

THE CAMBRIDGE COMPANION TO

LAW IN THE HEBREW BIBLE

Edited by

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Abbreviations

1Q28b	Rule of the Blessings (= 1Q5b)
1QapGen	Genesis Apocryphon
1QM	Milhamah (War Scroll)
1QS	Serekh ha-Yahad (= Community Rule / Manual of Discipline)
4Q159	Ordinances ^a
4Q174	4QFlor (= Florilegium / Midrash on Eschatology ^a)
4Q251	Halakhah A
4Q255	papS ^a (= papyrus of Serekh ha-Yahad ^a)
4Q265	Serekh Damascus (= Miscellaneous Rules)
4Q266	Damascus Document ^a
4Q269	Damascus Document ^d
4Q270	Damascus Document ^e
4Q271	Damascus Document ^f
4Q274	Tohorot A
4Q284	Purification Liturgy
4Q364	Reworked Pentateuch ^b
4Q365	Reworked Pentateuch ^c
4Q366	Reworked Pentateuch ^d
4Q415	Instruction ^a
4Q513	Ordinances ^b
4Q514	Ordinances ^c
4Q542	Testament of Qahat (Aramaic)
4QMMT	Miqsat Ma'ase ha-Torah
4QRP	Reworked Pentateuch
11Q19	Temple Scroll ^a (= 11QT ^a)
AASF	Annales Academiae Scientiarum Fennicae
AB	Anchor Bible
ABAW	Abhandlungen der Bayerischen Akademie der Wissenschaften

AbB	Altbabylonische Briefe
'Abod. Zar.	'Abodah Zarah
'Abot R. Nat.	'Abot de Rabbi Nathan
<i>Adv. Jud.</i>	<i>Against the Jews (Adversus Judaeos)</i>
<i>AfO</i>	<i>Archiv für Orientforschung</i>
<i>AJSR</i>	<i>American Jewish Studies Review</i>
Akk.	Akkadian
ALD	Aramaic Levi Document
<i>Ant.</i>	Josephus, <i>Jewish Antiquities</i>
AT	D. J. Wiseman, <i>The Alalakh Tablets</i> (London, 1953)
ATD	Das Alte Testament Deutsch
<i>Ath. Pol.</i>	<i>Constitution of Athens (Athēnain politeia)</i>
ATHANT	Abhandlungen zur Theologie des Alten und Neuen Testaments
<i>Autol.</i>	Theophilus, <i>To Autolyucus (Ad Autolyicum)</i>
AYBRL	Anchor Yale Bible Reference Library
b.	Babylonian Talmud
B. Meṣ.	Baba Meṣi'a
Bar	Baruch
Barn.	Barnabas
<i>BASOR</i>	<i>Bulletin of the American Schools of Oriental Research</i>
BCE	Before the Common Era
Ber.	Berakot
BG	Berlin Gnostic Papyrus
BHS	Biblica Hebraica Stuttgartensia
BJS	Brown Judaic Studies
<i>BO</i>	<i>Bibliotheca Orientalis</i>
BZAR	Beiheft zur Zeitschrift für altorientalische und biblische Rechtsgeschichte
BZAW	Beiheft zur Zeitschrift für die alttestamentliche Wissenschaft
<i>CAD</i>	<i>The Assyrian Dictionary of the Oriental Institute of the University of Chicago</i> (Chicago: The Oriental Institute, 1956–2010)
CahRB	Cahiers de la Revue biblique
CBQ	<i>Catholic Biblical Quarterly</i>
CC	Covenant Collection
CD	Damascus Document
CDCH	<i>The Concise Dictionary of Classical Hebrew</i> , ed. David J. A. Clines (Sheffield: Sheffield Phoenix Press, 2009)

CE	Common Era
<i>Cels.</i>	Origen, <i>Against Celsus</i>
Chr	Chronicles
Clem.	Clement
CM	Cuneiform Monographs
Col	Colossians
col.	column
ConBNT	Coniectanea Biblica: New Testament Series
<i>Const. ap.</i>	<i>Apostolic Constitutions (Constitutiones apostolicae)</i>
Cor	Corinthians
CRINT	Compendia Rerum Iudaicarum ad Novum Testamentum
CSHJ	Chicago Studies in the History of Judaism
CUSAS	Cornell University Studies in Assyriology and Sumerology
<i>Cyr.</i>	J. N. Strassmaier, <i>Inschriften von Cyrus, König von Babylon (538-529 v. Chr.)</i> (Leipzig: Pfeiffer, 1890)
D	Deuteronomic, Deuteronomy, or Deuteronomic Source/Work
DC	Deuteronomic Collection
<i>Dem. ev.</i>	<i>Demonstration of the Gospel (Demonstratio evangelica)</i>
<i>Dial.</i>	Justin Martyr, <i>Dialogue with Trypho</i>
<i>Did. apost.</i>	<i>Didascalia apostolorum</i>
DJD	Discoveries in the Judean Desert
Dr	Dreros
<i>DSD</i>	<i>Dead Sea Discoveries</i>
E	Elohistic or Elohist Source/Work
Eccl	see Qoh
<i>Ep. Tra.</i>	Pliny, <i>Epistulae ad Trajanum</i>
Eph	Ephesians
'Erub.	'Erubin
Est	Esther
EST	Esarhaddon Succession Treaty (= VTE)
et al.	<i>et alii</i> ("and others")
Ezek	Ezekiel
FAT	Forschungen zum Alten Testament
<i>FGrH</i>	F. Jacoby, <i>Die Fragmente der griechischen Historiker</i> (Leiden: Brill, 1923–1958)
<i>Flor.</i>	Ptolemy (the Gnostic), <i>Letter to Flora (Epistula ad Floram)</i>
FM	Florilegium marianum
fr.	fragment

FRLANT	Forschungen zur Religion und Literatur des Alten und Neuen Testaments
G	Gortyn
Gal	Galatians
Gen. Rab.	Genesis Rabbah
Git.	Giṭṭin
GMTR	Guides to the Mesopotamian Textual Record
Gos. Mary	BG 1 Gospel of Mary
Gos. Thom.	Nag Hammadi codex II 2 Gospel of Thomas
H	Holiness Source; see also HS
Hab	Habakkuk
Haer.	Irenaeus, <i>Against Heresies (Adversus haereses)</i>
Hag	Haggai
Hag.	Hagigah
HC	Holiness Collection
HdO	Handbuch der Orientalistik
Heb	Hebrews
Heb.	Hebrew
HeBAI	<i>Hebrew Bible and Ancient Israel</i>
Hist.	Herodotus, <i>Histories (Historiae)</i>
Hist. eccl.	Eusebius, <i>Ecclesiastical History (Historia ecclesiastica)</i>
HL	Hittite Laws
Hos	Hosea
HS	Holiness Source or Holiness School
HThKAT	Herders Theologischer Kommentar zum Alten Testament
HTR	<i>Harvard Theological Review</i>
Hul	Hullin
IC	<i>Inscriptiones Creticae</i> , ed. Margherita Guarducci, 4 vols. (Rome: Libreria dello Stato, 1935-1950)
ICC	International Critical Commentary
IEJ	<i>Israel Exploration Journal</i>
IG	<i>Inscriptiones Graecae, consilio et auctoritate Academiae Litterarum Borussiae editae</i> (Berlin: de Gruyter, 1873-)
Ign. Eph.	Ignatius, <i>To the Ephesians</i>
Ign. Magn.	Ignatius, <i>To the Magnesians</i>
Ign. Phld.	Ignatius, <i>To the Philadelphians</i>
Il.	Homer, <i>Iliad</i>
IOS	<i>Israel Oriental Studies</i>
Isa	Isaiah

J	Yahwist or Yahwistic Source/Work
J.W.	Josephus, <i>Jewish War (Bellum judaicum)</i>
JANEH	<i>Journal of Ancient Near Eastern History</i>
JBL	<i>Journal of Biblical Literature</i>
JEOL	<i>Jaarbericht van het Vooraziatisch-Egyptisch Gezelschap (Genootschap) Ex oriente lux</i>
Jer	Jeremiah
JESHO	<i>Journal of the Economic and Social History of the Orient</i>
JJS	<i>Journal of Jewish Studies</i>
JNES	<i>Journal of Near Eastern Studies</i>
Josh	Joshua
JSJSup	Supplements to the Journal for the Study of Judaism
JSNtSup	Journal for the Study of the New Testament Supplement Series
JSOT	<i>Journal for the Study of the Old Testament</i>
JSOTSup	Journal for the Study of the Old Testament Supplement Series
JSPSup	Journal for the Study of the Pseudepigrapha Supplement Series
Jub.	Jubilees
Judg	Judges
KAI	<i>Kanaanäische und aramäische Inschriften</i> , ed. Herbert Donner and Wolfgang Röllig, 2nd ed. (Wiesbaden: Harrassowitz, 1966-1969)
Ketub.	Ketubbot
Kgs	Kings
Lam	Lamentations
LCL	Loeb Classical Library
LE	Laws of Ešnunna
Lev. Rab.	Leviticus Rabbah
LH	Laws of Hammurabi
LHBOTS	Library of Hebrew Bible/Old Testament Studies
LL	Laws of Lipit-Ištar
LNTS	The Library of New Testament Studies
LOx	Laws about Rented Oxen
LSCG	Franciszek Sokolowski, <i>Lois sacrées des cités grecques</i> (Paris: de Boccard, 1962)
LU	Laws of Ur-Namma
LXX	Septuagint
m.	Mishna(h)

Macc	Maccabees
Mal	Malachi
MAL	Middle Assyrian Laws
Marc.	Tertullian, <i>Against Marcion (Adversus Marcionem)</i>
Matt	Matthew
Meg.	Megillah
Mic	Micah
Migr.	Philo, <i>De migration Abrahami</i>
Miqw.	Miqwa'ot
ML	<i>A Selection of Greek Historical Inscriptions to the End of the Fifth Century B.C.</i> , ed. R. Meiggs and D. Lewis, 2nd ed. (Oxford: Clarendon, 1988)
MMT	Miqtsat Ma'aseh ha-Torah
ms./MS	manuscript
MSL	<i>Materialien zum sumerischen Lexikon / Materials for the Sumerian Lexicon</i> , 17 vols. (Rome: Pontifical Biblical Institute, 1937-2004)
MT	Masoretic Text
NA	Neo-Assyrian
NABU	<i>Nouvelles assyriologiques brèves et utilitaires</i>
Nah	Nahum
NBL	Neo-Babylonian Laws
Nbn.	J. N. Strassmaier, <i>Inschriften von Nabonidus, König von Babylon (555-538 v. Chr.)</i> (Leipzig: Pfeiffer, 1889)
Neh	Nehemiah
NJPS	<i>Tanakh - The Holy Scriptures: The New JPS Translation according to the Traditional Hebrew Text</i>
Nomima	Henri van Effenterre and Françoise Ruzé, <i>Nomima: Recueil d'inscriptions politiques et juridiques de l'archaïsme grec</i> , 2 vols. (Paris: de Boccard, 1994-1995)
NovTSup	Supplements to Novum Testamentum
NRSV	New Revised Standard Version
NT	New Testament
OBO	Orbis Biblicus et Orientalis
Od.	Homer, <i>Odyssey</i>
Op.	<i>Works and Days (Opera et dies)</i>
Or. 4	Isocrates, <i>Panegyricus (Oration 4)</i>
Or. 12	Isocrates, <i>Panathenaicus (Oration 12)</i>
P	Priestly Source/Work
Paed.	Clement of Alexandria, <i>Christ the Educator (Paedagogus)</i>

Par.	Parah
PC	Priestly Collection
Pet	Peter
Phil	Philippians
Pol.	Aristotle, <i>Politics (Politica)</i>
Pol. Phil.	Polycarp, <i>To the Philippians</i>
Princ.	Origen, <i>First Principles (De principiis)</i>
Prov	Proverbs
Ps(s)	Psalms(s)
Pud.	Tertullian, <i>Modesty (De pudicitia)</i>
Q	Qumran
Q (source)	hypothesized collection of Jesus' sayings ("Q" comes from German <i>Quelle</i>)
Qidd.	Qiddušin
Qoh	Qohelet (Ecclesiastes)
R.	Rabbi
RB	<i>Revue biblique</i>
RGRW	Religions in the Graeco-Roman World
RIME	The Royal Inscriptions of Mesopotamia, Early Periods
Rom	Romans
RSV	Revised Standard Version
SAA	State Archives of Assyria
Sam	Samuel
Sanh.	Sanhedrin
SBLDS	Society of Biblical Literature Dissertation Series
SBLSymS	Society of Biblical Literature Symposium Series
SBLWAW	Society of Biblical Literature Writings from the Ancient World
SBS	Stuttgarter Bibel Studien
Sir	Sirach/Ecclesiasticus
SLEx	Sumerian Laws Exercise Tablet
SLHF	Sumerian Laws Handbook of Forms
SNTSMS	Society for New Testament Studies Monograph Series
SNTSU	<i>Studien zum Neuen Testament und seiner Umwelt</i>
SP	Samaritan Pentateuch
STDJ	Studies on the Texts of the Desert of Judah
Sum.	Sumerian
Šabb.	Šabbat
t.	Tosefta
Ta'an.	Ta'anit
Thess	Thessalonians

Tim	Timothy
Tob	Tobit
VT	<i>Vetus Testamentum</i>
VTE	Vassal Treaty of Esarhaddon (= EST)
VTSup	Supplements to Vetus Testamentum
WMANT	Wissenschaftliche Monographien zum Alten und Neuen Testament
WO	<i>Die Welt des Orients</i>
WUNT	Wissenschaftliche Untersuchungen zum Neuen Testament
y.	Jerusalem Talmud
Yad.	Yadayim
Yebam.	Yebamot
ZA	<i>Zeitschrift für Assyriologie und Vorderasiatische Archäologie</i>
ZAR	<i>Zeitschrift für altorientalische und biblische Rechtsgeschichte</i>
Zebah.	Zebahim
Zech	Zechariah
Zeph	Zephaniah
ZTK	<i>Zeitschrift für Theologie und Kirche</i>

Introduction

BRUCE WELLS

This volume is devoted to the study of biblical law. The expression "biblical law" customarily denotes the collections of laws or law-like statements found in several sections of the Torah or Pentateuch – the first five books of the Hebrew Bible, also known as the five books of Moses. There are five such collections.

The Ten Commandments (Exod 20:2–17; Deut 5:6–21)

The Covenant Collection (Exod 20:22–23:19)

The Priestly Collection (Leviticus 1–16, plus some sections of Exodus and Numbers)

The Holiness Collection (Leviticus 17–26)

The Deuteronomic Collection (Deuteronomy 12–26)

These five comprise the material that serves as the focus of this volume. Subsequent chapters analyze their nature, literary context, potential origins, and legal import, as well as their historical and cultural setting. The collections are made up of individual statements, and scholars often disagree on how to characterize them. The chapters in this volume refer to them by several terms such as laws, rules, and provisions, even when it is unclear whether a particular statement should be understood as having what we ordinarily think of as the force of law.

When understood in a broader sense, however, the notion of biblical law identifies more than simply the pentateuchal collections. It also includes ideas and allusions found in other types of biblical texts such as narratives, prophetic speeches, poetic prayer, and wisdom sayings. These, too, contain references to legal traditions and practices that have to be taken into account in any assessment of biblical law. Thus, while much of the volume centers specifically on providing an overview and analysis of the laws in the Torah, it also considers other biblical genres and their interactions with the themes and rules found in the collections, though it can be difficult at times to determine whether the authors behind these genres are relying directly on the pentateuchal

material or have access to these themes and rules by other means. The volume examines, as well, a variety of postbiblical literature and the significance of biblical law therein.¹

GOALS

The study of law in the Hebrew Bible has grown increasingly complex in recent decades. This is due, in part, to a proliferation of scholarly theories concerning the biblical texts in question and when they should be dated, how they originated, and whether they should even be considered legal in nature. In certain respects, scholars are talking past each other and engaging with each other's ideas less fully than might be optimal. There are those who are mainly interested in questions of the relative dating of the biblical legal collections and their relationships to each other (did one collection draw on or borrow from another?), while others concentrate on interpreting the overall meaning of each collection or determining the degree of possible overlap between the collections and the practice of law. One finds less work aimed at bringing these different foci together in order to gain a comprehensive view of current research. This state of affairs can be bewildering both to experts and to nonexperts in the field and can deter those who might otherwise be interested in learning more about the scholarship in this area of biblical studies.

The goals of this volume are several, but one of its initial aims is to provide entrée into the range of scholarly thinking that prevails in the study of biblical law and into some of the innovative theories that scholars, including several of this volume's contributors, have recently produced. These theories cover matters such as the scribal process behind many biblical provisions, the use of pedagogical exercises in the law collections, the characterization of the biblical deity in the stories about the giving of the law, the theological utility of the procedural laws, the role of certain sacrificial rites, the legal nature of prayer in ancient Israel, and the web of questions surrounding law's relationship to prophetic, wisdom, and early Jewish and Christian texts. Although it cannot answer every question that might be posed, the volume seeks to

¹ In this volume, the terms "Bible" and "biblical" refer exclusively to the Hebrew Bible (the Tanakh in Jewish tradition, the Old Testament in Christian tradition). For the sake of clarity, it should be noted that the Protestant version of the Old Testament (as opposed to the Catholic or Orthodox versions) contains all the same books that are included in the Hebrew Bible, though it arranges the books in a different order.

give readers a sense of how theories about different aspects of biblical law relate to each other and how some of the newer ideas differ from earlier scholarly positions.

Second, this volume endeavors to explain the content of the Pentateuch's rules from a legal perspective. While some scholars decline to characterize this biblical material as related to societal law, it is important to consider how the rules might have functioned had they been part of the legal system of ancient Israel and/or Judah. Part III of the book ("The Biblical Laws") is devoted to that end. It examines, in turn, the biblical rules that fit into the categories of substantive law (e.g., personal status, marriage and family relations, inheritance, property, harms, social taboos), procedural law (having mainly to do with trials and litigation), and ritual law (e.g., sacrifices, festivals, purity concerns, cultic officials). It also draws on biblical narratives to supplement the picture presented by the collections. Part I ("The Historical Context of Biblical Law") serves in part to support this effort. It looks at the legal traditions and practices from Mesopotamia, to the east of Israel and Judah, and those from ancient Greece, to the west. These data help to set the expectation level for what types of provisions may have connections to rules that were actually in effect and how legal systems from that part of the ancient world would have operated. Part II ("The Biblical Legal Collections") provides some balance to this picture in its consideration of the scribal context in which many if not most of the biblical provisions originated and of the narrative context in which they now stand. It thus raises questions about whether the Pentateuch's laws were originally intended to function as binding law and explores how they may have been compiled for other purposes.

Finally, this volume assesses how biblical law figured in the Hebrew Bible's other types of theological and philosophical discourse – namely, prophecy, prayer, and wisdom – and in postbiblical literature. Part IV ("Biblical Law and Other Scriptural Discourses") takes up the first task. It considers the legal orientation of biblical prayer, the use of law in prophetic literature, and the ever-fraught question of how the so-called wisdom texts deal with the matter of law. Part V ("The Legacy of Biblical Law") looks at the role of biblical law in the Dead Sea Scrolls, the New Testament, early rabbinic literature, and prominent texts from early Christianity. It demonstrates a diversity of approaches to law in both Jewish and Christian circles. Still, despite what scholars now see as a more positive view of Jewish law in Jesus and Paul, the range of early Christian perspectives eventually gave way to the more negative outlook that came to prevail. Conversely, in Judaism, attempts to unify

disparate voices were overwhelmed as the rabbis continued to exercise a wide array of interpretive methods that continue to be difficult to categorize in a systematic fashion.

Given the range of theories entailed in research on biblical law, it should come as no surprise that the contributors to this volume do not all agree on how to evaluate a number of issues. A careful reading of the following chapters will reveal disagreement over how the biblical legal collections originated, whether they are useful for understanding Israelite law, what their relative dating might be, whether and how they were appropriated by later audiences, and other matters. As a whole, then, this volume does not always speak with one voice. It would be disingenuous to attempt to smooth out all the differences and emphasize one point of view to the exclusion of others. The hope remains, however, that readers will find the volume a well-developed and advantageous entry point into the study of biblical law and that even experts in the field will find herein syntheses and new ideas to stimulate and enhance their work.

BIBLICAL LAW AND ISRAELITE LAW

Biblical law comes to us from the societies of ancient Israel and Judah, as is the case with the entire Hebrew Bible, and it is difficult to say precisely which sections of the Bible originated in Israel and which in Judah. It generally seems that most biblical texts were either written or edited in Judah, but the evidence suggests that prominent thinkers in both kingdoms saw their own communities as "Israelite" in significant ways (e.g., ancestral heritage). It is convenient, therefore, to refer to the law that was practiced in both Israel and Judah as "Israelite law," and there would have been a fair amount of congruity between the legal systems of the two polities in any case. Given how uncertain it can be to determine the geographic origin of a particular biblical provision, the analysis associated with attempting to make such decisions is not pursued in the following chapters.

There is general agreement, however, that a distinction needs to be maintained between biblical law and Israelite law. That is, the laws listed in the Pentateuch may not have been followed or enforced in ancient Israel and Judah – or, at least, one cannot presume that those laws were adhered to without further argumentation.² It may well be the case that some of the biblical laws correspond to legal practices that

² See the overview of this issue in Wells 2008.

were operative in ancient Israel and Judah, but this is not self-evident. Moreover, some of the biblical rules cover unusual situations that were unlikely to occur in real life (e.g., the case of the so-called slandered bride in Deut 22:13–19), and the implementation of laws within a society is never as clean and neat as any list of rules would have it seem. Even if there were considerable overlap between biblical and ancient Israelite law, what actually took place in ancient Israel and Judah would never look exactly like what is pictured in the legal texts. All law is aspirational, and no society ever fully lives up to its aspirations.

Thus, this book centers around biblical law. Several chapters venture into discussions of what the law might have been in Israel and Judah, but they do so in connection with their examination of what we find in the biblical text. Chapter 6 ("Substantive Law"), for example, considers how certain legal practices might have been conducted on the ground, as it were, but it must draw primarily on evidence from the biblical legal collections and narratives from elsewhere in the Hebrew Bible to do so. Unfortunately, the territory of ancient Israel and Judah has provided us with virtually no legal documents of practice from the biblical era, and so we lack the sources that would serve as the ideal comparanda in order to determine just how much overlap might exist between the pentateuchal rules and the operative law of the society that produced them. Most of our knowledge concerning the practice of law in the ancient Near East comes from territories outside of Israel and Judah, and scholars debate the utility of this evidence for understanding biblical law.

BIBLICAL LAW AND ANCIENT NEAR EASTERN LAW

While biblical law is often contrasted with the legal traditions and literature from elsewhere in the ancient Near East, it is important to remember that Israel and Judah were part of that region and shared in its culture and intellectual environment. In a very real sense, then, biblical law is part of ancient Near Eastern law, and any distinction between the two cannot be drawn very sharply. What has often been of most interest for the analysis of the Pentateuch's legal collections comes from the existence of collections from other ancient Near Eastern societies that exhibit several features shared by their biblical counterparts. The parade example is the Laws of Hammurabi, but there are seven principal collections that fit this classification.³ All are written in the cuneiform

³ The best resource for accessing these collections is still Roth 1997.

script and can thus be identified, collectively, as the cuneiform legal collections. (This volume follows the Middle Chronology; see more on this below.)

- Laws of Ur-Namma (LU): named after a king of Ur (ca. 2100 BCE)
- Laws of Lipit-İštar (LL): named after a king of Isin (ca. 1930 BCE)
- Laws of Ešnunna (LE): named after a city in northern Babylonia (ca. 1780 BCE)
- Laws of Hammurabi (LH): named after a king of Babylon (ca. 1750 BCE)
- Hittite Laws (HL): named for the people of the kingdom of Hattusa (ca. 1500 BCE)
- Middle Assyrian Laws (MAL): named for the time period and dialect of Akkadian in which it was written (ca. 1100 BCE)
- Neo-Babylonian Laws (NBL): named for the time period and dialect of Akkadian in which it was written (ca. 700 or later BCE)

Scholars have assigned paragraph numbers to the individual provisions in each of these. Multiple tablets (labeled A through O) make up MAL, and so a provision in MAL has a tablet designator and a paragraph number (e.g., MAL A §12). All of these collections are preserved on clay tablets, with LH being the only one that has also been discovered on a stone monument. Each of the LU, LL, and LH collections has a prologue and an epilogue that extol the virtues of the king for whom it is named and credit him with having received the necessary wisdom from the gods in order to issue just laws and decisions. This has led to the suggestion that LU and LL were also likely displayed on stone monuments. The most fragmentary of the cuneiform collections is NBL, which has only about thirteen provisions that are legible. Some have supposed that the one tablet we have of the text was a scribal exercise tablet, and, although that may be the case, new evidence has come to light that could enhance our understanding of NBL. A recently published inscription, likely from the reign of Nabonidus (556–539 BCE), makes mention of a stele on which the first-person author of the inscription says that he inscribed “the just judgments that I rendered” (col. ii, line 8; see Frazer and Adalı 2021). It seems very possible that the stele in question once contained the text of what we now refer to as NBL. This would support the conjecture that, after a long hiatus, the tradition of the royal promulgation of a law collection had once again been taken up in the Neo-Babylonian period.

The other regions of the ancient Near East have provided us not only with several additional legal collections but also with a vast array

of legal documents such as receipts, loan arrangements, marriage contracts, trial records, depositions, sale and service contracts, promissory notes, surety agreements, wills, business partnerships, treaties, and the like.⁴ It is these records, most of which are written in cuneiform on clay tablets, that offer the best insight into the practice of law throughout the region. The picture that they present can be used, with certain caveats, to understand what law was like in Israel and Judah. Comments on the cuneiform collections and other documents are thus incorporated into certain chapters where they serve as useful points of comparison.

BIBLICAL LAW AND MODERN LAW

An undeniable gulf exists between our modern understanding of what law is and how it functions, on the one hand, and how ancient societies understood the rules by which they believed they were governed, on the other. Several chapters in this volume make use of modern legal categories (e.g., contracts, court system, civil law) as part of their examination of biblical law. At times, the ancient phenomenon being referred to does not line up precisely with the corresponding modern phenomenon with which we are familiar. Even the concept of law can present an inexact match from one era to the other.

This is not to say that these terms and the concepts that they represent should be excluded from scholarly work in this area. They are, in some respects, indispensable. Historical scholarship often draws on categories and concepts from the social sciences and other modern fields of study, and it would appear no less legitimate to rely on categories acquired from the modern study of law, since these comprise the main tools of legal historians regardless of which period they examine. In addition, ancient societies possessed legal systems with a number of elements that we find in those of our own day. For example, their mechanism for resolving disputes incorporated accusations, defense statements, third-party witness statements, the examination of physical evidence, adjudicating authorities, investigations, the questioning of litigants and witnesses, and other elements that do not differ dramatically from those in a modern system. The same is true of the legally binding agreements that were made voluntarily between two parties, involving obligations and benefits on both sides. It is entirely

⁴ The most convenient discussion of such documents and the practices they represent can be found in Westbrook 2003a.

appropriate to use the category of "contract" to characterize such agreements, even if they do not conform to modern contracts in every respect (Magdalene 2020). There can indeed be significant value in bringing modern legal terms and ideas to bear on the analysis of biblical law.

Still, as the ensuing chapters unfold throughout this volume, it is important to mind the gap between the biblical world and our own. While the use of legal terms and concepts, not to mention the historical data that can be gleaned from the ancient Near East and the Mediterranean region, can help to fill that gap in important and meaningful ways, it will never be fully bridged. Caution is thus in order when it comes to rendering value judgments concerning the laws found in the Hebrew Bible. Some laws may strike us as odd or even reprehensible. Before we hastily assume the rightness of our judgments, however, it is worthwhile to remember the vastly different sociocultural, political, economic, and philosophical culture in which these laws were created – and the susceptibility of our own thinking to the self-serving bias that tends to privilege our own views over those from the past. The proper question is not so much how well the biblical rules measure up to our standards today but how they compare with the various cultural values of their own day and age, a topic that would require its own book-length treatment. This volume, therefore, mostly eschews evaluative assessments of biblical law and its ethics or morality.

BIBLICAL LAW AND LEGAL THEORY

Biblical scholars have been wary of incorporating modern legal theory into their work for several reasons, not the least of which is to avoid introducing further anachronisms into our analysis beyond what we already have. Nevertheless, several aspects of legal theory are worth considering. For example, Jonathan Vroom's work on law in the Hebrew Bible and in the Dead Sea Scrolls (Vroom 2018) relies on an important distinction made by legal theorists (e.g., Raz 2006; Knowles 2010; Rosen 2014) between two types of authority: (1) practical authority, which provides reasons for action that preempts or supersedes one's own practical reasoning and (2) epistemic authority, which provides good – even authoritative – reasons for action but does *not* preempt or supersede other reasoning. Statutes and codes of law are obvious examples of practical authority. They provide a line of reasoning about a given action that takes precedence over other lines of reasoning. Whether one should perform that action is based more on what the statute or code says than it is on the legal actor's own assessment of the action.

Epistemic authority, by contrast, typically inheres in those who have superior knowledge of the issue in question and thus speak with a different kind of authority on the matter. A doctor's instruction to take certain medications would come with epistemic authority but without an enforcement apparatus that could punish patients who disobey. Individuals could decide to trust their own reasoning over the doctor's, since the latter does not automatically supersede the former when it carries only epistemic authority.

Vroom argues that this distinction is important for understanding the nature and function of law in the Hebrew Bible. He maintains, understandably so, that some biblical authors interact with the rules in the Pentateuch in ways that indicate their belief that pentateuchal law held epistemic but not practical authority for them. Thus, one finds a number of texts where the law appears not to be fully applied. David is not punished directly for committing adultery with Bathsheba and conspiring to murder her husband (2 Samuel 11–12). No critique is rendered of Abraham's marrying his half-sister (Genesis 20) or Jacob's marrying two rival sisters (Genesis 29), even though both of these acts are prohibited in Leviticus 18. Yhwh himself speaks of having divorced Israel for adultery (Jer 3:8), a metaphor for religious apostasy, despite execution being the penalty set forth in the law collections (e.g., Lev 20:10). On the other hand, some texts refer to applying the law in a strict manner. In the same passage from Jeremiah 3, Yhwh speaks of the law in Deut 24:1–4, about whether a woman can return to the first husband who divorced her after she has been married to a second husband, as if it cannot be broken, as if there is no built-in flexibility (Jer 3:1). The text of 2 Kgs 14:6 cites the law in Deut 24:16 that forbids the execution of children for the crimes committed by their parents; it does so to show that King Amaziah was acting in accord with the "law of Moses." It may well be that biblical authors diverged on this point, with some finding epistemic authority in the Torah and others practical authority.

Interpreting the Torah as if it holds practical authority means being concerned with the question of what does and does not qualify as compliance. This approach concentrates on the particular wording of the rule and not as much on the underlying purpose. Put differently, the key issue at stake is the question of "how" – how to comply with or follow the rule. By contrast, with epistemic authorities, addressees are free to consider the "why" – why should I do such-and-such? Why would the authority suggest performing or refraining from a particular act? Why is it a good or bad idea for me to follow this rule? Vroom suggests that views on the nature of pentateuchal law changed over

time in early Judaism until it came to be seen as having the kind of full-scale practical authority that we usually assume law has today.⁵

The dilemma that we face as modern readers is essentially two-fold. First, did the authors behind the Pentateuch's legal collections intend for their works to be read as having epistemic authority or practical authority? Second, did their early readers interpret the collections as having epistemic or practical authority? In light of what we know concerning the handling of legal traditions in other ancient Near Eastern societies, it is likely that what we are calling epistemic authority served as the coin of the realm for most authors and readers, at least until well into the postexilic era. There are certainly scholars who would disagree with this view, but it is not a simple matter to find clear-cut evidence that the biblical collections were widely obeyed in a modern fashion – with concern for adhering to the letter of the law. The category of epistemic authority allows us to see how ancient scribes and others could treat a written collection as eminent and authoritative, even when they appear less concerned with obeying every detail. It is in areas like this that legal theory that can help readers to avoid the pitfalls that often accompany the study of ancient texts from a modern perspective.

CONVENTIONS

Several matters have been made uniform throughout the volume chiefly for the sake of convenience. The following chapters refer to biblical texts according to the versification found in most English translations. The Masoretic Text (MT), the primary manuscript tradition for the Hebrew Bible, possesses a different versification for some passages; where that is the case, the reference in the MT is presented in parentheses directly after the reference used in the English translations – e.g., Exod 22:2–3 (MT 22:1–2). For names, the customary English spelling is used where one is available. For example, readers will find “Hammurabi” throughout the volume, even though a more accurate rendering would be Ḥammu-rāpi, and “Nebuchadnezzar” instead of the more authentic Nabû-kudurru-ušur. When there is no such standardized spelling, renderings such as Nabû-bān-aḥi (mentioned in Chapter 6) have been used in an attempt to indicate the proper pronunciation of the name. As for dates prior to the Common Era, those employed in this volume follow what is known as the Middle Chronology, primarily

⁵ But see Turton Forthcoming (based on her dissertation, Turton 2020); she argues that, even in Second Temple Judaism, views on the law were not as strict as one might have presumed.

because it is the most common system found in the scholarly literature. Its main competitor is the Low Chronology.⁶ Both chronologies, for instance, agree on a forty-two-year reign for Hammurabi, but the beginning of his reign in the Low Chronology comes sixty-four years after it does in the Middle Chronology. It is difficult to establish which chronology provides the more accurate dating system, but using the Middle Chronology will allow readers to compare information from this book more readily with that of others.

At the end of each chapter is a limited fifteen-item bibliography, listing some, if not all, of the sources that were cited in the chapter. One can find all of the sources cited in every chapter in the general bibliography at the back of the volume. To these were added a number of additional items that are important for the topics covered herein. Due to space limitations, however, we have not been able to include every source that we believe is important for the study of biblical law. But the general bibliography that is provided should be able to guide those who are interested to other items of significance that will take them more deeply into this area of research. Footnotes were also kept to a minimum, and so there are fewer comments on secondary issues or on more subtle debates within the field than one might find in a research monograph.

Finally, the contributors to this volume have used a variety of English translations in their chapters. Several quote from the New Revised Standard Version (NRSV) or another well-known English version, such as the second edition of the New Jewish Publication Society translation (NJPS). A number provide their own translations of biblical and ancient texts, and some have adapted and modified the translations of the NRSV, the NJPS, or other published translations in order to produce what they believe is a better rendering. In most chapters, a footnote indicates how the author of that chapter has decided to handle this. In chapters without this note, the authors make clear the source of their translations on a case-by-case basis.

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14 Biblical Law and Rabbinic Literature

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INTRODUCTION/WARNINGS

The risk of uttering any characterization of ancient rabbinic literature is to risk being asked, "What about . . .?"¹ That is, for every example of an argument there is a counterargument (or, more commonly, many counterarguments). This is to be expected from a "literature" that not only crosses centuries and continents, that is mainly anthological in its contents and structure, but that elevates diversity of views and the persistence of debate to an art form, as much in legal texts (*halakha*) as in narrative ones (*'aggada*). This challenge can be turned inward upon itself (making a virtue of necessity) so as to constitute something worthy of attention in its own right (see Stern 2004). The anthological nature of rabbinic literature also contributes to our difficulty in knowing how much of what first appears there, especially in its early collections, has roots going back, even far back, into Second Temple Jewish traditions, a methodologically fraught subject that cannot be considered here (but see, e.g., Fraade 2011). Therefore, what follows is a discussion of selected themes that cite selected texts, rather than any synthesis that could claim to be comprehensive or decisive.

AFTER MOSES?

Rabbinic literature rests on presuppositions that it would claim are contained in, derive from, or are in continuity with biblical law itself, even as, under closer scrutiny, they can be shown to represent radical departures from the legal posture of the Hebrew Bible – and even as they are hermeneutically grounded therein. First and foremost, biblical law is understood to have been divinely revealed, principally through Moses,

¹ Unless otherwise indicated, biblical translations are from the NRSV; translations of rabbinic literature are those of the author.

the supreme mediating prophet, at Mt. Sinai or within a generation thereafter. The rabbis themselves, following scriptural cues, debate whether Moses was a more active or more passive stenographer. If more credit is given to Moses, not just as the transmitter of revelation, but as its innovative teacher, does that weaken, as it were, the absolute authority of God as the ultimate source of all revelation? But this merely raises the question, since Moses was mortal (Deuteronomy 34), how did revelation and its interpretation continue after Moses' death, seeing as he did not establish a prophetic dynasty. Was it closed or did it remain open to restatement and explication in human hands?

The Hebrew Bible itself acknowledges that there were legal situations not anticipated in biblical law, already during the period of the wilderness wandering, which, so long as Moses was alive, could be clarified through his prophetic interventions with God in the Tent of Meeting (see Lev 24:10–23; Num 9:6–13; 15:32–36; 27:1–11). Presumably, there were or would be others. If so, how and by whom would they be adjudicated (or legislated) in Moses' absence? Would this be part of the job descriptions of future prophets or kings? For the most part not, since early rabbinic literature sees neither of these inspired figures as the sources of law *per se*.

Previous to the book of Deuteronomy, there is little evidence of a judicial system in the Torah's legal discourse. God alone, ideally speaking, would be Israel's king and judge. At most we have anecdotal, ad hoc arrangements for Moses to share the administrative burden of governing the people with lay leaders (e.g., "elders"), as found in Exod 18:13–27, Num 11:10–17, 24–25, and Deut 1:9–18. Deuteronomy radically innovates in conceiving a court system and limited monarchic governance in Deut 16:18–17:20, especially a high court of referral in Deut 17:8–13.

In one of rabbinic literature's most daring and consequential exegetical feats (Sifre Deut 152–55), it radically redesigns the Deuteronomic high court. Whereas scripturally it would appear to have been located on the (Jerusalem) Temple Mount, to have been composed mainly of priests and Levites, and to have dealt with human conflicts that could not be resolved at lower-level courts, it is exegetically and rabbinically transformed so as to be transportable, as it were, to (rabbinic) Yavneh (and, henceforth, elsewhere from there to other rabbinic centers of learning), to be composed of (rabbinic) non-priests, and to adjudicate and legislate the full range of (rabbinic) law, whether civil, criminal, or ritual, whether applicable or not (see Fraade 2017). Finally, the authority of the high court (unlike that of the king) is absolute. Most radically, the midrash interprets Deut 17:11 ("You must not deviate from the verdict

that they tell you either to the left or to the right") to mean, "Even if they show you that right is left and left is right, obey them" (see Fraade 2017: 420–22). That is, the correctness of a legal ruling is less important than the authority of the legal body that issues the ruling. To paraphrase a different well-known rabbinic legal story (b. B. Mes. 59b), while the Torah (and its laws) originate at Mt. Sinai, its interpretation and adjudication are no longer "in heaven" (Deut 30:12) but in fallible human (rabbinic) hands by majority vote.²

RABBINIC LAWS "FROM" SINAI

If the Torah and its rabbinic laws are no longer "in heaven," they are still, it is claimed, "from Sinai," that is, "from heaven" by way of Moses' (and later sages') intermediary agency. A well-known example of this attitude is the opening words of the "chain of tradition" of m. 'Abot 1:1–15, which begins, "Moses received Torah from Sinai and passed it on to Joshua, and Joshua to the elders," etc. The fact that the passage (according to all the best manuscripts) has "Torah" without a definite article suggests that what is being depicted is the revelation and transmission not just of the written Torah (the Pentateuch) but of the broader rabbinic curriculum of written Scripture and oral teaching, both legal and narrative, of which Mishna 'Abot would have been a familiar component. This is borne out by the fact that, beginning with the first post-prophetic link (the apocryphal "men of the great assembly"), each successive link teaches maxims that become part of the Torah teaching to be transmitted down the line, as if to say, that they, too, could be said to have been "received from Sinai."

Another way of expressing this sense of continuity of later legal teaching and interpretation with the revelation through Moses at Mt. Sinai can be seen in the following interpretation of Deut 32:10 by way of Exod 19:12 (Sifre Deut 313 [ed. Finkelstein, 355]):

"He shielded him" (Deut 32:10): before Mt. Sinai, in connection with which it is said, "You shall set bounds for the people all around, saying" (Exod 19:12). "He cared for him": with the Decalogue. This teaches that (when each) Divine Word went forth from the mouth of the Holy One, Israel would observe it and would

² For the recent debate among scholars as to whether rabbinic literature, in contrast to its Second Temple antecedents, exemplifies legal nominalism (of which our midrash passage would be a prime example) rather (or more) than legal realism, see most recently, Hayes 2015; Amihay 2017: 17–30; David 2017.

know how much midrash could be derived from it, how many laws could be derived from it, how many a fortiori arguments could be derived from it, how many arguments by verbal analogy could be derived from it.³

Thus, each divine utterance of revelation contained within it, as it were, its full potentiality of meaning(s), which later interpreters, in due course, would disclose through the hermeneutical rules of interpretation, with those rules themselves likewise having been enclosed in revelation. It was to the great credit of the Israelites (as a whole, presumably) to be able to "see" this exegetical potentiality at the very moment of its divine revelation. Note that each revelatory word (or phrase) "contained" *multiple* outcomes from the application of hermeneutical methods and forms, to which we shall shortly return. Similarly:

Rabbi Joshua ben Levi said (citing Deut 9:10): "[And the Lord gave me the two stone tablets of stone written with the finger of God, and on them were as all the words that the Lord had spoken to you at the mountain out of the fire on the day of assembly (NRSV, adapted)]: [not] "on them" [but] "and on them"; [not] "words" [but] "the words"; [not] all [but] "as all": [this seemingly superfluous wording denotes] Scripture and *mishna* (oral teaching) and *talmud* (dialectical legal study) and *'aggada* (narrative). And even what a veteran student will in the future teach before his master, was already said to Moses from Sinai. This is what is meant when (Scripture) says, "Is there a thing of which it is said, 'See, this is new'?" His fellow responds to him, "It has already been, in the ages before us." (Qoh 1:10)⁴

In short, legal innovation is a mistaken conceit. What might seem new was there all along, ever since the revelation at Sinai, but has taken time to come to its disclosure and fulfillment. This is especially so for Torah laws, both written and oral.

"A Heart of Many Chambers"

A hallmark of rabbinic literature is the proliferation of opinions and interpretations, whether legal or nonlegal, although they assume

³ Sifre Deut 313 (ed. Finkelstein, 355), corrected according to MS London 341 (MS Vatican 32 not being extant here). For a fuller discussion, see Fraade 1991, 60–62.

⁴ Y. Meg. 4:1, 74d. For parallels, see y. Pe'ah 2:6, 17a; y. Hag. 1:8, 76d; Lev. Rab. 22:1; and others. For a thorough examination of the related expression, "a law to Moses from Sinai," see Hayes 2000.

different compositional and rhetorical forms respectively. An explanation does not (or not solely) reside in the fact that, as a scholastic society, the rabbis could see the inverse side of any argument and relish debate for its own sake. Nor is it simply the consequence of anonymous editors having incorporated the polyphony of rabbinic opinion in the anthological format of *midrash*, *mishna*, and *gemara* (*talmud*) as a way to maximally preserve accumulated traditions. Rather, it is telling that rabbinic literature repeatedly projects multiplicity of meaning and interpretation onto the originary moment of divine revelation at Mt. Sinai, rather than bemoan it as a symptom of rabbinic belatedness from originary revelation. As we shall see, legal (and nonlegal) polyphony has theological meaning. The following (t. Soṭah 7.11–12) is one of the finest, relatively early rabbinic examples:

- [1] "Masters of assemblies" (Qoh 12:11): [This refers to] those who enter and sit in multiple assemblies, declaring what is impure [to be] impure, and what is pure [to be] pure, what is impure [to be] in its place, and what is pure [to be] in its place (see Fraade 2015: 116 nn. 10–11).
- [2] Should a person (*'ādām*) think to himself, "Since the House of Shammai declares impure and the House of Hillel declares pure, so-and-so prohibits and so-and-so permits, why should I henceforth learn Torah?"
- [3] Scripture teaches, "Words," "the words," "these are the words" (Exod 19:6 or Deut 1:1; see Fraade 2015: 116 n. 13).
- [4] All of the[se] words "were given by one shepherd" (Qoh 12:11). One God created them, one benefactor [Moses] gave them, the master of all deeds, blessed be he, spoke (it) [them].
- [5] Therefore, you should make of your heart chambers of chambers, and bring into it the words of the House of Shammai and the words of the House of Hillel, the words of those who declare impure and the words of those who declare pure.

The cacophony of seemingly irreconcilable legal opinions might well drive a generic "person" (*'ādām*), perhaps a prospective student, to give up in frustration before beginning to study, asking himself, "How can I possibly learn anything here? Either something is pure or impure; prohibited or permitted," etc. Based on a "close reading" of Exod 19:6 (or Deut 1:1), the multiplicity of contradictory rabbinic or proto-rabbinic legal opinions are "all" shown to have originated with God as their single creator and Moses as their single communicator, all of them ultimately being one, *e pluribus unum*. Note how the midrashic voice now speaks in the second person singular to its audience of one, presumably the

forementioned "person," with direct instructions of how to take it all in. "Make your heart (or mind, both being seats of memory) into multiple chambers within chambers," a "memory palace," within which they are sorted and evaluated (on which see Fraade 2015, 116 n. 13) so as to give equal consideration to the words of the House of Shammai, even if not operative, as to those of the House of Hillel, for they "all" originate at Sinai (or shortly thereafter).

This is reminiscent of the more famous talmudic story of an irreconcilable legal dispute between the House of Shammai and that of Hillel regarding an unspecified matter of *halakha*, which, after three years without resolution, is ended by a heavenly voice (*bat qol*) declaring that "these and these are the words of the living God," even as the *halakha* is henceforth to follow the opinion of the House of Hillel as a reward for their more modest and respectful manner of debate.⁵ These two passages share a claim that rabbinic legal teaching and debate is ultimately rooted in Sinaitic revelation, and they appear to authorize the contest of multiple opinions and interpretations throughout the transmission of this revelation. But a clear tension remains. The story of the heavenly voice would, in effect, foreclose forever any debate between the two houses (why debate if the outcome is predetermined, except for the value of debate in its own right?), whereas the midrash about the "heart of many chambers" would seem to keep the debate stage (multi-chambered hearts) open and available for continuing disagreement and contradiction, at least for the time being.

Memory Loss

Until now, the rabbinic passages that we have examined have stressed the continuity, if not identity, of discordant rabbinic debate with the unitary revelation of divine law at Mt. Sinai through the prophetic agency of Moses. However, in other passages (since we might expect there to be diversity), we find expressions of uncertainty as to the fragility of oral teaching going forward in the chain of tradition, whether for legal uncertainty or the fallibility of human memory. Let me give just two short examples:

Were it not for those who arose and established the Torah, would it not have been forgotten from among Israel? Had not Shaphan in his

⁵ The story appears in multiple versions. I am paraphrasing the one in b. 'Erub. 13b, which is fuller, but others that at least allude to this story include b. Git. 6b; y. Qidd. 1:1, 48d; y. Ber. 1:4, 3b; y. Yebam. 1:6, 3b; y. Soṭah 3:4, 19a.

time, Ezra in his time, and R. Akiba in his time stood up, would it not have been forgotten? (Sifre Deut 48[ed. Finkelstein, 112])

For in ancient times when the Torah was forgotten from Israel, Ezra came up from Babylon and established it. When it was again forgotten, Hillel the Babylonian came up and established it. When it was again forgotten, R. Hiyya and his sons came up and established it. (b. Sukkah 20a)

The Torah, it is feared, could be (as it recurrently has been) forgotten as much as, if not more than, the (rabbinic) oral Torah as the written foundation of the latter. The chronological succession of tradents, who repeatedly restored the forgotten Torah, extends, presumably, to the living present of its continuous study.⁶

The following midrashic passage from Sifre Deuteronomy dramatically and figuratively illustrates the fragile nature of "words of Torah," implicitly with respect to rabbinic law. It comments separately on the two halves of Deut 32:46, which is part of Moses' swan song to the people of Israel just prior to his death, forbidden as he is by God from crossing over into the promised land with them.

"He said to them: 'Take to heart [lit.: set your heart[s] toward] all the words [that I am giving in witness against you today]'" (Deut 32:46a): A person (*'ādām*) needs to direct his eyes and his heart and his ears toward words of Torah. And so it says, "Mortal, [mark well] [lit.: set your heart], look closely [with your eyes] and listen attentively [with your ears] to all that I shall tell you [concerning all the ordinances of the temple of the Lord and all its laws;] and mark well [lit.: set your heart toward] those who may be admitted to the temple and all those who are to be excluded from the sanctuary" (Ezek 44:5). We may argue *a fortiori ad minore* (*qal wāḥōmer*, from light to heavy or the reverse): if in the case of the Temple, which could be seen with the eyes and measured with the hand, a person (*'ādām*) needed to direct his eyes and his heart and his ears (toward it), then how much more should this be with words of Torah, which are like mountains suspended by a hair.⁷

⁶ Note that Ezra alone appears in both lists. On Ezra's role as a restorer of Torah and as a second Moses in late Second Temple and early rabbinic literature, see Fraade 2013, 366–71.

⁷ Sifre Deut 335 (ed. Finkelstein, 384–85). Unless otherwise indicated, I translate the text of MS London 341, with slight adjustments. For further in-depth treatment of this and the following midrashic unit, which interprets the second half of the verse, see Fraade 2022a.

The idiom "to set one's heart (= mind) toward" would seem to denote mental engagement with or concentration on divine or Mosaic instruction. But the midrash – based on the parallel use of the same idiom in Ezek 44:5, but there combined with the senses of seeing and listening – concludes that in Deut 32:46a, too, Moses is exhorting the people to actively and intensely engage "words of Torah," not just mentally but visually and aurally as well, with the totality of one's sensing self, in effect internalizing the "words of Torah."⁸

Before proceeding, however, we should note that the expression "words of Torah," construed here broadly as including both scriptural and non-scriptural (oral) rabbinic teaching,⁹ is without direct scriptural antecedent. In the present context, the phrase "words of Torah" does not appear in the first half of the verse (46a) but is the result of a midrashic importing of it from the second half of the verse (46b: "all the words of this Torah") to the first (46a: "all the words"). The expression "the words of Torah" within the Pentateuch only appears in the book of Deuteronomy, where it occurs nine times, but always modified by the demonstrative pronoun "this" (as in v. 46b), referring to some form of the book of Deuteronomy or a part thereof (Deut 17:19; 27:3, 8, 26; 28:58; 29:28; 31:12, 24; 32:46). The expression "the words of Torah" appears only five more times in the rest of the Hebrew Bible but always with the definite article "the" (Josh 8:34; 2 Kgs 23:24; Neh 8:9, 13; 2 Chr 34:19). The more inclusive (rabbinic) expression "words of Torah" (without the definite article or demonstrative pronoun) *never* appears scripturally or, for that matter, in any pre-rabbinic Jewish text (e.g., the Dead Sea Scrolls). Thus, it is most likely that the expression "words of Torah," here, is intended to refer to Torah learning in general, both scriptural and (oral) rabbinic, and is an early rabbinic innovation.

With respect to our midrash, the parallel expressions of Moses' call to the people to pay close mental and multisense attention to his "words of Torah" and God's call to Ezekiel to pay close attention to the envisioned heavenly Temple do not constitute an analogy between equals. Rather, by an argument of *qal vāḥōmer*, the midrash says that if such multisense engagement is divinely demanded with respect to the seemingly solid, stable, and tangible Temple, which can be "measured by the hand," how much more should it be required of the precariously

⁸ For the triad of heart (=mind), eyes, and ears, see Deut 29:3; Isa 6:10; 32:3–4a; Jer 5:21. For the importance of visualization in rabbinic literature, see Fraade 2022a, n. 20.

⁹ On the rabbinic phrase "words of Torah" denoting both biblical and rabbinic oral Torah, see Fraade 1991: 258 n. 219. See especially Sifre Deut 306 (ed. Finkelstein, 339), treated in Fraade 1991: 97, and cited and discussed below.

fragile, unstable, and intangible "words of Torah," which are likened to "mountains suspended by a hair."

The metaphor of "mountains suspended by a hair" demands a brief detour. The phrase appears in only one other tannaitic textual context, that being m. Ḥag. 1:8 and its relatives in t. Ḥag. 1:9 and t. 'Erub. 8:23. There it metaphorically denotes a class of laws (e.g., Sabbath laws) with "little Scripture and many laws," meaning that these classes of laws have little in Scripture upon which to "lean" (according to the Tosefta), that is, from which to derive authority (and perhaps by which to facilitate memorization through grounding in scriptural interpretation).

The Sifre Deuteronomy commentary is unique in its use of this metaphor to characterize "words of Torah" *in their entirety*. Should we read the Sifre in light of the Mishna and Tosefta, as saying that all "words of Torah," that is, all of rabbinic law, are fragile by reason of having "little Scripture and many laws," that is, few scriptural hooks upon which to hang or from which to derive its laws? I would prefer not to do so but to read the expression in Sifre Deuteronomy in its own right, thereby preserving the radical ambiguity of its reason for characterizing rabbinic "words of Torah" in their entirety as being "like mountains suspended by a hair." One could imagine other reasons for this fragility besides the abundance of rabbinic laws with respect to their meager scriptural bases, for example, the difficulty of committing such a large corpus of laws and cacophonous legal debate to memory and oral recitation, and hence the danger of their being lost by being lost from memory, as we have seen, unless they are repeatedly studied and visualized.

In any case, the *qal vāḥōmer* argument is ironic since, at the time the midrash was composed (and thereafter, as it was continually studied through history), the solid physical temple (but not its heavenly prototype) had long been destroyed, while the unstable "words of Torah" had survived, perhaps thanks to the multisense attention lavished upon them by their midrashic tradents over the generations. The second half of the midrash, which interprets Deut 32:46b, (for which see Fraade 2022a) heightens the radical sense of the precarious nature of both Mosaic and rabbinic Torah, as they depend on each successive generation's preserving, transmitting, and obeying their commands as an intergenerational legacy.

BIBLICAL LAW VERSUS RABBINIC LAW

Notwithstanding the above claims that rabbinic laws are continuous with biblical antecedents, with both deriving their authority from the divine revelation at Mt. Sinai, it is generally assumed that biblical laws

exceed rabbinic laws in their authority, the former being original and direct as divine revelation, the latter being derived and indirect as human teaching. This can be seen in a number of cases (all in the Babylonian Talmud), in which it is said that (non-biblical) rabbinic laws require extra stringency or reinforcement (*hizzûq*), since they might be commonly viewed as being of lesser authority and hence lesser obligation. Let us look at one example, which will also serve as a taste of talmudic legal argument.¹⁰

Although Genesis 38 and the book of Ruth offer narrative treatments, Deut 25:5-10 is the only legal treatment of the levirate marriage in the Hebrew Bible. It states that, if a married man dies childless, his brother is obligated to marry his widowed sister-in-law and father a child who will be considered the son of the deceased brother, in order that "his name not be blotted out of Israel" (v. 6). If, however, the brother declines for some reason to perform this act of levirate marriage, then he must undergo a ceremony of *hālîšâ* (sandal removal) in the presence of the town elders. He proclaims his refusal, and his brother's widow humiliates him in public by removing his sandal and spitting in his face, declaring, "'This is what is done to the man who does not build up his brother's house.' Throughout Israel his family shall be known as 'the house of him whose sandal was pulled off'" (vv. 9-10).

The Mishna (as well as the Tosefta and the two Talmuds) devotes a sizable tractate (Yebamot) to this arrangement and ritual, adding much by way of specificity and raising questions for clarification. M. Yebam. 1:2 introduces the following scenario. What if it is discovered only after the levir (brother-in-law of the widow) has consummated his marriage to his brother's widow that she was pregnant with and gave birth to the son of her deceased husband? According to the Mishna, it depends on whether the fetus is considered "viable," that is, will continue to live or not. If the fetus is deemed viable, then there is no purpose served by the levirate marriage, which is therefore dissolved. A sacrificial penalty must also be paid since the marriage is considered to be in violation of Lev 18:16, which prohibits the marriage between a man and his brother's wife. That is, the levirate marriage is allowed as an exception to this biblical prohibition but only so long as it serves its scriptural purpose of extending the "name" of the deceased brother "in Israel." This would not be the case if the fetus were viable, there being

¹⁰ b. Yebam. 36b. For other examples, see b. 'Erub. 77a; 85b; b. Ketub. 56a; 83b; 84a; b. Zebah. 101a.

no function then filled by the levirate marriage. If the fetus is deemed to have been inviable, however, the levirate marriage can stand with its purpose fulfilled, assuming a later son is born of the levirate marriage. But, continues the Mishnah, what happens in cases of doubt as to whether the child is the offspring of the deceased husband or of his brother, the levir? In such cases of doubt (and the absence of DNA testing), the levirate marriage is dissolved on the assumption that there was sufficient doubt at the time of intercourse between the levir and his brother's widow to render it invalid and forbidden retroactively; a sacrificial penalty is required in this instance as well.

The Talmud's commentary (*gemara*) begins by citing a *barayta*' (tannaitic tradition embedded in the *gemara*') in the name of Rabbi Eliezer (ben Hyrcanus) that disagrees with the Mishnah. It argues that, if the woman is pregnant at the time of levirate intercourse, this is sufficient grounds to dissolve the levirate marriage with a writ of divorce. The reason is that it would likely be unknown for certain if the fetus and child would be viable (invalidating the levirate marriage) or not (validating the levirate marriage), and there is no point in risking violation of Lev 18:16 for the sake of a doubtfully legal levirate marriage.

It is next claimed that Rabbi Meir (a contemporary of Rabbi Eliezer) came to the same conclusion, but by a different route, as expressed in another *barayta*', again not found in our Mishna, which prohibits a man from marrying a woman who is pregnant with the child of another man or is nursing the child of another man, though she is now widowed or divorced. While this rule is not specific to levirate marriage, its similarity to the case being discussed is apparent, and this allows an inference to be drawn with regard to Rabbi Meir's view of the question at hand. According to Rabbi Meir's stringent opinion, if someone violates the prohibition of intercourse with a pregnant or nursing wife of another man, he must divorce the woman with a writ of divorce and never remarry her. Rabbi Meir would, presumably, say the same of a levir who has intercourse with his widowed sister-in-law when she is pregnant, regardless of whether or not the resulting fetus is viable. The other rabbis, however, take a more lenient view: such a man may send his wife out and may remarry her after an appropriate amount of time (twenty-four months, the length of time for nursing an infant) – a provision that is certainly not adduced in (or from) Scripture.

In seeking to reconcile the various rabbinic opinions, a distinction is drawn between the Torah (*de'orayta*') prohibition of marrying one's

brother's wife (Lev 18:16) and the rabbinical (*derabbanan*) prohibition of marrying a divorced or widowed woman who is pregnant with or nursing another man's child (according to the *barayta*). This is said to be an example of the sages having "given more force (*hizzûq*) to their words than to those of the Torah," since "people generally keep away from (Torah prohibitions)," exhibiting greater obedience to Torah prohibitions than to rabbinic prohibitions, and this necessitates greater stringency with respect to the latter (even though one might have expected the opposite). Thus, rabbinic law is in a position of both greater strength and weakness with respect to biblical law – more stringent but less readily followed.

There are other cases, however, where we see the opposite. Rabbinic law can sometimes directly undermine, bend, or circumvent ('*oqeret*, '*oqemet*, '*oqebet*, or '*oqepet*) biblical law, rather than being subservient to it. There are three such examples of this tradition: the one from the legal midrash of Sifre Deut 122 to Deut 15:17 (ed. Finkelstein, 180); another from the Jerusalem Talmud, y. Qidd. 1:2, 59d; and yet another from the Babylonian Talmud, b. Soṭah 16a. Here we will examine the version in the Sifre, since it is arguably the oldest.¹¹

"And you shall take an awl [and put it through his ear into the door]" (Deut 15:17): From whence can we learn to include a thorn, or a [piece of] glass, or a splinter of reed? As it says, "and you shall take" [anything that can be taken in hand]. These are the words of Rabbi Jose the son of Rabbi Judah. Rabbi [Judah the Patriarch] says: "Awl": Just as the awl is best made of metal, so too I can only consider [instruments] made of metal. From here Rabbi Ishmael would say: In three places the *halakha* circumvents Scripture: (1) The Torah said, "He shall pour out its blood and cover it with dust (earth)" (Lev 17:13). The *halakha* said, "with anything that grows plants." (2) The Torah said, "He shall write her a writ of divorce" [on writing material]. The *halakha* said, "on anything that is separate [from the ground]." (3) The Torah said, "with an awl" (Exod 21:6). The *halakha* said, "with anything."

¹¹ I follow MS Vatican 32. In Finkelstein's edition, he prints the text beginning with "from here" in a smaller font and indicates in his critical apparatus that an equal number of manuscripts either include or exclude this text. However, the manuscripts that include it, I would argue, provide better text-critical evidence for its inclusion. Even if the passage in question is an editorial insertion into the text of the Sifre, that would not preclude its being earlier than its other attestations. For further discussion, see Gvaryahu 2017.

We should first emphasize that, on the surface at least, it is hard to know which of these legal interpretations, except for the writ of divorce, had practical application in early rabbinic times. They still would have been studied and debated all the same "for the sake of heaven" – that is, the study and debate of Torah (written and oral) are valuable for their own ritual sake (e.g., m. 'Abot 5:17).

While there are, no doubt, many other cases of the *halakha* circumventing or undermining Scripture, the three here cited are of a type. Each asks just how broadly can a scriptural word be construed and still validly fulfill its function in the required legal/ritual act: dust (earth), writ of divorce, awl? In each case, the range of meaning of the Torah word is broadened from its apparent scriptural meaning but only within certain limits – except for the awl, unless its construal is deemed to be constrained by the prior interpretations of Rabbi Jose the son of Rabbi Judah and of Rabbi Judah the Patriarch.

Although, as I have suggested, there might be legal hermeneutics at work in these three cases, they are not made explicit, except for the hermeneutical language employed by Rabbi Jose the son of Rabbi Judah. There appears to be a tension between those who would root their legal interpretations in the very words of the Torah and those (presumably of the "school" of Rabbi Ishmael) who would, at least in some cases, feel no such constraints. For this latter view, rabbinic *halakha* can, where either necessary or desired, stand on its own, rather than necessarily deriving meaning from or projecting it onto Scripture.

Herein lies a fundamental difference between *mishna* and *midrash* as modes of study. In the former, *halakha* does not necessarily derive from or require the justification of Scripture, being organized topically as if it were employing a hermeneutics of taxonomy, and yet is deeply interconnected with Scripture. In the latter, *halakha* emerges from (even if *ex post facto*) a hermeneutics of extraction, performed in dialogue with Scripture and its multiple interpretive voices.

SCRIPTURE AND ORAL TEACHING IN A SHARED CURRICULUM OF STUDY

While it is useful to divide the rabbinic Torah into what is deemed "written" and "oral," and what is legal (*halakha*) and narrative (*aggada*), demarcations that rabbinic literature itself employs, it is important to recognize the fluidity and porousness of such divisions and to remember that they are intersecting and interpenetrating

components in a shared curriculum of study at all levels.¹² Consider the example of Sifre Deut 306 (ed. Finkelstein, 339, adapted):

Another interpretation of "May my teaching drop like rain" (Deut 32:2): Just as rain falls on trees and infuses each type with its distinctive flavor – the grapevine with its flavor, the olive tree with its flavor, the fig tree with its flavor – so too words of Torah are all one, but they comprise Scripture and Mishna (oral teaching): Midrash (dialectical commentary), Halakhot (laws), and Haggadot (narratives)... Another interpretation: Just as rain cannot be anticipated until it arrives, as it says, "In a little while the heavens grew black with clouds [and wind; there was a heavy rain]" (1 Kgs 18:45), so too you cannot know what a disciple of the sages is until he teaches: Mishna, Halakhot, and Haggadot; or until he is appointed administrator over the public.

The main point of the midrash is to demonstrate that all branches of the rabbinic study curriculum, irrespective of their different "flavors," which I take to be their diverse rhetorical and formal practices, have their common origins in heaven (represented in the single rain). Their earthly manifestation can be found, perhaps unexpectedly, in the teaching of the individual rabbinic sage or disciple, who combines (ideally at least) all of these forms of study in combined discourses, while maintaining the performative boundaries between their distinctive modalities, beginning with written and oral and continuing with laws and narratives. In a sense, the sages and their disciples embody and reflect the rabbinic written and oral "library."

For the combination and integration of the different forms of study, especially legal and narrative, within the heart/mind of each disciple, we will conclude with the following passage, albeit from a later anthological source (Abot R. Nat. A 8 [ed. Schechter, 35–36], commenting on m. Abot 1:6):

"Provide yourself with a teacher": How so? This teaches that one should provide himself with a single teacher and study with him Scripture and Mishna (oral teaching): Midrash, Halakhot, and Aggadot. Then the interpretation which the teacher neglected to

¹² For a broader and deeper discussion, see Fraade 2022b. For the rabbinic study curriculum, see Fraade 1991: 51, 97, 116, 214 n. 131, 239 n. 69, 243 n. 92, 244 n. 111, 254 n. 179, 256 n. 201. Some versions of the rabbinic study curriculum include *targum* (Aramaic scriptural translation) between Scripture and Mishna – written and oral Torah – as their intermediary bridge and buffer.

tell him in the study of Scripture he will eventually tell him in the study of Mishna; the interpretation which he neglected to tell him in the study of Mishna he will eventually tell him in the study of Midrash; the interpretation which he neglected to tell him in the study of Midrash he will eventually tell him in the study of Halakhot; the interpretation which he neglected to tell him in the study of Halakhot he will eventually tell him in the study of Aggada. Thus, that man remains in one place [that is, with one teacher] and is filled with good and blessing. Rabbi Meir used to say: He that studies Torah with a single teacher, to whom may he be likened? To one who had a single field, part of which he sowed with wheat and part with barley, and planted part with olives and part with oak trees. Now that man is full of good and blessing. But when one studies with two or three teachers he is like someone who has many fields: one he sows with wheat and one he sows with barley, and plants one with olives and one with oak trees. Now this man's (attention) is divided among many pieces of land, without good or blessing. (trans. Goldin, 49–50, adapted)

We see here, based on a literal understanding of the singular form "teacher," the ideal of the *single* sage who combines in his teaching and in his very self the *full* curriculum of rabbinic studies, including *halakha* and *aggada*, thereby rejecting, or at least devaluing, the attraction toward scholastic specialization. This is the opposite of the tendency, known to all scholars and scholastic institutions, to master one subject well, and for the student who seeks a comprehensive education to study from a wide range of such specialized teachers, shuttling between them, to the deleterious effect of being worn out and not receiving a wholistic education. As we have previously seen ("A Heart of Many Chambers"), deep within the heart or mind of the student and teacher, the specific "flavors" of rabbinic teaching are interconnected so that what is neglected in one becomes manifest in another. Once again, the ultimate unity of the branches of the rabbinic curriculum locates their origins (and authority) in a single source and their pedagogic embodiment in the single rabbinic polymath.

CONCLUSION/CONFUSION

At the risk of over-synthesizing the wide array of rabbinic texts, and types of texts, that we have examined, a few common threads can be identified. Notwithstanding the diversity, or cacophony, of forms and

opinions (so much so as to dissuade a potential student from joining in), it is repeatedly claimed that behind, or within, such variety is the unitary heavenly/divine/Mosaic source of all rabbinic teaching. Divergent opinions and forms need to be recognized, differentiated, and named, even as they are all ultimately, both theologically and anthropologically, one. This is particularly true for the relation of written to oral Torah, of Sinaitic revelation and post-scriptural interpretation, and of law(s) to narrative(s). The fear of forgetting introduces a motif of rupture to complement in dialectic fashion, as it were, that of continuity.

For the midrashist, rabbinic law has its hermeneutical roots in Scripture, from which its authority derives, whereas for the "mishnayist" (just coined), rabbinic law can stand on its own legs, deriving its authority, as it were, from the rabbinic "house of study," with its synchronic study circles and diachronic chain of masters and disciples. Rabbinic law in some cases can circumvent biblical law and in others demand greater attention and consequence. On the one hand, there is "nothing new under heaven" (Qoh 1:9), since all Torah teaching ultimately goes back to what Moses received from Sinai. On the other, not a day passes without something "new" being taught in the house of study (e.g., b. Hag. 3a). How to understand and balance such seeming tautologies is itself the source of continued debate for no less than "the sake of heaven."

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