
GOD, JUSTICE, AND SOCIETY

ASPECTS OF LAW AND LEGALITY

IN THE BIBLE

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CONTENTS

Acknowledgments xi

How to use this book xiii

Glossary xix

Abbreviations xxi

Time line xxiii

Introduction: The Horizon of Biblical Law xxv

Chapter 1: The Character of Biblical Law 1

I. Top Ten Texts in Biblical Law 1

II. Conclusion 29

Chapter 2: A Deal With God 31

I. Deal or No Deal 31

II. The Divine Concordat 35

III. Close Encounters of the Divine Kind 40

IV. The Sinai Event 45

V. Mercy Etched in Stone 50

VI. Spiritual Counterfeit 54

VII. The Newness of the New? 56

VIII. Conclusion 64

Chapter 3: Beyond Sinai 67

I. Biblical Law and Natural Law 67

II. Continuity Between the Divine and Creation 69

III. Continuity Between the Created World and
Human Behavior 73

IV. Universal Knowledge of Certain Norms 76

V. Continuity Between Different Forms of Revelation 81

VI. Continuity Between Divine and Human Acts
of Judgment 84

VII. Rethinking Natural Law 92

VIII. Conclusion 100

Chapter 4: Justice as a Calling 103

I. Top Ten Ways of Pursuing Justice 103

II. Grassroots Justice 116

III. Divine and Human Justice 119

IV. Falls the Shadow 133

V. Judging in a Spiral 137

VI. Thinking Relationally about Justice 139

VII. Conclusion 144

- Chapter 5: Humanity and the Environment 145
 - I. Earth Under Threat 145
 - II. Earthing the Earthling 150
 - III. The Chosen Species 152
 - IV. Mother Earth 157
 - V. Judgments in Genesis 162
 - VI. New Laws for a New Earth 167
 - VII. Eco-Law 171
 - VIII. Conclusion 176

- Chapter 6: People and Land 179
 - I. Divine Ownership 179
 - II. Chosen People, Promised Land 182
 - III. People, Land, and Narrative 185
 - IV. Favored Sons, Rebellious Sons 190
 - V. “Restonomics” 197
 - VI. “Sabbath-Plus” 198
 - VII. Squaring the Sabbath 201
 - VIII. Developing Property 212
 - IX. Conclusion 218

- Chapter 7: Social Welfare 219
 - I. Freedom from Demands 219
 - II. A Welfare System or a Welfare Society? 222
 - III. The Debt Penalty 232
 - IV. Laws of Abundance 234
 - V. Social Welfare or Social Justice? 240
 - VI. The Sabbath Spectrum 242
 - VII. The Original “Third Way”? 247
 - VIII. Conclusion 252

- Chapter 8: Homicide and Vengeance 253
 - I. The Interpretation of Murder 253
 - II. How to Save a Life 265
 - III. First Blood 271
 - IV. “V” for Vendetta? 275
 - V. Conclusion 283

- Chapter 9: Theft and Burglary 285
 - I. Who’s the Thief? 286
 - II. To Catch a Thief 288
 - III. A Thief in the Night 299
 - IV. Payback 303
 - V. The Law of Theft in the Parable of Nathan 308
 - VI. Conclusion 316

- Chapter 10: Marriage and Divorce 317
- I. Family Circles 317
 - II. Scenes from a Marriage 319
 - III. Anything for Love? 324
 - IV. Wedding Lists 326
 - V. Dangerous Liaisons 329
 - VI. Breaking Up 336
 - VII. Deconstructing Marriage 340
 - VIII. Conclusion 345
- Chapter 11: Sexual Offenses 347
- I. The Good Sex Guide 348
 - II. The Decalogue Pattern in Leviticus 20 349
 - III. Who Punishes Whom? 356
 - IV. Sex, Harm, and Society 358
 - V. From Foreplay to Horseplay 361
 - VI. Sleep with Me 367
 - VII. Secrets and Lies 368
 - VIII. Sex in the City 373
 - IX. Consent *versus* Community 375
 - X. Conclusion 386
- Chapter 12: New Laws for a New Age 389
- I. In the Shadow of the Temple 389
 - II. Secrets from the Desert 390
 - III. Sleeping with the Enemy 395
 - IV. Another Brick in the Wall 397
 - V. Biblical Law at Qumran 403
 - VI. Law in the Hands Of Jesus 404
 - VII. Adultery—But Not As We Know It 411
 - VIII. Adulterers Cannot Benefit 416
 - IX. Conclusion 424
- Chapter 13: The Trials of Jesus 427
- I. Gospel Truth? 427
 - II. Dodging Bullets 430
 - III. The Stigmata of Jesus 431
 - IV. Moral Panics 438
 - V. Before the Sanhedrin 439
 - VI. Framing the Charges 441
 - VII. “Crucified Under Pontius Pilate” 447
 - VIII. “What Charges Do You Bring Against This Man?” 453
 - IX. Miscarriages of Justice Then and Now 456

X CONTENTS

X. The Silence of the Lamb 458

XI. Conclusion 463

Conclusion: Law in the Purpose of God 465

Bibliography 479

Index of Biblical Sources 505

General Index 527

INTRODUCTION: THE HORIZON OF BIBLICAL LAW

Biblical law is a truly remarkable body of law. This is partly because of the sheer length of its continuous history of transmission and interpretation. Although other legal materials are older than biblical law, such as the ancient Laws of King Ur-Nammu of Ur (*circa* 2100 BC), these have not had a continuous history of transmission and interpretation to the present day: on the contrary, they were forgotten until their chance rediscovery last century. By contrast, biblical law has a history of engagement that can be traced back more than two thousand years to the fall of the Temple in Jerusalem in the first century AD and even beyond. According to estimates by some conservative scholars, biblical law can be followed back another thousand years to the time of Israel's first kings and even to the late second millennium BC, which is the period traditionally associated with the giving of Torah to Moses.¹ Even this does not exhaust the potential history of biblical law because we should also take into account the customary law practiced by Israel's patriarchs (Abraham, Isaac, and Jacob) and their descendants. These practices are consistent with what we know of life in Egypt and the Levant in the early second millennium BC, regardless of when the materials in the form we have them now were actually written. This further extends the history of tradition of biblical law. Of course, there are scholarly debates about the age and historicity of these materials,² the interaction between oral tradition and written records,³ and the relationship between the various written sources and the final form of the biblical texts.⁴ Nevertheless, the fact remains that biblical law is unique among ancient legal systems for the length of its continuous history as an object of study.

A. Why study biblical law?

This continuity has, at the same time, given biblical law a claim to historical influence unmatched by any other legal system of antiquity. As far as the West is concerned, this influence is due largely to the spread of Christianity. Lord Denning averred that “the common law of England has been moulded for centuries by

1. *See* Time line (above).

2. *E.g.*, KENNETH A. KITCHEN, *ON THE RELIABILITY OF THE OLD TESTAMENT* (Grand Rapids: Eerdmans, 2003).

3. *E.g.*, SUSAN NIDITCH, *ORAL WORLD AND WRITTEN WORD: ORALITY AND LITERACY IN ANCIENT ISRAEL* (London: SPCK, 1997).

4. *E.g.*, JEAN-LOUIS SKA, *INTRODUCTION TO READING THE PENTATEUCH* (Winona Lake, In.: Eisenbrauns, 2006).

judges who have been brought up in the Christian faith.”⁵ English canon law drew substantially upon biblical law. Indeed, the application of biblical law to inheritance law prompted the nineteenth-century jurist Sir Frederick Pollock to call Numbers 27:1–11 “the earliest recorded case which is still of authority.”⁶ Some of the application of biblical law in English legal history is surprisingly specific. If we travelled back in time to AD 1540, we would discover King Henry VIII establishing seven cities of refuge based on the biblical model (e.g., Numbers 35:9–29), and if we travelled even further back to the ninth century AD and to the period of King Alfred the Great, we would find that codified English law starts off with the Ten Commandments. Likewise, the early Puritan settlers of New England self-consciously styled their new commonwealth after the pattern of biblical law (witness the *Order of the General Court of Massachusetts* 1636 and the *General Lawes of Plymouth Colony* 1658). This means that to study biblical law is to explore materials that have been of profound significance in giving shape and color, not only to English law and legal history, but also to Western civilization as a whole.⁷

Nor is the influence of biblical law limited to the past. Biblical law has a continuing and living influence in the world today (as distinct from some of the more universally shared moral sentiments such as prohibitions of murder and theft). This influence is felt to some degree not only in the lives of modern Jews around the world, and in the laws of the State of Israel, but even by many in the West who see themselves as “secular.” Biblical law continues to exert a hold over popular culture at a basic level, including the structure of the working week and the idea of a day of rest, the constraints placed upon political authority, the use of everyday language (such as references to a “scapegoat”), the idea of mercy, employee rights, and the special significance historically attached to marriage and the monogamous family unit. The word “covenant”, which is prominent in biblical law, used to be the standard word for a contract in English law and is still used in the law of property today. This is not to say that such language entered our culture exclusively through the Bible; nevertheless, there are deeply rooted biblical concepts that are well understood and used today. Justice Scalia, giving the dissenting judgement in a U.S. Supreme Court decision regarding the public display of the Ten Commandments, observed that the depiction of Moses with

5. LORD DENNING, *THE INFLUENCE OF RELIGION ON LAW* (Newport: Starling Press, 1989), 19. See also S. J. Bailey, *Hebrew Law and its influence on the Law of England*, *LAW Q. REV.* 47, 533–35 (1931); and D. S. DAVIES, *THE BIBLE IN ENGLISH LAW* (London: Jewish Historical Society of England, 1954).

6. HENRY SUMNER MAINE, *ANCIENT LAW*, with introduction and notes by Sir Frederick Pollock (London: John Murray, 1930), p. 23.

7. See generally HAROLD J. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* (Cambridge, Mass.: Harvard University Press, 1983); HAROLD J. BERMAN, *LAW AND REVOLUTION II: THE IMPACT OF THE PROTESTANT REFORMATIONS ON THE WESTERN LEGAL TRADITION* (Cambridge, Mass.: Harvard University Press, 2003), and GABRIEL SIVAN, *THE BIBLE AND CIVILIZATION* (Jerusalem: Keter, 1973).

the Ten Commandments in the U.S. Supreme Court building, and throughout Washington D.C., “testifies to the popular understanding that the Ten Commandments are a foundation of the rule of law, and a symbol of the role that religion played, and continues to play, in our system of government.”⁸ Biblical ideals also form the basis of grassroots movements; witness the recent Jubilee 2000 campaign (which, post-2000 is known as the Drop the Debt campaign). These instinctive cultural references show how much biblical law still anchors people today.

Finally, as these modern campaigns show, biblical law is also remarkable for its revolutionary breadth and depth of vision. It has the imaginative power to disturb the world. The language of biblical law, like that of the Hebrew Bible itself, is forged from “letters of fire. . . beaten out upon an anvil.”⁹ It “pour[s] out floods of anger, and utter[s] cries of rage against the abuses of the world, calling the four winds of heaven to the assault of the citadels of evil.”¹⁰ As the social commentator Will Hutton noted in a leading United Kingdom broadsheet in the context of the international Drop the Debt campaign: “Leviticus Chapter 25 [which is partly concerned with abolishing debt and reuniting people with the means of production] is a passage that makes *Das Kapital* look tame. . . it is no longer Morris, Keynes and Beveridge who inspire and change the world—it’s *Leviticus*”¹¹ (see further, Chapter 7).

B. Biblical law in the twenty-first century

In addition to these remarkable qualities—of staying power, relevance, and challenge—there are other good reasons for studying biblical law in the twenty-first century. As a result of its historical influence, biblical law is part of our cultural DNA. Tertiary-level students who study biblical law with no previous schooling in the subject find to their surprise that they are familiar with its texts, even though they may not remember reading them before. Biblical law bleeds into popular culture, like *Big Brother* and Michael Jackson. It is part of our background ambience, thanks to the Bible’s iconic status in Western civilization. At the same time, however, although biblical law is part of our cultural and legal identity, it is not always recognized as such. A great deal of modern law is an indirect engagement with biblical law (for example, the abolition of the English laws of blasphemy in 2008), but often it is so implicit that we are not aware of it. We have taken our understanding of biblical law for granted for so long that it

8. *McCreary County v. American Civil Liberties Union of Ky.*, 545 U.S. 844 (2005); <http://supreme.justia.com/us/545/03-1693/case.html>, accessed September 24, 2009.

9. Renan, cited in ABRAHAM I. KATSH, *THE BIBLICAL HERITAGE OF AMERICAN DEMOCRACY* (Ktav Publications, 1977), p. 49.

10. *Ibid.*

11. *The Jubilee line that works*, THE OBSERVER, October 3, 1999.

has become unfamiliar.¹² This is the immanence of biblical law: it is part of our culture—but it is alien. We do not understand how it is supposed to work. Biblical law is unfamiliar to us—yet it is also in our midst. This means that now is a good time to be studying biblical law. It is time to uncover the immanence of biblical law.

Studying biblical law also enables us to appreciate law from a theological point of view. This is important because law and theology “share common goals and face common problems. . . if, indeed, one may not view the two as ultimately the same endeavour.”¹³ Both are concerned with the mystery of our sense of obligation (why should I behave in such and such a way?), the need for a sense of purpose in the law, as well as questions of guilt, innocence, and judgment. Biblical law is an example—perhaps it is the supreme example—of how, as Philip Allott writes in a different context: “law is inevitably connected with our ideas about the ultimate things—our ultimate ideas about the natural world, and our ultimate ideas about humanity’s relationship to the supernatural and the spiritual.”¹⁴ Law is a “backstage pass” to theology. Indeed, to the extent that law always reflects ultimate concerns, “much of jurisprudence collapses into theology.”¹⁵ Biblical law shows how theological categories can be applied to law and legal phenomena, to the benefit of both. It is high time, therefore, to overcome the “intellectual provincialism”¹⁶ under which both law and theology have struggled.¹⁷

In particular, there is always a danger that the study of law becomes parochial and self-referential, partly because of the dominance of legal positivism in the

12. As Levinson remarks, in relation to the 2005 decisions of the U.S. Supreme Court regarding the display of the Ten Commandments in public places: “The back and forth [between the parties] . . . generated significant debate over the role of religion in contemporary society, but it produced very little intelligent dialogue about the legal texts in [t]he Bible itself.” (Bernard M. Levinson, *The first constitution: Rethinking the origins of rule of law and separation of powers in light of Deuteronomy*, CARDOZO L. REV. 27, 1853–1888 (2006), italics omitted).

13. Troy Harris-Abbott, *On law and theology*, AM. J. JURIS. 35, 105–27, 127 (1990).

14. Philip Allott, *The true function of law in the international community*, IND. J. GLOBAL LEG. STUDS. 5, 391–413, 398 (1998).

15. Harris-Abbott, *Law and theology*, p. 126.

16. *Ibid.*, 127. For a good example of this division in relation to the Hebrew Bible (Ezekiel) and philosophy (Kant), see BERNARD M. LEVINSON, *LEGAL REVISION AND RELIGIOUS RENEWAL IN ANCIENT ISRAEL* (Cambridge: Cambridge University Press, 2008), pp. 67–71.

17. In *The first constitution*, Levinson pleads for an “interdisciplinary dialogue” that would “provide an overdue corrective to the ideological and polarizing use of [t]he Bible in contemporary political debate and jurisprudence: a use that does justice neither to [t]he Bible nor to the history of law” (p. 1888; italics omitted).

twentieth century.¹⁸ Legal philosophy can become limited to its own narrow purview, isolated from everything that makes it interesting. As part of an attempt to counter this insularity, it is necessary to engage in what we could call “spiritual jurisprudence.” “Spiritual jurisprudence” can be defined in a preliminary way as the recognition that belief in God, in one form or another, is among the influences upon law and legal practice. (In the context of English law, an example might include the practice of “swearing upon the Bible” before giving testimony in an English court). Spiritual jurisprudence reflects the belief that the task of bringing order to society is ultimately a humble one because political and legal authorities are accountable to God for their decisions.

The language of spiritual jurisprudence can make us nervous because it juxtaposes “God” and “law.” However, this is because we have wrongly tended to assume that the only options for modern society are either secularism on the one hand (where God is purely a matter for consenting adults) or a “theo-tyranny” on the other (where religious authorities tell us what to do). The reality, however, is different. We have a legal system that is what it is because it is the product of a large number of influences, including biblical law.¹⁹ In this respect, biblical law does not function in relation to English law or U.S. law as an external or parallel body of law (cf. Islamic religious law or *sharia*). This is because, unlike *sharia* law, biblical law is nascent in the history of English law and so continues to be an influence on many citizens. It is simply unrealistic to suggest that we live in a wholly secular legal system. It follows, then, that understanding one of the traditions that has historically shaped modern law is a productive thing to do, regardless of whether we are personally committed to the biblical texts.

The study of biblical law is all the more important at a time when we are becoming increasingly aware that we cannot shut religion out of the public square. As a result, radical postmodern thinkers such as William Connolly have concluded that “the time of the secular *modus vivendi* is drawing to a close.”²⁰ An article in *The Economist* concludes with reference to the revelation of God to Moses, that “the twigs of the burning bush are still aflame with the fire of God.”²¹ Nor have politicians been successful in finding a dominant alternative discourse to the ethical language of the Bible, with the result that religious rhetoric has

18. Ronald Dworkin, *Thirty years on: Review of Jules Coleman The Practice of Principle*, HARV. L. REV. 115, 1655–87 (2002). Legal positivism is rooted in the belief that “law” in any given society is essentially a question of social fact or convention, and further, that there is no necessary connection between law and morality.

19. See, for example, Bernard M. Levinson, *The first constitution*.

20. WILLIAM E. CONNOLLY, *WHY I AM NOT A SECULARIST* (Minneapolis: University of Minnesota Press, 1999), p. 4.

21. *The battle of the books*, THE ECONOMIST, December 22, 2007, p. 79.

been an increasing feature of political discourse.²² Again, this means that the study of biblical law is relevant. Regardless of how we try to address the issues raised by religion and politics, we need to understand the nature of the material we are dealing with.

Our discussion of biblical law can be set within the broader context of legal pluralism, which acknowledges that there are competing accounts of the purposes of law and the derivations of these purposes. In understanding the nature of this pluralism and engaging with it, it is particularly important that those individuals and groups who are part of the biblical tradition understand how they should conceive of biblical law, including its purposes and functions. This is because churches and Christians, for example, have unfortunately misconstrued and misapplied biblical law. Mistakes have been made historically and continue to be made today. This means that among Christians, for example, there is a need for a better understanding and better adherence to this tradition in order to draw appropriately from it in the future. There is also a need for learning on the part of those in other religious traditions so they have an appreciation of what biblical law is seeking to achieve and how to engage with it. Effective pluralism requires that each group understands the other and the more this happens, the better the accommodation that society is likely to achieve. To this extent, the study of biblical law may help us to resolve some of the issues surrounding the place of faith in the public square.

C. The horizon of Torah

Another reason for studying biblical law is because it contributes to our understanding of law in general. Biblical law can be read as a case study that helps us to understand the nature of law and the different forms law can take within a tradition of legal pluralism.²³ One of the ways biblical law does this is by presenting us with an understanding of law that is wider than State law (see (1)–(7) below). We can see this by looking at the Hebrew word that has become synonymous with biblical law—Torah. If we look at this single word, we find that Torah can be seen as an expanding horizon, as follows:

- (1) Torah can be seen as the handing down of an individual legal precept or body of laws (e.g., Leviticus 26:46, where it appears in the plural form *torot*). On this narrow reading, the word Torah is almost interchangeable with the words “commandment” (*mitswah*) or “commandments” (*mitswot*). Sometimes the words are used in parallel (e.g., Exodus 24:12).

22. *The church may be struggling, but in politics its rhetoric is on the rise*, THE GUARDIAN, July 2, 2007.

23. E.g., WILLIAM L. TWINING, *GLOBALISATION AND LEGAL THEORY* (London: Butterworths, 2000).

Jewish tradition holds that the Torah consists of 613 commandments and prohibitions.

- (2) Torah can be seen more broadly, not simply as legal precepts that are applied in the course of legal disputes but also as the *outcome* of judicial decisions. These are the “instructions” (*hattorah*) given by the judges to the parties in a hard case (e.g., Deuteronomy 17:11).
- (3) Torah can be said to go beyond legal precepts and judicial decisions to be identified with a major literary work. For example, Torah is used in references to “this book of Teaching” (*hattorah hazzot*; e.g., Deuteronomy 28:61; JPS), which is usually taken to refer to the book of Deuteronomy.
- (4) Torah expands beyond this to encompass *all* of Moses’s teachings and instructions. For example, at the start of the book of Joshua, God instructs Joshua to “observe faithfully all the Teaching (*hattorah*) that My servant Moses enjoined upon you” (Joshua 1:7; JPS).
- (5) Torah goes beyond even this to become synonymous with the first five books of the Hebrew Bible (also known as the Pentateuch, from the Greek word *pentateuchos*, meaning “five volume” work). Here, Torah refers not just to law but to a whole host of other literary genres, including narrative, poetry, genealogical record, and so on. Jewish tradition formally divides the *Tanakh*, or Hebrew Bible, into *Torah* (commonly designated “The five books of Moses”), *Nevi'im* (the Prophets) and *Kethuvim* (the Writings).
- (6) Torah expands beyond even the Pentateuch to be equated with “the word of the LORD.” The most famous biblical laws are of course described as “the ten commandments (*haddebbharim*)” (Exodus 34:28), which is more accurately translated “the ten words” or “the ten utterances.”²⁴ There are synonymous parallels between the Hebrew words *Torah* and *dabhar*. For example, the prophet Isaiah pleads: “Hear the word of the LORD (*debhar-Adonai*). . . , Give ear to the teaching of our God (*torat Eloheynu*)” (Isaiah 1:10). Numbers 12:1–8 indicates that there is no tension between law and prophecy: indeed, Torah is seen to be “the highest form of prophecy.”²⁵ The interdependency of Torah and prophecy is captured in references to “the Teaching (*hattorah*) that I [God] commanded your fathers and that I transmitted to you through My servants the prophets (*hannebhi'im*)” (2 Kings 17:13; JPS). Torah needs prophets to deliver God’s message, but equally the prophetic message is based upon Torah. For this reason,

24. See also Exodus 20:2–17 and Deuteronomy 5:6–21, and generally, Chapter 2.

25. S. David Sperling, *The Law and the Prophet*, in *Jews, Christians and the Theology of the Hebrew Scriptures* (Alice Ogden Bellis & Joel S. Kaminsky eds.; Atlanta: Society of Biblical Literature, 2000), pp 123–36, 131.

the phrase “the law and the prophets” (e.g., Matthew 5:17) is used by Jesus as a form of shorthand for the Hebrew Scriptures as a whole.

- (7) The most expansive horizon of all sees Torah as something that goes beyond prophecy and “the word of the LORD” to link up with “all divine revelation as the guide to life.”²⁶ This is the sense in which Torah is used in the Psalms. In Psalm 119, particularly (the longest in the Psalter), “the meaning of Torah is all-embracing; it refers to God’s entire revelation.”²⁷ Elsewhere, too, Torah is associated with God’s “paths” (Isaiah 2:3). Here, Torah becomes indistinguishable from “wisdom” (*hokhmah*) because both are ultimately concerned with “how to live life well” (e.g., “The teaching of the wise (*torat hakham*) is a fountain of life. . .”; Proverbs 13:14). Both Torah and wisdom are written into the structure of the physical universe and the reality of all that is (Psalm 19; Proverbs 8:22ff).

Seeing Torah as an expanding horizon has several implications for our study of biblical law. It shows us that Torah is capable of a range of different meanings in the Bible. Nor do we have to choose one over the other: they are all necessarily present in everything that Torah is. Torah is legal precept. Torah is judicial decision. Torah is instruction. Torah is the fusion of law and narrative. Torah is prophecy. And so on. Torah is an accumulated phenomenon.²⁸ In fact, it would be fair to describe Torah, essentially, as an integration of all these things.

D. What is biblical law?

One of the implications of this is that if the word Torah—which is usually translated “law” in most Bible translations—is such a complex entity, then it follows that there can be no simple answer to the question: what is biblical law? Biblical law, like Torah, can be found at all sorts of different levels, including: individual legal precepts, legal collections, judicial decisions, wisdom, and so on. To keep things simple, though, we should remind ourselves that Torah has the basic meaning of instruction and teaching. This is something which characterizes other biblical genres as well, including biblical narratives and the wisdom literature, as well as the legal collections themselves. Accordingly—and because lawyers are frequently lost without a definition of some sort and subject to what follows in the rest of the book—we could characterize biblical law as *an integration of different instructional genres of the Bible which together express a vision of society ultimately answerable to God*. This is a broad and flexible definition which reflects the expansive meaning that is given to Torah in the Bible as well as its

26. García López, *Tôrâ*, in THEOLOGICAL DICTIONARY OF THE OLD TESTAMENT (G. Johannes Botterweck, Helmer Ringgren & Heinz-Josef Fabry eds.; David E. Green trans.; Grand Rapids, Mich.: Eerdmans, 2007), vol. XV, pp. 609–44, 628.

27. López, *Tôrâ*, p. 631.

28. Cf. Allott, *True function of law*, on the nature of law.

multiple literary genres. To speak of biblical law in relation to the many different facets of Torah is to begin to acknowledge something of its power and complexity as a legal phenomenon.

It is precisely because Torah and biblical law is an integration of many different kinds of legal phenomena and literary genres that handling biblical law is rather like grappling with a Rubik's cube. Biblical law has various interconnected sides, all of which have to be tackled simultaneously and held together. This means that our study of biblical law cannot be neatly restricted to what are sometimes termed the "biblical legal collections," such as the Covenant Code (Exodus 20:22/MT 20:19–23:33). Even a distinct literary unit such as this is fully integrated with its surrounding narrative. The fact that biblical law can be said to operate on a number of different levels means that we have to engage with a broad range of texts, genres and materials to get a rounded sense of what biblical law is and how it works. This means that, in addition to individual legal precepts and bodies of law, this book will also draw upon customary social practices (e.g. rules about inheritance; Numbers 27:3–4) and ad hoc judicial decisions (e.g., the case of the blasphemer; Leviticus 24:10–23), as well as juridical parables (e.g., Nathan's parable; 2 Samuel 12:1–14). We will also draw, where appropriate, on biblical narratives (e.g. the primeval history, Genesis 1–11), prophetic oracles (e.g., Amos 1–2), including the prophetic use of legal metaphors (e.g., Hosea 2:16 [MT 2:18]) and Wisdom texts (especially *Proverbs*).

This means that when we encounter the phrase "biblical law" in this book, we should not think simply of the Pentateuchal regulations that cover the A to Z of biblical Israel, from the high priest Aaron's vestments (Exodus 28:3–39) to the daughters of Zelophehad (Numbers 27:1–11). We should also be thinking of individual judicial decisions such as Moses's judgement in the case of the Sabbath breaker (Numbers 15:32–36)²⁹ and David's ruling in the case of the widow of Tekoa (2 Samuel 14:1–24). Likewise, we should keep in mind the general hortatory teaching found in Deuteronomy as well as the incubation of wisdom, in a domestic setting, between parents and children (e.g., Deuteronomy 6:6–7 and Proverbs 1:8–9). Nor should we forget the epic stories that speak of God's just interventions in history (such as the story of the Exodus³⁰) as well as many, smaller, narratives that speak of the application of particular norms to individuals and society (e.g., the Naboth story in 1 Kings 21 and the book of Ruth). These are all different ways in which the biblical materials reflect upon the order and regulation of society, and so they are necessarily part of what it means to study biblical law.

29. See Jonathan Burnside, *What shall we do with the Sabbath-gatherer? A narrative approach to a "hard case" in biblical law (Numbers 15:32–36)*, *Vetus Testamentum* 60, 45–62 (2010).

30. See Jonathan Burnside, *Exodus and Asylum: Uncovering the Relationship between Biblical Law and Narrative*, *J. Stud. Old Testament* 34, 243–266 (2010).

The study of biblical law thus potentially covers a great deal of biblical material although, for reasons set out elsewhere, this book will only concentrate on particular subject areas (see “How to use this book”). It also means we should not try to make any sharp distinctions between what counts as “law” on the one hand and “ethical judgments” on the other. Nor should we try to detach biblical law from narrative or from theological considerations. Indeed, there has been a healthy tendency in recent years *not* to isolate the pentateuchal laws from the rest of biblical literature (including narrative and wisdom).³¹

The study of biblical law should also be careful to include the administration of law in biblical Israel (what we would today call a legal system). This is obviously an important aspect of the internal order and regulation of biblical society and includes such matters as the appointment of judges (see generally Chapter 4) as well as the role of quasi-judicial persons (such as the “avenger of blood”) and social institutions (such as the “cities of refuge”; see generally Chapter 8). This raises the general question of whether there were ever contradictions between what the biblical authors believed the law should be and what the law actually was in Israelite society. While it is reasonable to presume that the biblical texts provide evidence of the social reality of biblical Israel it is, at the same time, plausible to suggest that there is some disjuncture between social reality and biblical ideology. This is all the more likely, given that the biblical texts themselves describe biblical Israel as a society that was, right from the start, pluralistic in its attitudes and beliefs (e.g., the story of the golden calf in Exodus 32). Indeed, the prophets frequently denounce Israel for her failure to abide in God’s covenant, presupposing a lack of compliance on a national scale. For this reason, it is fair to draw a distinction between “biblical law” (understood as a general ideology) and the “law of biblical society” (understood as what was actually practiced).³²

A further question is whether biblical law, understood as a general ideology, was ever *meant* to be applied in practice. To put it another way, was “best practice” ever intended to be “common practice”? Some scholars take the view that the biblical laws were in some way utopian, or idealized, retrojections from a later era. Our position in this book is that although biblical law provides only a partial view of the norms of biblical Israel, they are nevertheless a primary source for reconstructing the ideals and practices of that society. The texts are literary constructions that connect, to a greater or lesser extent, to the law as actually practiced.³³ So, in my view, it goes too far to claim that the biblical laws were

31. See, for example, GORDON WENHAM, *STORY AS TORAH: READING THE OLD TESTAMENT ETHICALLY* (Edinburgh: T & T Clark, 2000).

32. Bernard Jackson, *The ceremonial and the judicial: Biblical law as sign and symbol*, J. STUD. OLD TESTAMENT 30, 25–50, 29 (1984).

33. Bernard Jackson, *Reflections on Biblical Criminal Law*, J. OF JEWISH STUDS. 24, 29–37, 29 (1973).

purely literary creations. For example, some have argued that the Jubilee provisions in Leviticus 25 were merely stated ideals that were never intended to be put into practice,³⁴ although, as we will see in Chapter 8, this view is discounted by other scholars.³⁵ Yet, although debates about the historicity of the particular laws and legal procedures are important, as are the competing theories regarding the provenance and interrelationships of the biblical legal collections, such issues are beyond the scope of this book. It aims to present the biblical material from the standpoint of the completed canon, without consideration of its history or theories as to its composition or historical development. This is because the world of biblical law is one that we access today by means of the finished canon, and so the literary choices that have been made in the final editing of the text are an important aspect of how we make sense of biblical law. Moreover, as noted above (see “How to use this book”), there is a parallel between a canonical reading and the traditional doctrinal lawyer’s handling of a modern legal system’s sources (although the practical and justificatory reasons for reading law doctrinally are not necessarily the same as the reasons for reading Scripture canonically). As a result, a canonical approach is compatible with the overall goal of this book, which is to explore aspects of law and legality from the perspective of a modern lawyer. Although not all lawyers approach law canonically (for example, sociologists and anthropologists of law), there is an affinity between doctrinal law and a canonical approach. Both work with the finished product and seek to make sense of it as a body of normative materials (that is, as materials claiming authority). Indeed, belief in the consistent and hierarchical normative character of legal doctrine can be said to be the central, or natural, mindset of the lawyer. This is not necessarily to presuppose harmony between all the materials in all respects; however, it does presuppose that biblical law constitutes a coherent body of jurisprudence that makes sense from the standpoint of the final editors at the end of the redaction process. Moreover, it is this finished product which has been authoritative in both Judaism and Christianity—and has had the influence on Western culture and English law that we noted earlier in this chapter.

E. Law and order

The horizon of Torah outlined above, and the correspondingly broad definition that has been given to biblical law might seem rather expansive, especially when compared to the ways in which we normally tend to think about law. Indeed, to some, it might only heighten the difference between ideas of law found in the Bible and popular “modern” ideas of law which see law, in simple terms, as a coercive instrument of the State. However, if we reflect for a moment on the

34. E.g., Karl Elliger, *Leviticus*, HANDBUCH ZUM ALTEN TESTAMENT 4 (Tübingen: Mohr, 1966).

35. E.g., Jacob Milgrom, *Leviticus 23-27*, Anchor Bible Commentary (New York: Doubleday, 2001), p. 2251.

nature of law as it has been understood in Western legal philosophy, we do in fact find that law has been understood in similarly broad terms. Even a very brief survey of Western legal philosophy shows that law, like Torah, can be seen as an expanding mental horizon.³⁶ Of course, the transitions from a narrow view of law toward a more expansive view of law do not map exactly onto the expanding horizon of Torah presented above, and so, as we look at each of these ideas of law, the steps will be different. The point, however, is that even in Western legal thought, there are different ideas about law that require us to see it as an accumulated phenomenon of great complexity, and as something that encompasses, but which also goes beyond, national laws. This means that although a biblical understanding of law is very different from a Western philosophical understanding, there is also a sense in which biblical law is familiar because the understanding of law in the Bible has a similar complexity in treatment to modern ideas about the meaning of law, as follows.

On a narrow reading of law, law can be seen as a closed system, isolated from social and moral considerations. This is the “law as law” view,³⁷ classically expressed by Austin.³⁸ Law is a form of command whose validity is derived from social facts—chiefly, the fact of sovereign power and the fact of habitual obedience on the part of most of the citizens.

A broader view sees law not simply as a self-contained mechanical exercise but instead as a particular subsystem within society that is connected to other social systems (such as politics and economics). Law is seen as “a value-processing system”³⁹ which processes the values of society into various forms, depending on what society seeks to become. This means that “[l]aw is a purposive social phenomenon like any other.”⁴⁰ Here, the meaning of law is bound up with the character and goals of society itself. For a legal theorist such as Dworkin,⁴¹ the purpose of law is to enable society to become a “genuine” community, in accordance with a deep conception of equality.

Broadening the horizon still further, law can be seen not just as one social system among others but as something that takes in society as a whole. This is the “law as society” view. “Law and society are coterminous,”⁴² viz., the meaning of law is found in the social conditions that produce law and legal ideas.

36. PHILIP ALLOTT, *THE HEALTH OF NATIONS* (Cambridge: Cambridge University Press, 2002), pp. 45–56.

37. *Ibid.*, 56.

38. JOHN AUSTIN, *THE PROVINCE OF JURISPRUDENCE DETERMINED*, *CAMBRIDGE TEXTS IN THE HISTORY OF POLITICAL THOUGHT* (Cambridge: Cambridge University Press, 1832/1995).

39. Allott, *True function of law*, p. 396.

40. ALLOTT, *HEALTH OF NATIONS*, p. 49.

41. RONALD DWORKIN, *LAW'S EMPIRE* (Oxford: Hart, 1986), p. 96.

42. Allott, *True function of law*, p. 397.

For Marx,⁴³ law is part of the superstructure of material reality and is ultimately determined by material forces of production.

A yet wider view sees law as something that transcends the laws of a given society to encompass the order of all societies in all times and all places. This is the “law beyond society”⁴⁴ view. It is the traditional haunt of natural lawyers who see the role of law as being to reconcile, by means of reason, certain widely held assumptions about human existence, with some conception of what constitutes a “good” and worthwhile life for human beings. Classic expressions of this can be found in Roman,⁴⁵ medieval,⁴⁶ and modern times.⁴⁷

Finally, the most expansive horizon of all extends the meaning of law to the ultimate degree by seeing law as part of the hidden order of the universe. This is the “law as universal order” view.⁴⁸ The unity and order of everything is interconnected, and what is seen as real is simply the shadow of a higher reality. This hidden reality is part of a universal order which goes all the way up to meet with God (whether understood in philosophical or theological terms), who is the ultimate unity of everything. This is classically expressed by Plato,⁴⁹ who seems to have believed that what we call “justice” and the “good” are manifestations of Justice and the Good which are the universal forms, or ideas, of “justice” and the “good.” From this perspective, law and society—along with everything else—is on the march back to God.

The point of this brief overview is to show that there is a great breadth of ideas, even in Western philosophy, regarding the nature of law. This ranges from the particularity of legal positivism to the universality of Platonism and all stops in between. Law (like Torah) is an accumulated phenomenon. And all of these different ideas are necessarily present in all we think and do and in all that the law is, just as the different facets of Torah are necessarily present in everything that Torah is.

So although the breadth of biblical law might seem strange to us, ultimately it is not unfamiliar because modern debates about the nature of law are similar to the different ways we can think about Torah. The difference is that nowadays

43. KARL MARX, PREFACE AND INTRODUCTION TO A CONTRIBUTION TO THE CRITIQUE OF POLITICAL ECONOMY (Peking: Foreign Languages Press, 1859/1976).

44. ALLOTT, *HEALTH OF NATIONS*, p. 56.

45. E.g., MARCUS TULLIUS CICERO, *DE RE PUBLICA: SELECTIONS*, CAMBRIDGE GREEK & LATIN CLASSICS (Cambridge: Cambridge University Press, 1995).

46. E.g., SAINT THOMAS AQUINAS, *SUMMA THEOLOGIAE: A CONCISE TRANSLATION*, (Timothy McDermott ed.; London: Eyre and Spottiswoode, 1989).

47. E.g., JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (Oxford: Clarendon Press, 2001).

48. *Ibid.*

49. PLATO, *THE REPUBLIC*, edited by G.R.F. Ferrari, translated by Tom Griffith, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 2000).

we tend to shunt ideas about law being anything other than, say, a system of rules, or a basis for punishment into a general sociology of law, or else we put such ideas at the back of our minds and fail to acknowledge how complex law is.

To sum up, we find that law is capable of a broad meaning, both in the biblical materials and in Western legal philosophy. Consequently, it is not surprising that this book takes a broad approach both to the meaning of biblical law and to understanding law in general.

F. Biblical law—and modern lawyers

Finally, biblical law is an important field of study, especially for modern lawyers and law students. We live in a neophilic culture, which means that we value what is new and automatically assume—correctly—that the latest iPod is better than the previous version. In the same vein, we naturally assume that subjects such as medicine and the natural sciences are far more sophisticated than they were three or four thousand years ago. Unfortunately, the same reasoning does not apply when carried over to other fields of human endeavor, such as law. We cannot assume that “new law” is always “best,” that antiquity is a disqualification when it comes to legal reasoning, and that the past has nothing to do with today. The reverse, in fact, is as likely to be true. We find in biblical rules and judgments a level of insight that has rarely, if ever, been surpassed. Nor do we find in any other legal system a more positive vision for humanity and the world than that found in the biblical legal collections. Neither should we underestimate the intellectual or the literary powers of people in biblical society. The student of biblical law who explores the texts in detail finds that they are sound, wise, and practical. Just as in Dworkin’s theory of liberal jurisprudence, we find *Law’s Empire*⁵⁰; so in biblical jurisprudence, we encounter what we can call “Law’s Splendor.”

The study of biblical law is also a chance to study the law of a society with very different values and assumptions. This forces the reader to question the “naturalness” and the “normality” of what appears to be the social consensus in our own society. We should not assume that what *is*, is inevitable—especially when what *is*, is wrong. Biblical law reminds us that the world can be other than it is—and that the actual is merely the possible.⁵¹ It is a way of stirring the imagination—and the indignation—of law students. For this reason, biblical law should be at the heart of legal study because “legal education must inculcate an understanding of the ideals, social role and importance of lawyers as well as the ethical rules they observe.”⁵²

50. RONALD DWORKIN, *LAW’S EMPIRE* (Oxford: Hart, 1986).

51. Cf. Philip Allott, *Kant or won’t: theory and moral responsibility* (The British International Studies Association Lecture, December 1995), *Review of International Studies* 23 (1997), 339–57, on the society-making capacities of law.

52. Andrew Boon, *Good lawyers, good people?*, *Westminster Law* 4, 3 (2002).

In addition, there is a tendency for most lawyers to study aspects of a given country's legal system, such as its criminal law and land law, as discrete subjects. They are all isolated from each other, and so the opportunities to make connections between them are rare. The study of biblical law is thus important because it enables us to see how different aspects of the legal order and regulation of society connect. We will see how, for example, biblical land law fits with a concern for the environment, which also coheres with our understanding of sexual offenses and the administration of justice. Studying biblical law also provides an opportunity to see how law develops over a long period of time and to reflect on aspects of its narrative and literary presentation. These are all things that rarely (if ever) happen in other legal subjects.

Furthermore, most law students who go into legal practice find that some of what they study in law will not be relevant. By contrast—and perhaps contrary to expectations—the study of biblical law will always be relevant, no matter what branch of the law students enter and even if they do not go into the law at all. This is because biblical law consciously presents itself as a journey into wisdom (see Chapter 1). The study of law should not be valued simply for its contribution to students' economic well-being. Law is far too important for that. Biblical law aims to teach all who encounter it the essentials of justice. If you allow it to do so, biblical law will make its mark upon you and leave you with a set of attitudes that will profoundly determine how you view life and the world.

Ultimately, the study of biblical law helps lawyers to become better barristers and solicitors. To excel in legal practice, you must possess, *inter alia*, the ability to find new creative possibilities for legal problems. Biblical law helps in this regard because it encourages us to think broadly about how law works. It opens the mind to new approaches and helps us to come up with new solutions. Lawyers, especially, need to study the things that stimulate the imagination and which open the door to a change of perceptions. Otherwise, the danger is that we end up with a very narrow view of what law is—law as a body of rules or commands that are enforced by punishment, and so on. The former Lord Chief Justice of England and Wales, Lord Woolf, rightly observed that the lawyer's task is to make complex value judgements between competing rights and values. "The facts of a dispute have to be carefully assessed against the conflicting social and human values before the law can be ascertained. This is a task which is fundamentally different to that involved in seeking to make sense of badly drafted contracts or legislation."⁵³ The study of biblical law helps in this regard because it encourages us to look beyond the traditional context of legal analysis and to consciously reflect on social and human values. It links the study of law up with

53. "The education the justice system requires today," 29th Lord Upjohn Lecture, Inns of Court School of Law, June 14, 2000.

the humanities at large. And it enables us to develop larger perspectives on law, legal institutions, and the vocation of lawyers themselves.

G. Conclusion

To summarize, there is a wide range of reasons for studying biblical law in the modern world. Any one of them would be enough to justify a new spirit of inquiry into biblical law. Nor is this effort in vain because if its track record is anything to go by, biblical law will continue to be a source of inspiration and debate when modern legal empires have long been forgotten.

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We begin our journey by exploring the general outlines of biblical law, starting with: its character, the theme of covenant, whether there is such a thing as “natural law” in the Bible, and humanity’s vocation to pursue justice. We will then look at a range of specific issues, including: the relationship between humanity and the environment, people and land, social welfare, homicide and vengeance, theft and burglary, marriage and divorce, and sexual offenses, before closing with an exploration of how different interpretive communities understood biblical law during the late Second Temple period.

Welcome to the study of biblical law.

Selected reading

Roger P. Booth, “Early Jewish law and university education,” *Denning Law Journal* 11 (1986), 29–39.

Bernard S. Jackson, “The teaching of Jewish Law in British universities,” *The Second Jewish Law Fellowship Lecture* (Yarnton Manor, Oxford: Oxford Centre for Hebrew and Jewish Studies, 1990).

Raymond Westbrook, “Biblical law,” in *An Introduction to the History and Sources of Jewish Law* N. S. Hecht, B. S. Jackson, S. M. Passamaneck, D. Piattelli, A. M. Rabello eds. (Oxford: Oxford University Press, 1996), pp. 1–17.

1. THE CHARACTER OF BIBLICAL LAW

Imagine that you are walking through a neighborhood, and you see the following graffiti, spray painted on a wall:

Insects Bite!

Squashed Insects

Don't Bite

Mad Mentals Rule

What would you make of it? Not a lot. But if you knew that the “Insects” were an urban gang and that the “Mad Mentals” were their rivals, then you would know what it meant.¹ The enmity between the two gangs is part of your “presupposition pool”: in other words, all the things you take for granted and which other people might not know.

Not surprisingly, there are many things which belong to the presupposition pool of biblical Israel that the author or compiler could assume made sense to his readers but which might not make sense to us. Biblical Israel is a world where a brother may be required to have intercourse with his dead brother's wife, where slaves have their ears pierced with a screwdriver on someone's doorpost, and where people gather a mysterious substance called “manna” and go into battle carrying the “Ark of the Covenant.” It all sounds weird to us, but it was everyday to them and did not need explaining by an author or editor. If we are to understand biblical law, then we need to immerse ourselves in its world. It is tempting to read biblical law as if it is like modern law, but this is a mistake because it does not take into account the presupposition pool of biblical Israel.

This chapter presents my “Top Ten” texts in biblical law, each of which looks at a different aspect of the presupposition pool of biblical law. These texts are in my Top Ten, not necessarily because they are the best known but because they illustrate ten important things about the character of biblical law, which we need to understand before we go any further. They give us ideas of how to read it well: because to read biblical law well, we have to read in sympathy with its character.

I. TOP TEN TEXTS IN BIBLICAL LAW

Reconstructing the social world of biblical Israel—the world in which biblical law made sense—is a tricky task. Our job is like that of a palaeontologist “struggling

1. GILLIAN BROWN & GEORGE YULE, *DISCOURSE ANALYSIS* (Cambridge: Cambridge University Press, 1983), 42–44.

to piece together a set of bones which a dinosaur had used all its life without even thinking about it.”² The rest of this chapter aims to set out the “bare bones” of biblical law and, without wishing to push the “skeleton” argument too far, identify its main points of articulation. Each text is chosen to reflect a particular characteristic of biblical law. We will see that biblical law is similar to—but also different from—ancient Near Eastern (ANE) law. It is also different from modern law. It is bound up with the story of God, Israel, and humanity, as well as being an integral part of the vocation of Israel. For these reasons, biblical law is didactic and incomplete and relies on rhetoric and literary art to convey its meaning. Biblical law also receives new expressions as God performs new acts of generosity for Israel. Finally, biblical law is an expression of something called “wisdom” and is relational in character. We shall look at each of these characteristics in turn, although, given the importance of the ancient Near Eastern context and the need to make comparisons between biblical and ANE law, we will have more to say about these initial subjects than some of the other texts.

A. Biblical law is similar to ancient Near Eastern law

When one man's ox hurts another's, so that it dies, then they shall sell the live ox and divide the price of it; and the dead beast also they shall divide.

—(Exodus 21:35; *God speaking*)

We are distanced from biblical law not only by time (several millennia, at least) but also by space (the Middle East rather than Mid-America). This creates an initial presumption that biblical law has more in common with ancient Near Eastern law than it does with modern law. This claim to the greater comparability of the ANE is, of course, only a relative one since there are important respects in which biblical law differs from the rest of the ANE (see below). The deep significance of the ANE means that it is vital to acknowledge—right at the start of our studies—some of the ways in which biblical law is similar to ANE law. This is important if we are to avoid projecting our own modern assumptions about how law works onto biblical law.

We cannot step into the TARDIS (Time and Relative Dimension in Space), or some other time machine, and travel back to Bronze Age Mesopotamia, where many of these legal collections originated. But each new archaeological discovery opens up a sort of “time corridor” by which we can travel back to the ancient world and allow the past to come to us. Over the past hundred years or so, archaeologists have made amazing discoveries of ANE legal collections. Some of the most important finds are summarized in Table 1.

2. N. T. WRIGHT, *THE NEW TESTAMENT AND THE PEOPLE OF GOD* (London: SPCK, 1993), 101.

TABLE 1 SUMMARY OF MAIN ANE LEGAL COLLECTIONS IN APPROXIMATE ORDER OF ANTIQUITY.³ THE REFERENCE TO “+ x” IN THE FINAL COLUMN INDICATES THAT THE KNOWN TEXTS OF THESE COLLECTIONS ARE INCOMPLETE AND THAT x PARAGRAPHS ARE LOST.

Name of legal collection	Estimated date of composition	Place of origin	Date and place of discovery	Language	No. of provisions
Laws of King Ur-Nammu (of Ur) (LU)	<i>circa</i> 2100 BC	Ur, southern Mesopotamia (= modern Tell el-Muqayyar, about 360 km southeast of Baghdad, Iraq)	Site of ancient city of Ur (= details adjacent)	Sumerian	37 + x(+ prologue and possibly epilogue)
Laws of King Lipit-Ishtar (of Isin) (LL)	<i>circa</i> 1930 BC	Isin, southern Mesopotamia (= modern Ishan Bakhriyyat, south of Baghdad, Iraq)	Site of ancient city of Nippur (= modern Tell Nuffar, southern Iraq)	Sumerian	38 + x(+ prologue and epilogue)
Laws of the kingdom of Eshnunna (LE)	1770 BC	Eshnunna, Mesopotamia (= modern Tell Asmar, 50 km northeast of Baghdad, Iraq)	1945-47; Tell Harmal, (= 10 km east of Baghdad, Iraq)	Sumerian	60(+ superscription)
Laws of King Hammurabi (LH)	<i>circa</i> 1750 BC	Babylon (= modern Al Hilla, about 80 km south of Baghdad, Iraq)	1901; Louvre stela found at site of ancient city of Susa(= modern plain of Susiana, Khuzestan, eastern Iran)	Akkadian	282(+ prologue and epilogue)
Hittite Laws(HL)	<i>circa</i> 1650–1500 BC	Hattusha, Anatolia (= modern Boğazköy, about 170 km east of Ankara, Turkey)	1906; royal archives, site of ancient city of Hattusha (= details adjacent)	Hittite	200
Middle Assyrian Laws (MAL)	<i>circa</i> 1076 BC	Assur, Assyria (= near Qalat Sharqat, about 280 km north of Baghdad, Iraq)	1903–1913; site of ancient city of Assur (= details adjacent)	Akkadian	123

3. See generally MARTHA T. ROTH, LAW COLLECTIONS FROM MESOPOTAMIA & ASIA MINOR (Atlanta: Scholars Press, 2nd ed. 1997).

We will draw on some of these comparative texts at certain points in this book.

In addition to these public legal documents, archaeologists have also uncovered a host of private legal arrangements. Private records cover every aspect of social life, from tax receipts to marriage contracts and property disputes, and so on. The scale of some of these finds is immense. For example, the discovery in 1933 of the ancient city of Mari (located in modern Syria, close to the border with Iraq) has revealed, to date, a vast archive of around 25,000 cuneiform tablets from around 1810–1750 BC. (Cuneiform tablets are tablets of clay which were impressed with a cuneiform script while they were damp and allowed to dry in the sun, forming a permanent record). There are so many private documents from the ANE in existence that a large number have yet to be translated and documented. Much more still remains to be discovered, even at Mari itself, which is still only partially excavated. Of course, our knowledge of the ANE is as hit and miss as the vagaries of time (in terms of what has survived) and the archaeologist's spade (in terms of what we have recovered). We don't know what it is we don't know. Unlike modern law, there are no new cases to be decided in the ancient Near East. However, there are potentially many new cases and legal texts to be discovered and translated.

Exodus 21:35, quoted above, is included in the Top Ten because it is an example of how biblical law is similar to ANE law and, in particular, to the Laws of Eshnunna (LE) §53, which states: "If an ox gores another ox and thus causes its death, the two ox-owners shall divide the value of the living ox and the carcass of the dead ox."⁴ It is said that the similarities between the two cases provide us with what seems to be, based on the available sources, "the closest textual parallel between provisions in the Bible and an early near eastern rule."⁵

Not all the similarities between biblical and ANE law are as close as this, however. Nevertheless, there are sufficient parallels to make this an important aspect of our understanding of biblical law, especially when viewed from a modern perspective. Biblical law does not exist in a cultural vacuum. It is one of the laws of the ancient Near East and needs to be understood in that context. "Generic conventions cross cultural boundaries in antiquity as well as today"⁶; consequently, we have to study biblical genres in the light of their ANE equivalents. Indeed, Deuteronomy 4:8, in which Moses rhetorically inquires of the

4. *Ibid.*, 67.

5. Reuven Yaron, *Biblical law: Prolegomena*, in *THE JEWISH LAW ANNUAL (SUPPLEMENT TWO): JEWISH LAW IN LEGAL HISTORY AND THE MODERN WORLD* (Bernard S. Jackson ed., Leiden: E.J. Brill, 1980), 27–44, 34.

6. Tremper Longman III, *Israelite genres in their Ancient Near Eastern Context*, in *THE CHANGING FACE OF FORM CRITICISM FOR THE TWENTY-FIRST CENTURY* (Marvin A. Sweeney & Ehud Ben Zvi eds., Grand Rapids: Eerdmans, 2003), 177–95, 177.

Israelites: “What great nation is there, that has statutes and ordinances [or “laws and rules”; JPS] so righteous as all this law [or “Teaching”; JPS] which I set before you this day?” might suggest that the author is aware of and responding to comparable claims made elsewhere: for example, in the Laws of Hammurabi.

Some of the principal similarities between biblical and ANE law can be summarized as follows:

- (1) Both have shared social norms that govern cases involving miscarriage (e.g., MAL Tablet A §50 and cf. Exodus 21:22–25; see Chapter 8); battery (e.g., HL §§1–4 and cf. Exodus 21:22–25; see Chapter 8); and the rape of a betrothed girl (e.g., HL §197 and cf. Deuteronomy 22:23–27; see Chapter 11). Westbrook⁷ claims that three-quarters of Covenant Code of Exodus 20:22/MT 20:19–23:33 can be traced back to standard legal problems found in the cuneiform texts.
- (2) Both draw on common social customs. For example, in both ANE and biblical law, the use of an unusual execution site reflects the nature of the offense (e.g., HL §§21, 25, 256; HL §166; and cf. Deuteronomy 22:13–21; see Chapter 11); likewise, both ANE and biblical law are familiar with the operation of “talion” or “vengeance” (e.g., LH §§196, 200, 201 and cf. Exodus 21:24–25; see Chapter 8).
- (3) Both use common legal forms, such as the “casuistic” form (if . . . [+ consequence]). Examples can be found throughout all the legal collections listed in Table 1 as well as in, for example, the Covenant Code. Both ANE and biblical law also make use of prologues at the head of legal collections (e.g., LU, LL, and LH and cf. Exodus 19:3–6 and Deuteronomy 1–4).
- (4) Both are characterized by a lack of abstract conceptions or legal definitions and instead by the use of case examples. Again, examples can be found throughout all the legal collections listed in Table 1 as well as in, for example, the Covenant Code.
- (5) Neither ANE nor biblical law is comprehensive in scope. Even the Laws of Hammurabi, with its 280-odd provisions, is not a comprehensive legal collection, nor does biblical law present itself as complete (see further below).
- (6) Both have a religious and theological aspect, including the belief that the deity has ultimate authority for law. The Hammurabi stela depicts Hammurabi, king of Babylon, standing before the sun god Shamash, who is also the Babylonian god of justice. This can be compared with the

7. Raymond Westbrook, *Biblical Law, in AN INTRODUCTION TO THE HISTORY AND SOURCES OF JEWISH LAW* (N.S. Hecht, B.S. Jackson, S.M. Passamaneck, D. Piattelli & A.M. Rabello eds., Oxford University Press 1996), 1–17, 7.

biblical presentation of Moses receiving Torah from the God of Israel at Mount Sinai in Exodus 20:18ff (see Chapter 2).

- (7) Both have examples of civil leaders who are responsible for propagating and administering the law (e.g., the role of Mesopotamian kings in proclaiming “freedom” and “liberation” and cf. the role of Moses in making similar proclamations in the context of the septennial and Jubilee years; see Chapter 7).

What are the implications of these parallels for the study of biblical law?

First, the similarities remind us that biblical law is part of a long-standing ANE legal tradition that developed throughout the second millennium BC (see Table 1, above). Until the re-emergence of this tradition, various claims were made to the uniqueness of biblical law, which went unchallenged due to the lack of any other information. Certain rules that previously were regarded as unique to biblical law have now turned out to represent more widespread Near Eastern practice. One example is the individualization of criminal liability, which appears in Deuteronomy 24:16 and which we now know is also found in an earlier Hittite text.⁸ The discovery of other ANE legal collections has finally provided a context in which we are better able to see biblical law as it really is. This is not to say that there are no respects in which biblical law is different from the ANE (see below); however, it does mean we are better able to evaluate any claims to difference and uniqueness.

Second, the parallels raise the question of the relationship between biblical and ANE law. The possibilities can be ranged along a continuum of literary dependence, ranging from complete dependence to no dependence at all. Some scholars claim direct literary dependence, viz., the biblical writers had a copy of certain ANE laws before them, in one form or another, when the biblical materials were written.⁹ David Wright goes so far as to claim that the Laws of Hammurabi were the “primary source”¹⁰ for the *Mishpatim* and specifically influenced the sequence of 14 laws in the Covenant Code. The argument in favor of direct literary dependence is at its strongest when dealing with texts such as Exodus 21:35 and LE §53. This is often regarded as the best case for literary dependence, given the similarity of language and grammatical structure. Yet claims to direct dependence are not straightforward, as its proponents recognize. For example, we have no evidence that LE was widely disseminated, and while an intermediate literary source could have provided the “missing link” between LH and the *Mishpatim*,

8. Reuven Yaron, *The Evolution of Biblical Law*, LA FORMAZIONE DEL DRITTO NEL VICINO ORIENTE ANTICO (1988), 76–108, 83.

9. Raymond Westbrook, *Biblical and Cuneiform Law Codes*, in *REVUE BIBLIQUE* 92 (1985), 247–64, 257.

10. David P. Wright, *The Laws of Hammurabi as a source for the covenant collection* (Exodus 20:23–23:19); *MAARAV* 10, (2003), 11–87.

we have no evidence of this to date. Even if there is direct dependence between LE and the *Mishpatim*, the adoption of LE is itself highly selective. We need to explain why the *Mishpatim* might copy one part of LE but not others. Other scholars claim an indirect literary relationship based on oral tradition, while others caution against any form of literary dependence.

There are several reasons why we might hesitate to place too much emphasis on direct or indirect literary influence. For one thing, all the ANE legal collections that have so far been recovered were found in parts of Mesopotamia and Anatolia (see Table 1, above). Each location is hundreds of miles from Canaan (that is, the region occupied by biblical Israel). Had they been found closer to Canaan and its environs, there would be a stronger claim to literary influence. Eichler¹¹ points to structural similarities between LE §§27–30 and LH §§128–136. This is understandable inasmuch as LE and LH both hailed from the same geographical area and were probably quite close in time (see Table 1). We should not have the same expectations of similarities when legal collections are more widely separated in time and space, as is the case with the *Mishpatim* and the Laws of Eshnunna.

In addition, it is likely that the wide circulation of “cuneiform culture” as a result of war, conquest, and diplomacy left the ANE with a broad cultural experience, including common legal customs that were applicable to similar circumstances in many regions. It may be that this is reflected in the different settings of surviving texts, making equivalent language on specific topics almost unavoidable, rather than “proof” copying of a text. This does not, however, exclude the possibility of a distinction between common customary origins and literary influence at the redactional stage: that is, the points at which the biblical texts were assembled and edited.

Third, the similarities between biblical and ANE law means that the latter can be used to generate hypotheses regarding the meaning of the former, especially when this is unclear. Such hypotheses need to be tested in the light of other data. A good example of the way in which ANE law can be used to fill in the background to biblical law is seen in the following juxtaposition between Exodus 21:2 and LH §117:

When you buy [or “acquire”] a Hebrew slave, he shall serve six years, and in the seventh he shall go out free, for nothing. (Exodus 21:2; *God speaking*)

If an obligation is outstanding against a man and he sells or gives into debt service his wife, his son, or his daughter, they shall perform service in the

11. B. L. Eichler, *Literary structure in the Laws of Eshnunna*, in *LANGUAGE, LITERATURE & HISTORY: PHILOGICAL AND HISTORICAL STUDIES PRESENTED TO ERICA REINER* (Francesca Rochberg-Halton ed., New Haven: American Oriental Society, 1987) 71–84, 82–84.

house of their buyer or of the one who holds them in debt service for three years; their release shall be secured in the fourth year. (LH §117)¹²

There are two main kinds of slavery in the ANE: (1) capture in war; and (2) debt slavery, where a person sold its services for a specific period of time in order to pay off a debt. “War captive” slaves would normally be foreigners, whereas “debt slaves” would normally be impoverished fellow countrymen. Although we do not know for certain the circumstances in which the slave was acquired in Exodus 21:2, LH §117 suggests that it was as a result of debt. This hypothesis is confirmed by Exodus 21:2 itself, which refers to “a Hebrew slave,” indicating that the subject is an indebted countryman.¹³ We know from other ANE sources that debt slavery itself could arise either at the time of the loan or later, as a result of agreement or unilateral action on the part of the creditor, known as “distrain.” This, in turn, might be part of the background to how the master “acquires” his slave in Exodus 21:2.¹⁴ Consequently, ANE law can be used to generate hypotheses and explain aspects of biblical law that cannot be explained from the law itself. Further examples will be discussed throughout this book.

B. Biblical law is different from ancient Near Eastern law

Keep [the laws] and do them; for that will be your wisdom and your understanding in the sight of the peoples, who, when they hear all these statutes, will say, “Surely this great nation is a wise and understanding people.” For what great nation is there that has a god so near to it as the LORD our God is to us, whenever we call upon him? And what great nation is there, that has statutes and ordinances [or “laws and rules”]; JPS] so righteous as all this law [or “Teaching”]; JPS] which I set before you this day?

—(Deuteronomy 4:6–8; Moses speaking)

We have seen that the similarities between ANE and biblical law can illuminate our understanding of biblical law. This is preferable to making presuppositions based on our own cultural context because of the increased distance of modern law from biblical law, when compared to ANE law. However, there are limits to the comparability of ANE and biblical law. This is why Deuteronomy 4:6–8, quoted above, is included in the Top Ten because it illustrates that biblical law saw itself as different from other ANE laws. Not surprisingly, there are a

12. ROTH, LAW COLLECTIONS, p. 103.

13. BERNARD S. JACKSON, WISDOM-LAWS: A STUDY OF THE MISHPATIM OF EXODUS 21:1–22:16 (Oxford: Oxford University Press, 2006), pp. 80-85.

14. Ibid.

number of important differences between biblical and ANE law, including the following:

- (1) Biblical law is presented as divine revelation. As Crüsemann notes, “the basic notion that Israelite law is direct divine utterance is not at all common in the ancient world.”¹⁵ This contrasts with, say, the Laws of Hammurabi in which the king, Hammurabi, presents his laws *to* the deity for approval, as opposed to receiving them *from* the deity, as in biblical law (see Chapter 2).
- (2) Following from (1), biblical law presents Moses as the mediator of Torah (see Chapter 2). This contrasts with the practice of Mesopotamian kings who simply commend themselves to deities and subjects alike (witness the prologues of Ur-Nammu, Lipit-Ishtar, and Hammurabi).
- (3) Biblical law differs from ANE law in its ideology and function. Biblical law envisages practical application: the priests are expected to teach Torah (e.g., Leviticus 10:10–11), judges are expected to follow them (Deuteronomy 16:18–20), kings are accountable for their enforcement (Deuteronomy 17:18–20; 2 Kings 23), and the prophets exhort their observance (Amos 8:4–8; Micah 2:1–2; Hosea 4:6). No comparable statements of ideology and function are found in other ANE legal collections. Indeed, Hammurabi’s practice of erecting a stela of his laws in public places seems to have had a predominantly monumental function.
- (4) Following on from (3) above, biblical law contains explicit endorsements of a didactic model (e.g., “The teaching of the LORD (*Torat Adonai*) is perfect, renewing life; the decrees of the LORD are enduring, making the simple wise (*mahkhimat*)” Psalm 19:8; JPS). This is not found in the extant ANE legal sources.
- (5) Biblical law omits a number of issues that are seen as important in ANE law (e.g., adoption and the problem of the “missing” or “absent” husband).¹⁶
- (6) Biblical law differs from ANE law in form as well as content. The laws of both the *Mishpatim* and Deuteronomy frequently use the second person masculine singular form of address (e.g., Exodus 21:2 and Deuteronomy 15:3), which emphasizes the individual’s responsibility to keep Torah. This is without parallel in ANE law, although it does occur in the ANE treaty tradition.¹⁷ In addition, biblical law is also different because of

15. FRANK CRÜSEMANN, *THE TORAH: THEOLOGY AND SOCIAL HISTORY OF OLD TESTAMENT LAW* (Edinburgh: T & T Clark, 1996), 15.

16. Yaron, *Evolution of Biblical Law*, p. 82.

17. J. Gordon McConville, *Singular Address in the Deuteronomic Law & the Politics of Legal Administration*, J. STUD. OLD TESTAMENT 97, 19–36 (2002).

its extensive use of the “motivation clause,” which supplies reasons for obeying Torah (e.g., Deuteronomy 5:15). The explanatory function of these clauses underlines the didactic character of biblical law (see further below). Moreover, biblical law differs from ANE law by having a large proportion of what are technically called “apodictic” laws. These include unconditional commands (e.g., “You shall/ shall not [do such and such] . . .”; see, for example, Exodus 20:4) and curses (“Cursed be anyone/be he who [does such and such] . . .”; see, for example, Deuteronomy 27:15–16). By contrast, there are few apodictic laws in the ANE (although see, for example, MAL A §40).

- (7) Biblical law differs from ANE law because of its literary context. The *Mishpatim* and Deuteronomy “are in a literary context too different from that of their Mesopotamian counterparts to allow any meaningful comparison.”¹⁸ Biblical law is part of a treaty between God and Israel, whilst the Laws of Hammurabi, for example, are representative of a different literary genre, namely the royal *apologia*. Hammurabi’s prologue and epilogue set the laws in the context of a “grand auto-panegyric” designed to bring the attention of the Babylonian god Shamash “to bear upon the deeds and accomplishments of the king.”¹⁹ This differs from the position of Moses, who makes no such claims for himself.

Consequently, although ANE law can generate hypotheses that may enhance our understanding of biblical law, we must beware of “parallelomania.”²⁰ There is value in comparative study, but it needs to be handled carefully. Responsible comparative work means understanding the relevant laws as best we can in their original cultural context—and this means taking account of differences as well as similarities.²¹ Ultimately, comparisons between biblical and ANE law can never be an exact science because there will always be gaps in our knowledge about literature and genres in the ANE. This is typical of the problems of trying to correlate the biblical materials with the findings of archaeology generally.²²

18. Westbrook, *Law codes*, p. 250.

19. SHALOM PAUL, *STUDIES IN THE BOOK OF THE COVENANT IN THE LIGHT OF CUNEIFORM AND BIBLICAL LAW, SUPPLEMENTS TO VETUS TESTAMENTUM 17* (Leiden: Brill, 1970), 23.

20. Longman, *Israelite genre*, p. 194.

21. Cf. Longman, *Israelite genres*.

22. E.g., Alan R. Millard, *The Bible B.C.: What can archaeology prove?*, in *ARCHAEOLOGY IN THE BIBLICAL WORLD* 1 (1991), 18–38.

C. Biblical law is not like modern law

If the thief is seized while tunnelling [through or under a wall for housebreaking] and he is beaten to death [by the householder], there is no bloodguilt in his case [that is, on the part of the householder]. If the sun has risen on him, there is bloodguilt in that case [on the part of the householder].

—(Exodus 22:2–3/MT 22:1–2; *God speaking*; JPS)

Biblical law is not only different from ANE law; it is also different, as we would expect, from modern law. The increased cultural, temporal, and geographical distance of modern law means that biblical law is removed even further from modern law than it is from ANE law. This distance does not undercut the contemporary relevance of biblical law noted in the Introduction. On the contrary, it is precisely because of the potential application of biblical law that we have to “mind the gap” as we step between the biblical and the modern world.

One of the obvious ways in which biblical law differs from modern law is its application to individual attitudes (e.g., Exodus 20:17/MT 20:14) and thoughts (e.g., Deuteronomy 29:18–19); areas which are regarded as beyond the purview of modern law.

Another, less obvious, way in which biblical law differs from modern law is in its form of legal interpretation. The cognitive structures that go into reading the text of biblical law are narrative, not semantic.²³ Modern scholarly assumptions on how to read biblical law are often based on the values of modern liberalism, particularly the “rule of law” (the belief that adjudication should be governed by laws and not by people). The dominant paradigm of “conventional meaning” today is “literal meaning,” which is closely tied, as its name suggests, to writing.²⁴ A literal or semantic reading sees the rule as covering all cases which may be subsumed under the meaning of its words. This often amounts to paraphrasing the legal rule and substituting one set of words with another.

However, there is another way of thinking about language and about legal rules, and this is to take a “narrative” approach. Narrative meaning consists of typical stories or images that are evoked by the use of words. Whereas a semantic interpretation asks: “What is the literal meaning of the words?,” a narrative approach asks: “What typical situations do the words of this rule evoke?,” or more straightforwardly, “What does it make you think of?” It is a picture-oriented or “imagistic” approach, rather than a literal one. Narrative meaning arises in the context of a group which shares the social knowledge necessary to

23. JACKSON, *WISDOM-LAWS*, pp. 24–25.

24. BERNARD S. JACKSON, *STUDIES IN THE SEMIOTICS OF BIBLICAL LAW*, JOURNAL FOR THE STUDY OF THE OLD TESTAMENT SUPPLEMENT SERIES 314 (Sheffield: Sheffield Academic Press, 2000), 14.

evoke those images without needing to “spell them out.”²⁵ (Social knowledge refers to our knowledge of social situations which is informed by our social and historical contexts and which we normally take for granted).

This distinction between literal and imagistic approaches is an important one in practice. Rules that are read literally cover all cases that may be included under its language. By contrast, rules that are understood as pictures apply only to the typical cases it makes you think of. We can take a simple example, such as the “eye for eye, tooth for tooth” formula in Exodus 21:24–25. One of the classical arguments against this rule (posed by Plato and others) was, “what happens if a one-eyed man puts out one of the eyes of a two-eyed man?” This objection assumes a literal reading; viz., it assumes that the rule applies whatever the circumstances of the parties. A literal application of the “eye for an eye” rule would mean that the offender’s eye must be taken, even though this means that he will be completely blind, whereas his victim was made only half-sighted.²⁶ An alternative approach, preferred by Bernard Jackson,²⁷ is to read Exodus 21.24–25 narratively. The typical offender is pictured as a two-eyed man, which means that the case of the one-eyed offender is far removed from the typical case. Under this picture-oriented approach, the further the real-life case is from the typical case, the less likely it is that the rule applies, and the more room there is for negotiation between the parties.²⁸ The question is no longer whether the dispute is “covered” by the literal meaning of the words of the rule but whether the dispute is sufficiently similar to the picture evoked by the rule to justify its use in order to resolve the problem. If it is sufficiently similar, it applies, even though it is not the literal meaning of the words.

Significantly, questions of relative similarity evoke intuitive judgements of justice to a greater degree than literal interpretations. “How similar . . .” questions are evaluative questions (“how justified is it to treat these cases as similar?”). This in itself suggests a more popular form of dispute resolution than is nowadays the case.²⁹ It also means that biblical law demanded a great deal of private and creative reflection (cf. Deuteronomy 6:6–9).

Exodus 22:2–3/MT 22:1–2—the case of the nocturnal thief—quoted above, is included in the Top Ten because it is a good example of the difference between semantic and narrative approaches to biblical law. If we take a modern semantic approach to this case, then the drafting of verses 2 and 3 seems odd and contradictory. The first part of the rule apparently gives carte blanche to the householder who kills an intruder at any time of day or night, while the second part of the rule

25. Bernard S. Jackson, *Law, wisdom and narrative*, in *NARRATIVITY IN BIBLICAL AND RELATED TEXTS* (G. J. Brooke & J. D. Kaestli eds., Leuven: Leuven University Press, 2000), 31–51, 45.

26. JACKSON, *STUDIES*, p. 285.

27. *Ibid.*, 286.

28. *Ibid.*, 75–82.

29. *Ibid.*, 82ff.

denies self-help if the break-in occurs during the day. However, the text makes perfect sense if we take a narrative approach and ask “what is the typical situation evoked by the words “tunnelling thief?” We know from elsewhere in the Bible that thieves typically tunnelled into other people’s houses at night: “The murderer rises in the dark, that he may kill the poor and needy; and in the night he is as a thief . . . In the dark they dig through houses . . .” (Job 24:14–16). In other words, it is clear from Job 24 that the typical situation evoked by the words in Exodus 22:2/MT 22:1 is one in which the thief tunnels at night. There is therefore no tension with the subsequent part of the rule which contrasts the legitimate action of the householder at night with the illegitimate action of the householder by day.³⁰

As we have seen, one of the implications of this approach is that the narrative image represents the core of the message. The further one departs from the typical case, the less sure we can be that the message is intended to apply or would be regarded as applicable by the audience³¹ (e.g., killing a thief who was breaking in at dusk would probably have been regarded as questionable and would have led to negotiations for compensation between the householder and the deceased thief’s family).

To sum up, the distinction between semantic and narrative readings of the law is all part of the presupposition pool of biblical law, and we will see a number of examples of narrative readings of biblical law throughout this book. B.L. Eichler argues that the Laws of Eshnunna and the Laws of Hammurabi make use of “polar cases with maximal variation,”³² viz. contrasting cases with extreme variations in circumstances. Such cases make sense because they, too, rely on narrative stereotypes, indicating that the process of reading the Bible narratively has comparative support from the ANE.

As the narrative reading of biblical law suggests, norms are frequently told as stories in the Bible. This has a number of knock-on effects which further distances biblical law from modern law. If we take, for the sake of argument, the law of primogeniture in Deuteronomy 21:15–17, we find that it is not expressed in general terms, as we would expect in modern law (e.g., “The first born shall have a double portion”³³). Instead, it is framed in narrative terms (i.e., “If a man has two wives, the one loved and the other disliked, . . . and if the first-born son is hers that is disliked”; Deuteronomy 21:15). This presentation informs our understanding of the law itself: you should not discriminate against a firstborn just because you prefer another son’s mother. The formulation of Deuteronomy 21:15–17 recalls the patriarchal narratives in which Joseph—son of Jacob’s

30. Ibid., 75–81.

31. Bernard S. Jackson, *Modelling biblical law: The covenant code*, CHI.-KENT L REV. 70, 1745–1827, 1767–68 (1995).

32. B. L. Eichler, *Literary structure in the Laws of Eshnunna*, in LANGUAGE, LITERATURE & HISTORY: PHILOLOGICAL & HISTORICAL STUDIES PRESENTED TO ERICA REINER (Francesca Rochberg-Halton ed., New Haven: American Oriental Society 1987), 71–84, 72.

33. Jackson, *Law, wisdom and narrative*, p. 47.

preferred wife Rachel—receives the birthright over Reuben—the eldest but also the son of Jacob’s unloved wife Leah. This is despite the fact that Jacob does not act for the reason specified in Deuteronomy 21:15–17 (partiality) but because Jacob wanted to punish Reuben for sleeping with Jacob’s concubine (1 Chronicles 5:1).³⁴

This is consistent with the general approach in biblical law (and also ANE law) which does not present us with “a systematic ethic but, rather, conveys its teaching through the particular and the specific.”³⁵ Biblical law talks about concrete things—goring oxen instead of “tort” or “liability for damage caused by animals.” As in modern Africa, abstract nouns are expressed in concrete terms; thus, instead of a concern for society, we have a concern for land (see Chapter 6), and when biblical law speaks of power, it refers to the hand (see Chapter 7).

To conclude, biblical law is different from modern law, and this is due in large measure to the way in which it is shaped by narrative. This is the focus of the next subsection.

D. Biblical law is bound up with the story of God’s involvement with humanity

*You shall not oppress a stranger; you know the heart of a stranger,
for you were strangers in the land of Egypt.*
—(Exodus 23:9; God speaking)

One of the most striking aspects of how law is presented in the Hebrew Bible is its integration with narrative, by which we mean the specific biblical story of God’s involvement with humanity. It is crucial to recognize that biblical law is not presented as “codified law” but is integrated “at every stage” into the wider story of God’s purposes for Israel and, beyond that, for the world. For example, the Sinai narrative (see Chapter 2) switches between story (e.g., Exodus 19:1–25); law (Exodus 20:1–17); story (Exodus 20:18–21), law (Exodus 20:22–23:33), and back to story again (Exodus 24:1–18). What is true of the Sinai narrative (Exodus 19–24) is true of the Pentateuch as a whole. All of the Pentateuch’s legal collections are firmly embedded in their own narrative contexts. This means that to be good readers of biblical law, we should not split what authors and compilers have joined together. Nor should we imagine we have arrived at the “true” meaning of biblical law when we have “boiled off” the narrative to a set of rules or underlying principles. There is increasing recognition of the importance of narrative in human sense construction; indeed “the brains of human beings seem built to process stories better than other forms of input.”³⁶ This contrasts with modern

34. *Ibid.*, 47–48; cf. CALUM CARMICHAEL, *WOMEN, LAW & THE GENESIS TRADITIONS* (Edinburgh: Edinburgh University Press, 1979), 31–32.

35. P. J. Harland, *Review of John Barton Ethics and the Old Testament*, *VETUS TESTAMENTUM* 49 (1999), 135–36.

36. Thomas B. Newman, *The power of stories over statistics*, *BRIT. MEDICAL J.* 327, 1424–27, 1426 (2003).

law which, although it makes use of narrative, principally in the form of case law,³⁷ it does not rely on narrative to structure legal thought to anything near the same degree as biblical law.

One of the key turning points in the story of God and Israel is the Exodus, in which God rescues Israel from the condition of being enslaved to Pharaoh in Egypt (Exodus 12–13). Israel's experience of the Exodus becomes the motivation for obeying the law in Exodus 23:9, quoted above. It is included in the Top Ten because it is a good example of the way in which biblical law is bound up with the story of God's involvement with humanity and, particularly, Israel.

In fact, there are many narrative allusions to the Exodus in biblical law. First, there is an explicit narrative reference to the Exodus in the opening words of the Decalogue:

I the LORD am your God who brought you out of the land of Egypt, the house of bondage. (Exodus 20:2; *God speaking*)

Second, we find that there is an explicit narrative allusion to the Exodus at the head of individual sections within biblical law, such as Exodus 23:9, noted above. Third, we find that there is an implicit narrative allusion at the head of the entire *Mishpatim* itself. This takes the form of a reference to slavery which alludes to the Exodus from Egypt:

These are the rules (*hammishpatim*) that you shall set before them: When you acquire a Hebrew slave . . . (Exodus 21:1–2; *God speaking*)

Fourth, there is evidence that slavery—and liberation from slavery—is the main organizing theme of Exodus 21:2–27, which is the first section of laws in the *Mishpatim*. This section is structured according to a literary pattern known as a chiasmus. This is “a pattern in which a series of elements is repeated in reverse order, with the first and last elements also often forming the centrepiece of the group,”³⁸ as follows:

A (Exodus 21:2–11)	Liberation of male and female slaves
B (Exodus 21:12–17)	Capital provisions
C (Exodus 21:18–19)	Injuries from a brawl
D (Exodus 21:20–21)	Fatal assault on one's own slave
C' (Exodus 21:22–23)	Brawl affecting pregnant woman
B' (Exodus 21:24–25)	Talionic provisions
A' (Exodus 21:26–27)	Liberation of male and female slaves

FIGURE 1. CHIASTIC STRUCTURE OF EXODUS 21:2–27 (JACKSON 2006:447)

37. See generally BERNARD S. JACKSON, *LAW, FACT & NARRATIVE COHERENCE* (Liverpool: Deborah Charles Publications, 1991).

38. Bernard S. Jackson, *On the nature of analogical argument in early Jewish law*, *JEWISH L. ANN.* 11, 137–68, 144 (1993).

Explicit and implicit allusions to the Exodus have several functions in biblical law. They are reminders that Torah is given to those whom God freed from slavery in Egypt. For this reason, the laws sometimes allude to the Exodus in order to act as a check on oppressive behavior, lest the formerly oppressed become the new oppressors. They also emphasize that Torah is an expression of the character of God who liberates and gives life to Israel. For this reason, the Exodus allusions are a spur to generous and selfless behavior (e.g., Deuteronomy 15:12–15; see Chapter 7). “Narrative gives moral truth an existential force which cannot be done by law.”³⁹ The use of narrative allusions reminds us once again that we are not dealing with law in a modern sense. Unlike modern law, biblical law harnesses narrative to shape national identity and to promote personal compliance.

E. Biblical law is an integral part of the vocation of Israel

You shall be to me a kingdom of priests and a holy nation

—(Exodus 19:6; *God speaking*)

Biblical law is an integral part of the vocation of Israel. This is not surprising because the story of God’s involvement with humanity, which we saw was relevant to biblical law in the previous section, is, in part, the story of Israel’s vocation. This vocation is expressed in Exodus 19:6, quoted above, which is why it is part of the Top Ten. At Mount Sinai, and prior to the giving of Torah, Israel is called to be “a priestly kingdom and a holy nation.” In other words, Israel’s declared role within the purpose of God is to serve the nations by standing in the same relationship to them as a priest stands in relation to the people at the Tabernacle, or Temple, of Israel’s God. Among other things, it signifies the way in which Israel is intended to be a conduit of blessing to the world, in the same way that a priest is a conduit of God’s blessing to the people (e.g., Numbers 6:22–27). This contrasts with a modern “systems theory” of law (also known as “autopoiesis”), which sees law as simply one subsystem among many others, including politics, that characterize the modern state.⁴⁰

This vocation is in keeping with the story arc that develops throughout the Pentateuch. It starts off with Genesis 1–11 (the “primeval history”) which establishes the origins of the cosmos and humanity and introduces what is, perhaps, the dominant theme of the Bible—namely, the divine-human relationship. Genesis 1 begins with a picture of the earth “unformed and void” (1:2), from which an ordered universe is brought into being by God. Genesis 3 narrates the subversion of that order, as the serpent challenges the humans who in turn disobey God. The result is a situation of disorder where the man and woman accuse

39. Harland, *Review of Barton*, p. 135.

40. E.g., P. Capps & H. Olsen, *Legal autonomy & reflexive rationality in complex societies*, Soc. L. STUDS. 11, 547–67 (2002).

each other and God and are in conflict with the rest of creation. The rest of the primeval history expresses this disorder in various ways, including murder (4:1–16), vengeance (4:23–24), and strange sexual offenses (6:1–4). The physical disorder of Genesis 1 is resolved, but the moral and relational disorder of Genesis 3 remains unresolved. A major theme of Genesis 1–11 is thus the movement from disorder to order and then back to disorder.

The primeval history (Genesis 1–11) then gives way to the Abraham story (Genesis 12:1–25:18), which is followed by that of Abraham’s descendants, including Jacob (Genesis 25:26–37:1) and Jacob’s family, including the “Joseph cycle” (Genesis 37:2–50:26). The rest of the Pentateuch, and indeed the Hebrew Bible, takes up the story of Jacob’s descendants: that is, the people of Israel. But although there is a major contrast between the universalism of the primeval history and the particularism of Genesis 12 onwards, there is a connection between the two. The link is Genesis 12:1–3, which is the call of Abram (later Abraham). These verses introduce the theme of the Pentateuch, namely, God’s choice of Abraham from among all the people of the earth for a special relationship and the establishment of Abraham’s descendants as “a great nation” (12:2), which will be the means of blessing “all the families of the earth” (Genesis 12:3). The universal is related to the particular and vice versa. Nehemiah 9:6–8 presents God’s call of Abraham as God’s first act after creation. Rendtorff claims that if we take our cue from this, “we can even say that this divine act is seen on almost the same level as creation itself.”⁴¹ The juxtaposition of the primeval history with the Abraham story indicates that somehow resolving the outstanding problems of Genesis 1–11 will have something to do with Abraham and his family, although this story is not resolved within the Pentateuch itself.⁴²

This, then, is the background to the vocation of Israel in Exodus 19:6. Being “a kingdom of priests and a holy nation” is how Israel will be a “blessing to the nations.” Like a priest officiating in the Temple, Israel holds out the knowledge of God to the rest of the world. Biblical law is given in the context of a theophany (that is, the visual and auditory manifestation of God), which signifies that Torah is associated first and foremost with the person and character of God (Exodus 19–20). And because Israel’s God has a certain character, Israel is to reflect that character “in the sight of the peoples” (Deuteronomy 4:6) by following Torah.

The vocation of Israel is how we can understand laws such as, “You shall not hate your brother in your heart” (Leviticus 19:17; *God speaking*). From a modern perspective, such a law seems strange because it commands an attitude. No modern Western law would be framed in those terms. We would ask what is the point of having a law that everyone is going to break—and who is going to

41. Rolf Rendtorff, *The Covenant Formula: An Exegetical & Theological Investigation*, in *OLD TESTAMENT STUDIES* (Margaret Kohl trans., Edinburgh: T&T Clark, 1998), 1.

42. David J. A. Clines, *The Theme of the Pentateuch*, in *JOURNAL FOR THE STUDY OF THE OLD TESTAMENT SUPPLEMENT SERIES 10* (Sheffield: Sheffield Academic Press, 1978).

enforce it when it is broken? However, Leviticus 19:17 makes sense within the presupposition pool of biblical Israel because biblical law is part of God's call that Israel should "be" a certain quality of people and reflect the character of God to the nations. At one level, Israel's obedience to Torah is presented as being in her own best interests as a community (e.g., Deuteronomy 32:46–47), but ultimately, biblical law is fulfilled when Israel carries out her mission to the nations—a mission framed not so much in terms of *going* somewhere but of *being* something.

F. Biblical law is didactic—and incomplete

Take to heart these instructions with which I charge you this day. Impress them upon your children. Recite them when you stay at home and when you are away, when you lie down and when you get up. Bind them as a sign on your hand and let them serve as a symbol on your forehead; inscribe them on the doorposts of your house and on your gates.

—(Deuteronomy 6:6–9; Moses speaking)

Deuteronomy 6:6–9 is included in the Top Ten because another important aspect of biblical law is its didacticism. Biblical law is meant to be taught. This teaching is not limited merely to "legal knowledge" but is, instead, presented as a guide to "life, the universe and everything." As Jethro advises Moses: "Teach them the statutes and the decisions, and make them know *the way in which they must walk . . .*" (Exodus 18:20). The priests' job is "to teach the people of Israel all the statutes which the LORD has spoken to them by Moses" (Leviticus 10:11), while Deuteronomy 1:5 describes how Moses "undertook to explain this law (Torah) [or "Teaching"; JPS]." Torah is something that needs to be understood and fully internalized.

This is all the more necessary given that biblical law, in common with ANE law, was not comprehensive. Biblical law never aimed to be an ancient equivalent of *Enquire Within About Everything*, a nineteenth-century handbook of the necessities of domestic life in Victorian Britain. Many problems are simply not covered in biblical law—including some which were common to other ANE legal collections (see above). This contrasts with modern assumptions that law is a complete system, even when the law itself is silent on a given issue.

Of course, our sense that law in biblical Israel was fragmentary and incomplete may be more apparent than real. Simply because a rule is not mentioned in biblical law does not mean that it did not exist. Absence of evidence is not evidence of absence. Nor can we assume, as Yaron rightly points out, that the Pentateuchal texts are "a comprehensive collection of at least all that there ever was in writing."⁴³ The Bible itself refers to books and materials which it assumes

43. Yaron, *Evolution of Biblical Law*, p. 98.

are common knowledge but to which we do not have access (e.g., “the Book of the Wars of the LORD”; Numbers 21:14). Biblical law may also seem incomplete to us because the Israelites were relying on customary law, which again is unknown to us.

At the same time, however, we know there were still serious gaps in biblical law because these gaps were acknowledged by biblical society itself. Examples include the ad hoc legal situations presented by, variously, the daughters of Zelophehad (Numbers 27:1–11); the impure celebrants (Numbers 9:6–14); the wood gatherer (Numbers 15:32–36); and the blasphemer (Leviticus 24:10–23). In all four cases, the legal norms operating at the time of the event were insufficient and needed an ad hoc oracular supplement.⁴⁴ There was always a need to “mind the gap” in biblical law; and this is true of any legal system.

Every legal system has to deal with the fact that “in many contexts, our knowledge of what constitutes appropriate behaviour depends upon a background of understandings that we could not fully articulate in advance of the situations that call them into play.”⁴⁵ Practical reasoning depends upon “a never fully articulable” background consensus.⁴⁶ Biblical law addresses this by offering rules that are limited in number but which are designed to promote wisdom (see further below). There is a cultural expectation which finds its classic expression in the Book of Proverbs—that the study of biblical law in a domestic context, both privately and in groups, results in the formation of a person’s character and leads to the acquisition of wisdom. “Minding the gap” in biblical law meant applying wisdom. When faced with a problem that is not explicitly covered by biblical law, the Israelite is expected to apply the wisdom that comes from practicing and meditating upon Torah, although in “hard cases,” he may have recourse to those who are regarded as having superior wisdom (see Chapter 4). This means that while biblical law is incomplete, its purpose is to teach wisdom, which is complete.

If biblical law is not a complete representation of the issues facing biblical society, the question is raised, “what criterion is used for selecting those that are included?” It is commonly claimed that ANE legal collections included either controversial or common cases, the former being those that changed customary law. A number of the Hittite Laws state that while formerly such and such was the rule, it has now been replaced by something else (e.g., §§166–167, although it is not known whether the Hittite Laws themselves *make* the change or merely record it). On the other hand, scholars generally regard the Covenant Code in Exodus as a statement of common, rather than controversial, cases. It is hard to generalize, of course, and we should not assume that the laws of any ancient

44. JACKSON, *WISDOM-LAWS*, pp. 425–30.

45. N. E. SIMMONDS, *CENTRAL ISSUES IN JURISPRUDENCE* (London: Sweet & Maxwell, 2002), 148.

46. SIMMONDS, *CENTRAL ISSUES*, p. 149.

legal collection are cast all from the same mold. But if the stated purpose of biblical law is to impart wisdom by means of teaching, practice, and meditation, it is reasonable to conclude that cases were included which were thought to promote wisdom.

G. Biblical law relies upon rhetoric and literary art to convey meaning

If there is among you a poor man, one of your brethren, in any of your towns within your land which the LORD your God gives you, you shall not harden your heart or shut your hand against your poor brother, but you shall open your hand to him, and lend him sufficient for his need, whatever it may be.

—(Deuteronomy 15:7–8; Moses speaking)

Biblical law is also characterized by the use of rhetoric and sophisticated literary structure. First, biblical law is rhetorical in the strict sense of the term because it is “persuasive speech.” Biblical law is presented as having originally been delivered in oral form. The “giving of the law” by God to Moses (Exodus 20:19ff) and by Moses to the people (Exodus 24:7; Deuteronomy 5:1ff) is delivered orally, with the latter giving rise to a tradition of septennial public law readings (Deuteronomy 31:10–13). This means that in our overall understanding of biblical law, some account has to be taken of its rhetorical features. Deuteronomy 15:7–8, quoted above, is part of the Top Ten because it is a good example of a text that is designed to “influenc[e] the audience’s thoughts and persuad[e] them to alter their behaviour.”⁴⁷ Appeal is made on behalf of the “poor man” who is identified as a “brother” (verse 7), while an unfavorable contrast is drawn between the “shut hand” and the “open hand” (verses 7–8). Moses’s rhetoric switches between corporate Israel (verse 7a) and the individual Israelite (verses 7b–8). The audience is “addressed both as individuals and as a whole, reinforcing both these identities . . . [Moses’] appeal to the solidarity of the group reinforces his appeal to each individual.”⁴⁸

Deuteronomy is the most rhetorical of all the biblical legal collections, emphasizing as it does, “the ultimate consequences of urgent choices.”⁴⁹ This is not surprising because Deuteronomy is presented as a series of four farewell speeches by Moses to Israel, immediately prior to his death. Rhetoric is thus another way in which biblical law differs from modern law. Although there are rhetorical features in modern law, particularly in oral and written legal judgments,⁵⁰ it is less significant than in biblical law. Oral delivery need not

47. James W. Watts, *Rhetorical strategy in the composition of the Pentateuch*, J. STUD. OLD TESTAMENT 68, 3–22, 3 (1995).

48. T. A. LENCHAK, CHOOSE LIFE!: A RHETORICAL-CRITICAL INVESTIGATION OF DEUTERONOMY 28:69–30:20 (Rome: Pontifical Biblical Institute, 1993), 106.

49. Watts, *Rhetorical strategy*, p. 20.

50. E.g., Lord Denning in *Miller v. Jackson* [1977] Queen’s Bench Division 966.

necessarily imply a lack of consistency in the use of biblical legal language. For example, the offense of having sexual relations with a wife and her mother is described as “depravity” (*zimmah*; JPS) both in Leviticus 18:17 and 20:14. But this offense is also described, along with other kinds of prohibited sexual relations, in Leviticus 18:26, as “abominations” (*to’ebhot*). Here, language is used more broadly for rhetorical purposes and to influence behavior.

Biblical law is also characterized by sophisticated literary structure. “Holy writ” is brilliantly “writ”. This contrasts with modern law, which does not regard literary presentation as key to the construction of meaning. To give a random example, necrophilia is prohibited under section 70 of the Sexual Offences Act 2003, but there is no reason why it has to appear at that particular point in the statute, and its meaning would not be affected if it appeared somewhere else. It is frequently the case that the way in which biblical law is structured and organized internally determines the meaning of its content. The biblical texts are craftily assembled: both at the level of metanarrative and the detail of individual pericopes. This is the art of biblical law. It is practical and functional; but it is also esthetic. This is one of the many things biblical law has in common with wisdom. The perfect arrangement of words is a thing of wonder:

Like golden apples in silver showpieces
Is a phrase well turned. (Proverbs 25:11)

Biblical law is an expression of wisdom (see further below). One of the features of wisdom in the Bible is that it provides insight into the structure of things (e.g., Proverbs 8:22–31, which describe the role of wisdom in constructing the world). Since one of the functions, then, of biblical law is to provide insight into how things fit together, it is appropriate that biblical law should itself be characterized by a high degree of internal structure. The form is the message.

Some of these literary units are simply structured, such as Exodus 21:28–35, where four cases involving a goring ox are structured according to the declining social status of the victim:

TABLE 2 LITERARY ARRANGEMENT OF EXODUS 21:28–35⁵¹

A	Exodus 21:28	When an ox gores a <i>[free] man or a woman</i> to death...	DECLINING SOCIAL STATUS OF VICTIM
B	Exodus 21:31	. . . if it [the ox] gores a <i>[free] man's son or daughter</i> ...	
C	Exodus 21:32	If the ox gores a <i>slave</i> , male or female...	
D	Exodus 21:35	When one man's ox hurts <i>another's [ox]</i> . . .	

51. JACKSON, WISDOM-LAWS, p. 286.

Other literary arrangements can be more complex. An example of this is the chiasmic structure of Exodus 21:2–27, noted in Figure 1, above, which is centered upon slavery. A highly complex chiasmus can be found in Leviticus 24:13–23. It is too large to reproduce here but spans a total of eleven verses.⁵² We also find examples of detailed literary structure in Leviticus 20 (see Chapter 11). However, while literary arrangements in biblical law may seem complex to us—indeed, so complex they frequently remain hidden from our eyes—they might not have seemed that way to the original audience. A model of oral popular rhetoric does not exclude the possibility that a biblical audience, or at least certain parts of it such as a scribal elite or priests, might have been able to take complex literary arrangements in its stride. We might compare the ability of modern television audiences to follow complex dramas with only the minimum of plot, dialogue, and characterization—and even to absorb multiple storylines juxtaposed on a split screen.

Doing justice to biblical law thus means paying attention to the way in which it is presented. Throughout this book, we will find examples of how the interpretation of biblical law is guided by its literary presentation.

H. Biblical law receives new expressions as God does more for Israel

If a fellow Hebrew, man or woman, is sold to you, he shall serve you six years, and in the seventh year you shall set him free. When you set him free, do not let him go empty-handed. Furnish him out of the flock, threshing floor, and vat, with which the LORD your God has blessed you. Bear in mind that you were slaves in the land of Egypt and the LORD your God redeemed you; therefore I enjoin this commandment upon you today.

—(Deuteronomy 15:12–15; Moses speaking)

Biblical law is dynamic. As we study it, we will see how Torah adapts itself to new circumstances. This is partly because, as we have seen, it is integrated into the story of God’s involvement with Israel and the world—and this story keeps on developing. Because biblical law is embedded in a story arc, we must keep a constant eye on such things as plot, character, and setting. We need to know where we are “in the story” to be able to interpret biblical law. This contrasts with modern law, which is less inclined to indicate in its sources the processes that have led to its development.

A good example of the dynamism of biblical law is the story line that unfolds after the Exodus events. This results in changes to the characters and the setting. It is important for our understanding of biblical law because it helps to explain the differences between the *Mishpatim* in Exodus and the Deuteronomic laws. We discover that the people who came out of Egypt and who received Torah at

52. Ibid., 448.

Mount Sinai rebelled (with a few exceptions) against God in the wilderness and died without entering the promised land (Deuteronomy 1:19–45). This means that the promised land is inherited by the next generation, which was born in the wilderness. Because of this, Moses repeats the covenant that was given at Sinai to the new generation on the plains of Moab at the entrance to the promised land. But although the Moab covenant corresponds to the one at Sinai (Deuteronomy 5:2–5), it is not identical.

A classic example of the differences—and hence the dynamism of biblical law—is Deuteronomy 15:12–15, quoted above. This is the reason why this text is included in the Top Ten. This slavery law differs from the previous law on the release of slaves in Exodus 21:2–6 because Deuteronomy 15:12–15 enjoins generosity, while Exodus 21:2–6 does not.⁵³ The change in setting—a series of military victories that have led the Israelites to the entrance to the promised land—means that the Israelites have experienced much more of God’s bounty than the previous generation (Deuteronomy 2:24–3:22). Moreover, they are going to experience much more of God’s generosity when they enter the land. As a result, more is expected of them than the previous generation. This is why Deuteronomy makes frequent references to “the land which the LORD . . . gives you” (e.g., Deuteronomy 4:1).

Consequently, Moses’s teaching in Deuteronomy 15:12–15, and Deuteronomy as a whole, reinterprets Sinai for a new generation. Biblical law is reexpressed to bring it up to date with changes in the biblical narrative which speaks of God’s new acts of generosity toward Israel. This in turn results in a higher standard that is expected of Israel. Israel is now expected to behave even more generously toward God and others, including debt slaves, in response to God’s new acts. Deuteronomy is not, of course, the only example of a reexpression of biblical law, which calls forth a higher standard of ethical behavior. Christians would see in the teaching of Jesus in the New Testament a reexpression of biblical law which calls for an even higher standard of ethical behavior (including, for example, the areas of divorce and remarriage; see Chapter 12). This response, Christians believe, is in keeping with changes in the biblical narrative which see in Jesus the ultimate demonstration of God’s love and generosity toward Israel and the world.

The second main reason why biblical law is dynamic is because it is not complete, as we saw above. Because it is incomplete, it keeps being added to. A good example of this is the case of the daughters of Zelophehad (Numbers 27:1–11). In biblical law, there is a presumption that property devolved onto sons, not daughters (see Chapter 6). Zelophehad died without leaving a male heir, and his daughters petitioned Moses with a request to inherit his property (Numbers 27:4), on the occasion of entry to and division of the promised land. Although

53. For further differences, see JACKSON, *WISDOM-LAWS*, pp. 79–102.

this arrangement had not been provided for under existing biblical law, the daughters' appeal is emphatically vindicated by God:

The daughters of Zelophehad are right; you shall give them possession of an inheritance among their father's brethren . . . (Numbers 27:7)

Nor is that the end of the matter. In Numbers 36, the Josephites (family heads of the clan to which Zelophehad belonged; Numbers 36:1) express concern that if the daughters receive the inheritance but marry outside the tribe, the land will be absorbed into their husband's family and thus into another tribe (see Chapter 6). This concern is also legitimated by God in somewhat similar terms to the daughters (Numbers 36:5–6). This example indicates that there is scope for innovation when biblical law is applied to unspecified cases. Biblical law is, in this sense, “up for grabs”—both by the daughters of Zelophehad and by the Josephites. God is portrayed as having new words to speak in view of life's ongoing twists and turns.

The case of the daughters of Zelophehad provides an unusual insight into the process by which legal innovations are received into the prevailing corpus.⁵⁴ Divine legal revelation is supplemented by fresh divine legal revelation, a process about which we are normally unaware. We know that biblical law is dynamic because we can see there is an interactive relationship between law and social process, as a result of which law is reinterpreted and transformed. The gaps in biblical law are opportunities for fresh revelation, and this makes biblical law dynamic. God is presented as being open to human questioning, and God's interaction with the questioning human party—whether the daughters of Zelophehad or the Josephites—leads to a fuller knowledge of the divine will.

I. Biblical law is an expression of wisdom

The teaching of the LORD (Torat Adonai) is perfect, renewing life; the decrees of the LORD are enduring, making the simple wise (mahkhimat).

—(Psalm 19:7/MT 19:8; *David speaking*; JPS)

Biblical law is an expression of wisdom (*hokhmah*). It “covers a wide range of attributes that constitute wisdom in particular contexts,”⁵⁵ and so one-sentence summaries of biblical wisdom usually fail to capture its diversity. *Hokhmah* includes “the skill needed to win a war or complete a technical enterprise; the cleverness and shrewdness required in government or administration; the hidden secrets and knowledge of prophets or magicians; the prudence required to deal with difficult situations; the ability to make ethical . . . decisions, and ultimately the ability to discern God as the one who created the world through

54. *Ibid.*, 426–27.

55. KATHARINE DELL, *GET WISDOM, GET INSIGHT: AN INTRODUCTION TO ISRAEL'S WISDOM LITERATURE* (London: Darton, Longman & Todd, 2000), 1.

wisdom and who is the fount of all knowledge and understanding.”⁵⁶ The idea that biblical law is an expression of wisdom contrasts with modern law, which is usually seen as concentrating on minimum standards of obligatory behavior, viz., what citizens need to do to “stay on the right side of the law.”

Wisdom needs to be distinguished from what is termed the biblical “wisdom literature” (including Proverbs and Job). This refers to those biblical materials that are specifically identified with the theme of wisdom; however, scholars recognize the influence of wisdom on other material in the Hebrew Bible, including biblical law. A further distinction is sometimes made between literary wisdom, which is the product of scribal activity and popular wisdom, which need not necessarily have existed in literary form and could have been generated orally by means of either a formal or an informal controlled oral tradition.⁵⁷

There are a number of connections between biblical law and wisdom. First, there are numerous “sapiential counterpart[s]”⁵⁸ to biblical law in the Book of Proverbs, for example. Just as it is impossible to separate law from narrative, so it is impossible to separate law from other genres in the Bible, including, as here, proverbs. To take just one area of concern—the proper administration of justice—we find equivalents to the biblical prohibitions regarding partiality (Deuteronomy 16:18–19) and bribes (Exodus 23:8 and Deuteronomy 16:19) in the book of Proverbs (Proverbs 24:23; 28:21, respectively). Indeed, Exodus 23:8 and Deuteronomy 16:19 could be said to be “more proverbial than *Proverbs*” inasmuch as the legal texts use “a striking metaphor (blindness) to convey their message.”⁵⁹ Many of the values of biblical law are also expressed in Proverbs (e.g., adultery is subject to the death penalty in biblical law and is also presented as “leading to death” in Proverbs 7:24–27). The point is that biblical law can be taught as wisdom rather than laws to be applied in a modern sense. We noted above that biblical law is incomplete and that its purpose is to teach wisdom, which is complete (see further Chapter 4).

Second, one of the functions of wisdom—which is evident from even the most cursory reading of Proverbs—is to provide practical guidance for daily living. One of the core competencies of the wise person in the Bible is the ability to resolve interpersonal disputes, which is part of the reason why wise people were appointed as Israel’s judges (see Chapter 4). Likewise, one of the aims of biblical law is to provide an understanding of what to do in specific circumstances. One of the ways in which it does this is by formulating a number of

56. Ibid.

57. JACKSON, *WISDOM-LAWS*, p. 30 n. 137.

58. William P. Brown, *The law and the sages: A re-examination of Torah in Proverbs*, in *CONSTITUTING THE COMMUNITY: STUDIES ON THE POLITY OF ANCIENT ISRAEL IN HONOUR OF S. DEAN MCBRIDE JR.* (John T. Strong & Steven S. Tuell eds., Eisenbrauns: Winona Lake, 2005), 251–80, 255.

59. Jackson, *Law, wisdom and narrative*, pp. 34–35.

what Jackson⁶⁰ calls “self-executing rules,” in other words, “rules of thumb” that enable a “rough and ready” resolution of the dispute in hand. An example of this is Exodus 21:35, quoted above, involving the bovicidal ox. The owner of the dead ox will only be compensated for his loss if the value of the live ox is equal to or greater in value to that of the dead ox. However, any “rough justice” is outweighed by the fact that the parties can resolve the matter quickly between themselves without the need to have recourse to arbitration by third parties or formal institutions.⁶¹ Indeed, avoiding the shame of involving third parties in interpersonal disputes is itself a hallmark of wisdom (Proverbs 25:7–10). This leads into the final text in this Top Ten, which emphasises the importance of relationships in biblical law.

J. Biblical law is relational

Hear, O Israel: The LORD our God is one LORD; and you shall love the LORD your God with all your heart, and with all your soul, and with all your might.

—(Deuteronomy 6:4–5; Moses speaking)

Biblical law is relational because it is given in the context of God’s desire for a relationship with Israel. God’s command to Pharaoh, through Moses, is, “Let my people go, that they may hold a feast to me in the wilderness” (Exodus 5:1). This is a demand that Israel should be free to enter into a relationship with the ancestral deity. Pharaoh’s response is telling: “Who is the LORD, that I should heed his voice and let Israel go? I do not know the LORD, and moreover I will not let Israel go” (Exodus 5:2). Pharaoh does not know the LORD; therefore, he is not able to obey him. Knowledge of God is a prerequisite for following Torah. Indeed, the giving of the law is preceded by a revelation of God’s character, in the context of Israel’s own experience: “I am the LORD your God, who brought you out of the land of Egypt, out of the house of bondage” (Exodus 20:2). These circumstances suggest that biblical law is intended to preserve Israel’s newly won freedom and her relationship with God. The laws provide further opportunities for Israel to practice her faith in God, as she had done in the journey from Egypt. “Living by the law” is thus pictured as a dynamic relationship rather than as a duty. This is classically summed up in Deuteronomy 6:4–5, which is commonly known in Jewish tradition as the *Shema*. It is the most famous biblical text in modern Judaism, and it is the final case in our Top Ten.

Biblical law is relational because God “addresses Himself not, or not primarily, to individuals but to a people.”⁶² Israel is called not merely to a covenant relationship with God (see Chapter 2) but also, and as a consequence to, right

60. JACKSON, WISDOM-LAWS, pp. 29–30.

61. Jackson, *Law, wisdom and narrative*, p. 31.

62. Bernard Harrison, *The strangeness of Leviticus*, JUDAISM 48, 208–28, 216 (1999).

relationships within the body of the people—hence the law of Leviticus 19:17–18, which includes the command to “love your neighbour as yourself” (19:18). The “skull beneath the skin” of biblical law is concerned with promoting the quality of relationships in biblical society.

This concern for right relationships is reflected in the Hebrew term *tsedaqah* (“righteousness,” although the word itself is not restricted to a concern for right relationships). “When people fulfil the conditions imposed on them by relationships, they are righteous.”⁶³ *Tsedaqah* is the goal of *mishpat* (justice), and both “justice and righteousness” (*mishpat utsedaqah*) are major concerns of the prophets (e.g., Isaiah 56:1; see Chapter 4). Israel’s righteousness is to be seen in her relationship with God, the nations, and at the level of relationships between individual Israelites. This is reflected in Jesus’s response, in the New Testament, to the challenge of identifying relative priority within biblical law:

One of them [the Pharisees], a lawyer, asked him [Jesus] a question, to test him. “Teacher, which is the great commandment in the law?” And he said to him, “You shall love the Lord your God with all your heart, and with all your soul, and with all your mind” [quoting Deuteronomy 6:5]. This is the great and first commandment. And a second is like it, “You shall love your neighbour as yourself” [quoting Leviticus 19:18]. On these two commandments depend all the law and the prophets. (Matthew 22:35–40; *narrator speaking*)

The relational values of biblical law are also seen in the following summary of Torah by Hillel (a Pharisaic teacher from the first century BC):

Whatever you yourself hate, that do not do to your neighbour: in this is the whole Torah. The rest is but comment upon it. Go and take it as your guide! (Shabbat 31a).

The relational character of biblical law broadly contrasts with modern law, which has a predominantly individualistic approach.

There are a number of different aspects to “the relationships factor” and biblical law. First, it means individuals have to put “the interests of other parties to the relationship on a par with their own.”⁶⁴ This is signified by Leviticus 19:17–18, quoted above. The Israelite’s attitude toward others should not be, “what is the minimum I can get away with?,” but “what is important is the quality of the continuation of the relationship between us.” A practical example of this is Exodus 22:5/MT 22:4 where, in a case involving agricultural damage, the person responsible “shall make restitution (*yeshallelem*) from the best in his own field (*meytabh sadehu*) and in his own vineyard”. Jackson⁶⁵ has argued that the phrase *meytabh sadehu* may mean simply “the produce of his field” although even here,

63. *Ibid.*, 16.

64. Harrison, *Strangeness of Leviticus*, p. 218.

65. JACKSON, *WISDOM-LAWS*, p. 325.

the semantic field of *yeshallem*, derived from a form of the verb *shalam*, which here means “to make good,” points toward the restoration of social relationships between the parties. This is one way in which biblical law promoted social solidarity and relational well being.

Second, it means that individuals have to exercise positive concern and restraint in order to keep social relationships healthy. This involves something that is over and above “[the] terms of any legally enforceable contract.”⁶⁶ We will see examples of this in Deuteronomy’s concern for the “poor brother” (see 15:7–8, below). Here, a sense of obligation arises from the fact that the wealthy Israelite has been the recipient of God’s generosity. Likewise, biblical law restrains the extent to which an Israelite can allow himself “to profit from the distress of another.”⁶⁷ For example, we will see that the economic provisions of the Jubilee limit the degree to which one can profit from another person’s hardship and indebtedness (Leviticus 25:39–41; see Chapter 7).

Third, Israel’s vocation to be “the people of God” is something that “comes into being as the precipitate of innumerable well-conducted relationships between individual and individual,”⁶⁸ as well as between each individual and God. The sense of “belonging to a people” is thus “relationship led,” as opposed to being, say, “project led” in which the people are asked to give their allegiance to “an overarching social project of some sort” (such as Communism or Fascism⁶⁹).

Finally, biblical law is relational because relationships are at the heart of practical reasoning about law in the Bible. “Eliciting the further requirements of a basic moral stance is not to be understood [*per* the Enlightenment] . . . by analogy with the deductive unpacking of theorems from a set of axioms, but in terms of the extension of relationships.”⁷⁰ The application of biblical law is relational, not propositional. A good example of this is found in Leviticus 19:34:

The stranger (*ger*) who sojourns with you shall be to you as the native among you, and you shall love him as yourself; for you were strangers (*gerim*) in the land of Egypt: I am the LORD your God.

Behavior toward the *ger* is conceived as an extension of several relationships: the Israelite’s relationship with their fellow citizens, their own experience of having been *gerim*, and their relationship with God.

It is because biblical law “hinges upon the lived character of relationships” that the first requirement for understanding biblical law is “wisdom” rather

66. Harrison, *Strangeness of Leviticus*, p. 218.

67. *Ibid.*, 219.

68. *Ibid.*, 218.

69. *Ibid.*

70. *Ibid.*, 220.

than, say, reason or logic.⁷¹ An important aspect of wisdom is the ability to grasp the significance and nature of relationships and so to be capable of making shrewd, clever, and prudent decisions in different areas of life (see Chapter 4). This is not to say that biblical law does not also require reason and logic, but it is to say that wisdom is the cornerstone of biblical law, and this is reflected in a concern for the quality of relationships.

On this reading, the purpose of biblical law is to enable us to love God and to love our neighbor. Biblical law is a guide on how to love appropriately. However, this is not merely an agenda for improved interpersonal contact; it is also an agenda for institutions. In biblical law, love for God, and love for neighbor influences the design of our financial and lending relationships, our political relationships, our conditions of employment, our impact upon the environment, and so on. Love is institutionalized. The challenge is to see how biblical law advances being about something more than just an interpersonal agenda, important though that is. It is to recognize that biblical law goes far beyond this to inform the whole of politics and public administration. This means that from the perspective of biblical law, “spiritual jurisprudence” goes far beyond the mere recognition that belief in God, in one form or another, is among the influences upon law and legal practice. Instead, it sees the law as having a transcendent reference point in the God of Israel and that its primary concern is with promoting love for God and neighbor. Its goal is to develop a worldview that is shaped at every point by an understanding of what it means to live a life of love as persons made in the image of God and which, in turn, feeds into our understanding and aspirations regarding the sort of world we want to live in.

II. CONCLUSION

Making sense of biblical law from the distance of our modern twenty-first century means being aware of those things that were part of the presupposition pool of biblical society at the time, especially in relation to law and its social practice. This presupposition pool includes the things that biblical Israel took for granted and that we might not know. We have seen that biblical law is similar to ancient Near Eastern (ANE) law in certain respects and to this extent, ANE law can be used to generate hypotheses and explain aspects of biblical law that cannot be explained from the Bible itself. This is preferable to making presuppositions based on our own cultural context because of the increased distance of modern law from biblical law, when compared to ANE law. At the same time, though, biblical law is also different from ANE law in a number of key respects, and this sets limits to the comparability of ANE and biblical law. Modern law is even

71. *Ibid.*

further removed from biblical law, and so we have to be careful not to project things from our own modern presupposition pool onto biblical law. This includes not imposing a semantic reading on biblical law when a narrative reading is appropriate.

Biblical law is not presented as codified law but is integrated, at every stage, into the wider story of God's purposes for Israel and, beyond that, for the world. It is also bound up with the vocation of Israel and the call that she should "be" a certain quality of people and reflect the character of God to the nations. Unlike modern law, biblical law offers a limited number of rules that are primarily designed to have a teaching function. To this end, biblical law is also characterized by rhetoric and sophisticated literary presentation, while also being relational, dynamic, and an expression of wisdom. As we progress through the remainder of this book, we will try to pay attention to all these features. This is part of what it means to take biblical law seriously.

Selected reading

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