the simpler sociological situation conceived of for the earliest history of Israel. Finally, the change from long form to dyad form stems from adapting the talion concept to work syntactically as the new penalty in the second miscarriage law.

Intentional versus Unintentional Assault

Hammurabi’s and CC’s miscarriage and talion laws differ in another way that offers us a further clue as to how the authors of CC worked. The LH miscarriage and talion laws all assume that the assault was intentional. The assaults are direct, without mitigating circumstances, and the penalties are severe. In CC’s law, in contrast, men fight each other and happen to strike the pregnant woman, and this leads to the talion. This characterizes the assault as unintentional.

Here too CC has been influenced by LH, specifically by the LH laws that deal with *inadvertent* injury and homicide (LH 206–208), which appear between the talion (LH 196–201) and the miscarriage laws (LH 209–210):

206If a man strikes another man in a fight and injures him (lit., puts a wound, *simmum*, on him), that man shall swear (saying), “I did not strike him with intent,” and he shall pay the physician.

207If he dies from his being struck, he shall also swear. If (the victim) is an *awīlum*, he shall weigh out one-half mina (= thirty shekels) of silver.

208If a *muškēnum*, he (the assailant who is an *awīlum*) shall weigh out one-third mina (= twenty shekels) of silver.

CC has a version of these laws. It appears separately but immediately preceding its miscarriage laws:

שמות כא:יח וְכִי יְרִיבֻן אֲנָשִׁים וְהִכָּה אִישׁ אֶת רֵעֵהוּ בְּאֶבֶן אוֹ בְאֶגְרֹף וְלֹא יָמוּת וְנָפַל לְמִשְׁכָּב.כא:יט אִם יָקוּם וְהִתְהַלֵּךְ בַּחוּץ עַל מִשְׁעַנְתּוֹ וְנִקָּה הַמַּכֶּה רַק שִׁבְתּוֹ יִתֵּן וְרַפֹּא יְרַפֵּא.

18When men fight and one strikes his fellow with a stone or with a fist (?), and he (the latter) does not die but takes to his bed—19if he gets up and walks about outside on his staff, then the striker is absolved, but he must recompense him for his period of inactivity and provide for his cure.[15]

Unlike LH, CC does not discuss in these verses what happens if the man dies as a result of the assault. This is due to CC’s larger systematic formulating of laws on homicide that appears a few verses earlier than this assault law, to which we now turn.

Laws of Homicide

CC’s main homicide legislation appears at the very beginning of CC’s assault laws:

שמות כא:יב מַכֵּה אִישׁ וָמֵת מוֹת יוּמָת. כא:יג וַאֲשֶׁר לֹא צָדָה וְהָאֱלֹהִים אִנָּה לְיָדוֹ וְשַׂמְתִּי לְךָ מָקוֹם אֲשֶׁר יָנוּס שָׁמָּה. כא:יד וְכִי יָזִד אִישׁ עַל רֵעֵהוּ לְהָרְגוֹ בְעָרְמָה מֵעִם מִזְבְּחִי תִּקָּחֶנּוּ לָמוּת.

Exod 21:12He who strikes a man so that he dies shall be put to death, 21:13and he who did not plan it, but God directed (the victim) to his hand, I will appoint a place for you to which he may flee. 21:14But if a person plots against his fellow to kill him by deceit, you shall take him from my altar to be put to death.

This corresponds with LH 207, cited above, and shares its concern about unintentional homicide. The topic was removed from the context of Exod 21:18–19 and placed at the beginning of CC’s assault laws because of its seriousness.[16] Oddly, while CC’s homicide law prescribes a penalty for intentional homicide, no liability for inadvertent homicide is stated. It looks like the killer in the latter case is totally exonerated in contrast to the indemnification required by LH 206–208.

But CC’s talion law, beginning with the case of inadvertently killing the pregnant woman, actually fills this gap and sets out liability for inadvertent homicide and injury. As noted already it deals with unintentional assault whose results include homicide, incorportated in the “life for life,” which mirrors the measure-for-measure capital liability in Hammurabi’s miscarriage law (LH 210). It also is a general law that prescribes payment, i.e., compensation, according to the degree of injury suffered by the victim.

“וְנָתַתָּה”: What Does the Inadvertent Killer/Damager “Give”?

That the talion law requires payment, not literal infliction of death or injury, is indicated in part by the indirect and hence unintentional nature of the assault. Capital punishment or corporal punishment does not fit with the system of CC (e.g., 21:12–14, 18–21, 28–32).

More importantly, the verb נָתַן “give” which heads the talion list (“you shall give life for life…” v. 23b), is found in other contexts of CC to refer to payment (Exod 21:19, 30, 32) and even in the first miscarriage law (v. 22). Thus CC’s law prescribes payment for inadvertent homicide and injury like LH 206–208. The difference is that that CC’s talion allows for variable rather than fixed rates as in LH.[17]

The formulation of this verb and the length and scope of the talion list also indicate that CC’s talion law is a*general*law covering all cases of inadvertent homicide and injury. In standard case law formulation, verbs describing acts committed and resulting obligations are generally in the third person (“if he/they does/do X, he/they must do Y”). For example, CC’s first miscarriage law has such a style: “If men struggle and they knock a pregnant woman …, he shall be fined as the husband of the woman exacts from him” (Exod 21:22).

The penalty in the second miscarriage law uses, in contrast, an unusual second person verb: “you shall pay (וְנָתַתָּה,) life for life, eye for eye….”). This shift in style seems to point to a legal horizon beyond the immediate context of miscarriage by broadening the audience beyond the specific case of assault. In addition, the length of the talion list with its eight dyads, and the range of injuries listed, also point to application beyond the context of miscarriage.[18]

As such, CC’s talion law fills the gap left in its homicide law and prescribes compensation for inadvertent homicide. It thus follows the basic requirement of LH 206–208. Another smaller but significant point where these laws influence CC was in the mention of inflicting a wound (LH 206). Just as CC bifurcated Hammurabi’s bone in the talion laws of LH 198–199 into an “arm” and “leg” in v. 24, so it seems to have trifurcated Hammurabi’s “wound” in LH 206 into its “burn,” “injury,” and “wound” in verse 25.

The payment of compensation also explains the implicit mechanism for how an inadvertent killer leaves the altar. When this is paid or agreed to, the anger of the victim’s family is assuaged and the killer may return safely home. This negotiation with the family would be similar to the negotiations in the first miscarriage law (v. 22) or the goring ox (v. 30).

Reworking Hammurabi

Thus, CC’s miscarriage and talion list reworks three main sections from LH:

1. Two basic miscarriage laws, in vv. 22 and 23–25 from LH 209–210
2. Talion as a replacement penalty in the second law in vv. 23b–25 from LH 196–201
3. The context of a fight to characterize inadvertence from LH 206–208

The talion list in verses 23b–25 itself draws on these sections of LH:

1. Life in v. 23b from LH 210;
2. The eye, tooth, arm, leg in v. 24 from LH 196–201;
3. Burn, injury, and wound in v. 25 from LH 206.

These all derive from a rather delimited area of Hammurabi’s text—laws 196-210. The movement from miscarriage law to talion is an artificial yet highly creative construction that, as noted above, was primarily motivated by eliminating vicarious punishment from LH 210[19] and secondarily motivated by a desire to complement the homicide law of verses 12–14.

CC’s connections to LH are thus very intricate. They do not seem to result from common broad legal traditions or sources that are reflected independently in LH. Rather, the correlations between the laws of CC and LH and the hermeneutic process proposed in their creation indicate that CC’s homicide and assault laws derive quite directly from a knowledge of LH.

This provides a basis for arguing that other casuistic laws in CC (those formulated as “if such is the case, then such is to be done”; Exod 21:2–22:19) that have correspondences with LH also are reworking similar laws in LH.[20]

These, with their parallels in LH, include the laws on:

* Debt-slavery (Exod 21:2–11; LH 117, 148–149, 154–156, 282),
* Capital crimes (Exod 21:12–17; LH 14, 192–195, 207),
* Animal theft (Exod 21:35–22:3; LH 253–266),
* Animal grazing (Exod 22:4; LH 57–58),
* Stolen deposits (Exod 22:6–8; LH 122–126),
* Animal lost by a borrower (Exod 22:9–12; LH 266–267),
* Animal rental (Exod 22:13–14; LH 244–249, 268–271).[21]

Dating the CC

CC’s use of LH as a source fits best in the chronological window of 740–640 B.C.E., during the height of Neo-Assyrian political and cultural domination. Even though LH was promulgated much earlier, many copies of LH, which was used as part of the training of scribes, are attested in this period.[22] Moreover, we know that the CC must have been composed before the Deuteronomic law collection, generally dated to the second half of the seventh century B.C.E., which builds on it and responds to it.[23] This period corresponds to the final years of the northern kingdom of Israel (destroyed by Assyrian in 722 B.C.E.) and Assyria’s conquest of Judah (701 B.C.E.) and its incorporation into the empire as a vassal state.

Grappling with LH and Assyrian Ideology

This dating provides an indication of CC’s ideological goal. It appears to operate as a response to the politically dominant Assyrian power by adapting Mesopotamian cultural motifs as part of Israelite/Judean heritage. The degree that this response sought to acquiesce to imperial power by emulation or to subvert it is open to debate. But a strong hint that this is an expression of resistance is found in CC’s replacing the royal human lawgiver (Hammurabi) with the national deity (YHWH) and setting this revelation of law at the nation’s birth.[24]

Appendix

Rejection of Vicarious Punishment in Ox Goring Laws

That CC’s penalty in the second miscarriage law (vv. 23–25) is a rejection of the penalty in LH 210, discussed above, is supported by its goring ox laws, which also have close correlations with Hammurabi’s legislation, including covering the same topics in the same order:

|  |  |  |
| --- | --- | --- |
|  | CC | LH |
| (A) *Ad hoc* goring—the owner suffers no penalty. | 21:8If an ox gores a man or woman and he dies, the ox shall be stoned, its flesh shall not be eaten; the owner of the ox is not liable. | 250If an ox gores aa *awīlum* while passing through the street and kills (him), that case has no claim. |
| (B) Goring by an ox known to gore—the owner is liable. | 21:9If an ox is a habitual gorer, from previous experience, and its owner has been warned, but he did not restrain it, and it kills a man or woman, the ox shall be stoned and its owner shall be put to death. 21:30If ransom is laid upon him, he shall pay the redemption price for his life, according to whatever is laid upon him.21:31Or (if) it gores a son or daughter, it shall be done for him according to this law. | 251If a man’s ox is ahabitual gorer, and his district has informed him that it is a habitual gorer, but he did not file its horns and did not control his ox, and that ox gores the son of an*awīlim* and kills (him), he shall pay one-half mina (= thirty shekels) of silver. |
| (C) Goring of a slave—monetary penalty | 21:32If the ox gores a male slave or a female slave, he shall pay thirty shekels of silver to his (the slave’s) master and the ox shall be stoned. | 252If it is the slave of an *awīlum*, he shall pay one-third mina (= twenty shekels) of silver. |

CC’s laws display some notable differences, whose rationale cannot be explored here, such as the requirement to stone the goring ox.[25] Here I will only explore how the two collections differ concerning vicarious punishment.

Child Victims as People

CC includes a verse on children as victims in verse 31, not found in LH. But there is still a subtle correlation. The victim of Hammurabi’s first goring ox law is an *awīlum*, “a (free) man” (LH 250), while the victim in its second is called a *mār awīlim*, “son of a (free) man.”

This term can have two meanings in Akkadian, literally, “a son of a (free) man” or broadly “one of the *awīlum* class,” i.e., “a (free) man” (LH 251). CC’s inclusion of children in verse 31 as part of its second law looks like a response to the ambiguity of Hammurabi’s terminology in its second law, especially against LH 250 where the victim is clearly an adult.

CC’s prescribes in its second law that even if the victim is a child (a literal *mār awīlim*), the case is to be prosecuted as if the victim were an adult. That is, in this case, the owner would be liable to the penalties of vv. 29–30, not his child. This rather explicit rejection of vicarious punishment supports the interpretation that the alternative penalty in vv. 23–25 in the miscarriage law is an calculated revision.[26]

[View Footnotes](https://www.thetorah.com/article/how-exodus-revises-the-laws-of-hammurabi)

1. Verse numbering in the article follows that of the NJPS.
2. Susa (Shushan) was not part of Babylon but an important city in ancient Elam (and eventually Persia), and rival of Babylon. The stela had been stolen by the Elamites in a raid against Babylon and never returned.
3. For translations of Hammurabi’s Laws, see Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, 2nd ed., Writings from the Ancient World (Atlanta: Scholars Press, 1997), 76–140; M. E. J. Richardson, *Hammurabi’s Laws* (London: T&T Clark, 2000).
4. For arguments along this line, see J. J. Finkelstein, *The Ox That Gored*, Transactions of the American Philosophical Society 71/2 (Philadelphia: American Philosophical Society, 1981); Bernard S. Jackson, *Wisdom-Laws: A Study of the*Mishpatim*of Exodus 21:1–22:16* (Oxford: Oxford University Press, 2006); Eckart Otto, “Town and Rural Countryside in Ancient Israelite Law: Reception and Redaction in Cuneiform and Israelite Law,” *JSOT*57 (1993): 3–22; repr. in *The Pentateuch: A Sheffield Reader*, ed. J. W. Rogerson (Sheffield: Sheffield Academic Press, 1996), 203–221; Ralf Rothenbusch, *Die kasuistische Rechtssammlung im “Bundesbuch” (Ex 21,2–11.18–22,16)*, AOATS 259 (Münster: Ugarit-Verlag, 2000); Raymond Westbrook, “The Laws of Biblical Israel,” in *The Hebrew Bible: New Insights and Scholarship*, ed. Frederick Greenspahn, Jewish Studies in the Twenty-First Century (New York: New York University Press, 2008), 99–119. (See the review of scholarship in Wright, *Inventing*, 16–24, referenced in the next note.)
5. David P. Wright, *Inventing God’s Law: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* (Oxford: Oxford University Press, 2009); Wright, “The Origin, Development, and Context of the Covenant Code (Exod 20:23–23:19),” in *The Book of Exodus: Composition, Reception, and Interpretation*, ed. Thomas Dozeman, Craig Evans, and Joel Lohr, VTSup 164 (Leiden: Brill, 2014), 220–244; see p. 224 [n6] for others who follow this view in one way or another; also see the review by Morrow in the next note.
6. In biblical literature broadly, see Michael Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford: Oxford University Press, 1985). For biblical legal texts, see Bernard M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (Oxford: Oxford University Press, 1998); Levinson, *Legal Revision and Religious Renewal in Ancient Israel* (Cambridge: Cambridge University Press, 2008), 95–181.
7. For a discussion of such differences, see Bruce Wells, “The Covenant Code and Near Eastern Legal Traditions: A Response to David P. Wright,” *Maarav* 13 (2006): 85–118.
8. Attention to hermeneutical creativity also provides an avenue for assessing and appreciating the significance and meaning of the innovative text.
9. See the review by William Morrow, “Legal Interactions: The *Mišpāṭîm* and the Laws of Hammurabi,” *BO*70 (2013): 309–331. He concludes that the assault laws of Exod 21:18–32 do show dependence on LH and calls for more study of the means and context for this dependence.
10. For בִּפְלִלִים, perhaps read בנפלים “for the fetus.” This plural, as well as יְלָדֶיהָ “her children,” earlier in the verse, would be abstractions referring to the aborted fetus.
11. Some scholars argue that v. 25 is a later expansion.
12. The inconsistency in the conceptual and stylistic flow from the miscarriage laws proper to the talion law has led some scholars to speculate that this was the result of textual development done in redactional stages.
13. In the Old Babylonian period, the *muškēnum*was probably free but tied by economic obligations to the palace. Later, it became a general term for the poor. See Wright, *Inventing*, 428 [n61].This Akkadian word is the origin of the Late Biblical (Eccl. 4:13; 9:15-16) and Rabbinic Hebrew *מִסְכֵּן, meaning “poor.”*
14. The trio of soft-tissue injuries in v. 25, burn, injury, and wound, that complete CC’s talion list, can be explained similarly. Though they do not come from this part of LH, they derive from another group of laws, dealing with unintentional assault that we will look at momentarily, trifurcating LH’s “wound” (*simmum*) in LH 206.
15. Again, the law does not distinguish between two classes of non-slaves, but it is followed up by a separate law dealing with the striking of slaves:

שמות כא:כ וְכִי יַכֶּה אִישׁ אֶת עַבְדּוֹ אוֹ אֶת אֲמָתוֹ בַּשֵּׁבֶט וּמֵת תַּחַת יָדוֹ נָקֹם יִנָּקֵם. כא:כא אַךְ אִם יוֹם אוֹ יוֹמַיִם יַעֲמֹד לֹא יֻקַּם כִּי כַסְפּוֹ הוּא.

Exod 21:20If a man strikes his male slave or female slave with a rod and he (or she) dies under his hand, he (the victim) is to be avenged, 21:21 but if he lingers for a day or two, he (the assailant) shall not suffer vengeance, since he is his (the master’s) silver (i.e., property).

CC is altering social gradations—from LH’s *muškēnum* to CC’s slave—consistent with its sociological perspectives and, in particular, to fit its interest in legislating about slaves generally (21:2–11, 20–21, 26–27, 32). A similar adaptation is found in CC’s law about knocking out a slave’s tooth in Exod 21:27, which correlates with LH 201 about knocking out a *muškēnum*’s tooth.

1. The three legal topics in LH 206–208 (injury of an *awīlum*, homicide of an *awīlum*, and homicide of *muškēnum*) have correlates in Exod 21:18–19, 12–14, 20–21 (injury of a free person, homicide of a free person, homicide of a slave). The homicide law in vv. 12–14 appears to have been extracted from this plotting of cases and placed at the beginning of CC’s assault law because of its gravity and paradigmatic nature. A telltale sign of dependence is that vv. 18–19 deal with injury of a free person and then vv. 20–21 deal with the death of a slave. One expects an intervening case of the death of a free person, to which the death of the slave serves as the socially graded case. On the deviant style of the homicide law, see Wright, *Inventing*, 154–204.
2. Note the variable rates in Exod 21:22 and 30 versus the fixed rates in the parallel laws of LH 210 and 251.
3. Again, CC follows up its law of unintentional injury of free men with that of slaves:

שמות כא:כו וְכִי יַכֶּה אִישׁ אֶת עֵין עַבְדּוֹ אוֹ אֶת עֵין אֲמָתוֹ וְשִׁחֲתָהּ לַחָפְשִׁי יְשַׁלְּחֶנּוּ תַּחַת עֵינוֹ. כא:כזוְאִם שֵׁן עַבְדּוֹ אוֹ שֵׁן אֲמָתוֹ יַפִּיל לַחָפְשִׁי יְשַׁלְּחֶנּוּ תַּחַת שִׁנּוֹ.

Exod 21:26 If a man strikes the eye of his male slave or the eye of his female slave and destroys it, he shall send him away free for his eye. 21:27 And if he knocks out the tooth of his male slave or the tooth of his female slave, he shall send him away free for his tooth.

These laws parallel Hammurabi’s talion-related laws on injuries to those of lower classes (LH 199, 201, cited above). In Near Eastern legislation, laws on those of a lower social class (e.g., commoners and/or slaves) often accompany laws on the same topic dealing with free persons. Hence vv. 26–27 presume a preceding law on similar injuries to free persons. CC’s talion law, when read as a general law referring to all cases of assault, provide this initial case. Thus, CC’s talion law (vv. 23b–25) is Janus-faced. It provides the penalty for the second miscarriage law (v. 23) and, at the same time, is a general law that sets up the slave injury law (vv. 26–27).

1. This artificial character makes sense of other inconsistencies in the context. The slave injury laws in vv. 26–27 are fully formulated, with clauses setting up the cases and clauses prescribing penalties, while the conceptually governing talion laws in vv. 23b–25 is just a list. That is a function of their being crafted to fit the context and syntax of the miscarriage law. In addition, the slave injury laws maintain motifs from the preceding talion law (mention of an eye and tooth, and the prepositional phrase “*for* his eye/tooth”), even as they have nothing to do with miscarriage. That is a function of the talion law operating as a general law for all cases of homicide and injury, not just miscarriage.
2. This in turn provides a foundation for arguing that the apodictic laws (those formulated as commands, “do X” or “don’t do Y”), which precede and follow the casuistic laws (i.e., 20:19–23 and 22:20–23:19), also have a motivation in LH. These along with CC’s casuistic laws match the A-B-A pattern of Hammurabi’s prologue-casuistic laws-epilogue. CC’s apodictic laws also share the thematic pattern and injunctive style of the first half of Hammurabi’s epilogue. Moreover, the appendix to CC (Exod 23:20–33), which is part of the revelation of CC in its context, has correspondences with Mesopotamian royal inscriptions and fits like a puzzle piece in the thematic correlations with the epilogue of LH. See David P. Wright, “The Covenant Code Appendix (Exod 23:20–33), Neo-Assyrian Sources, and Implications for Pentateuchal Study,” in *The Formation of the Pentateuch: Bridging the Academic Cultures of Europe, Israel, and North America*, ed. Jan Gertz, Bernard Levinson, Dalit Rom-Shiloni, and Konrad Schmid, FAT 111 (Tübingen: Mohr Siebeck, 2016), 47–85.
3. On this methodological point see David P. Wright, “Method in the Study of Textual Source Dependence: The Covenant Code,” in *Subtle Citation, Allusion, and Translation in the Hebrew Bible*, ed. Ziony Zevit (London: Equinox Publishing, 2017), 159–181.
4. The correlations of CC’s appendix are mainly with Neo-Assyrian royal inscriptions.
5. See discussion in Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation*.
6. For the problem of all too simplistic assessments about emulation and subversion in regard to Neo-Assyrian ideas, see Jessie DeGrado, “Authoring Empire: Intellectual Engagement with the Neo-Assyrian Empire in the Bible” (PhD diss., University of Chicago Divinity School, 2018).
7. This may arise from ideological considerations about the value of human life, from native practice, or from systematic contrast with the law on an ox goring an ox in Exod 21:35–36, where the lethal animal is *not* put to death. See Moshe Greenberg, “Postulates of Biblical Criminal Law,” in *Yehezkel Kaufman Jubilee Volume*, ed. Menahem Haran (Jerusalem: Magnes, 1960), 5–28. See the discussion in Wright, *Inventing*, 222–227.
8. LH 116 prescribes vicarious punishment in the case where a creditor beats and kills the son of a debtor who is laboring as a debt slave. LH 115–116 appear to be an influence on Exod 21:20–21 (these verses are cited in another context later in this article). But the penalty for killing a slave in CC’s law is “vengeance” (using the root נקם). This may be a further implicit rejection of vicarious punishment. See Wright, *Inventing*, 169–176. LH 230 also prescribes vicarious punishment, for the son of a house owner killed by the collapse of a shoddily built house. CC does not have a corresponding law.