

DYLAN R. JOHNSON

Sovereign Authority and
the Elaboration of Law
in the Bible and the
Ancient Near East

*Forschungen
zum Alten Testament
2. Reihe*

Mohr Siebeck

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In memory of my grandmother, Christine Fenton.

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Zürich, 2020

Dylan Robert Johnson

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List of Abbreviations

Most abbreviations follow *The SBL Handbook of Style*, 2nd ed. (Atlanta, GA: SBL Press, 2014) and “Abbreviations for Assyriology,” [cdli:wiki, http://cdli.ox.ac.uk/wiki/abbreviations_for_assyriology](http://cdli.ox.ac.uk/wiki/abbreviations_for_assyriology). In addition, the following abbreviations are used:

<i>BLD</i>	<i>Black’s Law Dictionary</i> . Bryan A. Garner and Henry Campbell Black. 9 th ed. St. Paul, MN: West, 2009.
CC	Covenant Code (Ex 20:22–23:19)
<i>CKLR</i>	<i>Chicago-Kent Law Review</i>
DC	Deuteronomic Code (Deut 12–26)
<i>DNWSI</i>	<i>Dictionary of the North-West Semitic Inscriptions</i> . Jacob Hoftijzer and Karel Jongeling. 2 vols. Leiden: Brill, 1995.
DSROA	Dissertationes Scientifcae de Rebus Orientis Antiqui
<i>DULAT</i>	<i>A Dictionary of the Ugaritic Language in the Alphabetic Tradition</i> . Gregorio Del Olmo Lete and Joaquín Sanmartín. 2 vols. Translated by Wilfred G. E. Watson. Handbook of Oriental Studies: Section One the Near and Middle East 67. Leiden: Brill, 2003.
H	Holiness
<i>HANEL</i>	<i>A History of Ancient Near Eastern Law</i> . Raymond Westbrook (ed.). Handbook of Oriental Studies. Section One, The Near and Middle East 72. 2 vols. Leiden: Brill, 2003.
HANEM	History of the Ancient Near East Monographs
HC	Holiness Code (Lev 17–26)
HL	Hittite Laws
Inst.	The Institutes of Justinian
<i>JLH</i>	<i>The Journal of Legal History</i>
<i>JR</i>	<i>The Juridical Review</i>
<i>JS</i>	<i>Journal des Savants</i>
LH	Laws of Hammurabi
LL	Laws of Lipit-Ištar
LU	Laws of Ur-Namma
M.	Siglum for tablets from Mari
MAL	The Middle Assyrian Laws
MAPD	Middle Assyrian Palace Decrees
NBL	Neo-Babylonian Laws
PIHANS	Publication de l’Institut historique et archéologique néerlandais de Stamboul
<i>RE</i>	<i>Texts from the Vicinity of Emar in the Collection of Jonathan Rosen</i> . Gary Beckman. History of the Ancient Near East Monographs 2. Padova: Sargon, 1996.

<i>RHD</i>	<i>Revue historique de droit français et étranger</i>
<i>Samr</i>	<i>Samaria Ostraca</i> . Numeration follows Gorge A. C. Reisner and David Lyon. <i>Harvard Excavations at Samaria, 1908–1910</i> . Cambridge, MA: Harvard University Press, 1924; André Lemaire. <i>Les ostraca: Introduction, traduction, commentaire</i> . Inscriptions Hébraïques 1. Paris: Éditions du Cerf, 1977; Graham I. Davies. <i>Ancient Hebrew Inscriptions</i> . Cambridge: Cambridge University Press, 1991.
<i>SDHI</i>	<i>Studia et Documenta Historiae et Iuris</i>
SLEx	Sumerian Laws Exercise Tablet (YOS 1 28)
Akk.	Akkadian
C-	Causative Stem (Heb. <i>Hifil</i>)
DN	Divine Name
D-	<i>Doppelstamm</i> (Heb. <i>Piel</i>)
D ^p -	<i>Doppelstamm passiv</i> (Heb. <i>Pual</i>)
G-	<i>Grundstamm</i> (Heb. <i>Qal</i>)
Gtn-	<i>Grundstamm</i> infixed <i>-tan-</i>
LBH	Late Biblical Hebrew
MBA	Middle Bronze Age
OB	Old Babylonian
P ^s	Priestly <i>Grundschrift</i> (earliest layer of the priestly writings)
P ^s	Secondary Priestly writings
RN	Royal Name
SBH	Standard Biblical Hebrew
Ug.	Ugaritic
[]	No visible sign(s)
[...]	Lacuna
⌈ ⌋	Sign(s) partially readable
< >	Sign(s) omitted by scribe
?	Suggested reading
!	Scribal error

Chapter 1

Introduction

A. Introduction

In the ancient Near East, law emerged largely from unwritten customary tradition.¹ The rules and prohibitions that governed Near Eastern societies emanated from the cultural wellspring of local customary law, which in turn informed the decisions of judicial authorities. Yet, custom was not the only source of law in the ancient Near East, even if it was the most prevalent. The famous Near Eastern law collections locate the normative authority validating their litany of statutes not in custom, but rather, in a socially and politically recognized legislative sovereign. Legislative sovereignty was typically embodied through the person of the king – or in the institution of kingship – although corporate authorities could also fulfill such a function. The legal collections composed in the name of these sovereign authorities impressed the concept of legal unity on societies characterized by a diversity of local customary traditions.² Earlier scholarship dismissed the claims made in the prologues and epilogues of some Near Eastern law collections as little more than royal apologia;³ these collections were propagandistic compositions or scientific treatises that had no real impact on the actual practice of law because they lacked normative authority.⁴

¹ Émile Szlechter, “La loi et la coutume dans l’antiquité orientale,” *Travaux et Recherches de l’institut de Droit comparé de l’Université de Paris* 23 (1962): 5–11; Richard Haase, “Gewohnheitsrecht,” *RIA* 3:322–23; Sophie Démare-Lafont, “La valeur de la loi dans les droits cunéiformes,” *Archives de Philosophie du droit* 32 (1987): 342; Eadem, “Les lois dans le monde cunéiforme: codification ou mise par écrit du droit?,” in *Written Laws in Antiquity: L’écriture du droit dans l’Antiquité*, ed. D. Jaillard and C. Nihan, BZAR 19 (Wiesbaden: Harrassowitz, 2017), 23.

² Démare-Lafont, “La valeur,” 346; Eadem, “Les lois dans le monde cunéiforme,” 23, 29–31.

³ On the notion of the law collections as “royal apologia,” see Benno Landsberger, “Die babylonischen Termini für Gesetz und Recht,” in *Symbolae ad iura orientis antiquae pertinentes Paulo Koschaker dedicatae*, ed. T. Folkers et al. (Leiden: Brill, 1939), 221–22; Jacob J. Finkelstein, “Amīšaduqa’s Edict and the Babylonian ‘Law Codes’,” *JCS* 15 (1961): 101–103. See the critique of this theory in Raymond Westbrook, “Biblical and Cuneiform Law Codes,” *Revue Biblique* 92 (1985): 247–65.

⁴ There is an extensive bibliography on the question of the normative value of the legal statutes of the codes, notable contributions include F. R. Kraus, “Ein zentrales Problem des Altmesopotamischen Rechtes: Was ist der Codex Hammu-Rabi?,” *Geneva NS* 8 (1960):

However, practical legal documents attest to normative acts of sovereign authorities that affected legal transactions between private individuals, both in a retroactive and in a prescriptive manner.⁵ Such evidence demonstrates that law could and did emerge from normative acts of sovereign authorities, even if on a more limited scale than that suggested in the law collections.⁶ The legal collections of the Hebrew Bible make similar claims, though the validity of biblical law rests in its promulgation by Israel's divine sovereign, Yahweh.⁷

283–96; Jean Bottéro, “The ‘Code’ of Hammurabi,” in *Mesopotamia: Writing, Reasoning, and the Gods*, trans. Zainab Bahrani and Marc Van de Mieroop (*Annali della Scuola normale superior di Pisa, Classe di Lettere e Filosofia* III/xii: 4; 1982, 409–44; repr., Chicago, IL: University of Chicago, 1992), 169–72; Westbrook, “Biblical and Cuneiform Law Codes,” 3–20; Idem, “Cuneiform Law Codes and the Origin of Legislation,” *ZA* 79 (1989): 201–22. In support of their assertions, proponents of this view remarked that ancient Near Eastern judges never cited any positive law as the authoritative basis for their decisions. However, this is not a convincing indictment of the normative value of these laws, but merely a reflection of juridical scribal praxis that almost never invoked the legal basis of a judicial decision, whether that was a written statute or a custom. See Démare-Lafont, “La valeur,” 335–346. For a recent critique of Démare-Lafont's approach, see Jonathan Vroom, *The Authority of Law in the Hebrew Bible and Early Judaism: Tracing Legal Obligation from Ezra to Qumran* (Leiden: Brill, 2018).

⁵ See F. R. Kraus, *Königliche Verfügungen in altbabylonischer Zeit*, SDIO 11 (Leiden: Brill, 1984), 111–123; Klaas R. Veenhof, “The Relation between Royal Decrees and ‘Law Codes’ of the Old Babylonian Period,” *JEOL* 35–36 (2000): 53; Sophie Démare-Lafont, “Les actes législatifs des rois mésopotamiens,” in *Auctoritates Xenia R.C. van Caenegem oblata, Iuris Scripta Historica: La formation du droit et ses auteurs*, eds. S. Dauchy et al., *Iuris Scripta Historica* 13 (Leuven: Peeters, 1997), 3–7. Dominique Charpin (*Writing, Law, and Kingship in Old Babylonian Mesopotamia*, trans. Jane Marie Todd [Chicago: University of Chicago, 2010], 73–77) identified an OB letter sent to Hammurabi by a goldsmith inquiring as to the proper punishment for a thief apprehended breaking the wall of his home. Although the verdict is lost, Charpin posits that the LH §21 may have represented a general rule elaborated on the basis of this particular case – or one very much like it. See also W. F. Leeman, “King Hammurabi as Judge,” in *Symbolae Iuridicae et Historicae Martino David Dedicatae*, eds. Johan A. Ankum and Martin David (Leiden: Brill, 1968), 107–29. It appears that in Pharaonic Egypt, the source of positive law was the pharaoh, who would periodically issue royal edicts (*hpw*) – though these would never be compiled into a law collection of any kind. See Aristide Théodorides, “La ‘Coutume’ et la ‘Loi’ dans l’Égypte Pharaonique,” *Receuil de la Société Jean Bodin* 51 (1990): 39–47; Lisbeth S. Fried, “‘You Shall Appoint Judges’: Ezra's Mission and the Rescript of Artaxerxes,” in *Persia and Torah: The Theory of the Imperial Authorization of the Pentateuch*, ed. James W. Watts (Atlanta, GA: SBL, 2001), 68–9.

⁶ Westbrook, “Biblical and Cuneiform Law Codes,” 14.

⁷ Although Israel's law is now presented as emanating from its national deity, this may not have always been the case. It is not clear to what authority the various laws now found in the Pentateuch may have originally been ascribed, but it is possible that they were validated through a different kind of authority aside from Yahweh, perhaps that of a king. See Konrad Schmid, “Divine Legislation in the Pentateuch in its Late Judean and Neo-Babylonian Context,” in *The Fall of Jerusalem and the Rise of the Torah*, eds. Peter Dubovský,

The uncertainty and debate surrounding the nature of ancient Near Eastern law is the direct result of its lack of a self-reflective legal doctrine.⁸ The legal collections of Mesopotamia, Hatti, and the Hebrew Bible make only laconic statements about how these societies understood the source of their law. Ancient Near Eastern legal literature privileged concrete facts above theoretical doctrine.⁹ Near Eastern jurisprudence and legislation was procedural: devoted to coordinating a legal dispute with its appropriate resolution. The legal principles and institutions operating in these societies were rarely, if ever, described. There was never an attempt to describe the mechanisms of legislation in any systematic manner, leaving modern legal historians the task of piecing together the framework in which laws were elaborated in the ancient Near East from scattered references in legal and non-legal sources. It is only through these legal frameworks that researchers can probe the abstract juridical questions of interest to modern scholars, but of little relevance to practically minded ancient legislators. Through the close analysis and comparison of legal sources from various Near Eastern cultures, scholars can extract the conceptual framework surrounding the latent concept of law and its creation. This project seeks to explore such a framework found within biblical legal tradition: a small set of five biblical texts that describe the elaboration of law by Yahweh through his intervention in judicial procedure (Lev 24:10–23; Num 9:6–14; Num 15:32–36; Num 27:1–11; Num 36:1–12). These episodes form the textual basis of this research project and structure the chapters of this work. Like all descriptions of Near Eastern trial proceedings, these texts focus on the concrete legal details of each case. However, through their fixed and repetitive literary form,

Dominik Markl, and Jean-Pierre Sonnet, *FAT 107* (Tübingen: Mohr Siebeck 2016), 129–153; Idem, “The Genesis of Normativity in Biblical Law: Historical and Theological Observations on the Development of the Canonical Notion of Law in the Hebrew Bible and its Applications on Nature,” in *Concepts of Law in the Sciences, Legal Studies, and Theology*, eds. Michael Welker and Gregor Etzelmüller, *Religion in Philosophy and Theology* 72 (Tübingen: Mohr Siebeck, 2013), 119–136.

⁸ Démare-Lafont, “La valeur,” 341–342. Démare-Lafont remarked that Mesopotamian legal literature neither discussed the general principles that inspired the composers of the various legal collections, nor did they ever develop any theoretical reflection as to the source of law or the authority that validated it. Although Near Eastern scribes never explained these concepts in a systematic abstract manner, they can nonetheless be detected as implicit notions that give structure to the various ways that law was presented in these societies.

⁹ Démare-Lafont (“Les lois dans le monde cunéiforme,” 25) characterized this as the *tendance au concrétisme*, which defines the very layout of some of the Mesopotamian law collections. Instead of being structured on the basis of legal principles, the long lists of statutes in the law collections are organized according to keywords found in the concrete details of each case. For example, in the Middle Assyrian Laws (MAL) the rape or seduction of a young woman is dealt with in the context of laws dealing with young women (MAL A §§55–56), while the same infraction committed against married women is dealt with in the context of crimes against married women (MAL A §§12–13).

which describes a distinct judicial and legislative procedure, the abstract concepts of law and legal sovereignty in biblical tradition become discernable. Thus, the analysis of these texts will begin by exploring their literary form from the perspective of judicial and legislative procedure before moving on the legal matter addressed in each case.

The notion of Yahweh's legal sovereignty in these texts builds on themes found throughout the Priestly writings of the Pentateuch. This motif is not limited to the Priestly tradition alone but appears in connection with the other Pentateuchal law collections with varying degrees of emphasis. Despite its prevalence, the Pentateuchal law collections do not uniformly present Yahweh's sovereignty. A collection like the Covenant Code (CC) (Ex 20:19–23:33), for instance, may not always have been presented as divinely promulgated.¹⁰ In certain regards, the notion of a divine sovereign sets biblical legal tradition apart from its Near Eastern neighbors, which locate sovereign legal authority in human rulers.¹¹ But this difference between biblical and Near Eastern law should not be taken as an example of Israel and Judah's legal exceptionalism. Vestiges of royal judicial authority preserved in the Hebrew Bible suggest that the judicial hierarchy of Israel and Judah likely resembled that of its Near Eastern neighbors and that there is a history to biblical notions of legal sovereignty.¹² Thus, it is necessary to distinguish between biblical law on the one hand and the law *en vigueur* in ancient Israel and Judah on the other. Moreover, it is necessary to explore the relationship between these two legal traditions to understand the use of biblical sources in the pursuit of the comparative history

¹⁰ In fact, the role of Yahweh or "God" (אלהים) in the legal core of the Covenant Code (CC) is analogous to the judicial roles of deities seen elsewhere in ancient Near Eastern law: the function of the deity in solemnifying oaths or symbolic legal acts (Ex 21:6; 22:9, 11). If it was not divinely promulgated, the legal content of Ex 21:1–23:13 could have existed in one of two forms. First, the laws may not have originally been ascribed to any official source. Like the MAL or the Hittite Laws (HL), the CC could have been compiled by legal experts who drew on Israelite customary law and older legal-literary motifs connected with the genre of legal compilations. See Démare-Lafont, "Les lois dans le monde cunéiforme," 26. Second, an earlier form of the CC could have been ascribed to an official source other than Yahweh, and based on the comparative data from the ancient Near East, the king would be a likely candidate.

¹¹ However, there is some debate surrounding this issue even within Assyriological circles. See Horst Steible, "Zu den Nahstellen in den altmesopotamischen Codices," in *Assyriologica et Semitica: Festschrift für Joachim Oelsner anlässlich seines 65. Geburtstages am 18. Februar 1997*, eds. Joachim Marzahn, Hans Neumann, Andreas Fuchs (Münster: Ugarit-Verlag, 2000), 447–55.

¹² For instance, the judicial authority of the king in relation to local customary law is preserved in the episode of the wise woman of Tekoa (2 Sam 14), the Judgment of Solomon alludes the king's access to "divine (judicial) wisdom" (חכמת אלהים) (1 Kgs 3:16–28), David's decision regarding the spoils of war (1 Sam 30:22–25) alludes to the king's normative authority, as does Zedekiah's power to declare a remission edict (Jer 34:8–22).

of law. In this way, this project engages the question of legal sovereignty in biblical law and how biblical tradents depicted the creation of new laws. Yet, even the moniker “biblical law” is somewhat of a misnomer, given that the Hebrew Bible does not preserve one monolithic conception of “Law.” Instead, the Bible preserves competing visions of law reflecting vastly different views and ambitions arising from the different periods and social contexts of the biblical writers themselves. By using the traditional methods of biblical exegesis in tandem with juridical interpretation, scholars can explore the notion of sovereignty and jurisgenesis in biblical law.

Despite these caveats, biblical law is a species of ancient Near Eastern law; the biblical tradents who devised the normative order that identified Yahweh as the sovereign authority of Israel and Judah drew on their familiarity with the law and legal hierarchies of the societies in which they lived, which they then projected into the divine realm. Thus, biblical law is a legitimate object of study within the field of legal history and has a great deal to contribute to the study of ancient Near Eastern law. The notion of a divine sovereign is not an axiomatic peculiarity of biblical tradition, but explainable through the historical developments of Israel and Judah. If the legal traditions of these two polities originally resembled those of their neighbors, then several questions emerge: was there precedent for the concept of divine sovereignty elsewhere in the ancient Near East? What historical circumstances motivated the attribution of all civil and criminal law to Yahweh? What groups could have undertaken this project? What communities were served by a legal tradition validated through the god Yahweh? Although these questions are not the primary aim of this study, they will nonetheless ground the discussion of biblical law and literary traditions in an historical context.

Biblical law has hitherto played a largely ancillary role in the discussion of law in the ancient Near East. The lack of epigraphic legal documents from the kingdoms of Israel and Judah as well as the complex literary history of the biblical text present unique challenges to biblical scholars not confronted by their peers in other fields of Near Eastern studies. However, the five biblical texts describing the elaboration of law through the intervention of Yahweh in judicial procedure represent an occasion where biblical law has a great deal to offer historians of ancient Near Eastern law. As stated above, the descriptions of a unique legislative procedure rooted in a concrete vision of the law allows contemporary scholars to explore the latent principles that give shape to these texts. The textual form(s) of these texts takes its shape from the concepts of legal sovereignty and its relationship to the creation of new laws; the examination of these two principles moves the analysis of these texts from the realm of description to that of explanation. Thus, this is a project of historical comparative law, which requires the application of general juridical concepts, terminology, typologies, and categories onto the biblical text to conduct an effective cross-cultural comparison with other Near Eastern legal traditions and beyond.

B. Legal Categorization, Juridical Vocabulary, and the Potential for Anachronism

Throughout this study, a variety of juridical terms stemming from Roman law and modern legal theory will describe particular aspects of ancient Near Eastern law. Therefore, it is necessary to justify the relevance and suitability of using such terms, to acknowledge the potential anachronisms that could skew the interpretations of these texts, and to weigh that risk against the benefits of analyzing these texts through the lens of formal legal categories. Scholars of Roman legal history resolved the problem of translating ancient legal documents by conserving the Latin terminology in their treatment of that material. However, this solution is not suitable for ancient Near Eastern law for a number of reasons. First, cuneiform legal documents must pass through three filters of interpretation before any analysis can begin: transcription of the syllabic signs into Latin alphabetic letters, normalization of the spelling, and finally translation. The problem is less complicated for the translation of alphabetic texts, but the potential for mistranslation is nonetheless apparent. Second, neither Mesopotamian nor biblical law represents a homogenous or uniform tradition, meaning the same terms may not always carry the same sense in every context. Third, the terminology found in all ancient Near Eastern law derives from the quotidian vocabulary of everyday life that only carries a technical legal meaning when interpreted contextually. The absence of legal doctrine and concepts in ancient Near Eastern law is exemplified by the lack of any term correlating to “slavery” or “marriage,” despite the indisputable evidence for the existence of those institutions.¹³

Due to the problems cited above, the early interpreters of ancient Near Eastern law had little recourse but to rely on the juridical categories that they were most familiar with. The legal tradition of Rome was the essential reference for most of the early 20th century interpreters of cuneiform law, both because many of them were trained as Roman legal historians and because the rich legal literature of Rome was the archetype for law in the ancient world.¹⁴ Interpreting ancient Near Eastern legal traditions through the lens of Roman law was not

¹³ See Sophie Démare-Lafont, “Avec quels mots peut-on penser le droit babylonien?,” in *Penser l'ancien droit privé. Regards croisés sur les méthodes des juristes (II)*, eds. X. Perrot and N. Laurent-Bonne (Paris: Librairie générale de droit et de jurisprudence, 2018), 89–100.

¹⁴ Some of these early legal historians trained in Romanist studies included: Paolo Koschaker (*Rechtsvergleichende Studien zur Gesetzgebung Hammurapis* [Leipzig: Veit, 1917]); Édouard Cuq (*Études sur le droit babylonien, les lois assyriennes et les lois hittites* [Paris: Paul Geuthner, 1929]); Mariano San Nicolò (*Beiträge zur Rechtsgeschichte im Reich der keilschriftlichen Rechtsquellen*, Institutet for sammenlignende kulturforskning: Serie A, Forelesninger 13 [Oslo: Aschehoug, 1931]); and Victor Korošec (*Hethitische Staatsverträge. Ein Beitrag zu ihrer juristischen Wertung*, Leipziger rechtswissenschaftliche Studien 60 [Leipzig: Weicher, 1931]).

without its perils, and such an enterprise could be criticized as an “Orientalist” approach.¹⁵ Reading ancient Near Eastern law in the formal terms of Rome’s legal culture did result in some cases of misinterpretation, but the work of these early scholars laid the foundations for the comparative method still used today. The heterogeneous nature of ancient Near Eastern law and its lack of a native technical vocabulary made a comparative approach necessary. The approach of comparative law categorizes evidence based on legal function, examining data not considered analogous under different terms. Comparative law emphasizes the meaning of a legal act or document within its cultural context but posits that unrelated societies may resolve legal problems in similar ways. By stressing the similarities and the differences of the evidence, scholars can read texts in new ways, but no comparandum need adhere to the form of another.

The Hebrew Bible occupies a unique position in the comparative approach to ancient Near Eastern law. As stated above, biblical law is a species of ancient Near Eastern law. Yet, biblical law is embedded within a compilation of sacred scripture: it is alluded to in prayers and prophetic texts; it is found within legal collections incorporated into a larger metanarrative of the Pentateuch; and it appears as the central plot point in numerous shorter narratives. The dominant theory of biblical law’s relationship to the legal traditions of the ancient Near East was developed by Raymond Westbrook, who proposed the concept of a “shared tradition.”¹⁶ For Westbrook, the shared tradition emerged in Mesopotamia in the third millennium BCE with the advent of writing in Sumer, but the tradition already represented a fully developed “system” of law. This tradition was the substructure that the diverse legal systems of the ancient Near East were based on, which explained similarities seen in many legal cultures across several millennia. The general parameters of Westbrook’s theory – that biblical and Near Eastern law draw from the same stock of legal vocabulary and can reflect similar legal strategies – are convincing, but it nonetheless requires some nuance. First, Westbrook asserted that the shared tradition represented a fixed “common law” found throughout the Near East, and therefore never experienced legal innovation or evolution. Yet, earlier debates and evidence for

¹⁵ Edward Saïd, *Orientalism* (New York: Penguin, 2003), 20–21. Of particular relevance for early scholarship on ancient Near Eastern law is Saïd’s discussion of “exteriority.” The premise of exteriority describes the endeavor to render the mysteries of the Orient plain and understandable for the West, through the terms laid out by Western scholars and audiences.

¹⁶ See Raymond Westbrook, *Property and the Family in Biblical Law* (Sheffield: JSOT, 1991), 11–12; “Introduction: The Character of Ancient Near Eastern Law,” *HANEL*, 2: 1–92; Bruce Wells, “Introduction: The Idea of a Shared Tradition,” in *Law from the Tigris to the Tiber: The Writings of Raymond Westbrook*, eds. Bruce Wells and F. Rachel Magdalene, 2 vols. (Winona Lake, Eisenbrauns, 2009), 1:xi–xx.

innovation within the Near Eastern law collections challenge this assertion.¹⁷ Second, the linguistic and cultural features shared by ancient Near Eastern societies – not to mention the training of biblical scholars in Near Eastern and Assyriological studies – makes Mesopotamian and Syrian legal traditions the most convenient data set to compare with biblical law. However, there are numerous occasions where biblical law and non-Near Eastern legal cultures exhibit stronger parallels, as certain strategies used to resolve legal problems need not be a matter of shared cultural identity or direct exchange.

Despite the risk of anachronism in the comparative approach to legal history, the use of technical legal categories drawn from Roman and modern law opens the possibility of reading familiar biblical texts anew. Analyzing ancient sources through modern categories requires an explicit understanding of the historical and cultural context from which the term is drawn. However, the benefits of applying formal categories outweigh the risks. Most importantly, it allows specialists of different legal systems to discuss their material in technical terms and gain insight into the various strategies human communities use to resolve legal problems. As the historical horizons of legal history continue to expand, the literature of the ancient Near East and the Hebrew Bible have a great deal to contribute. Yet, to discuss the relevance of cuneiform and biblical law to the field of legal history, Assyriologists and biblical scholars need to engage the technical vocabulary employed by legal historians.

C. The Five “Legal Episodes” of the Pentateuch (Lev 24:10–23; Num 9:6–14; Num 15:32–36; Num 27:1–11; Num 36:1–12)

Five texts found within the Pentateuch describe legal cases that Yahweh adjudicates (Lev 24:10–23; Num 9:6–14; Num 15:32–36; Num 27:1–11; Num 36:1–12). These five cases represent the basis of this project, though relevant legal parallels from the ancient Near East and elsewhere illuminate the juridical significance of their content. Commentators have long identified these texts as a unique set due to their nearly identical descriptions of particular legal cases adjudicated by Israel’s national deity and their laconic style. Most important for the current study, however, these divinely adjudicated trials conclude not simply with verdicts for the particular cases but are opportunities to elaborate general statutes in a distinctive casuistic style. Like other examples of Near Eastern legal literature, these texts contain a concrete vision of law; they show an interest in the minute details of each individual case and the appropriate

¹⁷ See the contributions in Bernard Levinson (ed.), *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development*, JSOT 181 (Sheffield: Phoenix, 2006).

resolutions or sanctions to them. They do not elaborate on the abstract principles guiding Yahweh’s decision and they do not describe why these situations warranted the elaboration of general impersonal statutes. Despite their lack of abstract doctrine, in their concrete manner these texts show one means for developing law, and thus contribute to understanding how ancient authors believed new laws emerged.

The identification of Yahweh as a divine legislator is notable in the ancient Near East, though not without precedent.¹⁸ Nonetheless, Yahweh’s depiction as both national god of Israel and its legislative sovereign poses certain obstacles to a project of comparative law: to what extent does Yahweh’s divinity affect the creation of laws according biblical tradition? To demonstrate the significance of these texts to the broader questions faced by scholars of Near Eastern law, it is necessary to analyze them according to general legal categories used by contemporary legal historians. Thus, a major aspect of this analysis is to establish a legal typology of these texts and the figures described in them for the sake of an effective comparison to other legal cultures. There is of course the danger of anachronism when using technical legal categories unknown to ancient Near Eastern authors, but the lack of emic juridical terminology leaves the historian of ancient Near Eastern law with little recourse. However, this is not a detriment to ancient Near Eastern legal history; on the contrary, it enables historians of ancient Near Eastern law to engage with the legal institutions, acts, and concepts from any legal culture that may shed light onto the phenomena observed in biblical and cuneiform sources. Before subjecting these five biblical texts to a juridical analysis, it is necessary to introduce the content of each case as well as the reasons that previous commentators analyzed them together. The following outline includes some previous discussions of these texts and their place within the broader field of ancient Near Eastern law.

I. The Content of the Episodes

The five biblical texts at the center of this project are referred to as “legal episodes” in this chapter, to acknowledge that they describe succinct legal scenarios, in effect trial scenes, which are largely independent of their surrounding narratives. This general title will suffice before presenting a more precise juridical definition of these texts based on their legislative and procedural form in the next chapter. Each legal episode presents a unique situation or circumstance resolved through a judicial procedure, even though not all the matters addressed are legal ones in the strict sense of the word. For as much as these texts are similar, each one exhibits certain idiosyncrasies.

The first episode is called the case of the blasphemmer (Lev 24:10–23); it is the longest text among the five, the only one not found in the Book of Numbers,

¹⁸ See Steible, “Zu den Nahstellen,” 447–55.

and the only one incorporated into one of the three Pentateuchal legal collections – the Holiness Code (HC) (Lev 17–26).¹⁹ As the title suggests, it involves a man accused of “blaspheming” the name of Yahweh, an actionable offense that elicits a public trial. Even though the offense is committed against Yahweh, Near Eastern law consistently treats the crime of blasphemy as a criminal offense sanctioned by the public organs of justice, and not simply a religious wrongdoing. In this case, a half-Israelite and half-Egyptian man begins to fight (נצה) with another Israelite in the camp (v. 10).²⁰ During the course of this fight, the man of mixed heritage blasphemes (נקב/קלל) the name of Yahweh (v. 11), a grave crime that demands a penalty imposed by the public authorities. The witnesses to the crime (השמעים) bring (הביא) the perpetrator before this public judicial authority, embodied in the person of Moses, to suffer the penalty for his offense. Instead of imposing the sanction himself, however, Moses defers the case to Yahweh for his adjudication while the accused is imprisoned pending the divine verdict (ויניחהו במשמר לפרש להם על-פי יהוה) (v. 12). Yahweh condemns the accused to death (v. 14), commanding the “entire assembly” (כל-העדה) to stone the perpetrator outside of camp. Rather than describe the implementation of this verdict, however, the text includes an extended pericope on “talionic retribution” (vv. 17–21) for the crimes of homicide, injury, and property damage – issues seemingly unrelated to the crime of blasphemy. This pericope is framed by two references to the equal application of the law to the “sojourner” (גר) and the “native” (אזרח), a motif that belongs to a late Priestly stage of Pentateuchal redaction.²¹ Yahweh also takes the occasion of this case to elaborate a general, impersonal law governing the crime of blasphemy and its corresponding sanction for all future cases (vv. 15–16). The details of the case present a bewildering set of circumstances surrounding the act of blas-

¹⁹ The other two legal collections being the CC (Exodus 20:22–23:33) and the Deuteronomic Code (DC) (Deut 12–26). Recent scholarship has begun to seriously challenge the idea of a distinct Priestly legal collection called the HC that existed independent from other Priestly writings, especially the earlier sections of Leviticus. See Erhard Blum, *Studien zur Komposition des Pentateuch*, BZAW 189 (Berlin: de Gruyter, 1990), 321–22. By using the term “Holiness Code,” this study neither prescribes to any theory regarding the origins of that legal collection, nor does the analysis of the case of the blasphemer presuppose an independent Priestly legal collection. The term “Holiness Code” refers loosely to a mass of Priestly laws promulgated by Yahweh at Sinai, which in its final form is concluded by a kind of epilogue (Lev 26:3–46) promising rewards for obedience and punishments for disobedience.

²⁰ This is a rare case where the gentilic “Israelite” (ישראלית/ישראלי) is used to highlight the intermarriage between Israelites and non-Israelites.

²¹ Israel Knohl, *The Sanctuary of Silence: The Priestly Torah and the Holiness School* (Minneapolis, MN: Fortress Press, 1995), 21, 93, 121; Reinhard Achenbach, *Die Vollendung der Tora: Studien zur Redaktionsgeschichte des Numeribuches im Kontext von Hexateuch und Pentateuch*, BZAR 3 (Wiesbaden: Harrassowitz, 2003), 548–9, n. 58.

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