

FROM COVENANTS WITH GOD TO SOCIAL CONTRACT

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Abstract

Even the earliest societies have felt the need to adopt sets of laws to allow their own government. Although we start from an era in which not only the number of literate persons was reduced and even the material means of recording the legislation was even more limited, history has recorded numerous legislative codes since the antiquity. It is difficult to imagine a culture, anywhere on the planet, which has not known, since ancient times, various forms of understanding even though it has recorded different modes of normative expression. The indisputable necessity and applicability of such covenants and treaties also resides in their widespread, from Antiquity, from the political level to the level of relations between just two persons. Most of the covenants were not recorded on a support, the transcription of some by carving in stone, gave the chance of preserving them. It did not take long until man's ability to regulate social, economic, and political forms of organization has gone beyond conventional boundaries and man has received a covenant with divinity. The individual's agreement with society was just one step that, at least retrospectively, seems to be normalized. In time, the Humanity learned that any form of external constraint, be it religious or political-social, can only lead to diminishing, until suppression, of fundamental freedoms.

Keywords: covenants, treaties, codes of laws, Antiquity, legal systems, Age of Enlightenment, Social Contract.

1. Introduction

Covenants and treaties have been, since the period of the earliest forms of social organization, foundations for cohabitation and development of almost all groups of people. By establishing a set of rules, known and agreed, it was created a favorable framework to more harmonious relationships, based on a common and immutable value, consisting in the predictability of the other's behavior.

The indisputable necessity and applicability of such covenants and treaties also resides in their widespread, from Antiquity, from the political level to the level of relations between just two persons.

Recent studies identify a considerable number of documents, with covenant value, dated between 2500 - 46 BCE¹, coming even since the Near East, as an important source not only for the history of the area or only for this science.

Although the essential features of a covenant that complies with current normative requirements are also found in the content of those documents, there are significant features distinct from the present understanding of the notion of covenant. Of course, terms such as *treaty*, *pact*, *contract*, *covenant*, from the linguistic point of view, appear as neologisms, related to the temporary distance of the moment of conception of the documents referred to.

The legal construction under which the two convergent wills were met was, naturally, indissolubly

linked to the real and symbolic perception of the related times.

It is necessary a special and temporal framing of the concept that fulfills the formal and substantive conditions of a covenant, which can not, in any way, ignore the etymological interpretation of the notion.

2. Content

Reported to the Semitic language family, the akkadian term *birītu*, designates „the *area jointly owned by neighbors [...] but also a lock connecting the ends of a chain ...*”² while the Hebrew term *bērit*, equivalent to the concept of *covenant*, was used, in laic sense, with the intention of describing association relationships between individuals or between larger groups or even nations.

The reasons for such associations were different and could be deduced, including from the quality of the parties or from the nature of the relationship between them. Thus, the covenants could be concluded, for example, between a powerful, expansionistic nation, as an alternative to the conquest of a nation in its path. Or, the covenants could be concluded between tribes, of similar or different force, in order to keep peace between them or to protect themselves from the attacks of rival tribes. At the same time, there were also covenants made from commercial or civil interests.

Although most of the covenants were not recorded on a support, the transcription of some by

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¹ KA Kitchen and P.J.N. Lawrence, eds., *Treaty, Law and Convention in the Ancient Near East*, Wiesbaden: Harrassowitz, 2012, ap. S. Greengus, *Covenant and Treaty in the Hebrew Bible and Ancient Near East*, in *Ancient Israel's History*, edited by BT Arnold and RS Hess, Grand Rapids: Baker Academic, 2014, p. 91

² see HALOT 1: 157 (s.v. *bērit*); CAD B 252-55. For *brt*, *bryt* in Egyptian documents, v. K. A. Kitchen, P. J. N. Lawrence, *The Fall and Rise of the Covenant, Law, and Treaty*, *TynBul* 40 (1989): 122-23. v. and id., *Egypt, Ugarit, Qatna, and Covenant*, *UF* 11 (1979): 453-64, by S. Greengus, *Covenant and Treaty in the Hebrew Bible and in Ancient Near East*, in *Ancient Israel's History*, edited by BT Arnold and RS Hess, Grand Rapids: Baker Academic, 2014, p. 91

carving in stone, gave the chance of preserving them, not being neglected the number of such artifacts that are nowadays found in the world's important museums.

Correlated with the object of the covenant and, implicitly, with its importance in the subjective appreciation of the *connecting* parties, the time of the conclusion was associated with various rituals, whose significance referred to the sanctions that the party who violated that convention could expect.

According to the conceptualization of the notion of solemnity, age related, the symbolic representation of the gravity of the violation of covenant conditions, whether concluded between individuals, families, tribes, or between nations, was the blood with which it was sealed. Otherwise, this form of sealing the bond grants the title of Blood Covenant and played an important role in respecting the alliances that ensured a peaceful cohabitation.

The covenants, in the translation and interpretation of the terms used in the documents containing them, were *cut*, in the sense that, upon their conclusion, animals of considerable size, predominantly sheep or cattle were sacrificed in a specific manner, then the contracting parties going through certain stages who amplified the solemnity of the moment.

A concrete and meaningful example is illustrated by two treatises dating from the Neo-Assyrian period around 750 BC, concluded by king Mat'ilu of Arpad, a kingdom from Syria, in which the first is written in Akkadian, with the Assyrian King, the other, written in Aramaic, with a regional ally³.

The historical context was related to the difficult and ingrained situation of the Arpad state, constrained by imminent invasions, to decide between an alliance with Urartu or Assyria, either of which being a serious but indispensable compromise, given the pressure exerted by the two forces to make Arpad a buffer zone⁴.

The exceptional situation that made these documents survive the time gives us the privilege of being able to study also the form and substantive of a treaty in that era.

The treaty concluded between King Mat'ilu of Arpad and Ashurnirari had as purpose the permission conferred by the Assyrian king to keep his throne, under humiliating conditions, concurrently agreed with slaughtering an animal.

Of the characteristics of a *Blood Covenant*, the most relevant is that of the effects expanded their validity throughout the existence of a line of descent of each of the parties, the obligations and rights established by those who concluded the covenant being perfectly valid for an unlimited number of subsequent generations⁵.

Even in the presence of a descendant that breaks the Covenant, he does not lose, on the merits, its validity, and the sanction of its violation is reflected only to the person who violates it. Following the punishment or the death of the guilty of non-compliance, the initial effects of the Covenant continue to occur, these being considered as only suspended⁶.

It is not the case of the Treaty between Mat'ilu and Ashurnirari, being obvious that the acceptance of such conditions represented an ephemeral state, of opportunity, which led to the disruption of the treaty by the disadvantaged and the conclusion of a new covenant with a neighbor ally, as shown.

What is relevant, however, is how more or less subtle symbols were integrated into the covenant closing ceremony, which was a common element of the covenants of that period.

It is difficult to imagine a culture, anywhere on the planet, which has not known, since ancient times, various forms of understanding even though it has recorded different modes of normative expression.

From a historical perspective, *the covenant* was created to enforce a binding agreement, stronger than an ordinary covenant, even having elements of sacredness and eternal life.

Blood was considered vital by most societies, and being inseparable from life, it also involved sacredness. By default, the bloodshed as an irreversible process was sacred, this trace also reflecting on the human actions that were connected with it.

One of the rituals involves two superficial cuts, on the arm or wrist of each contracting party, which were gathered together on top of a vessel of wine, following that the blood dropped to be mixed with the wine by an official priest and given to be drunk to each participant, that they get one blood, one identity. In Antiquity, it was believed that the blood of each part of the covenant entered into the other's body, therefore, their life became unique⁷.

The Cutting of the Covenant is a symbolic representation of the Covenant's ending action, also seen from the perspective of the actual cutting of the prepared and killed animal for the Covenant's partners, as a complete and indispensable sacrifice. The offering of the sacrificial animal is the responsibility of King Vassal, as is his life that has been spared, the superior king deciding what kind of animal must be used in the sacrifice to be done by his Priest⁸.

From a practical point of view, the cutting technique involves splitting the animal into two equal parts, on the spinal cord, the Priest exposing internal organs to the air. The two kings stood between the halves of the sacrifice and continued walking around each half of the animal, in opposite directions,

³ S. Greengus, *op. cit.*, p. 110

⁴ E. G. H. Kraeling, *Aram and Israel or The Aramaeans in Syria and Mesopotamia*, New York: Columbia University Press, 1918, p.10

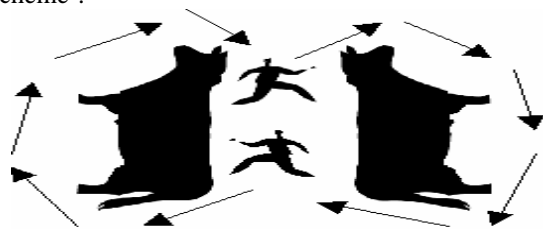
⁵ D. Plant, *The Blood Covenant of God*, Macquarie Fields: Smashwords, 2010, p. 14.

⁶ *Idem*, p. 17

⁷ *Idem*, p. 180

⁸ *Ibidem*, p. 182

following a strict rule, according to the following scheme⁹:



As they meet between the parts of the sacrifice, they addressed, initially, blessings to each other and enumerated their possessions as an inventory of what they intended to become a common heritage. This inventory could include, from case to case, personal property, land, people, towns and villages.

Then they continued to go to the other half of the sacrifice, uttering mutual curses, to divert over the one who violates the Covenant, its descendants or its people¹⁰.

As they meet between the two sides of the sacrificed animal, this ceremony is completed with the command *It will be done for you (or for me) as it was for this animal if we break the covenant*¹¹.

Subsequent to this part of the ceremony was invoked, through the Priest, the Divinity who was going to be a witness. An important element lies in the fact that it was established, also in this respect, the rule, the gods of the suzerain king having priority over the gods of the vassal king, if covenants were concluded between tribes or peoples¹².

The cut-off animal was also a threat, attached to a solemn oath called *'ālā* in Hebrew, which includes a curse, addressed the one who did not respect his word¹³.

However, the syntax of *cutting a covenant* becomes, with the passing of time, an idiom from time to time, being used in simpler contexts, even if the concluded covenant was not accompanied by the slaughter of an animal¹⁴.

However, the image of the parts of a covenant that goes together among the pieces of sacrificed animal is the incontestable source of expressions used to describe the making of a covenant, among them enumerating enter *a covenant, pass a covenant, or stay a covenant*¹⁵.

It is also possible to notice in the current language, in different cultures, the derivations of the respective phrases, examples being the expression in American English *cut a deal* but also the Romanian *a*

tăia un pariu. Also, the expression *going into business*, or the frequent *handshake* at the end of a convention.

Returning to the historical aspects revealed by the great number of covenants, conventions, pacts and treaties from the Near Eastern and inventoried by Kitchen and Lawrence, in the quoted work, we find that the majority are written in Sumerian, Akkadian (Babylonian and Assyrian) and Hittite languages¹⁶. A significant part of these documents comes from the old Babylonian period (2000-1600 BCE) and concerns the territories and rulers of the current states Iraq and Syria¹⁷.

Documents on diplomatic relations between Hittite kings and their neighbors in Anatolia and Syria form the next large set of documents, written in Akkadian and dating back to about 1400-1000 BCE, while the last important set of documents was around the year 900 -625 BCE, dealing with the relations between Assyria and the kings of the smaller kingdoms in Syria. They were also written in Akkadian and, in some cases, with Aramaic duplicates¹⁸.

Another example of an old covenant of blood is the covenant between Egypt's Ramses II and Hattusilis III of the Hittite Empire, representing, in turn, a true image of the ancient ceremonial rituals for the blood covenant, very close to the Blood Covenant of God in the Hebrew Bible.

Specific to this covenant and distinct from the Safire covenants, it is the archetype of covenant between the equal partners in force, power and wealth, concluded with the purpose of determining and formalizing the relationship between them, caused by a war that had no winner¹⁹.

The Covenant decided the boundaries, establishing the conditions of aid in wartime, regulated the treatment of fugitive slaves, trade and various beneficial laws for both Ramses II and Hattusilis III. The main purpose of their covenant was to help formalize and maintain the relationship between the two kings and their countries²⁰.

The vassal covenant is the covenant alternative, being the most common form of covenant. Usually, this occurred as a result of the conquest of a king by a stronger king, under the circumstances in which the conqueror saw an advantage in sparing the defeated.

A vassal covenant could also be the result of the respect for a greater king manifested by a inferior king in order to conclude a protective alliance. If the covenant was the result of a friendly relationship or

⁹ Ibidem, p. 183-184

¹⁰ Ibidem, p.183-184

¹¹ Idem, 184

¹² Loc. Cit.

¹³ S. Greengus, *op. cit.*, p. 94

¹⁴ Loc. Cit

¹⁵ Idem, p. 95

¹⁶ Ibidem, p. 96

¹⁷ Loc. cit.

¹⁸ S.M. Arab, *The Pharaoh Who Made Peace With His Enemies And The First Peace Treaty in History*, www.touregypt.net, accessed on February 1st 2018, URL: <http://www.touregypt.net/featurestories/treaty.html>

¹⁹ Idem

²⁰ D. Plant, *The Blood Covenant of God*, Macquarie Fields: Smashwords, 2010, p. 18.

based on mutual respect, but a king was significantly stronger or richer than the other, then the relationship would be marked by correlated terms such as the *Father and the Son*²¹.

If a king was conquering the king of a smaller kingdom, the conquering king will be called the *Lord*, and the younger king will be called the *servant*. The proper name for the servant was *vassal*, hence the name of vassal *Covenant*. Examples of these laws are found in the Treaties of Amarna. They are also reported as the Tell El Amarna Style dating back to the second millennium BCE. They were part of the old culture of the Middle East, involving the Philistine, Hittite and Egyptian cultures²².

The content of the covenant, with the predominant rights of the suzerain, and the majority of obligations of the vassal, after a preamble in which the first was presented, with all its titles and attributes followed by a historical prologue, in which the relationship between the two and their ancestors was highlighted, followed by an often exaggerated expression of the suzerain's benevolence towards the vassal and his country, included as the main provision that the Great King could have many vassal royalties, while One Vassal can only have a Great King, fact which can be considered as a source of inspiration for monotheistic rules.

Prohibition of any formal relationship between the vassal and any other king outside the suzerain sphere and the fact that the vassal does not have to listen or believe defamation of the Great King, and must immediately report any slander, also presents identifiable similarities, making an easy analogy of the covenants with God in the Hebrew Bible.

Concerning the biblical covenants, the theory according to which they can be classified into two types, major and minor, depending on God's involvement in the covenant conclusion has been highlighted²³.

In the category of the most important covenants are included²⁴:

- The covenant with Noah
- The covenant with Abraham
- The covenant with Moses
- The covenant with David

All other covenants are of inferior importance, including covenants between two persons, between individuals and groups of people or between nations²⁵.

The novelty element, even if it takes from the form and substantive of covenants conceived by people, consists, regarding the important covenants of

the Hebrew Bible, in the participation of God, as part of the covenant, not as simple witness.

What is kept in the Hebrew Bible, referring to the usual covenants and treaties in the Ancient Near East, is primarily the structure of the convention.

Thus, the preamble of each of the four covenants is formulated as a statement of God, similar to that of the suzerain, the people being informed by His will.

As far as the Noah Covenant is concerned, it is noteworthy that, from a legal point of view, it can be framed in the unilateral legal acts category, in the sense that God is the only one who makes a promise, a novel fact in texts with legal implications in the period. It is unique that the upper part of the covenant, almighty in this context, should assume obligations without claiming correlative rights.

The covenant with Abraham presents, beyond the distinctive elements of each of the most important biblical covenants, many features common to the treaties concluded between the nations found in the area. We have, when taking vows, the sacrificial animal with all the ritual, along with the reference to the eternity of the effects that will benefit or will show off over all of Abraham's descendants.

However, the content of the Covenant with Abraham also rise some problems of interpretation of its nature, meaning that the obligations assumed by God depend or not on the fulfillment of some conditions by the other party. Opinions are shared, and argumentation for each makes it even more difficult the strictly classification of the covenant into one of the legal categories.

The covenant with Moses, also called the Sinai Covenant, has also a raised controversy that starts from the question of conditional fulfillment of God's promises to the behavior of the other contractual party. Even if we admit that it is not a conditional covenant, although God is the initiator, the covenant is not one among the equals.

The covenant with David fits, along with the covenant promise category, in the sense that God does not require it to fulfill certain conditions.

The idea that comes out is that we are in the presence of two types of conventions in the Hebrew Bible, God's Covenant, for the fulfillment of which a series of conditions binds, and the covenant of God through which promises without asking anything in return¹.

Distinct from these covenants with God, we also mark the presence of a pseudo-covenant, namely the one who designates the relationship of God with Adam. We appreciate that this relationship does not present the elements required to fit into the category of Covenants.

²¹ Idem

²² C. F. Lincoln, in the article *The Biblical Covenants*, published in the *Bibliotheca Sacra* diary, April 1943, pp. 313-314, www.galaxie.com, URL: <http://www.galaxie.com/article/bsac100 -398-10>, visited on February 3rd, 2018.

²³ Idem

²⁴ ibidem

²⁵ M. Weinfeld, *The Covenant of Grant in the Old Testament and in Ancient Near East*, article published in Journal of the American Oriental Society, Vol. 90, No. 2 (Apr. - Jun., 1970), p. 184, ww.wisdomintorah.s3.amazonaws.com, URL: <https://wisdomintorah.s3.amazonaws.com/medialibrary/Grants-and-covenant.pdf>, visited February 1st, 2018

But another covenant made by God, according to the Hebrew Bible, of an importance not to ignore, is the covenant with Israel, preferred to be mentioned in the final part of the work, precisely because of the strong correlation with the formal and substantive of Esarhaddon's famous Treaty of Succession.

This is a recurring theme in the technical literature, which even created the terminology of *paralleling* in search of all the similarities between covenants, the existing treaties in the ancient culture of the Near East, and the biblical covenants²⁶.

However, no reasonable researcher can ignore the resemblance, almost overlapping, between the text of the Treaty and the Deuteronomy 28.

The curse section of Deuteronomy correlates many curses with suggestive images. These images, as many researchers have observed, are identical to those of the *Esarhaddon Neo-Assyrian Succession Treaty*²⁷. Moreover, some passages are quasi-identifiable.

It should not keep track that we are in the presence of civilizations from the Near East cultural region, whose level of legal concept development was considerable, both at the practical and theoretical level. We cannot ignore the numerous but especially well-drafted legislative codes existing in this region. It is easy to understand that the influence of a culture so developed in the geographical proximity is not only impossible to block but also to lack rational justification.

Legislative collections in the Near East space offer a useful point of comparison with biblical law materials, many theories about legal discourse that can be interpreted in different ways being issued. Three approaches to the interpretation of law collections of the ancient Near East are collected²⁸.

By studying in parallel the nature, forms and, especially, the substantives of the Hebrew Bible covenants with those found in the representative covenants of the ancient Near East, the conclusion that can be drawn is that of a cultural community that is not limited to legal issues. On the contrary, it extends to socio-political areas, having impact over collective consciousness, especially in the presence of a solid set of common values.

Thus, for the first time, we have an absolutely special quality of a co-contracting party, although the convention itself is not a particular legal category. It is the contract with the Divinity, having different objects, but also invariably stipulating obligations from its part.

It would lack objectivity not to observe that there rules a special character of these conventions that resides in that no penalties are stipulated for disrespecting the Divinity commitments, but this does not diminish the novelty of this type of approach at the

level of a contractual relationship circumscribed to a religion.

What emerges more obtrusive from this convention is the awareness of the interdependence between the parties concluding it, coming out the premises of another type of contract difficult to conceptualize, to a certain extent, given the disproportion, at least apparent, between the mere individual, citizen and state authority.

That is why, in a somewhat natural logic, that inglorious believer, with an immeasurable apprehension to God, dared to claim something from this, other than the usual way of a praying.

The mere individual realizes that no argument is viable and cannot resist if he ignores the importance of his quality in relation to even a powerful and ineffable Creator, as is in the culture that conceived this kind of convention.

This kind of contract is a good foundation for a normal citizen to claim obligations correlated with the rights assigned to an authority with a disproportionately high power, and much more concrete, in this case.

The reference is to what the theory has known as the Social Contract, and among its promoters is the one who took over and carried forward the concepts of Francis Bacon, the 17th century philosopher, Thomas Hobbes.

The model of conception of this construction of a legal nature, but with wide socio-political effects, was outlined on the basis of two conventions, one among citizens, with the aim to cede the common rights to a single sovereign and the second convention, under the form of an authorization granted by all of them to a single person²⁹. We are in the presence of a double contract³⁰ with a strong and relevant connection, without one being the principal and the other additional, them having only a certain temporal and logical succession.

The premise is the one in which, the individual, in his primordial condition, natural, pre-judicial state without having the consciousness of a superior authority, outside the divinity, motivated mainly by the need to live in peace, gives up his natural state and causes a political configuration characterized by artificialism, individualism and a representative system³¹.

Once outlined, the Social Contract theory takes root, attracting other distinguished thinking personalities, among them standing out the English philosopher John Locke and Jean Jacques Rousseau.

Although he stands out from Hobbes' vision also by identifying an essential problem in setting up a rule-based civilization, not authorizing the exercise of power, Locke asserts that the citizen does not give up

²⁶ W. S. Morrow, *An introduction to biblical law*, Grand Rapids : Eerdmans Publishing Co., 2017, p. 67

²⁷ S. Parpola și K. Watanabe, *Neo-Assyrian Treaties*, 28–58, apud S. Greengus, op. cit., p. 116

²⁸ W. S. Morrow, op. cit., p. 69

²⁹ T. Hobbes, *Leviatanul*, Bucharest: Herald Publishing House, 2017, p.203 - 205

³⁰ N. Popa, a.o., *Filosofia Dreptului. Marile Curente*, Bucharest: C.H.Beck Publishing House, 2010, p.155

³¹ Idem, p.156 - 158

his part of sovereignty, and if the power that he, along with the others who compose the people, entrusted it, is confiscated to the detriment of the true belonging, they can also run force to replace those who govern³².

Without being necessarily divergent but bringing consolidations and, above all, superposing to the edifice conceived by Hobbes and Locke, Rousseau consecrate the theory of *freedom - autonomy* on which the constitutional theory of human rights and fundamental freedoms is based, as well as the theory of limiting the power by consolidating them³³.

Remarkable is what Rousseau states when establishing the individual's priority with the state, contrary to the Aristotelian philosophy, affirming, in an age still tributary to some concepts that were not individual-based, that the state is a creation of it and, in the absence of a free will of the individual, the state cannot exist, society being itself a legal act³⁴.

At the same time, the French thinker states that freedom can only exist between peers, referring to an abstract legal freedom, and even the least inequality affects the freedom of one party³⁵, the notion defining the social contract, from the quorum's perspective, being the one's man will.

One of Rousseau's essential grievance is to create a harmony between what law permits with what interests dictate, so that justice and utility not to be in conflict³⁶.

Conclusion

What emerges as one of the conclusions is the idea of evolution, not so much of the courage to express the deep will of individual, taken rather in its individuality, but especially of the form of expression of the concepts of justice and freedom that define this as a human being.

Any form of external constraint, be it religious or political-social, can only lead to diminishing, until suppression, of fundamental freedoms. The mere awareness of the relationship of mutual dependence between individual and authority gives rise to a mutual duty of respect to the most sensitive and finer fibers.

From the moment that Individual dared to approach his relationship with God under equal conditions of contract, and the Creator himself allowed this, without feeling offended or by considering it a blasphemy, it is inadmissible that an Individual's creation, even of a major complexity, such as the State, to be claimed superior to any citizen.

It is not by accident that these manifestations of higher thought have as instruments legal institutions, the right being, certainly, the best buckler of humanity, both for relations between individuals and between them and entities of different and superior dimensions.

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³² Idem, p.165

³³ Ibidem, p.173

³⁴ Ibidem, p.175

³⁵ Ibidem, p.177

³⁶ J.J. Rousseau, *Contractul Social*, București: Editura Stiințifică, 1957, p.81