INTRODUCTION

THE CHARACTER OF ANCIENT NEAR EASTERN LAW

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PROLEGOMENON

*The Ancient Near East and Legal History*

Law has existed as long as organized human society. Its origins are lost in the mists of prehistory: we can only speculate as to what kind of law our early ancestors practiced. It was not until the advent of writing that lawmaking could leave durable traces, a record from which modern historians may reconstruct what were once living institutions. Writing was first invented toward the end of the fourth millennium B.C.E., in the ancient Near East. A few hundred years later, the earliest recognizably legal records appear. The ancient Near East is thus home to the world’s oldest known law, predating by far the earliest legal records of other ancient civilizations, such as India or China.

The ancient Near East also has the distinction of being the cradle of the two great modern Western legal systems, the Common Law and the Civil Law, and in consequence of modern law in general.\(^1\) Its influence has left few visible traces apart from the Hebrew Bible, the one relic that survived the collapse of its constituent civilizations and whose hold on the minds of Western lawmakers continues to this day. Rather, the connection is indirect, through the intermediary of the classical systems of Jewish, Greek, and Roman law. The legacy of these systems to the two great modern law traditions is

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\(^1\) By modern law I mean law based upon the Common Law or Civil Law traditions, as mediated by the Enlightenment of the eighteenth century and consequently characterized by restless innovation. The two traditions have been carried, in part by imperialism and in part by their own intellectual force, to virtually every corner of the globe. Today they are the basis, directly or indirectly, of the legal systems of most of the member states of the United Nations and of international law. The only other widely prevalent legal traditions are conservative systems: local customary law and religious law.
well known; the legacy of much more ancient cultures to classical law is only now coming to light.\(^2\)

The law of the ancient Near East is by no means that of a single system; it is the product of many societies, with different languages and cultures, that flourished, declined, and were replaced by others over the course of thousands of years. This *History* is the first attempt to produce a comprehensive analytical survey of their law, through the collaborative effort of twenty-two scholars.

**Scope and Structure**

The *History* covers an area situated in what is now called the Middle East, extending from Iran to Egypt, and concentrated in an arc of territories sometimes known as the Fertile Crescent. It begins with the earliest intelligible legal records, from Sumer in the twenty-eighth century B.C.E., and ends toward the close of the fourth century B.C.E., after the conquest of Alexander had made the ancient Near East part of the wider legal world of the Hellenistic period.\(^3\) Such are the variations in quantity and quality of sources that a neat division into separate legal systems, as in classical or modern legal history, is not feasible. Each chapter is designed to cover the sources of a geographical area often defined more in cultural or political terms than by the formal criteria of a sovereign legal system—a military outpost at Elephantine for example, or a trading colony in Anatolia. The chronological division is likewise based on cultural or political criteria current among historians or simply by virtue of the availability of archives. The lack of continuity in the sources means that a “history of events” is not possible. At most, a series of snapshots, scattered at random in time and place, can be compiled.

Within each chapter, the subject matter is divided into legal categories that cover all the structural and substantive aspects of a legal

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\(^2\) For example, the Roman concept of the universal heir was a fundamental characteristic of inheritance in the ancient Near East, traceable to the earliest sources. On a more specific level, the Talmud contains a rule that on divorce, a former widow receives half the amount of compensation to which a virgin bride is entitled (Mishna Ketuboth 1.2). That same rule is already found in a Sumerian law code from the third millennium B.C.E. (LU 9–10).

\(^3\) All dates henceforth are B.C.E. unless otherwise stated. The chapters on Demotic Law and the Neo-Babylonian and Persian period contain some later material, reflecting the continuation of their legal traditions into the Hellenistic period.