INCONSISTENCY

IN THE TORAH

Ancient Literary Convention and the Limits of Source Criticism

JOSHUA A. BERMAN

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For Rabbi Lord Jonathan Sacks

ונחה עליו רוח ה'
רוח חכמה ובינה
רוח עצה וגבורה

Contents

Abbreviations

AASOR	Annual of the American Schools of Oriental Research
AB	Anchor Bible
ABD	*Anchor Bible Dictionary*. Edited by D. N. Freedman. 6 vols. New York, 1992
AOAT	Alter Orient und Altes Testament
ATD	Das Alte Testament Deutsch
BA	*Biblical Archaeologist*
Bib	*Biblica*
BJS	Brown Judaic Studies
BO	*Bibliotheca Orientalis*
BR	*Biblical Research*
BZ	*Biblische Zeitschrift*
BZABR	Beihefte zur Zeitschrift für altorientalische und biblische Rechtgeschichte
BZAW	Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft
CAD	*The Assyrian Dictionary of the Oriental Institute of the University of Chicago*. Chicago, 1956–
CahRB	Cahiers de la Revue biblique
CBQ	*Catholic Biblical Quarterly*
CTH	*Catalogue des Textes Hittites*. Edited by E. Laroche. Paris, 1971
DULAT	*Dictionary of the* Ugaritic *Language in the Alphabetic Tradition*. Edited by G. del Olmo Lete and J. Sanmartin. Leiden, 2002
FAT	Forschungen zum Alten Testament
FRLANT	Forschungen zur Religion und Literatur des Alten und Neuen Testaments
HÄB	Hildesheimer Ägyptologische Beiträge

HALOT	Koehler, L., W. Baumgartner, and J. J. Stamm, *The Hebrew and Aramaic Lexicon of the Old Testament*. Translated and edited under the supervision of M. E. J. Richardson. 4 vols. Leiden, 1994–1999
HDT	*Hittite Diplomatic Texts*. Edited by G. Beckman. Atlanta, 1999
HKAT	Handkommentar zum Alten Testament
HS	*Hebrew Studies*
HTR	*Harvard Theological Review*
HUCA	*Hebrew Union College Annual*
ICC	International Critical Commentary
JAJ	*Journal of Ancient Judaism*
JANES	*Journal of the Ancient Near Eastern Society*
JAOS	*Journal of the American Oriental Society*
JBL	*Journal of Biblical Literature*
JETS	*Journal of the Evangelical Theological Society*
JHS	*Journal of Hebrew Scriptures*
JNES	*Journal of Near Eastern Studies*
JNSL	*Journal of Northwest Semitic Literature*
JSOT	*Journal for the Study of the Old Testament*
JSOTSS	Journal for the Study of the Old Testament Supplement Series
JSS	*Journal of Semitic Studies*
JTS	*Journal of Theological Studies*
KRI	Kitchen, K. A. *Ramesside Inscriptions, Historical and Biographical*. 8 vols. Oxford. 1969–90
LHBOTS	Library of Hebrew Bible/Old Testament Studies
MVAG	Mitteilungen der Vorderasiatisch-ägyptischen Gesellschaft. Vols. 1–44. 1896–1939
NCBC	New Cambridge Bible Commentary
NICOT	New International Commentary on the Old Testament
OTL	Old Testament Library
RBL	*Review of Biblical Literature*
RIMA	The Royal Inscriptions of Mesopotamia, Assyrian Periods
RITA	Kitchen, K. A., ed., *Ramesside Inscriptions Translated and Annotated*. 6 vols. Oxford. 1996–2014
RITANC	Kitchen, K. A., ed., *Ramesside Inscriptions Translated and Annotated Notes and Commentary*. Oxford. 1993–
RS	Ras Shamra

SSEA	The Society for the Study of Egyptian Antiquities
TB	*Tyndale Bulletin*
TZ	*Theologische Zeitschrift*
UF	*Ugarit-Forschungen*
UTB	Uni-Taschenbücher
VT	*Vetus Testamentum*
VTSup	Supplements to Vetus Testamentum
WBC	Word Biblical Commentary
ZA	*Zeitschrift für Assyriologie*
ZABR	*Zeitschrift für altorientalische und biblische Rechtgeschichte*
ZAW	*Zeitschrift für die alttestamentliche Wissenschaft*

Introduction

ON A SUNDAY morning in May 2013, nearly one hundred scholars from around the world awaited the beginning of the proceedings of a conference titled, "Convergence and Divergence in Pentateuchal Theory: Bridging the Academic Cultures of Israel, North America, and Europe" on the leafy Jerusalem campus of the Israel Institute for Advanced Study. There was anticipation in the air; this was no ordinary conference. Though the morning marked the beginning of the conference, in a more significant sense it was, rather, a culmination. For an entire academic year, the Institute had sponsored a residential research group composed of eight of the most distinguished names in Pentateuch criticism. Their task was to move toward a common discourse and set of shared assumptions about the field's most fundamental questions: should we be looking to identify extended sources that give a running history of Israel's origins, or should we be focusing on finding smaller thematic blocks and cycles? Are these units to be identified and delimited primarily by their narrative coherence, by the consistency of their ideology, or by their common language? Does redaction produce a cohesive text, or is cohesion to be found only in the precursors to the received text? What do we mean by "source," "layer," and "supplement?" Is the task of the exegete primarily literary and only secondarily historical—or, perhaps, must we date the passages first, and derive their message on that basis? These questions and more have been sources of great fragmentation within the discipline for some time. The Institute provided an unprecedented opportunity and environment for scholars to collaborate in close quarters, and to share their thoughts in weekly seminars.

The conference opened with a report of the group's accomplishments over that time. Speaking on behalf of the conveners, Bernard M. Levinson explained that the discipline is in a state of fragmentary discourse, where scholars talk past

each other, and mean different things even when they use the same terms. As he put it, "scholars tend to operate from such different premises, employing such divergent methods, and reaching such inconsistent results, that meaningful progress has become impossible. The models continue to proliferate, but the communication seems only to diminish."[1]

A colleague sitting next to me commented that he was not surprised to hear this description of gridlock and crisis. As he put it, this should have been the expected result of bringing together so many accomplished and senior members of the same field. If you are a scholar whose entire output has consisted of studies predicated on say, source criticism, it is probably quite difficult for you to imagine that perhaps sources, classically conceived, do not exist. The American novelist Upton Sinclair said, "It is difficult to get a man to understand something, when his salary depends on his not understanding it"[2]; and we may apply Sinclair's observation to the world of academic publishing and say, "It is difficult to get a scholar to understand something, when his entire scholarly oeuvre depends on his not understanding it." Put differently, perhaps this deadlock stems from what Thomas Kuhn explains in his *Structures of Scientific Revolutions*: paradigms do not shift overnight. When scholars have worked with a given paradigm for a long time, he writes, the problems of the paradigm are never quickly acknowledged. The old paradigm will not be discarded until another paradigm is proposed that is demonstrably more compelling.[3] We stand today in diachronic study of the Bible at a midpoint in this process. Problems have been identified with the reigning paradigms, yet no alternatives have been proposed that are demonstrably better. In this intellectual climate, it is to be expected that different scholars will stick to their different academic guns, so to speak.

In this volume I offer no panacea to the questions and issues raised concerning the formation of the Torah. Instead, I offer a contribution to a recent and growing movement within historical-critical scholarship on the Torah. The root of

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1. See Levinson's introductory comments to "Convergence and Divergence in Pentateuchal Theory: Bridging the Academic Cultures of Israel, North America, and Europe," available at https://www.youtube.com/watch?v=PHYKPSE6iZc at 0:16:47. See now also in the published conference volume, Jan Christian Gertz, Bernard M. Levinson, Dalit Rom Shiloni, and Konrad Schmid, "Convergence and Divergence in Pentateuchal Theory—The Genesis and Goals of This Volume," in Gertz, Levinson, Shiloni, and Schmid, *The Formation of the Pentateuch: Bridging the Academic Cultures of Europe, Israel and North America* (FAT 111; Tübingen: Mohr Siebeck, 2016), 3.

2. Upton Sinclair, *I, Candidate for Governor: And How I Got Licked* (Berkeley: University of California Press, 1994), 109.

3. Thomas Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1970).

the problem heretofore, according to this movement, is that scholars have rooted their compositional theories for the growth of the biblical text entirely in their own intuition of what constitutes literary unity. For those of us working in this new movement, the time has come to root compositional theory in the so-called empirical findings of the writings of the ancient Near East. We must canvas and analyze documented examples of compositional growth and editing across a wide field of ancient Near Eastern texts, both within ancient Israel and outside it.[4] How did these scribes go about editing and revising revered texts? What editorial trends do we see when we compare earlier versions of a text to later ones? For these scholars it is an axiom that the Hebrew Bible, and with it the Torah, is a product of an ancient Near Eastern milieu, which deeply influences not only its content, but also its poetics and process of composition. The turn by these scholars toward empirical models for compositional theory has met with resistance in some quarters, because essentially, these scholars claim that the only way to right the ship is by jettisoning many sacred cows of compositional theory, and effectively throwing them overboard.

Whereas other scholars have examined the editorial practices of ancient scribes, I seek here to question our own notions of consistency and unity in a text, in light of what we discover from the writings of the ancient Near East. Scholars have long known that this corpus can surprise us with the seeming "inconsistencies" that it yields. A foundational staple of early Penateuchal criticism maintained that the disparity of divine names found in the Torah was itself proof positive of composite authorship, and a key to determining and delimiting its sources.[5] This axiom had to be walked back, however, in light of evidence that the ancients were quite comfortable referring to the same deity by multiple names, even within a single passage. Witness what we find in Tablet IV of the Ugaritic Ba'al Cycle: "Ba'lu's enemies grasp hold of (the trees

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4. Karel van der Toorn, *Scribal Culture and the Making of the Hebrew Bible* (Cambridge, MA: Harvard University Press, 2007); David M. Carr, *The Formation of the Hebrew Bible: A New Reconstruction* (New York: Oxford University Press, 2011); Juha Pakkala, *God's Word Omitted: Omissions in the Transmission of the Hebrew Bible* (FRLANT 251: Göttingen: Vandenhoeck & Ruprecht, 2014); Molly Zahn, "Reexamining Empirical Models: The Case of Exodus 13," in Eckart Otto and Reinhart Achenbach, eds., *Das Deuteronomium zwischen Pentateuch und deuteronomistischem Geschichtswerk* (Göttingen: Vandenhoeck & Ruprecht, 2004), 33–56; Reinhard Müller, Juha Pakkala, and Bas ter Haar Romeny, *Evidence of Editing: Growth and Change of Texts in the Hebrew Bible* (Atlanta: SBL Press, 2014). See now also, Raymond F. Pearson and Robert Rezetko, eds., *Empirical Models Challenging Biblical Criticism* (Atlanta: SBL Press, 2016).

5. See discussion in Joel S. Baden, *The Composition of the Pentateuch: Renewing the Documentary Hypothesis* (New Haven, CT: Yale University Press), 106, 246.

of) the forest, Haddu's adversaries (grasp hold of) the flanks of the mountain(s). Mighty Baʻlu speaks up: Enemies of Haddu, why do you shake with fear?" (4, vi.36–vii.38).[6]

In like fashion, the alternation in address between singular and plural pronouns, sometimes referred to as *Numeruswechsel*, was thought to designate various sources or strata in the Hebrew Bible.[7] However, the phenomenon is also found in the Sefire treaty, that is, in a literary setting where we cannot propose diachronic composition. In Stele III, the suzerain commands the vassal to hand over fugitives, warning him that if he fails to do so, "You (pl.) shall have been unfaithful to all the gods of the treaty" (III:4; cf. similarly, ll. 16 and 23). However, further on, the suzerain demands freedom of passage in the vassal's territory, and warns him that if he fails to do so, "you (s.) shall be unfaithful to this treaty" (cf. similarly ll. 14, 20, and 27).[8]

These examples serve as a warning flag for scholars looking to parse the text on the basis of their own notions of literary unity. The ancient text is a minefield of literary phenomena that are culturally dependent. The diachronic scholar who treads there based solely on his own modern notions of literary unity risks serious interpretive missteps. Passages such as that from the Baal cycle above, or from the Sefire treaty can be safely assumed to have been written by a single hand. The rhetoric we find in these comparative materials can offer a control. Of course, the presence of these phenomena elsewhere does not prove that the Torah must be read this way as well. Even if we assume that the passage from the Baal Cyle cited above was composed by one hand, this does not mandate that the presence of two (or even three) divine names in Genesis must all stem from the same authorial hand—but it should, at the very least, place a check on the confidence that a modern exegete can have when approaching the biblical text and encountering literary phenomena that seem inconsistent. Perhaps the most prudent lesson from such examples is that we must attain competency as readers before we engage the text—and this we can do only by canvassing the available cognate materials.

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6. Translated by Dennis Pardee in William W. Hallo, ed., *The Context of Scripture* (3 vols.; Leiden, Brill, 1997), 1:262–63. See discussion in Norman Whybray, *The Making of the Pentateuch: A Methodological Study* (LHBOTS 53; London: Bloombury T & T Clark, 1987), 68.

7. E.g., Gerhard Von Rad, *Deuteronomy* (London: SCM Press, 1966), 49.

8. Translations of these lines in Joseph A. Fitzmyer, *The Aramaic Inscriptions of Sefire* (Rome: Pontifical Institute, 1995), 137. See discussion in Moshe Weinfeld, *Deuteronomy 1-11* (AB5; Garden City: Doubleday, 1995), 15.

The examples adduced above give witness to seeming inconsistencies within a given passage. But Pentateuch scholars routinely grapple with far more substantial inconsistencies in the Torah. These are inconsistencies not within a given passage, but rather, wholesale sets of inconsistencies between different versions of the same episode, such as the differences between the wilderness accounts of Exodus and Numbers on the one hand, and of Deuteronomy on the other. Similarly, the Torah presents tensions and inconsistencies between different iterations of the same law, such as the laws of manumission, the festivals, and more. In this book I examine ancient Near Eastern cognate materials that can shed interpretive light on these sorts of macro-level inconsistencies.

In Part I, "Inconsistencies in Narrative," I identify examples in the cognate literature where a single agent composes multiple conflicting versions of an historical account for consumption by one and the same audience. The first two chapters explore conflicting historical accounts that we find juxtaposed side by side for such an audience. Egyptologists have long noted that Ramesses II commissioned three conflicting versions of the battle of Kadesh to be inscribed together at various monumental sites. In chapter 1, "Diverging Accounts within The Kadesh Inscriptions of Ramesses II," I lay out the multiple inconsistencies witnessed between these accounts, and explore how Egyptologists have accounted for this. To our minds, when we encounter conflicting historical accounts, the trustworthiness of both accounts is brought into question. I conclude the chapter by exploring the modern notion of historiography—largely a phenomenon that emerges only in the nineteenth century—and premodern notions of history-telling in the writings of the so-called historians of ancient Greece and Rome, and the medieval Church fathers. These premodern notions of historiography give us a discourse through which to understand how ancient Egyptians could have overcome the glaring contradictions between these multiple, juxtaposed versions of the same event. In chapter 2, "The Exodus Sea Account (13:17–15:21) in Light of the Kadesh Inscriptions of Ramesses II," I demonstrate that the Exodus sea account bears strong affinities with the Kadesh Poem of Ramesses II. The two compositions share a lengthy and distinct common plot structure that features many tropes which are distinct to these two works alone. I claim that the Exodus sea account is an appropriation of the Kadesh Poem as part of an ideological battle with Ramesses II, who ruled Canaan for the better part of the thirteenth century BCE. Importantly for our purposes, I show how the differences between the prose and poetic accounts of the crossing of the sea in Exodus chapters 14 and 15 are highly reminiscent of the types of differences that we see between the multiple versions of the battle of Kadesh that Ramesses commissioned upon his return home from battle with the Hittites at Kadesh. I also demonstrate that the longest of the three inscriptions, the Kadesh Poem, which is universally understood as

composed by one agent, is nevertheless rife with the types of inner tensions and contradictions that often lead modern critics to the conclusion of revision and redaction within the texts of the Hebrew Bible.

In the latter half of Part I, I turn to a second forum in which we find conflicting historical accounts promulgated by a single agent for consumption by one and the same audience: the treaty literature of the Late Bronze Age Hittite empire. In chapter 3, "Divergent Histories between Original and Renewal Treaties in Hittite Diplomatic Literature," I show that, as Hittite kings communicated with their vassals, they routinely recounted the history of the relationship between the two kingdoms. Strikingly, the record reveals that each communication brought with it a redrafted version of that history—which, more often than not, was at odds with the history recounted in the earlier communications. Most significantly, we see that as Hittite monarchs redrafted earlier histories, these past versions were not erased from the record; rather, even as the Hittite kings redrafted their historical accounts in accord with the needs of the moment, both they and their vassals read these accounts while retaining and recalling the earlier, conflicting versions of events. Drawing inspiration from a series of pioneering studies of the El Amarna letters, I turn to the field of international relations for a social-science perspective to explain why the Hittite kings composed such conflicting histories and how, in turn, these were read and interpreted by their vassals. In chapter 4, "Retold History in the Book of Deuteronomy in Light of the Hittite Treaty Tradition," I turn to the vexing question of the bald contradictions we encounter between the narratives of the book of Deuteronomy and the parallel accounts earlier in the Torah. This rewritten history is remarkable because in the form that we encounter it today—the received text of the Torah—there is no erasure. We first encounter the stories in the books of Exodus and Numbers; we then encounter them again in reworked form, later in the text continuum of the Pentateuch as part of Moses's recollections, in the book of Deuteronomy. In this chapter I claim that what we witness in the Torah—namely, rewritten history that does not displace earlier, conflicting versions of those same events—may be understood with recourse to the Late Bronze Age Hittite treaty prologue tradition.

In Part II, I turn to inconsistencies among the Torah's law codes. Scholars of biblical law have long seen the inconsistencies among the law corpora of the Pentateuch as signs of schools and communities in conflict. Chapter 5, "The Pivotal Characterization: Ancient Law as Non-Statutory Law," forms the basis for the following five chapters on biblical and ancient Near Eastern law. Here I maintain that the dominant approach to the critical study of biblical law is based on anachronistic, nineteenth-century notions of how law works and how legal texts are formulated. I trace here the history of legal thought in that century, and how it shaped (perhaps a better word is "distorted") how we view the ancient

legal texts of the Bible and the Near East, and recover premodern understandings of how law works and how legal texts are to be read.

The modern notion of statutory jurisprudence mandates that judges adhere to the exact words of the code because the code, by definition, is autonomous and exhaustive. This hermeneutic, sometimes referred to as the jurisprudence of "strict construction," has had a profound impact on the comparative study of the Torah's law collections. In chapter 6, "The Misapplication of 'Strict Construction' and the Semblance of Contradiction," I draw from discussions concerning the inapplicability of strict construction in the understanding of ancient Near Eastern law to illuminate our understanding of seemingly contradictory passages of biblical law. As an illustration I build on the work of Barry Eichler and show that the logic of the formulation of §§25–29 of the Laws of Eshnunna sheds light on the compositional logic of the separate and inconsistent iterations of the laws of manumission in Exodus 21:1–6 and Leviticus 25:39–46. From there I turn to address laws within a single code that seem to contradict each other. In the Laws of Hammurabi, §§6–8 have long been considered to conflict with each other and to derive from competing traditions. The inconsistencies, however, are deliberate, and reflect rhetorical and ideological needs. The drafting of these laws can shed light on the coherence of the homicide laws of Exodus 21:12–14.

In chapter 7, "Honoring a Law Code and Diverging from Its Dictates in the Neo-Babylonian *King of Justice* and in the Book of Ruth," I attend to an unusual literary phenomenon found in both Mesopotamian and biblical traditions: the manner in which the consecutive order of clauses in a law collection serves as the structure of the plot of a later, narrative composition. The plot of the book of Ruth closely follows the series of laws found in Deut 24:16–25:10. The late Victor Avigdor Hurowitz noticed a similar phenomenon in the use of LH 1–5 in the Neo-Babylonian work, "Nebuchadnezzar King of Justice." What is remarkable about this phenomenon is that, while the author of Ruth pays homage to Deuteronomy by employing its laws as a structuring template, the practice of law in the story itself is at variance with those very laws to which it alludes. Likewise, the author of "King of Justice" pays homage to LH by employing its laws as a literary template, and yet the judgments rendered by the King of Justice are at variance with those found in the laws of LH, to which it alludes. The phenomenon challenges us to understand how these ancient writers related to venerated legal texts and the provisions they contain.

Chapter 8, "Blending Discordant Laws in Biblical Narrative," highlights a peculiar phenomenon in the biblical literature outside of the Pentateuch: a biblical writer will invoke iterations of a given law from two or more of the Pentateuch's four corpora. Scholars have heretofore assumed that this phenomenon was limited to post-exilic literature, and stemmed from the exigencies of exile

and return that created an urgent need to create a vehicle that would grant legitimacy to various communities and their attendant legal traditions. However, the broad array of books in which such legal blending is found forces us to question whether the legal blend is strictly a literary phenomenon of the post-exilic period. Moreover, the phenomenon obliges us to question the long-standing assumption that diverging iterations of the same law in two (or more) of the Torah's law corpora are inherently mutually exclusive.

In chapter 9, "Legal Revision in the Torah Law Collections: Supersessionist or Complementary?" I assess the state of the field concerning the mechanics of legal revision among the Torah's four codes of law. Classically, scholars of biblical law assumed that as jurists redrafted these laws, they did so with the intention that their new formulations would supersede the older ones, and that the older versions of the law were thereby denied any authority or standing. However, since the late twentieth century some scholars of biblical law have viewed the biblical law corpora as complementary; for these scholars, the inconsistencies between the various law corpora represent a process of reapplication, not rejection. No study to date has thoroughly measured the arguments for the two approaches. Marshaling all of the evidence brought thus far in Part II, I argue for the complementary nature of the inconsistent law collections.

Chapter 10, "Redacting the Torah's Conflicting Laws: New Empirical Models," attends to the final form of the law corpora as exhibited in the received text of the Torah. Scholars have classically viewed redaction of the Torah as either a great compromise or an attempt an anthology. Here I critique those views and champion more recent models of Pentateuch redaction that see here instead a creative melding of reapplications of God's word. Scholars who view the corpora as complementary, however, must also posit a redaction strategy which answers for the redaction of the Torah. By all accounts, the various law collections are revisions of one another. By the time of the redaction of the Torah, some iterations of the laws that conflict were clearly no longer in practice—so why, then, are they all retained in the final redaction? In this chapter I identify empirical models of legal texts that do what the Torah does: retain outdated law within an authoritative legal text. The examples I highlight are taken from American constitutional jurisprudence and from rabbinic jurisprudence in the Mishnah. These, of course, are unrelated to each other, and unrelated, in any direct fashion, to biblical Israel. I invoke these models phenomenologically, as a heuristic aid to understand legal revision and legal drafting in biblical Israel.

The evidence that I adduce in the first two parts of the book lead me to Part III, Renewing Pentateuchal Criticism, in which I critique current methodology and seek a new path forward. The Jerusalem conference to which I alluded to earlier was subtitled: "Bridging the Academic Cultures of Israel, North America, and

Europe." There is a fundamentally correct understanding in this framing of the current state of the field: scholars do not work in a vacuum. Rather, they ply their trade within specific academic cultures of first assumptions. In his introductory comments at the Jerusalem conference, Bernard Levinson noted that American and Israeli scholars contend that "the current proliferation of European hypotheses and multiple layers of redactional development is theory driven and self-generated without adequate consideration of comparative literary evidence."[9] However, the Jerusalem conference devoted no time to laying bare these cultural axioms. What is it, for example, about the academic culture of German-speaking lands that leads scholars there to rally around a certain set of methodological presumptions? An awareness of our cultural presuppositions and of the intellectual heritage to which we are heirs is essential if we are to be self-critical about our own work. I seek to address these issues in chapter 11, "A Critical Intellectual History of the Historical-Critical Paradigm in Biblical Studies." My goal is to understand the origins of the intellectual commitments that shape the discipline today, and its reluctant disposition toward empirical models of textual growth. I examine how theorists over three centuries have entertained the most fundamental questions: what is the goal of the historical-critical study of the Hebrew Bible? What is the probative value of evidence internal within the text itself, relative to evidence from external sources? What is the role of intuition in the scholar's work? What is the role of methodological control? The axioms that governed nineteenth-century German scholarship were at a great remove from those that governed earlier historical-critical scholarship, in the thought of critics such as Spinoza. These axioms were based in intellectual currents that were particular to the nineteenth century, and especially so in Germany. From there, I offer a brief summary of the claims of contemporary scholars who are looking toward empirical models to reconstruct the textual development of Hebrew scriptures. I conclude by demonstrating how this vein of scholarship undermines an array of nineteenth-century intellectual assumptions, but would have been quite at home in the earlier periods of the discipline's history, and call for a return to Spinozan hermeneutics.

I continue my critique of current historical-critical method in chapter 12, "The Abuses of Negation, Bisection, and Suppression in the Dating of Biblical Texts: The Rescue of Moses (Exodus 2:1–10)." Here I maintain that the scholarly aim to clearly delineate and definitively date layers in a text unwittingly leads to

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9. See his introductory comments to "Convergence and Divergence in Pentateuchal Theory: Bridging the Academic Cultures of Israel, North America, and Europe," available at https://www.youtube.com/watch?v=PHYKPSE6iZc at 0:19:00.

three malpractices of historical-critical method. Handling complex evidence in a reductive fashion, scholars routinely engage in what I call, respectively, the undue negation of evidence, the suppression of evidence, and the forced bisection of a text. Scholarship on the account of the rescue of Moses serves as an illustration.

The division of the Genesis flood account is one of the most celebrated achievements of modern biblical criticism. In chapter 13, "Source Criticism and Its Biases: The Flood Narrative of Genesis 6–9," I take a critical look at the source-critical paradigm and examine its hermeneutics. Here, too, we will see that historical-critical scholarship applies a series of double standards that all work in concert to support the source-critical aims and results. Moreover, it consistently suppresses evidence adduced from cognate materials (particularly from the Mesopotamian version of the flood story contained in Tablet XI of the Giglamesh Epic) that threatens its validity by simply ignoring it, or otherwise negating the validity of that evidence through unwarranted means.

In the Conclusion, I offer a new path forward for historical-critical study of the Hebrew Bible, calling for three imperatives. First, I suggest an epistemological shift that soberly acknowledges the limits of what we may determine, both in terms of the dates of the texts we study, and of the prehistory of those texts. Second, I call for a far greater engagement of the poetics and compositional strategies of scribal practices of ancient Near Eastern texts as we adduce compositional theories for the origins and growth of the Hebrew Bible. Finally, I invite scholars to employ an exciting new research tool that I have developed with my Bar-Ilan colleague, the computational linguist Moshe Koppel: The Tiberias Project: A Web Application for the Stylistic Analysis and Categorization of the Hebrew Scriptures.

Acknowledgments

Rabbi Lord Jonathan Sacks is one of the foremost public intellectuals in Britain today, a former recipient of the Grawemeyer Prize for Religion and the recipient of the Templeton Prize for 2016. Over the span of twenty-five years as a highly public figure, he has graciously made room in his calendar to meet with me during my visits to London and during his to Jerusalem. He is nowhere cited in this book, but his spirit, insight, and inspiration gird its every page. The hallmark of his voluminous writings is a critique of modernity: that where we see linear progress, we in fact are involved in a series of trade-offs, and that while what we celebrate is evident, what we have lost is not. With an unsurpassed grasp of modern cultural and intellectual history at his fingertips, he lays bare how the new perspectives that now seem so clear and obvious are, upon investigation, the limited glimpse of reality afforded us from within the fishbowl of our own cultural assumptions. It is in his spirit that I have tried to reflect on the habits of my field of study as a biblicist, and in joy and reverence I dedicate this book to him.

Inconsistency in Narrative

*Setting Conflicting Histories
Side by Side*

I

Diverging Accounts within the Kadesh Inscriptions of Ramesses II

It had always puzzled me that in several temples a great mili-
tary event should be described in two separate forms.
—ALAN GARDINER, *The Kadesh Inscriptions of Ramesses II*[1]

ONE OF THE most glaring forms of narrative inconsistency in the Hebrew Bible
is the presence of conflicting accounts that are juxtaposed within the received
version of the biblical text. This phenomenon is exhibited most clearly in the
paired accounts of creation in Genesis 1–2:4a and 2:4b–2:24, and in the narra-
tive-versus-poetic accounts of both the splitting of the sea (Exod 13:17–15:18) and
Barak's defeat of Sisera's army (Judg 4–5). To be sure, these are not identical liter-
ary phenomena. As scholars have noted, the varying accounts found, respectively,
in Exodus 14–15 and Judges 4–5 are exemplars of the phenomena of the mixing
of song and story in biblical narrative.[2] Yet, all three instances present an episte-
mological challenge: how are we to make sense of the deliberate juxtaposition of
conflicting accounts of the same event?

Canvassing the range of solutions offered within the source-critical paradigm,
we can identify four approaches to the question of juxtaposed, conflicting com-
positions that themselves may be split into two sets. The first set of approaches
maintains that the received text must be "unpacked" or bisected, and that mean-
ing is to be found only in the constituent parts, or, in the respective compositions
in isolation from each other:

1) A classical documentary approach: within this approach the two composi-
tions, A and B, represent distinct and possibly even competing traditions of

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1. Alan Gardiner, *The Kadesh Inscriptions of Ramesses II* (Oxford: Griffith Institute, 1960), 3.

2. See Steven Weitzman, *Song and Story in Biblical Narrative* (Bloomington: Indiana University
Press, 1997).

the material at hand. Compositions A and B were originally separate and were never intended to be read in light of one another. Their juxtaposition within the received text represents the work of a redactor, who is seen here as fulfilling the task of an anthologist. The redactor collected traditions familiar to him and placed them together as a record of the various strands of his community's traditions. There is no new meaningful text created by this redactor. Redaction represents only a preservation of earlier meaningful compositions.[3]

2) A supplemental approach: here, one of the sources, A, is posited as the earlier of the two sources. A later generation, however, extensively reworked the earlier source, creating and adding a new version of the account, or B, in accord with a new ideological agenda. Here, too, juxtaposition does not produce complementary meaning, and meaning is to be found only in each composition, independent of the other.[4]

The second set of approaches maintains that the juxtaposition of the works itself creates meaning, and that the fullest message is derived only by reading both works as complementary of one another:

3) The creative redactor: here, as in approach 1 above, compositions A and B once existed independently of each other. The redactor, however, sees each one as bearing only a partial perspective. He preserves them within the final text not out of fealty to cherished traditions alone, but because each composition complements the other. The fullest meaning is derived from reading the new, whole text, which assimilates both traditions.[5]

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3. For representative studies employing this approach, on Genesis 1–2:4a-2:4b–3, see Joel Baden, *The Composition of the Pentateuch: Renewing the Documentary Hypothesis* (New Haven, CT: Yale University Press, 2012), 23; on Exodus 14–15, see Cornelis Houtman, *Exodus* (Kampen: Kok, 1993), 2:244; on Judges 4–5, see Nadav Na'aman, "Literary and Topographical Notes on the Battle of Kishon (Judges IV–V)," *VT* 40, no. 4 (1990): 423–36.

4. For this approach on Exodus 14–15, see Frank Moore Cross and David Noel Freedman, *Studies in Ancient Yahwistic Poetry* (Missoula, MO: Eerdmans, 1975), 238; on Judges 4–5 see Baruch Halpern, "The Resourceful Israelite Historian: The Song of Deborah and Israelite Historiography," *HTR* 76, no. 4 (1983): 379–401.

5. This is argued with regard to Genesis 1–2 in Bill T. Arnold, *Genesis* (NCBC; Cambridge: Cambridge University Press, 2009), 55; with regard to Exodus 14–15 in Walter J. Houston, "Misunderstanding or Midrash? The Prose Appropriation of Poetic Material in the Hebrew Bible," *ZAW* 109 (1997): 342–55; with regard to Judges 4–5 in K. Lawson Younger, "'*Heads! Tails! Or The Whole Coin?!*': Contextual Method & Intertextual Analysis: Judges 4 and 5," in K. Lawson Younger, ed., *The Biblical Canon in Comparative Perspective: Scripture in Context IV* (Lewiston, NY: Edwin Mellon, 1991), 109–46.

4) The redactor-cum-author: within this approach, a composer extensively reworks prior materials, and chooses to create two, largely new accounts side by side, as complementary reflections upon the material at hand.[6]

While one can find representatives of all four approaches to juxtaposed conflicting accounts within the scholarship, it is safe to say that the first three have the most adherents. The fourth approach, which posits that both compositions are new creations designed from the start to complement each other, is an outlier within biblical studies.

Scholars have adduced these approaches without the benefit of textual witnesses as a control. We have no epigraphic remnants of any of these texts, and thus the approaches of source-critics here are hypothetical in nature. Indeed, they are hypothetical constructs not only of the compositional history of these texts; rather, and more significantly, they are hypotheses about the relationships between authors and redactors in ancient times, and about the nature of redactional activity in the ancient world. It is illuminating, therefore, to examine the only example from the cognate literature of juxtaposed conflicting accounts: namely, the Kadesh Inscriptions of Ramesses II. Under what circumstances did these conflicting compositions come together? What are the hermeneutics that allows them to be read together, when the facts they contain contradict one another?

Conflicting Accounts in the Kadesh Inscriptions of Ramesses II

The Kadesh Inscriptions are distinct in this regard. Within cognate literature one may point to several examples of events that are told quite differently in two different compositions. One example concerns the Assyrian compositions that depict the war between Tukulti-Ninurta I of Assyria and Kaštiliaš IV of Babylon. A prose account is found in the royal building inscriptions of the Assyrian king, while we also have a poetic rendering of the event, known as the Tukulti-Ninurta Epic. While these compositions differ in significant regards, they are nowhere

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6. This approach is employed with regard to Genesis 1–2 in Richard S. Hess, "Genesis 1–2 in Its Literary Context," *Tyndale Bulletin* 41, no. 1 (1990): 143–53; with regard to Exodus 14–15 in Richard D. Patterson, "Victory at Sea: Prose and Poetry in Exodus 14–15," *Bibliotheca Sacra* 161 (2004): 42–54; and with regard to Judges 4–5 in Athalya Brenner, "A Triangle and a Rhombus in Narrative Structure: A Proposed Integrative Reading of Judges IV and V," *VT* 40, no. 2 (1990): 129–38.

found together physically; it is thus rightly assumed that they were never meant to be read together and were composed at different times for different audiences and for different purposes.[7] To date, no example from the cognate literature has been produced that reveals two differing accounts of the same event in juxtaposed fashion. It is in this context that I draw attention to the compositions found in the Kadesh Inscriptions of Ramesses II. Here we find that the pharaoh commissioned two differing, and even conflicting, accounts of the Battle of Kadesh and had them carved side by side at several monumental sites across Egypt.

The battle of Kadesh, in the fifth year of the reign of Ramesses II, pitted Egypt against the Hittite empire for control of the states of the northern Levant. While the results of the battle are disputed, my interest here is not with what actually happened on the plain of Kadesh in 1274 BCE, but rather with how its results were projected post facto in Egypt.[8] Accounts of the Battle of Kadesh are displayed in ten copies on public buildings, and in five temples located at Abydos, Karnak, Luxor, Abu Simbel, and the king's mortuary temple, the Ramesseum. These compositions contain two separate literary accounts of the battle of Kadesh. The longer one, some 350 lines, is conventionally referred to as "The Poem," while the second account, conventionally called "The Bulletin," is about a third as long.[9] In all, we have evidence of seven carvings of the Bulletin and eight of the Poem, as well as fragments of the Poem on two hieratic papyri, p. Sallier III and p. Chester Beatty III. At most sites, the accounts are also accompanied by bas reliefs depicting the different stages of the battle (an innovation of Ramesside art) complete with captions.[10] At least three of these sites—Luxor, the Ramesseum, and Abydos—feature carvings of both the Poem and the Bulletin; the same may have been true at the temple at Karnak.[11] The accounts both tell of a common core event: as the pharaoh's troops approached Kadesh, they were surprised by a

7. For an overview of such examples, see Younger, "'*Heads! Tails! Or The Whole Coin?!*,'" 109–46.

8. For a bibliography on the Kadesh Inscriptions, see Kenneth A. Kitchen, *Ramesside Inscriptions: Translations & Annotated / Notes and Comments* (6 vols.; Oxford: Blackwell, 1993–2013), 2:3–5 (hereafter, *RITANC*).

9. Gardiner, *The Kadesh Inscriptions of Ramesses II*, 4–5; Miriam Lichtheim, *Ancient Egyptian Literature* (3 vols.; Berkeley: University of California Press, 1973), 2:57.

10. Lichtheim, *Ancient Egyptian Literature*, 2:57. While some scholars have seen the Bulletin as an extended caption servicing the reliefs, most scholars see the Poem, the Bulletin, and the reliefs as three separate accounts. See Lichtheim, *Ancient Egyptian Literature*, 2:58; *RITANC*, 2:8.

11. Gardiner, *The Kadesh Inscriptions of Ramesses II*, 3.

large force of Hittite chariotry. Ramesses's own troops broke ranks and the king was left to face the Hittite confederacy alone. Undaunted, he charged into their lines, single-handedly defeating them. These events are recorded in each composition through an array of identical stock phrases.[12] Numerous differences, however, distinguish the two texts:

1) The Poem celebrates the role of Amun. Ramesses offers an extended prayer to Amun (ll. 92–121) and credits the god with empowering him so that he could defeat the Hittite force without the aid of his troops. The Bulletin nowhere mentions Amun (save for the implicit reference in the theophoric name, Ramesses II Meriamun). No credit is given to the gods whatever, and the victory over the Hittites is ascribed entirely to Ramesses's own valor and courage.

2) The greater part of the Bulletin attends to a scene unrecorded in the Poem. The Bulletin reports that on the approach to Kadesh, the Hittite king sent two decoy spies to lull Ramesses into thinking that the Hittite king was in Aleppo, hundreds of kilometers away, when in fact, he was waiting in ambush on the far side of the city of Kadesh. The Bulletin also reports that Ramesses's troops then apprehended two genuine Hittite spies, who revealed under interrogation that, in fact, the Hittite king was waiting nearby in ambush. The king then holds an extended counsel with his officers and gives the order for his rear troops to make haste on their way to Kadesh. This extended episode comprises the first 75 of the Bulletin's 110 lines. No mention of any of this appears in the Poem. The Poem, instead, reports that the pharaoh and his troops were on the march near Kadesh, when they were suddenly surprised by a large force of Hittite chariots.

3) The Poem, conversely, relates much information that is absent from the Bulletin. It presents a detailed account of the procession of Ramesses's troops northward (P 28–91). It reports in great detail three successive battle scenes (P 128–167; 205–23; 277–94), while the Bulletin reports only one scene of battle (B 84–106). The Poem reports that the king issued two stinging rebukes to his troops for their cowardice (P 168–203; 251–76). It reports that upon returning to the battlefield, the troops surveyed the Hittite corpses and offered Ramesses an extended hymn of praise (P 239–50). It reports that the

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12. See discussion in Gardiner, *The Kadesh Inscriptions of Ramesses II*, 46. A brief discussion of the thematic structures of the two compositions is found in Thomas Von der Way, *Die Textüberlieferung Ramses' II. Zur Qadeš-Schlacht: Analyse und Struktur* (HÄB 22; Hildesheim: Gerstenberg, 1984), 272–75.

Hittite king sued for peace (P 295–320), and finally, it tells of the king's victorious march southward, home to Egypt (P 332–43). None of this appears in the Bulletin.[13]

These differences can largely be dovetailed to produce a composite picture.[14] However, other differences between the two accounts are harder to reconcile:

1) Both accounts list sixteen ally nations who joined the Hittite coalition. Fourteen of the nations listed are common to the two lists (B 43–47; P 43–47). The Bulletin, however, lists two nations that are absent from the list in the Poem (Alshe and Aleppo), while the Poem lists two nations absent from the list in the Bulletin (Nuhasse, Kizzuwatna). Moreover, there is no accord in the order of the fourteen allies that are common to the two accounts.

2) The Bulletin reports that when the Hittites surprise the Egyptian troops, they attack and "surround His Majesty's subordinates who were by his side" (B 83).[15] The Poem, however, reports (P 75) that after the Hittites attacked the Pre division, scouts arrived from the scene of the Hittite rout and reported this to the pharaoh on the north of the town of Kadesh.

3) Finally, I note a series of stylistic differences between the two accounts. Some four-fifths of the Poem is verse, while only about a quarter of the Bulletin is verse.[16] The Poem routinely alternates between first-person and third-person narration, while narration in the Bulletin is nearly entirely reported in the third person. The Bulletin refers to the Hittite king, and the Hittites generally, as "the fallen one(s) of Hatti," in nearly every reference to the Hittites, some thirteen times total. Of the eleven references to the Hittites by name in the Poem, this appellation appears only twice.

Complicating matters even further is the fact that a third, and often divergent, account of the battle is depicted in the bas reliefs and their accompanying

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13. See the synoptic charts delineating the differences between the two texts in *RITANC* 2:10–11.

14. And indeed, many scholars have attempted to do precisely that. See Gardiner's tabular demonstration of how the accounts dovetail, in Gardiner, *The Kadesh Inscriptions of Ramesses II*, 48–52.

15. All citations are from 2:218 (hereafter *RITA*).

16. *RITANC* 2:8.

captions. Here we discover information not found in either the Poem or the Bulletin—information that, indeed, is antithetical to the spirit found in those two accounts. In both the Poem and the Bulletin, the only Egyptian warrior to perform on the battlefield is Ramesses himself. These works underscore that his troops were of no use whatsoever, and that the entire victory was due to his valor alone. In the reliefs, too, Ramesses acts alone, but his solo warfare is limited to his own theater of action. Another force—the Ne'arin—are said to have rebuffed the Hittite troops that had penetrated Ramesess's camp, and these soldiers let none of the enemy troops escape.[17] Indeed, prior to the arrival of the Ne'arin, Ramesses is portrayed as nearly helpless: R 9 tells of the warnings to the royal children to flee the advancing Hittites; R 10 depicts the flight of Ramesses's own fan-bearer; R 11 says that the Ne'arin found the king hemmed in by the Hittites; R 12–15 tell of successive emissaries sent to the advancing Ptah army, urging them to make haste to save the beleaguered king. Indeed, the trope of the king entrapped by the Hittites gains different expression in all three accounts. In the Poem, the king charges into the Hittite force upon hearing that they have attacked the Pre division. Only once he has taken that daring step does he find "2500 chariot spans hemming him in, all around him" (P 84). In the Bulletin, however, the Hittites succeed already in their initial attack to "surround His Majesty's subordinates who were by his side" (B 83). In Ramesses's subsequent solo warfare, the Hittites never do surround him again, as per the Poem. In the reliefs, the Ne'arin arrive to find "that the hostile ranks of the fallen ones of Hatti had hemmed in the camp of Pharaoh, LPH, on its West side, while His Majesty sat alone, without his army being with him."

   It would be a mistake to assume that the presence of juxtaposed, conflicting accounts in the Kadesh Inscriptions is a function of genre—that is, that we have one account composed in prose and another, differing account composed in poetry. That formulation oversimplifies the situation at hand. For one thing, neither the "Poem" nor the "Bulletin" is a pure representation of either poetry or prose. By Kenneth Kitchen's estimation, the "Poem" is four-fifths poetry and one-fifth prose; the "Bulletin" is three-quarters prose, but also one-quarter poetry.[18] More significantly, we find differences—indeed, contradictions—of content across all three accounts of the battle—even between the prose account of the Bulletin and the prose formulations of the reliefs.

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17. R 11; *RITA* 2:19.

18. *RITANC* 2:8.

Accounting for Conflicting Depictions in the Kadesh Inscriptions

In accounting for these conflicting accounts, Egyptologists are of one mind: no diachronic explanation for these differences can be offered. Scholars do, indeed, debate the date of composition of these texts. Some scholars believe that Ramesses commissioned the inscriptions upon his return from Kadesh, while others maintain that the inscriptions date from several decades later during his long reign, following the establishment of peaceful relations with the Hittite kingdom in 1258 BCE.[19] Yet all scholars maintain that these compositions were commissioned at one and the same time; the debate is solely over whether this was at an earlier or later date in the reign of Ramesses II.

Egyptologists have struggled to make sense of the presence of these deliberately juxtaposed conflicting accounts. Miriam Lichtheim writes that we may "assume that the Bulletin and the Poem were written by the same author." [20] Likewise, Alan Gardiner wrote that we may assume common authorship "with practical certainty."[21] By contrast, Anthony Spalinger questions whether there is, in fact, proof for single authorship.[22] Concerning the question of authorship, a sharpening of terms is in order, and we may make good use of a dichotomy from the field of authorship studies. In classical literature from ancient Rome, there is a distinction between *auctoritas* and *scriptor*. The *auctoritas* is the person who commissions a work and takes responsibility for it. The individual who executes the commissioned work, who puts the words together, is the *scriptor*.[23] Given the differences that we highlighted between the Poem and the Bulletin, especially the differences in the lists of Hittite ally states, one could hypothesize that the two accounts represent the work of two separate scriptors. Working from the same daybook records, each felt at liberty to list the Hittite allies as he saw fit. Yet even if we accept this hypothesis, it demonstrates that the question of "single authorship" or "multiple authorship" of the Kadesh Inscriptions really concerns

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19. For the former view, see Boya Ockinga, "On the Interpretation of the Kadesh Record," *Chronique d'Egypte* 62 (1987): 43–46. For the latter view, see Jan Assmann, "Krieg und Frieden im alten Aegypten: Rameses II und die Schlacht bei Kadesch," *Mannheimer Forum* 83/84 (1983): 175–217; Von der Way, *Die Textüberlieferung Ramses' II,* 393–98.

20. Lichtheim, *Ancient Egyptian Literature*, 2:59.

21. Gardiner, *The Kadesh Inscriptions of Ramesses II*, 46.

22. Anthony Spalinger, *Aspects of the Military Documents of the Ancient Egyptians* (New Haven, CT: Yale University Press, 1982), 185.

23. Atle Kittang, "Authors, Authorship, and Work: A Brief Theoretical Survey," in Slavica Rankovic, ed., *Modes of Authorship in the Middle Ages* (Toronto: PIMS, 2012), 19.

the question of *scriptor* alone. There is no recourse other than to conclude that the Poem and the Bulletin were commissioned for inscription at the same time, by one and the same *auctoritas*, Ramesses II.[24] Gardiner sums up the issue well: "I cannot help envisaging a command given by the king to the ablest experts of his time to display his awe-stricken subjects his great military achievement in two mutually complementary forms."[25] In light of the fact that the two compositions are carved in juxtaposition in several monumental settings, no Egyptologist has proposed that the texts were intended for different audiences. We may not be able to reconstruct the precise purpose of each composition, but it seems reasonable to conclude, with Miriam Lichtheim, that for the king and for his potential audiences, "the Bulletin and the Poem each had a purpose and complemented each other."[26] Each of the three accounts has a clear focus. The Poem focuses on the miraculous divine aid bestowed upon the Pharaoh by the god Amun. The Bulletin makes virtually no mention of divine aid at all; rather, it extols the bravery of the earthly king, who engages in battle single-handedly. The reliefs, by contrast with both, make no mention of the gods, and only secondary mention of the king; their focus, rather, is upon the heroic deeds of the Ne'arin brigade.

Historiographies Modern and Premodern

Even as we can see that each of these three accounts had a distinct focus—the gods, the king, and the troops—we are left to ponder how audiences of these compositions made sense of the contradictions between them. Did they wonder what actually happened at the Battle of Kadesh? And if so, how did they reconcile these starkly contrasting accounts of the battle? The ancient Egyptians left no hermeneutical treatise that would help readers living three millennia later gain insight into their epistemology as they read and listened to the monumental inscriptions ubiquitous in their day. It is difficult for us to imagine penning three conflicting accounts and laying them side by side. Awareness of this mental chasm, however, is the opening to understanding.

Our perception of historical accounts such as these is colored by what we intuitively look for in an account we identify as "historical." Put differently, we

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24. See Scott Morschauser, "Observations on the Speeches of Ramesses II in the Literary Record of the Battle of Kadesh," in Hans Goedicke, ed., *Perspectives on the Battle of Kadesh* (Baltimore: HALGO, 1985), 206 n. 78: "Ramesses was the ultimate inspiration, if not the actual source."

25. Gardiner, *The Kadesh Inscriptions of Ramesses II*, 47.

26. Lichtheim, *Ancient Egyptian Literature*, 2:59.

take for granted a modern approach to historiography that is quite removed from the approach adopted by many premodern cultures. Therefore, it is instructive to examine scholarly insights about premodern historiography, its assumptions, and particularly how those assumptions often differ from our own. To be sure, historiography is not exactly the same in any two cultures. Nonetheless, it is useful to canvas the historiography of two distant periods that have had the good fortune of sustained scholarly attention as heuristic aids: classical Greece and Rome, and Western Europe in the Middle Ages.

What are our own presuppositions when we read a modern account of history? The assumptions that I draw attention to here will seem banal, perhaps even obvious, but that is why they are important to identify—because they are so at odds with how people read historical accounts before the modern age.

You are currently reading an account of how Ramesses II commemorated his victory over the Hittites in the Battle of Kadesh. Let's unpack the presuppositions that undergird this reading. First, you have presuppositions about what you will find in this study. You know that I, like any writer, am presenting an interpretation of the material, but you assume that I am providing you with factual information. You assume that I have cited the inscriptions accurately, and that the background information which I have provided is accurate and well-attested. You assume that I have done nothing to embellish those inscriptions with my own words. Indeed, you correctly assume that were it to be discovered that I had embellished—"fabricated" would be a better word—citations within the inscriptions, I would immediately be disbarred from the scholarly guild. In your mind you categorize this as a work of history. You make a sharp divide between a work such as this, which must be fully factual, and other genres that use accounts of the past, such as historical novels or ballads. Indeed, you presume that the material you are reading belongs to the genre of fact, not fiction. You live in a culture where those terms are often value-laden: things assigned to the category of fact are true and valuable, while things deemed to be merely fiction are false, and even mendacious. You assume that I have arrived at my conclusions on the basis of a careful scrutiny of original sources and the pertinent scholarship on those sources. You expect that I will advance my argument on the basis of evidence, citing those primary sources and the scholarly works that have shed light upon them. Put differently, you assume that there is a discipline called "history" that has well-established rules of inquiry, which determine how this work was researched and written. You also assume that you will find no preaching or moralizing in my account. As a work of academic history, my presentation is expected to be an interpretation of facts. There is no room in such a work to derive explicit religious, moral, or civic lessons for you as a reader.

Beyond the presuppositions about what you expect to find in this work, there are also assumptions that you make about me as the author of this book. You deem me to be a reliable authority by dint of the degrees that I hold, because of the standing I have in the academic community, because a panel of outside experts has vetted this work, and because a prestigious publisher has chosen to commit its name to it; you may also be familiar with some of my previous studies. Yet, at the same time, my authority is limited. In our milieu, these qualifications certify me solely to present before you an interpretation of events past. They do not authorize me to ask anything of you, to command you, or even to recommend a course of action. My background—my religious denomination, the community in which I was raised—are of ancillary interest at most, in terms of determining my qualifications to compose a work of history. My personal background is deemed so irrelevant to a judgment of my work that when I submit a study for publication, my name as author is kept from the reviewers, so that they might not be influenced by knowledge of my identity. We deem that arguments in a work of historical scholarship should be evidence-driven and independent of the identity of the author.

Finally, you bring presuppositions about yourself as a reader to your reading of this book. You see yourself as a consumer and perhaps a judge of this work. You are a consumer, because you read this volitionally, for the purpose of your edification. As this work is sold commercially, you or someone else paid the publisher for this opportunity. You are carrying out an exercise in inquiry and understanding; you wish to learn something about the ancient period. You know that there were ancient cultures—Israel and Egypt, for example—and you know that we have a certain degree of access to those cultures by dint of the epigraphic and archaeological finds in our possession. Further, you know that competent scholars have written much about these cultures, and that their works can be consulted, should you choose to do so. And so, if you are at all learned in the areas covered here, or have access to other scholarly works, then you will also stand in judgment of what you are reading. Implicitly, you will ask yourself, "Do I believe this is a compelling argument?" You may also consult other works to corroborate the claims I have made.

If this seems all quite obvious, it wasn't to the Roman readers who read the "historical" works of Cicero and Livy, or to the medieval readers who read the "historical" accounts of the Venerable Bede. History then and history now are alike in name only. In fact, to properly distinguish between accounts of the past that are read today (such as this book), and accounts of the past that were written and read in premodern times, we would do well to employ two different terms. In modern times we read works of history. In premodern times, however, it would be more correct to say that when people read accounts of the past, they were reading

"exhortation." That term captures many of the differences between accounts of the past written in the modern period, and seemingly similar exercises from the premodern age. To unpack this genre of exhortation fully, we should look to the same three categories of assumptions that I laid out before: what did readers expect to find in these accounts of the deeds of the past? What did they assume about the authors of these works? What presuppositions did they make about their place as readers of these works?

First and foremost, premodern readers harbored expectations for the material they read or heard. Works such as Cicero's *De Republica* or Livy's *The History of Rome*, or in medieval times, the Venerable Bede's *History of the English Church*, were works of exhortation. These writers never wrote with the disinterested aim of chronicling the past for its own sake; rather, the deeds of the past were harnessed for rhetorical effect to persuade readers to take action in the present; to believe in the salvific powers of a deity; or to exhibit bravery or other civic virtues.[27] For the historians of Rome, the deeds of the past were retold to instruct and to inspire. It was expected that writers would not only narrate the deeds of the past, but evaluate them as well, offering praise or blame. The lessons from the past were intimately connected to the public life of the state and had an educative purpose.[28] It was in this sense that Cicero remarked, "*Historia magistra vitae*," or, "history is a teacher of life."[29]

The essential nature of these compositions as exhortation leaves us ill-served by our modern binary categories of fiction and nonfiction, and unaware of their limitations.[30] As Lendon has noted, "We have no useful category for the realm inhabited by ancient historical texts: rather than being 'literature,' the works of ancient historians came far closer to the modern genres of non-fiction novel or popular, non-academic history, where a degree of embroidery and imagination

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27. Gerald Press, "History and the Development of the Idea of History in Antiquity," *History and Theory* 16 (1977): 290.

28. John Marincola, "Ancient Audiences and Expectations," in Andrew Feldherr, ed., *Cambridge Companion to Roman Historians* (Cambridge: Cambridge University Press, 2009), 19–22; Andrew Feldherr, "Introduction," in Feldherr, *Cambridge Companion to the Roman Historians*, 4.

29. See similar sentiments on medieval history-writing in Robert Bonfil, *History and Folklore in a Medieval Jewish Chronicle: The Family Chronicle of Aḥimaʿaz ben Paltiel* (Leiden: Brill, 2009), 28–29; and John Burrow, *A History of Histories: Epics, Chronicles, Romances and Inquiries from Herodotus and Thucydides to the Twentieth Century* (New York: Knopf, 2008), 160.

30. J. E. Lendon, "Historians without History: Against Roman Historiography," in Feldherr, *Cambridge Companion to Roman Historians*, 57.

is layered upon a basis of fact."[31] While history and fiction were conceptually distinct in the Middle Ages, medieval accounts of the past are full of what we would consider fictional elements: invented material (speeches, secret conversations, letters, and battle scenes); miracles; type scenes; and partisan deformations of the truth.[32] The notion put forth by Cicero that the facts as known to the writers were subject to rhetorical amplification and invention was a heritage of classical antiquity that remained influential throughout the Middle Ages. Far from detracting from the veracity of a work, plausible fictional embellishments endowed an account with credibility. Often, these embellishments would give an account greater depth, enabling an author to probe the thoughts and motives of historical actors.[33]

One thing that readers did not expect to find in the historical accounts of Rome was a detail of the historian's sources. Roman "historians" are notoriously silent about the sources of their accounts.[34] This further underscores the fundamental truth that these records of the deeds of the past do not represent a sustained effort to arrive at historical truth, as much as a harnessing of accepted historical details for the sake of exhortation. "History is written for telling, not proving" says Quintilian (*Institutes of Oratory* 10.1.31).[35]

Premodern readers of these works of exhortation also harbored certain presumptions about the authors of these works that differ from ours about modern writers of history. Such readers would never have assumed that these writers had special research training which qualified them to compose "historical" accounts. Livy was trained in rhetoric. Cicero famously described history as "a job for a public speaker" (*De Oratore* 2:62).[36] In Roman times there was no systematic study of history, and no methodology for doing so.[37] Even in medieval times history was not a discipline that was taught; there was no option for a student

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31. Ibid., 57. See a similar appraisal of medieval materials in Suzanne Fleischman, "On the Representation of History and Fiction in the Middle Ages," *History and Theory* 22 (1983): 278–310.

32. Justin Lake, "Current Approaches to Medieval Historiography," *History Compass* 13, no. 3 (2015): 90. For full-length treatment of modes of embellishment in medieval historiography, see Ruth Morse, *Truth and Convention in the Middle Ages: Rhetoric, Representation, and Reality* (Cambridge: Cambridge University Press, 1991).

33. Lake, "Current Approaches to Medieval Historiography," 91.

34. Marincola, "Ancient Audiences and Expectations," 19.

35. As translated in Lendon, "Historians without History," 55.

36. Feldherr, "Introduction," 4.

37. Marincola, "Ancient Audiences and Expectations," 18.

to enroll himself in a course entitled "history" or to be examined in a field called "history."[38] Indeed, the first faculty in a field called "history" was established in Berlin in 1810.[39] It is only with the rise of the academic discipline of history in the nineteenth century that the practice of annotation and citation of sources becomes de rigueur.[40] Therefore, premodern writers were authorities not on account of their mastery of sources, or extensive training in the methodology of historiography; rather, authority stemmed from their standing in the community. The imprimatur of the historian in classical Rome was *auctoritas*, the authority gained by dint of offices held, or armies commanded. Practical experience was what made one worthy to write of the deeds of the past, not research methodology.[41]

Finally, premodern readers of historical accounts differed from their contemporary peers in the presumptions they had about themselves as readers. As I noted, contemporary readers are consumers, or even judges, of the works they read. Modern historians give readers a way to verify information and to formulate different opinions by citing primary sources and referencing other scholarly works. By contrast, ancient and medieval historians rarely present to their readers sources for cross-reference; the interpretations which these writers offer and the lessons which they exhort are stated in absolute terms.[42] Few individuals would have been equipped to even begin to question the accuracy of the presentations they were reading.

To appreciate just how different our modern category of history is from the premodern genre of *exhortation,* consider this observation by the scholar of classical philosophy, Gerald Press:

> Here a very great difference between the ancient and modern ideas of history appears. For while in the ancient world there is no history apart from human thought and art, in the modern world there is such history, and it is to this which human thought and art are applied. The difference is between someone giving, writing, or knowing the history of something,

38. Beryl Smalley, *Historians in the Middle Ages* (New York: Scribner, 1975), 11.

39. Frederic Beiser, *The German Historicist Tradition* (Oxford: Oxford University Press, 2011), 22.

40. See discussion in Paul Veyne, *Did the Greeks Believe in Their Myths?: An Essay on the Constitutive Imagination*, trans. Paula Wissing (Chicago: University of Chicago Press, 1988), 11.

41. Charles W. Fornora, The *Nature of History in Ancient Greece and Rome* (Berkeley: University of California Press, 1983), 54; cf. Marincola, "Ancient Audiences and Expectations," 18.

42. See discussion in Veyne, *Did the Greeks Believe in Their Myths?*, 10.

and something *having* a history, which someone might attempt to learn
or to communicate. The difference might be described as one of inde-
pendent existence or subsistence. In modern thought there is history
independent of any knower ... History thus has become a category
of reality.[43]

For the premodern reader of the deeds of the past, facts about the past are sub-
sumed within a hortatory exhortation. The primary encounter is not between
the reader and the facts, but between the reader and the exhorter. And when that
exhorter or preacher is an esteemed man of letters, or office holder in classical
Rome, or a Church father in the histories composed by the early Church, the
reader no longer approaches these works as a consumer, or judge, as a contempo-
rary reader. Such readers encounter accounts of the past within the context of a
hierarchy, in which the reader is subordinate to the exhorter, or the preacher. The
reader does not expect to learn what transpired in times of yore, but rather, to
learn the lessons those texts intend to teach, via the lived example of individuals
in the past.

Ancient Egypt produced no systematic histories of its past; There is no
Egyptian Cicero, Livy, or Bede. However, when we consider how ancient
Egyptian audiences could have engaged monumental inscriptions, we cannot
anachronistically superimpose our own canons of modern historiography upon
these ancient readers. It is more likely that these ancient audiences approached
such accounts in the way that other premodern audiences did, with the presup-
positions that I have laid out here, gleaned from the cultures of ancient Rome
and Western Europe in the Middle Ages. This conceptual framework can enable
us to better appreciate how audiences of the Kadesh Inscriptions of Ramesses II
could have made sense of the three conflicting accounts of that battle carved side
by side on the Temples that line the Nile River. Modern historians read these
accounts and try to sort out fact from fiction; they attempt to create a mélange
of all three accounts, in the hopes of recreating what actually happened on the
plains of Kadesh in 1274 BCE.[44] In all likelihood, though, ancient readers made
no effort to sort "fact from fiction," which are cognitive categories distinct to the
modern mindset. They made no attempt to integrate and combine that which
had been presented separately. Rather, they encountered the Kadesh Inscriptions
at sites that trumpet the greatness of the Pharaoh. The inscriptions were a
communication—an exhortation—from Ramesses to his subjects. Here is where

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43. Press, "History and the Development of the Idea of History in Antiquity," 294.

44. See the survey of these various opinions in *RITANC* 2:21–49.

the king could communicate to his subject the vital lessons they needed to learn. All three compositions shared a common core idea about what had transpired: a great victory had been achieved over the chariotry of a northern coalition led by the hated Hittite empire. One composition, the Poem, extolled the salvific grace of the deity Amun. Another composition, the Bulletin, lauded the bravery of the unaccompanied king in the face of insurmountable odds. And a third composition, the visual reliefs, told of the heroic deeds of the soldiers of the Ne'arin brigade and served as a model for future battleground bravery by future troops of the Pharaoh. Audiences of the Kadesh Inscriptions may not have been able to sort out the precise chronology of that battle, but they would have come away from reading the Pharaoh's words with a greater sense of their indebtedness to Amun, the prowess of their monarch, and their own civic duties as soldiers in the Pharaoh's army. These were the lessons to be learned from the deeds of the past, these compositions of exhortation.

Epigraphic remains of the Kadesh Poem attest to just this function. In addition to the eight copies of the Poem found carved at the monumental structures at Thebes, two hieratic versions survive: p. Sallier III and p. Chester Beatty III. The latter was found in the workmen's village of Deir el-Medina, located in the Valley of Kings. Several scholars have surmised that the existence of these hieratic copies suggests that they were published widely and were probably used for public celebration and for the cult of the king—that is, for the sort of adoration of the king demanded by the Loyalist Instruction. They encapsulated an ideological statement of the relationship between king and god, and a political statement of the king's superior fitness for authority over his army and advisors.[45]

The Kadesh Inscriptions of Ramesses II and their Implication for Juxtaposed Conflicting Accounts in Biblical Literature

The Kadesh Inscriptions have been invoked in prior biblical scholarship with reference to the study of the mixing of the genres of song and story in Exodus 14–15

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45. Christopher Eyre, "Is Historical Literature 'Political' or 'Literary'?," in Antonio Loprieno, ed., *Ancient Egyptian Literature: History and Forms* (Leiden: Brill, 1996), 427; Von der Way, *Die Textüberlieferung Ramses' II*, 39–43; I. Shirun-Grumach, "Kadesh Inscriptions and Königsnovelle," in C. J. Eyre, ed., *Proceedings of the Seventh International Congress of Egyptologists: Cambridge, 3–9 September 1995* (Leuven: Peeters, 1998), 1067; Anthony J. Spalinger, *The Transformation of an Ancient Egyptian Narrative: P. Sallier III and the Battle of Kadesh* (Wiesbaden: Harrassowitz, 2002), 329; and Donald B. Redford, *Pharaonic King-lists, Annals and Day-books* (SSEA Publication 4; Mississuaga: Benben, 1986), 51–54.

and Judges 4–5.[46] Yet, the Kadesh Inscriptions are also important for the study of these passages because they are the only empirical example we have within the epigraphic record of juxtaposed conflicting accounts of a single event. And in this case it is apparent that the compositional activities that have produced the Kadesh Inscriptions most closely approximate those of a redactor who reworks prior material to deliberately produce two complementary compositions. There may well have been daybook reports that formed the basis of the Kadesh Inscriptions, as well as oral memories and instructions issued by the king himself. But substantively, the presence of the Poem, the Bulletin, and the reliefs together reflects the efforts of an *auctoritas*—Ramesses II—to proclaim his message by commissioning two, and perhaps three, complementary accounts of the battle.

It goes without saying that the same literary phenomenon exhibited in different settings may be the product of different compositional models in each case. Even if we can say with certainty that the Kadesh Inscriptions were the synchronic product of a single *auctoritas*, this does not mandate us to view the examples before us in the Hebrew Bible as the result of the same compositional process. With methodological modesty we may propose that the Kadesh Inscriptions show us documented proof of simply one way in which ancient writers could produce this literary phenomenon. Reviewing our four hypothesized approaches surveyed earlier, we may say further that the poetics of the Kadesh Inscriptions lend a measure of credence and cogency to the latter two approaches I outlined above. The juxtaposition of the two compositions produces, in effect, a new text, whose meaning is found by reading the two compositions as complementary of one another. Most scholars, of course, view the two accounts of creation as reflective of a larger process of conflation between Priestly and non-Priestly materials. Yet, even if we assume that the Kadesh Inscriptions were a synchronic juxtaposition of conflicting accounts, they may shed light on the process of redaction that scholars envision: essentially, the process of redacting conflicting accounts produces a new text, in which the two compositions are complementary accounts of the same event.

If, indeed, biblical authors or redactors deliberately placed conflicting accounts side by side as complements to each other—as found in the Kadesh Inscriptions—what might that tell us about the influence of Egyptian narrative poetics upon the poetics of biblical narrative? To date, no comprehensive study has been executed examining the poetics of Egyptian narrative. The

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46. Nahum Sarna, *Exploring Exodus: The Origins of Biblical Israel* (New York: Schocken, 1986), 114; Younger, "'*Heads! Tails! Or The Whole Coin?!*,'" 120–24; contrast with Weitzman, *Song and Story in Biblical Narrative*, 149 n. 31.

field of comparative poetics between Egyptian and biblical narrative is still in its infancy. Nonetheless, scholars have noted important areas of congruence between the two. Consider the question of genre. Many view the Song of the Sea and the Song of Deborah as hymns of triumph.[47] Triumph literature such as Merenptah's Israel Stele is unattested in the literature of Ugarit, but widespread in Egypt. Historicized narrative in prose or in verse is completely unattested at Ugarit.[48] These suggest that there may have been an Egyptian literary tradition that migrated to Israelite scribal culture; and the convention of juxtaposing conflicting accounts may be a part of this tradition.

In turning to the compositional practices of cognate literatures we avail ourselves of empirical lenses through which to understand such practices in ancient Israel that can be instructive, even when we cannot demonstrate direct cultural transmission. We may posit that this literary practice was sui generis both in Egypt and later in Israel. Writers in different cultures may indeed resort to the same literary conventions without knowledge of each other. Living and working in the same cultural milieu, authors and redactors in Egypt and in Israel, respectively, could juxtapose conflicting accounts as a way of suggesting the multifaceted messages to be learned from a given event.

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47. See, for example, Umberto Cassuto, *A Commentary on the Book of Exodus*, trans. Israel Abrahams (Jerusalem: Magnes, 1967), 173; Carol L. Meyers, *Exodus* (NCBC; Cambridge: Cambridge University Press, 2005), 110.

48. Mark S. Smith, "Recent Study of Israelite Religion in Light of the Ugaritic Texts," in K. Lawson Younger, ed., *Ugarit at Seventy-Five* (Winona Lake, IN: Eisenbrauns, 2007), 1–26; Richard Abbott, *Triumphal Accounts in Hebrew and Egyptian* (ebook; Matteh Publications, 2012), loc. 4401.

2

The Exodus Sea Account (Exod 13:17–15:19) in Light of the Kadesh Inscriptions of Ramesses II

IN THE PREVIOUS chapter I claimed that the Kadesh Inscriptions of Ramesses II could serve as literary precursor for the phenomenon of juxtaposed conflicting accounts in biblical literature. Here I demonstrate that the Exodus sea account (13:17–15:19) actually exhibits strong affinities of language and motif with the Kadesh Inscriptions, and that these affinities deepen my claim that the Kadesh Inscriptions have something important to tell us about narrative inconsistencies in the Torah.

I present my argument in four parts. In part one I demonstrate that the line of inquiry tracing reverberations of royal Egyptian propaganda from the New Kingdom within the narrative of Exodus has an established pedigree within the scholarship. In part two, the major portion of this chapter, I showcase the sequential and highly particular parallels of motif that structure both the Kadesh Poem and the Exodus sea account. However, even highly specific parallels are insufficient to demonstrate literary dependence between two texts. In part three, I employ a series of controls to establish the claim that these parallels are the product of literary dependence, and that the Exodus account, particularly the Song of the Sea, deliberately appropriates royal Egyptian propaganda in what it trumpets as YHWH's victory over Pharaoh himself. In the fourth and final part of this chapter, I consider how the Kadesh Inscriptions may shed light on narrative inconsistencies in the Torah generally, and in the prose and lyric accounts of the Exodus sea event in particular.

Resonances of New Kingdom Royal Propaganda
in the Book of Exodus

Many consider the Song of the Sea (Exod 15:1b–21) to be one of the earliest expressions of Israelite religion, standing in continuity with the mythopoeic patterns of Canaanite myth. Specific lexical terms within the Song emerge as precise parallels to terms found in the Ugaritic Baal cycle. For example, YHWH's temple is to be built בהר נחלתך (15:17), a phrase parallel to *bġr.nḫlty* in CAT 1.3 III.30; IV.20, referring to the site of Baal's palace. YHWH's enthronement is described as מכון לשבתך (15:16), the equivalent of *ksu ṯbt* in KTU 1.1 III.1; CAT 1.4 VIII.13–14; 1.8 VI.15. Within this line of scholarship, the Song preserves an historicized form of an old mythic pattern, whereby the divine warrior builds his sanctuary following his victory at sea upon the "mount of possession" won in battle, resulting in the divinity attaining eternal kingship.[1] While this West Semitic literary context is essential for understanding the Song, I argue here that the Song of the Sea can only be fully appreciated in consideration of an additional ancient literary context: namely, the Egyptian context.

Consider the question of genre, for example. Many view the Song of the Sea as a hymn of triumph.[2] As noted in the previous chapter, in Egypt, triumph literature, such as Merenptah's Israel Stele, is widespread, but is unattested in the literature of Ugarit. Historicized narrative in prose or verse is completely unattested at Ugarit.[3] The Song of the Sea is a poem inset within a narrative frame. To find compositions mixing prose and poetry we must turn to Egypt, where we find examples in *Sinuhe*, and particularly in New Kingdom compositions such as the Building Inscription of Amenhotep III, the Kadesh Poem of Ramesses II, and the Poetical Stela of Merenptah.[4] Moreover, the Song of

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1. See, for example, Frank Moore Cross, *Canaanite Myth and Hebrew Epic* (Cambridge, MA: Harvard University Press, 1973), 112–44; Mark S. Smith, *The Early History of God: Yahweh and the Other Deities in Ancient Israel* (San Francisco: Harper & Row, 1990), 41–79.

2. See, for example, Umberto Cassuto, *A Commentary on the Book of Exodus*, trans. I. Abrahams (Jerusalem: Magnes Press, 1967), 173; Carol L. Meyers, *Exodus* (NCBC; Cambridge: Cambridge University Press, 2005), 110.

3. Mark S. Smith, "Recent Study of Israelite Religion in Light of the Ugaritic Texts," in K. Lawson Younger, ed., *Ugarit at Seventy-Five* (Winona Lake, IN: Eisenbrauns, 2007), 1–26; Richard Abbott, *Triumphal Accounts in Hebrew and Egyptian* (ebook; Matteh Publications, 2012), loc. 4401.

4. See James W. Watts, *Psalm and Story: Inset Hymns in Hebrew Narrative* (JSOTSS 139; Sheffield, UK: JSOT Press, 1992), 206–12.; Richard D. Patterson, "Victory at Sea: Prose and Poetry in Exodus 14–15," *Bibliotheca Sacra* 161 (2004): 42–54.

the Sea is a voiced hymn, which the text ascribes to Moses and the Children of Israel (15:1). Hymns ascribed to a particular voice are much more common in Egyptian literature.[5]

My proposition that the Song of the Sea resonates with the Kadesh Inscriptions of Ramesses II builds upon a body of scholarship observing that the book of Exodus echoes language and images familiar to us only from the royal inscriptions of the Nineteenth and Twentieth Egyptian dynasties. I cite the following observations with no reference at this point as to how these influences may have reached Israel, or to the question of when they may have been incorporated into the text of Exodus before us.

One trope in the Exodus account that seems to be rooted in New Kingdom royal terminology appears in phrases describing YHWH's "strong" or "mighty hand." These include the phrases יד חזקה, "mighty hand" (Exod 3:19, 13:3, 14, 16; 32:11; cf. Deut 3:14, 6:21, 9:26) and זרוע נטויה, "outstretched arm" (Exod 6:6; cf. Deut 9:29, and in parallelism in Deut 4:34, 5:15, 7:19, 26:8). Critically for our purposes, the trope also appears in phrases found in the sea account of Exod 14–15: YHWH's יד הגדלה, "great hand" (14:31), ימינך, "your right/powerful hand" (Exod 15:6 [2x], 12), and בגדל זרועך, "your great arm" (Exod 15:16). Expressions relating to the conquering arm of pharaoh first appear in the Middle Kingdom (1970–1800 BCE), through the term *ḫpš* which means "arm" or "power."[6] Sinuhe describes Senusret I as "a mighty man who achieves with his strong arm *ḫpš* a champion *pr-ʾ* without equal." The expression *pr-ʾ* literally means "the arm goes forth or is extended."[7] Use of *ḫpš*-in royal titles reaches its peak during the era of the military conquests of the Thutmosside and Ramesside kings of the Eighteenth and Nineteenth dynasties (sixteenth through twelfth centuries BCE).[8] Epithets abound during this period for the phrases *nb ḫpš* (possessor of mighty arm), and *wsr ḫpš* "mighty of arm."[9] Ramesside kings use *nb ḫpš* as an epithet before the

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5. See James W. Watts, "'This Song': Conspicuous Poetry in Hebrew Prose," in Johannes C. de Moor and Wilfred G. E. Watson, eds., *Verse in Ancient Near Eastern Prose* (AOAT 42; Kevelaer: Butzon & Bercker, 1993), 345–50.

6. James K. Hoffmeier, "The Arm of God Versus the Arm of Pharaoh in the Exodus Narratives," *Biblica* 67 (1986): 380. See also Manfred Görg, "'Der Starke Arm Pharaos' – Beobachtungen zum Belegspektrum einer Metaphor in Palastin und Ägypten," in C. Berger et al., eds., *Hommages à François Daumas* (Montpellier: Université de Montpellier, 1986), 323–30.

7. Raymond O. Faulkner, *A Concise Dictionary of Middle Egyptian* (Oxford: Griffith Institute, 1962), 91; Hoffmeier, "The Arm of God," 380.

8. Hoffmeier, "The Arm of God," 380.

9. Ibid., 382.

cartouche bearing the king's prenomen and before his nomen.[10] At least four of Ramesses II's sons included it within their theophoric names.[11] By contrast, we find a discernible decline in the use of the terminology of the king's conquering arm during the Third Intermediate Period.[12] In the Amarna letters, three correspondences from Abdu-Heba of Jerusalem (*EA* 286:12, 287:27, 288:14) state that "the arm of the mighty king" installed him, where *zu-ru-uḫ* is the word for arm, cognate with Hebrew זרוע.[13] This is attested only in the Amarna tablets, and not other Mesopotamian cuneiform texts.[14] Although זרוע is related to the Ugaritic *ḏrʿ*, this term is not employed in military descriptions of either Baal or of Keret.[15] In Mesopotamia one finds occasional references to a king's conquering hand, but not as a central literary trope, nor incorporated into royal names and epithets.[16] Within the Bible, phrases describing not only YHWH's "hand" but his "mighty hand" are found nearly exclusively in relation to the Exodus from Egypt. There is no similar mention of YHWH's conquering arm in Joshua or in Judges 1.[17]

A second element of Egyptian royal propaganda that scholars have identified within the book of Exodus is a graphic one: distinct similarities between the military camp of Ramesses II as depicted in the reliefs of the Kadesh Inscriptions and the Exodus depiction of the Tabernacle and camp of Israel. The reliefs portray a 2:1 rectangular military camp, with the entrance in the middle of the eastern wall. At the center of the camp lies the entrance to a 3:1 rectangular tent, containing two sections: a 2:1 reception tent that leads to the throne tent of Pharaoh. The height of the throne tent matches its width. These proportions are all reflected in the prescriptions for the Tabernacle and its surrounding camp in Exodus 25–27, as is clearly evident in Figure 2.1.

Further, in the depiction at Abu Simbel, the cartouche of the pharaoh, symbolizing his throne, is flanked by falcons with their wings spread in protection, as shown in Figure 2.2. The ark of the Tabernacle is similarly flanked by two winged cherubim (Exod 25:20).

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10. Ibid.

11. Ibid., 383.

12. Ibid.

13. *zuruḫ, CAD* Z, 167.

14. Hoffmeier, "The Arm of God," 385.

15. On Ugaritic *ḏrʿ*, see *DULAT*, 288.

16. Hoffmeier, "The Arm of God," 385.

17. Ibid., 379.

Battle Compound of Ramesses II
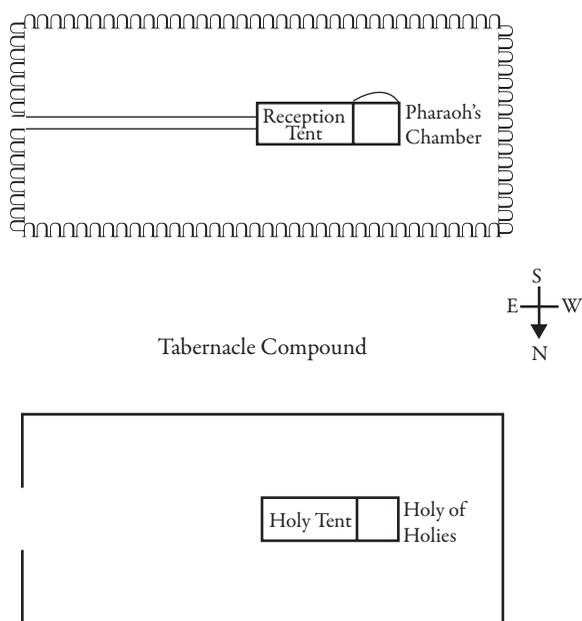
FIGURE 2.1 The Military Tent of Ramesses II (as depicted at Abu Simbel) and the Tabernacle plan of Exodus 25–27.

Egypt's four army divisions at Kadesh would have camped on the four sides of Ramesses's tent compound. The book of Numbers states that the tribes of Israel camped on the four sides of the Tabernacle compound (Num 2).[18] By contrast, Neo-Assyrian camps are routinely depicted as oval in shape, and feature no throne tent of any kind.[19] The military camp at Kadesh constitutes the closest parallel to the Tabernacle—including the Temple of Solomon—known to date. The tent of YHWH the divine warrior parallels the tent of the pharaoh, the living Egyptian god, poised for battle.[20]

18. Kenneth A. Kitchen, *On the Reliability of the Old Testament* (Grand Rapids, MI: Eerdmans, 2003), 278.

19. Michael H. Homan, "The Divine Warrior in His Tent: A Military Model for Yahweh's Tabernacle," *BR* 16, no. 6 (2000): 55 n. 12.

20. Homan, *To Your Tents*, 115; see further, Kitchen, *On the Reliability of the Old Testament*, 275–82. On the affinity between the literary structure of the biblical Tabernacle accounts and accounts of Temple building in the ancient Near East, see Victor (Avigdor) Hurowitz, "The Priestly Account of Building the Tabernacle," *JAOS* 105, no. 1 (1985): 21–30.
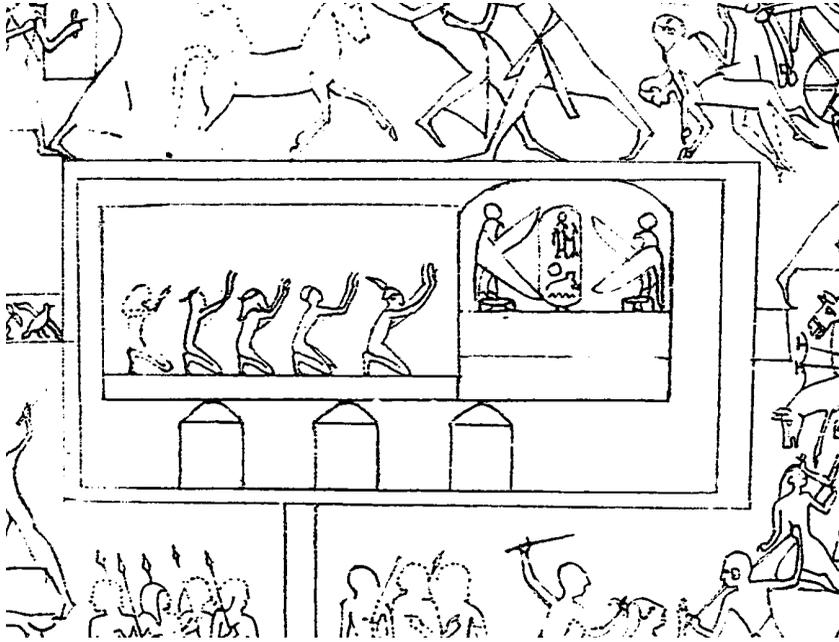
FIGURE 2.2 The throne tent of Ramesses II with winged falcons flanking his cartouche. (W. Wreszinski, *Atlas zur altägyptischen Kulturgeschichte* vol ii, 1935 pl. 169).

The Structural Similarity of the Kadesh Poem and the Sea Account of Exodus 13:17–15:19

The affinities between the Kadesh Inscriptions and the book of Exodus are just as pronounced in the similarities we find between the Kadesh Poem and the Exodus Sea account of 13:17–15:19. In both the Kadesh Poem and the sea account, the action begins in like fashion: the protagonist army is on the march and unprepared for battle, when it is attacked by a large force of chariots, causing the protagonist army to break ranks in fear. The Poem relates that Ramesses's troops were on the march when they were surprised by the Hittites, and that his troops and chariotry entirely collapsed before them (P72–74). The Exodus sea account opens in similar fashion. As they depart Egypt, the Israelites are described as "armed" (חמשים) (13:18), and as marching with a "raised arm" (ביד רמה) (14:8). Stunned by the sudden charge of Pharaoh's chariots, they become completely dispirited (14:10–12).

Each story continues by describing how the king confronts the enemy on his own, absent his fearful troops. Entirely abandoned, Ramesses engages the Hittites single-handedly without his army, a theme underscored throughout the Poem. In Exodus 14:14, YHWH declares that Israel need only remain

passive, and that He will fight on their behalf: "YHWH will fight for you, and you will be still."

In each story the protagonist now appeals to a divine agent for help. The divine agent exhorts the protagonist to move forward and offers assistance. In the Poem, Ramesses declares (P123), "The moment I called to him, I found Amun came . . . (P125) As close (face to face) he spoke out (from behind me): 'Forward! (P126) I am with you, I am your father, my hand is with you!' "[21] In like fashion, Moses cries out to the Lord, who responds in 14:15, "Tell the Israelites to go forward!" promising victory over Pharaoh (vv. 16–17).

From this point in the Poem, Ramesses assumes divine powers and proportions, and I thus examine his actions against the Hittites at the Orontes in tandem with YHWH's actions against the Egyptians at the Sea. YHWH engages the Egyptians in Exodus 14:24: "At the morning watch, the Lord looked down upon the Egyptian army through the pillar of fire and cloud, and threw the Egyptian army into panic." While it is possible to read that the Egyptians were confounded merely by the sight of the cloud and fire, several ancient traditions understood, variously, that YHWH attacked them with fire.[22]

The Poem describes a similar day-break encounter: (P277) "When dawn came, I marshaled the battle-line in the fight . . . (P279) I appeared against them . . . (P280) I entered into the battle lines, fighting like the pounce of a falcon, (P281) My Uraeus serpent (worn by the pharaohs as a head ornament-J.B.) overthrowing my enemies for me. (P282) She spat her fiery flame in the face(s) of my foes."

In each text, the dawn attack with fire on the enemy chariots is followed by the same trope: the enemy gives voice to the futility of fighting against a divine force, and seeks to escape. In each work, statements made earlier about the potency of the god are now confirmed by the enemy himself. As we saw, Ramesses attests that the Uraeus serpent spat fire at the enemy. In the Poem, the Hittites respond: (P285) "One of them called out to his fellows: (P286) Look out, beware, don't approach him! (P287) See, Sekhmet the Mighty is she who is with him!" Sekhmet is the warrior goddess, routinely depicted as wearing a crown with the Uraeus serpent. In this passage, the Hittites not only acknowledge that they are fighting a divine force, but articulate precisely which divine force it is. We find

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21. All translations of the Poem are taken from Kitchen, *Ramesside Inscriptions Translated & Annotated* (6 vols.; Oxford: Blackwell Press, 1996–2014; hereafter referred to as *RITA*), II:2–14.

22. Artapanus *apud* Eusebius *Praep. evangelica* 9.27.37; *Mekhilta* to Exod 14:25.; Tg. Neofiti 14:24. Cf. Isa 43:17. See discussion in William H. C. Propp, *Exodus 1-18* (AB 2; New York: Doubleday, 1999), 499.
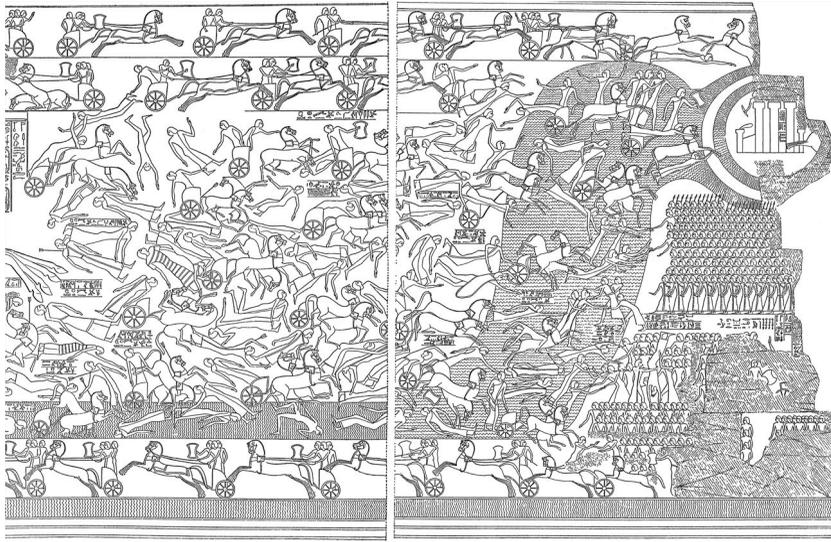
FIGURE 2.3 The corpses of the Hittite troops in the Orontes River (James Henry Breasted, *The Battle of Kadesh: A Study in the Earliest Known Military Strategy* [Chicago: Chicago University Press, 1903] pl. III).

the same trope in the Exodus narrative as well. In 14:14, YHWH had promised Israel, "YHWH will fight for you" (יהוה ילחם לכם). Following the dawn attack with fire, in 14:25 the narrative states, "And the Egyptians said, 'Let us flee from the Israelites, for the Lord is fighting for them (כי יהוה נלחם להם) against Egypt.'"[23]

An element common to the battle depictions of both compositions is that the enemy sinks into the water and perishes. This, of course, is central to the sea account of Exodus 14–15. The sinking or submerging of the enemy is emphasized in the Song at 15:4, 5, and 10. To be sure, the Kadesh Poem does not tell of wind-swept seas overpowering the Hittites; but they do submerge into a body of water—the Orontes River—and many perish there. Ramesses claims (P138–140) that in their haste to escape his onslaught, the Hittites "plunged" into the river, seeking refuge "like crocodiles." Ramesses claims that he slaughtered them there in the water. The reliefs draw attention to the drowning of the Hittites in vivid fashion, none more so than those on the second pylon at the Ramesseum (see Figure 2.3).

Both texts underscore that there were no survivors in the water. The Poem states, (P141) "None looked behind him, no other turned around. (P142)

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23. Cf. the similar scene elsewhere in the Poem: (P157) "One cried out to another amongst them, (saying): (P158) 'He is no mere man, he that is among us! (it's) Seth great of power, (very) Baal in person! (P161) Let's come away quickly, let's flee before him!'"

Whoever of them fell, he did not rise again." Exod 14:28 states, "The waters turned back and covered the chariots and the horsemen . . . not one of them remained."

We come now to the most striking of the parallels between the Poem and the Exodus sea account. In lines 224–249 of the Poem, Ramesses's troops offer the king a paean of praise for the might and salvation which he had given them. Conceptually, this is parallel to the Israelites' Song to YHWH in chapter 15, for the salvation provided to them. The correspondence of elements here is particularly tight. In each composition the timid troops see evidence of the king's "mighty arm"; then they review the enemy corpses; and finally, they are amazed by the king's achievement. In the Poem, we read:

> (P224) Then when my troops and chariotry *saw* me, (P 225) that I was like Montu, (P226) *my arm strong* . . . (P229) then they presented themselves one by one, (P230) to approach the camp at evening time. (P231) They found all the foreign lands, amongst which I had gone, lying overthrown in their blood . . . (234) I had made white the countryside of the land of Qadesh.[24] (P235) Then my army came to praise me, their faces [amazed/averted] at seeing what I had done.

We see very similar elements in Exodus 14:30–31: "Israel *saw* the Egyptians dead on the shore of the sea. And when Israel saw the *great hand* which the Lord had wielded against the Egyptians, the people feared the Lord." As noted earlier, phrases such as "the great hand" here in 14:30, or "your great arm" in 15:16, are used in exclusive fashion in the Hebrew Bible with regard to the Exodus, and represent a trope that is specific within cognate literature to royal Egyptian propaganda, especially during the New Kingdom.

From here, in both accounts, the troops offer a paean to the king. In each "song" or hymn, the opening stanza is composed of three elements: a) boasting of the king's name as a warrior; b) crediting him with heartening their morale; and c) lauding him for the salvation he has granted them. In the Poem we read: (P236) "My officers came to extol my strong arm (P237) And likewise my chariotry, (P238) boasting of my name thus: (P239) 'What a fine warrior, who strengthens the heart[25] (P240) That you should rescue your troops and chariotry!'" These

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24. That is, it was strewn with blanched corpses.

25. I have preferred the more literal translation here of Davies (Benedict G. Davies, *Egyptian Historical Inscriptions of the Nineteenth Dynasty* [Jonsered, Sweden: Paul Astroms Forlag, 1997], 75). Kitchen reads "who stiffens morale."

same motifs of the king's name, the strength he gives them, and the salvation he brings appear in the opening verses of the Song of the Sea (Exod 15:1–3) as well: "Then Moses and the Israelites sang this song to the Lord . . . the Lord is my strength and might; He is become my salvation . . . the Lord, the Warrior—Lord is His Name!"[26]

In both the Poem and in Exodus, the troops continue their praise of the victorious king with a double strophe extolling the achievement of the king's powerful hand or arm. In the Poem we read, (P241) "You are the son of Amun, achieving with his arms, (P242) you devastate the land of Hatti by your valiant arm." The Song continues in similar fashion (Exod 15:6): "Your right hand, O Lord, glorious in power, your right hand, O Lord, shatters the foe!"

It is worth noting here the distinctly Egyptian portrayal of the right hand. The Hebrew *ymn* (15:6, 12) is cognate with the Egyptian *imn, wnmy*, as it is with many Semitic terms, such as the Akkadian *imnu*, and the Ugaritic *ymn*.[27] Yet in Akkadian and in Ugaritic, we find that the right hand is portrayed exclusively with regard to holding or grasping.[28] In Egyptian literature, however, we find depictions of the right hand that match those found here in the Song. Perhaps the most enduring motif of Egyptian narrative art is that of the pharaoh raising his right hand to shatter the heads of enemy captives (see Figure 2.4).[29] The image is ubiquitous from the third millennium into the Christian era. Neither in iconography nor in the written compositions of cuneiform cultures do we encounter such portrayals of the right hand. The clause (15:6), "Your right hand, O Lord, shatters the enemy," therefore, exhibits high resonance with Egyptian royal imagery.[30]

In a prophylactic charm from the reign of Ramesses II, a demon is warned that should he attack, "the gods [shall have?] the right arm extended against an

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26. Note also that the Song describes YHWH in the opening verses of the Song as ירה בים and רמה בים, both of which have been understood by some as depictions of YHWH as an archer (cf. Hab 3:9, 11; Zech 9:14; Ps 144:6 and discussion in Propp, *Exodus 1–18*, 511). Ramesses is depicted throughout the Poem as defeating his enemy through his prowess as an archer (e.g., P12, P130), a trope that receives vivid representation in the reliefs.

27. *HALOT* 2:415.

28. *CAD* I/J 136; *DULAT*, 967.

29. See Emma S. Hall, *The Pharaoh Smites His Enemies: A Comparative Study* (Munich: Deutscher Kunstverlag, 1986).

30. See discussion of the image with regard to other biblical passages in James Hoffmeier, "Some Egyptian Motifs Related to Warfare and Enemies and Their Old-Testament Counterparts," *Ancient World* 6 (1983): 54–55.

FIGURE 2.4 Relief of Seti I with raised right hand, shattering the heads of his ene-mies, Hypostyle Hall at Karnak. (The Epigraphic Survey, *The Battle Reliefs of King Sety I* [Chicago, 1986] pl. 15a. Courtesy of the Oriental Institute of The University of Chicago).

arm of yours (?);—your name shall be rejected, and your corpse be banished."[31] Exod 15:12 likewise describes that YHWH extended his right hand, causing the earth to swallow the Egyptians (נטית ימינך תבלעמו ארץ). The trope of the threaten-ing, extended, weaponless right hand is found in the literature of no other nearby or immediate culture.

The next image of the Song of the Sea compares the enemy to chaff consumed by YHWH's wrath (15:7): "You send forth your fury, it consumes them like chaff." Within the Poem, the enemy is likened to chaff just a few lines prior, as the troops

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31. British Museum p. 10731, ln. 2, translated in *RITA* IV, 133.

review the Hittite corpses: (P227) "Amun my father being with me instantly, (P228) Turning all the foreign lands into straw (*dḥз*; Lichtheim[32]: "chaff") before me."[33] Note that the use of "chaff" as a simile for the enemy in a military inscription is unattested in cuneiform writings.[34]

In each hymn, the troops declare the king to be without peer in battle. In the Poem we read: (P243) "You are the fine(st) warrior, without your peer" and as we move on in the Song we find a similar note about YHWH: "Who is like You, O Lord, among the mighty?" Further, in each song, the king is praised as the victorious leader of his troops, intimidating neighboring lands. In the Poem we read: (P247) "You are great in victory in front of your army . . . (P249) O Protector of Egypt, who curbs foreign lands." These two ideas appear at this point in the Song. Following the victory over the Egyptians, the Israelites declare (15:13–15): "In your loving kindness, You lead the people you redeemed; In Your strength, You guide them to Your holy abode. The peoples hear, they tremble."

The penultimate lines of the Song of the Sea contain the main elements that comprise the penultimate lines of the Poem: the king leads his troops safely on a long journey home from the defeat of the enemy, intimidating neighboring lands along the way. In the Poem we read: (P332) "[He] turned peacefully southwards. (P333) His Majesty set off back to Egypt peacefully, with his troops and chariotry, (P334) all life, stability and dominion being with him, the gods and goddesses being the talismanic protection for his body, and (P 335) subduing all lands, through fear of him. (P336) It was the might of His Majesty that protected his army." These same motifs are found in the continuation of the Song (15:16–17): "Terror and dread descend upon them, Through the might of Your arm they are still as stone—Till your people pass, O Lord, the people pass whom you have ransomed. You will bring them and plant them in your own mountain."

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32. Miriam Lichtheim, *Ancient Egyptian Literature* (2 vols.; Berkeley: University of California Press, 1973), 2:69.

33. In the Kadesh "Bulletin" we find an image that is even closer to the chaff image in the Song of the Sea, where the enemy is likewise consumed by fire, as chaff:

> (B91) "All his patch blazed with fire, He burnt up every foreign land with his hot breath. (B92) His eyes became savage when he saw them. His might flared like fire against them. (B93) He paid no heed to even a million aliens. He looked upon them as on chaff" (*RITA* II, 17). Cf. references to enemies as chaff in Nineteenth and Twentieth Dynasty inscriptions in Kenneth A. Kitchen, *Ramesside Inscriptions: Historical and Biographical* (8 vols.; Oxford: Blackwell, 1975–1990; hereafter referred to as *KRI*) II 173:12 (*RITA* II, 46); *KRI* V 63:15 (*RITA* V, 50); *KRI* V 71:13 (*RITA* V, 54).

34. For "chaff" in Assyrian similes, see *CAD* P, 471–472, s.v. *pû* B.

The final motif of the Poem is also the final element of the Song: peaceful arrival at the palace of the king, and blessings to him for eternal rule. In the Poem we read,

> (P338) Arrival peacefully in Egypt, at Pi-Ramesse Great in Victories, (P339) and resting in his Palace of life and dominion . . . (P340) The gods of the land <come> to him in greeting . . . (P342) according as they have granted him a million jubilees and eternity upon the throne of Re, (P343) all lands and all foreign lands being overthrown and slain beneath his sandals eternally and forever.

The Song of the Sea concludes on a similar note, with YHWH inhabiting his "palace" or temple, and a declaration of his eternal sovereignty (15:17–18): "You will bring them and plant them in Your own mountain, the place You made Your abode, O Lord, the sanctuary, O Lord, which Your hands established. The Lord will reign for ever and ever!" Many scholars have compared vv. 17–18 here, with the conclusion of the Baal cycle, where the triumphant Baal returns from the battlefield, builds his palace, and is granted eternal rule.[35] Yet to see the motif as Canaanite, as opposed to Egyptian, is to set up a false dichotomy. The deity Seth was widely identified with the West Semitic Baal.[36] In fact, taking the Kadesh Poem and Bulletin together, Ramesses himself is compared to Baal no less than four times.[37]

The plot common to both compositions may be summarized as follows: the protagonist army breaks ranks at the sight of the enemy chariot force. A plea for divine help is answered with encouragement to move forward, and victory is assured. On the battlefield itself, the protagonist king encounters the enemy chariots with fire. The enemy chariotry seeks to flee and recognizes, by name, the divine force that attacks it. Many meet their death in water, and there are no survivors. The king's troops return to survey the enemy corpses and are amazed at the king's accomplishment. They offer the king a victory hymn. It includes praise of his name, references to his strong arms, and notes that he is their source of strength and the source of their salvation. The enemy is compared to chaff, while the king is deemed without peer in battle. He leads his troops peacefully home, intimidating foreign lands along the way. The king arrives at his palace, and is granted eternal rule. This is the story of Ramesses II in the Kadesh Poem, and this is the story of YHWH in the account of the sea in Exodus 14–15.

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35. See sources in note 1.

36. For discussion of the relationship between Seth and Baal see H. Te Velde, "Seth," *Oxford Encyclopedia of Ancient Egypt*, 269–71.

37. P78, P222, P298, and in the versions at the Ramesseum and Abu Simbel, also Bulletin ln. 87.

Characterizing the Relationship between the
Kadesh Poem and the Sea Account of Exodus 14–15

Does the common narrative sequence found in these two works appear independently in each culture from a common milieu of stock forms, or, may we propose that the Song of the Sea was composed with an awareness of the Kadesh Poem in mind? The bar to establish literary dependence is a high one. In this section I offer a series of observations which, I submit, warrant such a conclusion.

How distinct are these parallels? Battle inscriptions are found all over the ancient Near East.[38] Some of the motifs identified here, such as the dread and awe of the enemy in the face of the king, are ubiquitous across this literature. Other elements, such as the king's building or residing in his palace and gaining eternal rule, are recognizable typological mythological tropes known to us from Enuma Elish and from the Baal cycle.[39] Neo-Assyrian sources record the mass drowning of enemy soldiers.[40] Other motifs here are truly distinct, but can be seen as reflecting the needs of each author, with no connection between them. For example, few, if any, ancient battle accounts record that an army was on the march when it was suddenly attacked by a massive chariot force, and broke ranks as a result. Yet, it could be that coincidentally, the authors of the Kadesh Poem and the Sea account employed this trope independently. A relation between the two texts is suggested, however, by the totality of the parallels and the large number of highly distinct motifs that appear in these two works only, and largely in common sequence.[41] Perhaps paramount among these is the trope of the timorous troops surveying the corpses slain by the heroic "king," who then offer him a hymn of praise with several common elements.[42]

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38. For a survey, see K. Lawson Younger, *Ancient Conquest Accounts: A Study in Ancient Near Eastern and Biblical History Writing* (Sheffield, UK: JSOT Press, 1990).

39. See discussion at Propp, *Exodus 1-18*, 557.

40. See, e.g., concerning the foes of Shalmanesar III in A. Kirk Grayson, *Assyrian Rulers of the Early First Millennium BC II (858–745 BC)* (RIMA 3; Toronto: University of Toronto Press, 1996), texts no. 102.28.44 and 102.2 ii 100. See discussion in Seth Richardson, "Death and Dismemberment in Mesopotamia: Discorporation between the Body and Body Politic," in Nicola Laneri, ed., *Performing Death: Social Analyses of Funerary Traditions in the Ancient Near East and Mediterranean* (Oriental Institute Seminars 3; Chicago: University of Chicago Press, 2007), 200; and John R. Huddlestun, "Redactors, Rationalists and (Bloodied) Rivers: Some Comments on the First Biblical Plague," in David S. Vanderhooft and Abraham Winitzer, eds., *Literature as Politics, Politics as Literature: Essays on the Ancient Neat East in Honor of Peter Machinist* (Winona Lake, IN: Eisenbrauns, 2013), 218–21. My thanks to John Huddlestun for bringing this material to my attention.

41. On the importance of shared sequence as a marker of literary dependence, see Benjamin Sommer, *A Prophet Reads Scripture: Allusion in Isaiah 40–66* (Stanford: Stanford University Press, 1998), 41–42, 71, and 106.

42. Compare the large number of sequential and distinct parallels adduced here between Exodus 14–15 and the Kadesh Poem with the parallels adduced by Steven Weitzman between Exodus

The Exodus account does not seem to be drawing inspiration from a stock Egyptian form, but rather from a highly distinct and unique composition. The eminent Egyptologist Sir Alan Gardiner remarks about the Kadesh Inscriptions, "there is nothing in Egyptian literature really comparable to this narrative of Ramesses II. I maintain, therefore, that Ramesses II's account of his Hittite war is a unique phenomenon in Egyptian literature."[43] By the same token, this array of motifs found in the Song of the Sea has no parallel in any other biblical battle report. It is fair to say that no other battle account known to us from the Hebrew Bible, or the epigraphic remains of the ancient Near East, provide us with another account that has even close to half of the shared narrative motifs exhibited here.

Shared narrative sequence, however, is not a sufficient basis for determining literary dependence. We need to see that the purported later, borrowing text (in our case the sea account of Exodus 14–15) exhibits wide lines of commonality with the literature of the culture of the earlier, Egyptian text. I noted earlier that the mixing of prose and inset poetry, as well as the victory hymn, were common Egyptian rhetorical devices, and absent in Canaanite literature. I noted also that the depiction of the "mighty arm" of the hero king was a distinctly Egyptian motif, especially in New Kingdom writings.

To provide a deeper context, though, I note two aspects of the Song of the Sea that resonate with New Kingdom inscriptions more generally. A common topos of Nineteenth- and Twentieth-Dynasty military inscriptions is the claim that the pharaoh causes the enemy troops to cease all of the boasting of their mouths. Thus, in a typical line, the Seti I Karnak War Scene reads, "He causes the princes of Syria to cease all of the boasting of their mouths."[44] The concern with silencing the enemy's boastings is a distinctly Egyptian one, and is not found in any other cognate military literature. Note that the Song does not depict the movements or actions of the Egyptians. It records only their boasting (15:8–9): "The enemy said, 'I will pursue! I will overtake! I will divide the spoil! My desire shall have its fill of them, I will bare my sword, My hand shall subdue them!'" The sea then covers them, effectively silencing their boasting.[45] As noted earlier, the Song's depiction of the right arm of YHWH as "shattering" and "extending" in destructive ways has highly distinct resonance within Egyptian writings.

14–15 and the eighth c. Piye Stele in Weitzman, *Song and Story in Biblical Narrative: The History of a Literary Convention in Ancient Israel* (Bloomington: Indiana University Press, 1997), 17–32.

43. Alan Gardiner, *The Kadesh Inscriptions of Ramesses II* (Oxford: Clarendon Press, 1960), 53.

44. KRI I 7.12—*di.f kn wrw nw Ḫr ꜥbꜥ nb rꜣ(w).sn* translated in Anthony J. Spalinger, *Aspects of the Military Documents of the Ancient Egyptians* (New Haven, CT: Yale University Press, 1983), 56. See discussion of the trope, ibid., 55–56.

45. Note that the boasts here are a series of simple clauses, expressed in the first person, focusing upon what the boasting force seeks to achieve. This resonates with the only voiced boast that we find in the Egyptian record. An inscription of Ramesses III at Medinet Habu describes the

Finally, to substantiate literary dependence, we would want to see specific elements of convergence between the two texts, in addition to the narrative sequence they share. I noted earlier the diminution of the enemy through the simile of chaff. We may see an affinity between the Song of the Sea and the Kadesh Poem through the presence of an additional rhetorical device. Throughout the Poem, an apposition is established between the strong arm/hand of Ramesses (P8, 155, 197, 225, 236, 241–42, 276, 302, 305) and the failing and weak hands/arms of the Hittites (P136, 163, 290). The Song likewise sets up an apposition between YHWH's mighty arm (14:31, 15:6 [2x], 16), and the failed Egyptian "hand" of the boast of 15:9.

Many scholars see within the Song of the Sea a transformation of Semitic mythic motifs.[46] And, as I noted at the outset, many terms from the mythic lexicon appear in the Song. Yet, on many other levels, we may see how the Kadesh Poem is much closer to the Song than is the Baal Epic. The Baal epic is poetry; the Exodus sea account, like the Kadesh Poem, is a narrative, with inset poetry. The Baal cycle is set in primordial time—it is timeless and cyclical; the sea account, like the Kadesh Poem, claims to tell of a specific, historical event, recorded in human time. The Baal epic addresses the salvation of the world; the sea account, like the Kadesh Poem, speaks of the salvation of a specific group of people by its king. Within the sea account, the Sea is no longer the cosmic ocean, but a specific body of water. It is YHWH's tool, not a personalized adversary.[47] In these respects, the Kadesh Poem more closely resembles the Exodus sea account than does the West Semitic Baal cycle.

Finally, to determine literary dependence, we need to understand the later writer's literary strategy in working with the earlier composition. Whenever a writer borrows from another text, there is, perforce, both a process of adoption, and of adaptation. There is material that the later author borrows or adapts, but also material that the author rejects, or ignores. Having highlighted what is common between the sea account of Exodus 14–15 and the Kadesh Poem, I would like now to survey the Poem as a whole to determine what parts or aspects of it the author of Exodus 14–15 has left out, in the hope of identifying his strategy of adoption and adaptation.

Note that in the Poem, battle scenes are described across three separate days, here in Table 2.1 listed as elements *e-f, h,* and *l.* The Exodus account has no need

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boasting of the Libyan enemies in similar terms: "Their warriors relied upon their plan, coming with confident hearts: *'We will advance ourselves!'* The counsels within their bodies were: *'We will achieve!'*" (*KRI* V 22:12–13 [*RITA* V, 20]).

46. Peter C. Craigie, *Ugarit and the Old Testament* (Grand Rapids, MI: Eerdmans, 1983), 66; Thomas B. Dozeman, "The Song of the Sea and Salvation History," in Stephen L. Cook and S. C. Winter, eds., *On the Way To Nineveh: Studies in Honor of George M. Landes* (Atlanta: Scholars Press, 1999), 94; Smith, *The Early History of God*, 41–79; Cross, *Canaanite Myth and Hebrew Epic*, 112–44.

47. Propp, *Exodus 1–18*, 560.

Table 2.1 A Comparison of the Structure of the Kadesh Poem and the Exodus Sea Account

	The Kadesh Poem		The Exodus Sea Account	
	Lines	Event	Verses	Event
a	1–24	List of king's attributes	—	
b	25–91	March to Kadesh and attack of the Hittites.	13:17–14:10	March through desert and attack of the Egyptians.
c	92–124	Petition to Amun.	14:10	Petition to YHWH.
d	125–127	Amun promises salvation.	14:15–17	YHWH promises salvation,
e	128–142	Ramesses first attack; Hittites drown.	14:23–28	YHWH attacks, Egyptians drown.
f	143–165	Hittites recognize power of Seth and Baal and try to flee.	14:25–27	Egyptians recognize YHWH and try to flee.
g	166–203	Ramesses rebukes his troops.	—	
h	205–223	Ramesses's second attack.	—	
i	224–237	Troops survey corpses and revere king.	14:30–31	Israelites survey corpses and revere YHWH.
j	238–250	Troops sing praise.	15:1–19	Israelites sing Song of the Sea.
k	251–276	Ramesses rebukes his troops.	—	
l	277–294	Ramesses's third attack, with fire at dawn; Hittites recognize Sekhmet, try to flee.	14:24–27	YHWH attacks at dawn with fire, Egyptians recognize YHWH, try to flee.
m	295–331	Hittite king sues for peaceful surrender.	—	
n	332–343	March to homeland, residence in palace, eternal rule.	15:13–18	YHWH leads Israel to homeland, builds temple, is granted eternal rule.

of three separate days of battle, but rather has condensed and conflated the three scenes into a single battle episode in Exodus 14. The Exodus account incorporates and adapts the valorous deeds of Ramesses alone. The aim of the account, it would seem, is to depict YHWH as the equal of, or even greater than, the great Ramesses himself. Material that does not accord with this agenda is omitted. The Exodus account, therefore, incorporates no material from the extensive rebukes Ramesses issued his troops (elements *g* and *k*). The Exodus account has little interest in Ramesses's extensive petition to Amun (element *c*), nor in the petition of the Hittite king for peaceful surrender (element *m*). The Exodus account, however, displays intense interest in the reverence expressed by the pharaoh's troops for his act of salvation, and in the hymn they sing to him in praise (elements *i* and *j*). These are the sections most closely paralleled in the Exodus sea account.[48]

The Kadesh Inscriptions of Ramesses II and the Composition of the Exodus Sea Account

These findings shed light on our understanding of the compositional history of the prose sea account, and of the relationship between the prose account and the Song of the Sea.

It is a commonplace within source-critical scholarship that the prose account is rife with doublets and inconsistencies, and that these are evidence of multiple authorship, and of the composite nature of this text. The use of the divine name אלהים in 13:17–19 is incongruous with the use of the Tetragrammaton elsewhere throughout this pericope. There seem to be two motives ascribed for the chosen route of escape. Verse 13:17 states that the Israelites would take a route that would spare them from a military encounter. By contrast, verses 14:2–4 claim that Israel's wanderings were intended to be a lure, precisely to force an encounter with Pharaoh's forces. The text ascribes to Pharaoh two reasons for pursuing the Israelites. Verse 14:3 suggests that Pharaoh will pursue them because they are entrapped and can be easily routed. Verses 14:4–5 suggest that he pursues them because he wishes to apprehend the escaped slaves. The passage seems to offer two descriptions of the formation of Pharaoh's army. In verse 14:6, Pharaoh mounts

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48. In an earlier version of this study, I raise the question of how the Kadesh Inscriptions could have become known to ancient Israelites and discuss several alternatives. See Berman, "The Kadesh Inscriptions of Ramesses II and the Exodus Sea Account (Exodus 13:17–15:19)," in James K. Hoffmeier, Alan R. Millard, and Gary A. Rendsburg, eds., *"Did I Not Bring Israel Out of Egypt?" Biblical, Archaeological, and Egyptological Perspectives on the Exodus Narratives* (Winona Lake, IN: Eisenbrauns, 2016), 110–12.

his chariot and leads his troops out to battle. But verse 14:7 reports that Pharaoh takes six hundred choice chariots and the entire chariot corps of his army. In verse 14:10, the people cry out to God. In verse 14:11, though, they cry out to Moses. Verse 14:21 seems to offer two explanations for the creation of a dry path through the sea: Moses waving his staff, and God blowing an easterly wind. Twice the Egyptians are confounded: in verse 14:24 it is on account of the pillar of fire, while in verse 14:25 it is on account of the inability of the chariots to navigate the terrain.[49] For source critics, these doublets and inconsistencies mandate a division of the verses, and what emerges are two strands. One, the Priestly strand, features YHWH splitting the sea and Israel passing through on dry land. The other strand, the non-Priestly version, knows of no miracle by which Israel traverses parted seas. Rather, by this account, the Egyptians are defeated at sea. By all accounts, though, the split of the passage into two does not account for all of the textual data. Some scholars see in the passage a third tradent, the E source. Others posit that late expansions of the two primary strands sought to balance chronology, geography, and the nature of the miracle. Opinions abound concerning the chronological priority of these two strands, and of the editorial stages that produced the received text.[50]

One could argue that some of these doublets are not problematic. For example, we may read the cause of the drying of the sea in 14:21 synchronically, in its received form: Moses waved his staff, itself a signal to God to blow a wind to dry the seas. However, it is not my aim to argue that the doublets and inconsistencies that abound in this account can each be explained away through a synchronic reading. Rather, I aim to demonstrate the fundamental flaw in the very methodology of identifying doublets and inconsistencies as signs of composite composition. I reach this conclusion on the basis of the doublets and inconsistencies that abound within the Kadesh Poem. For the purpose of this argument, I may jettison entirely the evidence I have drawn thus far between the Kadesh Poem and the Exodus sea account. Let us assume that there is no textual connection whatever between these two compositions. The poetics of the Kadesh Poem alone call into question the validity of the source-critical methodology of establishing a text's compositional history on the basis of doublets and inconsistencies within the text. I make this claim because the Kadesh Poem is universally recognized to be a

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49. See Cornelis Houtman, *Exodus* (Kampen: Kok, 1993), 2:234 for a summary of inconsistencies and doublets.

50. For a recent comprehensive bibliography of this scholarship, see Jan Christian Gertz, "The Miracle at the Sea: Remarks on the Recent Discussion about Origin and Composition of the Exodus Narrative," in Thomas B. Dozeman, Craig A. Evans, and Joel N. Lohr, eds., *The Book of Exodus: Composition, Reception, and Interpretation* (Leiden: Brill, 2014), 97 n. 22.

unitary, synchronically composed composition, and because the inconsistencies found within it are of a nature more egregious than those identified by source-critics to the Exodus sea account. Put differently, the poetics of the Kadesh Poem demonstrate that source critics read ancient texts employing anachronistic notions of consistency, which were not shared by ancient writers. Understanding ancient literary convention requires careful study. The conventions that guided the composition of ancient texts must be learned; they cannot be assumed.

In over a century of sustained scholarship, no Egyptologist has proposed that the Kadesh Poem is a composite work, and for good reason. As we saw earlier, Sir Alan Gardiner remarked about the Kadesh Inscriptions, "there is nothing in Egyptian literature really comparable to this narrative of Ramesses II. I maintain, therefore, that Ramesses II's account of his Hittite war is a unique phenomenon in Egyptian literature."[51] We have ample epigraphic evidence of Egyptian monumental inscriptions, commemorating battles. To be sure, the Kadesh Poem employs stock phrases that are part of that literary tradition.[52] But in content and structure, there is no literary precursor to the Kadesh Poem; it does not adapt any known composition, let alone import entire passages from any previous work. It exists in ten copies, all virtually identical, such that we should not assume that it was hastily or sloppily composed. The diffusion of the work, and its presence at so many monumental sites, suggests that this was a carefully vetted work and reflects meticulous design. One full-length study has examined its literary qualities as a carefully structured and balanced whole.[53] Finding within the Poem literary phenomena that seem to us inconsistent, we should not conclude that the work is composite. Rather, we should assume that it employs literary conventions dissimilar from our own.

Surveying the Kadesh Poem with an eye toward the types of inconsistencies biblical source-critics see as tell-tale signs of textual growth, we discover a long list of such details:

1) *Shift in narratorial voice*: Most egregious of all the inconsistencies in this composition is the shift from third-person narration to first-person narration in line 88 of the Poem:

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51. Gardiner, *The Kadesh Inscriptions of Ramesses II*, 53.

52. See generally, Spalinger, *Aspects of the Military Documents of the Ancient Egyptians*.

53. Scott Morschauser, "Observations on the Speeches of Ramesses II in the Literary Record of the Battle of Kadesh," in Hans Goedicke, ed., *Perspectives on the Battle of Kadesh* (Baltimore: HALGO, 1985), 123–206.

(83) So His Majesty went to look around him; (84) he found 2,500 chariot-spans hemming him in, all around him, (85) even all the champion ("runners") of the Hittite foe, along with the numerous foreign countries who were with them – (86) from Arzawa, Masa and Pidassa; {from Gasgas, Arwanna and Qizzuwatna; from Aleppo, Ugarit Qadesh and Lukka;} (87) they were 3 men to a chariot-span, acting as a unit. (88) But there was no high officer with me, no charioteer (89) no army-soldier, no shield bearer. (90) But my army and my chariotry melted away before them, (91) none could withstand them, to fight with them.

2) *Inconsistency concerning the pharaoh's isolation*: In line 89, the pharaoh laments his abandonment by his troops: "There was no high officer with me, no charioteer, no army-soldier, no shield-bearer." Yet, in ll. 205–219, as Ramesses prepares to charge into the assembled enemy forces he admonishes a figure named Menna, identified as his shield-bearer. And in lines 273–274, Ramesses praises his shield-bearer and household butlers, who remained at his side throughout the ordeal.

3) *Inconsistent lists of the enemy nations*: The beginning of the Poem features a list of the nations that comprised the Hittite confederacy, totaling thirteen groups in all (ll. 2–6). Yet, when Ramesses engages these groups in battle, we discover seventeen enemy nations in that coalition (ll. 41–47).

4) *Inconsistent accounts of Ramesses's divine paternity*: Ramesses's divine father is identified as Montu at one point (l. 37), but as Amun in two others (ll. 92 and 188).

5) *Inconsistent references to the Pharaoh's steed*: Ramesses makes reference to his trusted steed, Victory in Thebes in l. 78, yet in line 267, the king gives praise to his two mounts, Victory in Thebes and Mut is Content, vowing to assume upon himself ever after their daily feeding responsibilities.

6) *Doubled reproach of the Pharaoh's troops*: Ramesses offers two separate admonishments to his troops for their cowardice (ll. 168–203 and ll. 251–276), with repetitions of many of the themes and tropes.

Were biblicists to analyze the Kadesh Poem with the same methodology they use to parse the biblical text, it is inconceivable that they would conclude that the Kadesh Poem was written under the authority of a single agent. And yet, the evidence suggests that this is precisely the case. The fact that a unitary composition can contain so many inconsistencies and doublets suggests a fundamental flaw in source-critical methodology. To be sure, none of this proves that the prose account of the Exodus sea event is a unitary composition. The evidence from the Kadesh Poem, however, strongly illustrates the need for scholars to attain competence in the conventions and poetics of ancient Near Eastern literature before adducing a methodology, if they are to responsibly retrace the growth of the biblical text.

The correspondences highlighted in this chapter further strengthen the challenge to source-critical methodology. The Kadesh Poem—with all its seeming inconsistencies—is not only an exemplar of unitary composition from somewhere distant in the ancient world. It also is a text that reveals deep ties to biblical literature, and its poetics are probative for an analysis of the literary data found in the Hebrew Bible.

The correspondences I identified between the Exodus sea account of 13:17–14:31 and the Kadesh Poem cut across source-critical lines, suggesting that we should read the prose account in linear fashion. The plea to God for help and the divine offer of assistance and encouragement to proceed (14:14–15) is distinct to the hypothesized P version. Likewise, the phrase "not a single one was left" when the enemy drowns (14:28) is found only in this version. On the other hand, the trope of confronting the enemy with fire (14:24), and the enemy declaration that they have been outmatched by a divine force and must flee for their lives (14:25), are found only in the hypothesized non-Priestly source. Similarly, the account of the Israelites viewing the corpses of their enemies and recognizing the "great hand" of the Lord (14:30) is found exclusively in the verses ascribed to the non-Priestly version. Only when the two hypothesized versions are read in canonical order do the correspondences with the Kadesh Poem emerge.[54]

The correspondences between the Kadesh Poem and the Exodus sea account can shed light on the scholarly discussion of the relationship between the poetic account of the Song of the Sea (15:1–19) and the prose account that precedes it. One portion of this discussion has focused on the chronological relationship between the prose and lyric accounts of the sea event. All critics concur that the Song contains archaic forms. For some, this points to the chronological priority of the Song over the prose account.[55] For others, the archaic forms are deployed by later writers to give the impression of antiquity.[56] My interest, however, concerns the final redaction of these materials: how, if at all, do these texts interact?

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54. See chapter 13 of this book, where I engage in a full-length critique of source-critical methodology in my analysis of scholarship on the Genesis flood story. There, I note that in similar fashion, only when the putative Priestly and non-Priestly accounts are read in canonical order, does the full complement of correspondences with the flood account of Tablet XI of the Gligamesh epic emerge.

55. Cross, *Canaanite Myth and Hebrew Epic*, 133; Frank Moore Cross and David Noel Freedman, *Studies in Ancient Yahwistic Poetry* (Grand Rapids, MI: Eerdmans, 1997), 238.

56. Thomas L. Thompson, "The Joseph-Moses Traditions and Pentateuchal Criticism," in J. H. Hayes and J. M. Miller, eds., *Israelite and Judaean History* (Philadelphia: Westminster, 1977), 165; A. Bender, "Das Lied Exodus 15," *ZAW* 23 (1903): 47; Siegfried Hermann, *Israel in Egypt* (London: SCM Press, 1973), 57; Martin L. Brenner, *The Song of the Sea: Ex. 15:1-21* (BZAW 195; Berlin: De Gruyter, 1991), 51.

Does final redaction of the material create a whole that must be understood as such, or must we understand the prose and lyric accounts only in isolation? Put differently, how shall we give proper credence to both the similarities and dissimilarities that exist between the prose and lyric accounts? Laying bare the data will allow us to see where first assumptions enter into the interpretive process, and how the evidence from the Kadesh Poem can shed light on these issues.

Consider the commonalities shared between the prose and lyric accounts. The essential features of the event occur in the same order in both the prose account and in the Song. Wind in verse 15:8 causes the water to heap up, just as in verses 14:21–22 wind blows and the waters stand up. Egyptians pursue Israelites into standing water in 15:9, as reported in the prose account at 14:23. Waters subdue the Egyptians in both verse 15:10 and in verse 14:28.[57] We can also see a wide set of shared terms. In both the prose account and the lyric account we find the terms "salvation" (ישועה—14:13; 15:2); "war" (מלחמה—14:14, 25; 15:3); "cover" (כסה—14:28; 15:5, 10); "wind" (רוח—14:21; 15:8, 10); "pursuit" (רדף—14:4, 8, 9, 23; 15:9); "overtake" (נשג—14:9; 15:9); "chariots" (מרכבת—14:25, 15:4); "troops" (חיל—14:4 = 15:4); "guide" (נחה—13:17; 15:13); "waving" (נטה—14:21, 26, 27; 15:12) and "*shalish*" (שליש—14:7; 15:4).[58]

However, dissimilarities also abound. Moses's acts of separating the waters (14:21) and of restoring the waters (14:26, 27) are unmentioned in the Song. The Song does not speak of walls of water, but rather of a single wall (15:8). And while 15:9 tells of Egyptians in hot pursuit of the Israelites, the Song makes no explicit mention of the Israelites passing through on dry land—the central and most dramatic element in the prose account.[59]

These data have given rise to two contrasting schools of thought concerning the relationship between the prose and lyric versions of the sea event. For some, the dissimilarities stand out as paramount. Similarities between the prose and lyric accounts exist solely because one work served as the basis for the composition of the other. The two works, however, need be respected as independent

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57. Brenner, *The Song of the Sea*, 86; W. J. Houston, "Misunderstanding or Midrash? The Prose Appropriation of Poetic Material in the Hebrew Bible," *ZAW* 109 (1997): 350.

58. For discussion of these shared terms, see Houtman, *Exodus*, 243; Brevard Childs, "A Traditio-Historical Character of the Reed Sea Motif," *VT* 20 (1970): 410. For a recent survey of understandings of the term *shalish* see Chaim Cohen, "Pharaoh's שלישים 'Third-Man Charioteers' (Exod. 14:7; 15:4) and the Unnoticed Literary Allusion to the Battle of Qadesh in the Song of the Sea," in Claire Gottlieb, Chaim Cohen, and Myer Gruber, eds., *Visions of Life in Biblical Times: Essays in Honor of Meir Lubetski* (Sheffield: Sheffield Phoenix Press, 2015), 17–46.

59. Cross, *Canaanite Myth and Hebrew Epic*, 131–32.

and interpreted as such.[60] Others admit that one account may be earlier than the other. Nonetheless, the two are so thoroughly integrated that, following Cornelis Houtman, we should abandon the search for the *Sitz im Leben* of the original Song, and instead focus on its *Sitz in der Literatur* of the book of Exodus.[61] William Propp notes that even though crucial events in the prose account are not laid out explicitly in the lyric account, the Song presumes that its audience is familiar with the subject.[62] We must therefore interpret the Song in intelligent consultation with the prose account that precedes it.[63] How shall we mediate between these two approaches?

This is where our earlier discussion about modern and premodern historiographies comes into play. Scholars that call for the prose and lyric accounts to be interpreted separately do so because the facts of the Sea event recorded in each seem so disparate. They employ a modern historiography: each account, they assume, seeks to portray, in primary purpose, a set of facts. The facts seem difficult to harmonize, and so the accounts must be the products of different hands.

Here is where the juxtaposed, conflicting accounts of the Kadesh Inscriptions offer an alternative interpretive lens. Each of those accounts gave a vastly different picture of the course of the victory over the Hittite confederation. By seeing each as a work of "history," we noted, we make a category error. The genre of those compositions is exhortation. Each account conveys a different lesson to the reader or listener about the victory at the Battle of Kadesh. The facts of those three accounts are difficult to reconcile—but the lessons to be learned from those three accounts are complementary. This literary precursor can provide insight into the presence of two accounts of the Exodus sea event that are not fully commensurate. In shaping and sculpting the Exodus sea event in different ways, the final redaction of the text reflects two tellings of the event that evince complementary messages as exhortative texts. In fact, the dichotomy of the messages offered by the prose and lyric accounts respectively is strikingly similar to the dichotomy of the messages seen between the Kadesh Poem and the Kadesh Bulletin. One of the primary differences between the Kadesh Poem and Bulletin concerns the divine role in the battle. The Poem underscores that Ramesses beseeched Amun for assistance and was victorious only because the god granted him divine powers of victory. By contrast, the Bulletin makes no mention whatever of divine assistance in the victory. The Bulletin focuses on the actions of the human agent, the

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60. E.g., Cross, *Canaanite Myth and Hebrew Epic*, 112–44.

61. Houtman, *Exodus*, 245.

62. Propp, *Exodus 1–18*, 553.

63. Ibid.

king. Now, to be sure, no such striking dichotomy is found between the narrative account of Exodus 13:17–14:31 and the poetic account of Exodus 15:1–19. In both of these accounts, YHWH is the key player and the agent responsible for victory. Nonetheless, whereas the narrative of Exodus 14 discusses the role of human agents such as Moses and the Children of Israel, the poetic account of Exodus 15 portrays the sea event as a battle between YHWH and the Egyptians. Moses and Israel appear only to give witness to YHWH's achievements.[64]

The degree of discontinuity between the prose and lyric versions of the sea account is no greater than the discontinuity between the three accounts of the Kadesh Inscriptions. The prose and lyric versions should be seen as complementary, each with its own focus, and with its own lesson of exhortation. From a narratological perspective, the focalization of the prose account is balanced between the salvation of Israel and the destruction of the Egyptian oppressor. The reader follows the Israelites as they set out into the wilderness and arrive at the shores of the Sea. The reader follows the dread of the Israelites as they are surprised by the Pharaoh's chariots. The reader follows the human agent, Moses, as he intercedes with God on Israel's behalf. The chapter concludes with the focalization still on Israel, as the freed slaves survey the corpses and come to full faith in YHWH and his servant Moses. Other sections of the prose narrative, however, focus upon the Egyptians. This is so in verses 5–9, as the Egyptians embark in pursuit of the Israelites. The Egyptians are again the focus in verses 23–28, which details the drowning of the Egyptian force. In short, the prose narrative has a dual agenda: to tell of Israel's miraculous salvation and of Egypt's miraculous defeat.

The Song, by contrast, functions differently from a narratological perspective. The key to understanding its focus on the Egyptian demise and its de-emphasis of the Israelite crossing of the Sea lies in the temporal orientation that undergirds the entire Song. The earlier portion of the Song (verses 1–12) narrates the sea event. The latter portion of the Song (verses 13–19) celebrates, or perhaps anticipates future events. Verbal tense/aspect issues are found throughout, and at many points it is difficult to determine whether the Song narrates events past, or speaks of future events.[65] All this suggests that the Song is not solely a praise of YHWH's past salvation (i.e., the sea event), but a prototype description of God's power over foreign enemies generally. Its verbal tenses, therefore, defy uniform interpretation as past perfect.

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64. The same distinction is seen in the accounts of Judges 4–5. In the narrative of chapter 4, YHWH acts only once (4:15), confounding the ranks of Sisera's camp. In the song of chapter 5, however, YHWH acts repeatedly (5:4–5, 23), and is the oft-repeated subject of praise (5:2, 3, 9, 11, 31).

65. For an overview of this issue, see Robert Shreckhise, "The Problem of Finite Verb Translation in Exodus 15.1–18," *JSOT* 32, no. 3 (2008): 287–310.

The Song communicates on two levels. On one level it is ostensibly a communication of the newly freed Israelites to YHWH, in celebration and praise of their deliverance. On a second level, though, it is a communication between author and reader. And here it is not only a communication about what the Israelites ostensibly sang at the sea; it is also a communication to the reader about God's power to defeat Israel's enemies at all times. The crossing of the sea by the Israelites is only obliquely referenced, because it was a one-time event. God's defeat of the Egyptians, however, is a prototype and a harbinger for salvation from enemy powers for ever more, and hence the blurring of the verbal\tense aspects, especially in verses 6–7 and 13. As "history" it does not dovetail well with the details of the prose account of chapter 14, as it nearly sidesteps the crossing of the sea by the Israelites. As exhortation, though, it has its own specific function: to teach of God's power over enemy forces, in the past and in the future. It is an error of category to view the prose and lyric accounts as contrasting "histories." The disparity of their details is of no issue when they are understood within the genre of exhortation. Ramesses II told of the same battle with different details, driving home complementary emphases in three exhortations that he had inscribed across the monuments of ancient Egypt. With regard to the Exodus Sea event the Bible does the same.

The correspondences I identified earlier between the Kadesh Poem and the full sea account—prose and lyric versions together—suggest that they have been crafted here in final redaction as a carefully orchestrated whole. It is instructive here to note that the correspondences between the Song and the prose account cut across the source-critical lines classically assigned for the prose account. Only in the hypothesized Priestly version do the waters stand up, and only in that version do the Egyptians chase the Israelites into the sea. By contrast, only in the hypothesized non-Priestly version does God cause the wind to blow, revealing dry ground to the Egyptians. Lexemes common to both the lyric and prose accounts likewise cut across source-critical lines assigned in chapter 14. The terms כסה, רדף, נשג, חיל, and נטה are found only in the hypothesized Priestly version of the story. The lexemes ישועה, מלחמה, רוח, מרכבת, and שליש are exclusive to the hypothesized non-Priestly account.[66] The fact that the Song in Exodus 15 shares tropes and lexemes with the full prose account suggests that it is integrally related to the message and design of the preceding narrative.[67] The shared sequential correspondences between the Kadesh Poem and the combined text of the Exodus sea account—prose and lyric versions together—further supports this reading of the text.

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66. See similarly Watts, *Psalm and Story*, 59; and Houston, "Misunderstanding or Midrash?," 349.

67. Weitzman, *Song and Story*, 30.

Disparity in the Sovereign's Recounting of History to His Vassal

3

Divergent Histories between Original and Renewal Treaties in Hittite Diplomatic Literature

> *Day by day and almost minute by minute the past was brought up to date. In this way every prediction made by the Party could be shown by documentary evidence to have been correct; nor was any item of news, or any expression of opinion, which conflicted with the needs of the moment, ever allowed to remain on record. All history was a palimpsest, scraped clean and reinscribed exactly as often as was necessary.*
>
> —GEORGE ORWELL, *1984*[1]

THE REWRITING OF the past to fit the needs of the moment—Orwell's palimpsest—is found throughout recorded history, the Hebrew Bible included. We find rewritten history in the Pentateuch, notably in the book of Deuteronomy, where the author has reworked several accounts from Exodus and in Numbers in line with his own agenda. These accounts are remarkable, however, because in the form that we encounter them today—the received text of the Torah—there is no erasure, no replacement of one version with another. Rather, we first encounter the stories in the books of Exodus and Numbers, and then again later, reworked, in the text continuum of the Pentateuch as part of Moses's recollections, in the book of Deuteronomy. This phenomenon has puzzled expositors since the dawn of modern scholarship. How are we to make sense of a Torah that offers two, mutually exclusive accounts of the appointment of judges, and of the Israelite conquests in Transjordan—and, extending our scope further, mutually exclusive accounts of the theophany at Sinai, and the Sin of the Golden Calf? Modern expositors have hardly been alone in their puzzlement. The ancient

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1. George Orwell, *1984* (New York: Plume, 2003), 41.

author/editor of the Samaritan Pentateuch conflated the accounts found in Exodus and Deuteronomy at several junctures, in order to remove the inconsistencies. He apparently reasoned that allowing the received text of the Pentateuch to remain fraught with such contradictions could well jeopardize its authoritative and divine standing for his community.[2]

Modern critical scholarship, of course, views the accounts in Deuteronomy as a later reworking of the earlier materials, precisely along the lines of Orwell's palimpsest. Hypotheses concerning the issue of how, when, and why Deuteronomy was appended to the other books of the Pentateuch proliferate, but consensus is hard to come by. Nonetheless, the vast majority of expositors agree that the presence of such bald contradictions is proof positive that the author of Deuteronomy did not intend his histories to be read against the backdrop of the traditions preserved in Exodus and Numbers—traditions which undermine his own agenda.

Recently scholars have begun to seek out the ways that the disparate parts of the Pentateuch might hold together through hermeneutics that may differ from our own. Even while affirming the importance of the diachronic study of the Pentateuch's origins and literary precursors, these scholars argue that the final step of diachronic study must be to understand how we can move from part to whole, that is, to understand how the received text holds together.[3]

In this chapter and the next I claim that what we witness in the Torah—specifically, rewritten history that does not displace earlier, conflicting versions of those same events—has an ancient precursor. I claim that we may understand Deuteronomy's retelling of events recorded in the earlier books of the Pentateuch with recourse to the Late Bronze Age Hittite treaty prologue tradition. In that tradition, we find that as Hittite kings communicated with their vassals, they routinely recounted the history of the relationship between the two kingdoms. Strikingly, the record reveals that each communication brought with it a redrafted version of that history, which more often than not was at odds with the history recounted in the earlier communications. Most significantly, we see that the redrafted versions were not Orwellian palimpsests; that is, past versions were

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2. On conflation of sources within the Samaritan Pentateuch, see Jeffrey H. Tigay, "Conflation as a Redactional Technique," in Tigay, *Empirical Models for Biblical Criticism* (Philadelphia: University of Philadelphia Press, 1985), 61–83; Sidnie White Crawford, "Scribal Traditions in the Pentateuch and the History of Early Second Temple Period," in Martti Nissinen, ed., *Congress Volume Helsinki 2010* (Leiden: Brill, 2012), 167–84.

3. See Eckart Otto, "Das postdeuteronomistische Deuteronomium als integrierender Schlußstein der Tora," in Markus Witte et al., eds., *Die deuteronomistischen Geschichtswerke; redaktions- und religionsgeschichtliche Perspektiven zur "Deuteronomismus": Diskussion in Tora und Vorderen Propheten* (Berlin: Walter de Gruyter, 2006), 71–102.

not erased from the record. Rather, what we will see is that even as the Hittite kings redrafted their historical accounts in accord with the needs of the moment, both they and their vassals read these accounts while retaining, and recalling, the earlier, conflicting versions of events. They did this through a hermeneutic about history writing which was much in line with the genre of exhortation that I laid out in chapter 1. The specifics of this hermeneutic, however, have been covered by the sands of time—and I seek to recover them here.

In this chapter I turn to the historical prologues of the Late Bronze Age Hittite treaties and demonstrate how, time and again, we see the Hittite kings redrafting history in their communications with their vassals, creating multiple conflicting narratives that were plain for the vassal to see. Drawing inspiration from a series of pioneering studies of the El-Amarna letters, I turn to the field of international relations for a social-science perspective to explain why the Hittite kings composed such conflicting histories and how, in turn, these were read and interpreted by their vassals. In the next chapter I will return to Deuteronomy and discuss the implications of this practice for our understanding of the phenomenon of retold historical accounts in the book of Deuteronomy within the context of the Pentateuch, where other, conflicting versions of those same stories are found.

The Twice-Told Account of How Niqmaddu II of Ugarit Became a Vassal to Šuppiluliuma I of Ḫatti

I take as my first exhibit two diplomatic texts which date to the mid-fourteenth century BCE: CTH 46 (=RS 17.340, RS 17.369A) and CTH 47 (=RS 17.227). Both texts were found at the South Palace at Ugarit and are Akkadian versions of texts that had been delivered by the Hittite king to his Ugarit vassal. They are both styled as an address from Šuppiluliuma I of Ḫatti to Niqmaddu II of Ugarit, and both texts begin with an historical introduction that recalls the developments which led Niqmaddu to submit to Šuppiluliuma as his overlord. From there, each text moves on to delineate a number of stipulations and mandates that are to govern the relationship between Ḫatti and Ugarit. Although both documents are composed in the name of the same Hittite king for the same recipient, Niqmaddu II, there are great discrepancies between the histories that are narrated in the introduction to each. I proceed to present each introduction and to highlight their mutually exclusive differences. The prologue of CTH 46 reads (a obv. 1–8):

> Thus says His Majesty, Šuppiluliuma, Great King, King of Ḫatti, Hero: When Itur-Addu, king of the land of Mukiš; Addu-nirari, king of the land of Nuḫašši; and Aki-Teššup, king of Niya were hostile to the

authority of His Majesty, the Great King, their lord; [they] assembled their troops; captured cities in the interior of the land of Ugarit; oppressed (?) the land of Ugarit; carried off subjects of Niqmaddu, king of the land of Ugarit, as civilian captives; and devastated the land of Ugarit;

(A obv. 9–28) Niqmaddu, king of the land of Ugarit, turned to Šuppiluliuma, Great King, writing: "May your majesty, Great King, my lord, save me from the hand of my enemy! I am the subject of Your Majesty, Great King, my lord. To my lord's enemy I am hostile, [and] with my lord's friend I am at peace. The kings are oppressing(?) me." The Great King heard these words of Niqmaddu, and Šuppiluliuma, Great King, dispatched princes and noblemen with infantry [and chariotry] to the land of Ugarit. And they chased the enemy troops [out of] the land of Ugarit. [And] they gave [to] Niqmaddu [all of] their civilian captives whom they took (from the enemy). [and Niqmaddu, king of the land] of Ugarit [. . .] honored the princes and noblemen very much. He gave them silver, gold, bronze, [and . . .]He arrived [. . .] in the city of Alalah before His Majesty, Great King, his lord, and [spoke as follows] to His Majesty, Great King, his lord: "[. . .] with words of hostility [. . .] Niqmaddu is [not] involved [. . .].

And [Šuppiluliuma, Great King], witnessed [the loyalty] of Niqmaddu.

(B obv. 3–4) Now Šuppiluliuma, Great King of Ḫatti, has made the following treaty with Niqmaddu, king of the land of Ugarit.[4]

I note several points, which will stand out in bold relief as we move to the account found in the second document: 1) the pressure that was brought to bear on Ugarit was of a military nature: specifically, the confederation of Syrian kings invaded and plundered its territory; 2) Šuppiluliuma sent troops to the rescue and these troops restored the plundered goods to Ugarit; and 3) Niqmaddu paid a visit of homage to Šuppiluliuma at Alalakh.[5] I note also two points about the general tenor of the account. First, it casts Šuppiluliuma as Niqmaddu's savior, and stresses the latter's indebtedness to the Hittite throne. Second, the account highlights the reciprocity of the relationship, which has proven itself through a series of responsive steps taken by each side. Niqmaddu appealed to Šuppiluliuma by offering submission, and the Hittite king responded by saving him. Niqmaddu

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4. Translated in Gary Beckman, *Hittite Diplomatic Texts* (2d ed.; Atlanta: Society of Biblical Literature, 1999 [hereafter *HDT*]), 34–35.

5. On the historical introduction to CTH 46, see *HDT*, 34 and Amnon Altman, *The Historical Prologues of the Hittite Vassal Treaties* (Ramat Gan: Bar-Ilan University Press, 2004), 237–55.

paid tribute to his rescuers and homage to Šuppiluliuma. In return, the Hittite king composed a treaty outlining Niqmaddu's rights as his vassal.

Turning to the prologue of CTH 47, we see roughly the same story, but in a fashion that differs sharply (A 1–24):

> Thus says His Majesty Šuppiluliuma, Great King, King of Ḫatti, Hero: When all of the kings of the land of Nuḫašši and the king of the land of Mukiš were hostile to His Majesty, Great King, their lord, Niqmaddu, king of the land of Ugarit, was at peace with His Majesty, Great King, his lord, and not hostile. Then the kings of the land of Nuḫašši and the kings of the land of Mukiš oppressed(?) Niqmaddu, king of the land of Ugarit, saying, "Why are you not hostile to His Majesty along with us?" But Niqmaddu did not agree upon hostilities against His Majesty, Great King, his lord, and His Majesty, Great King, King of Ḫatti, has thus made a treaty for Niqmaddu, king of the land of Ugarit.[6]

Although both accounts relate how Niqmaddu came to submit to Šuppiluliuma, there are major points of divergence in the two tellings. In contrast with the account of CTH 46, the pressure that the Syrian kings exerted upon Niqmaddu in this text was political rather than military (note, also, that the two lists of kings are not identical): they urged him to join their campaign against Šuppiluliuma; they did not invade his territory; and as there was no need for salvation by Šuppiluliuma, no troops were sent and no visit of homage was paid to the Hittite king. The tenor of the argument is, accordingly, different. Here, it is the Hittite king who is indebted to Niqmaddu for his loyalty.

Scholars debate the chronological order of the two documents. By cross-referencing various records from the period, most scholars date these documents to the so-called "one-year campaign" of Šuppiluliuma I, which occurred early in his reign, against a confederation of Levantine kings, and view the communication of CTH 46 as dating prior to CTH 47, in all likelihood by a few months.[7] A minority of scholars inverses the chronological order of the two documents, and an even smaller minority dates them to a later period in Šuppiluliuma's reign.[8]

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6. *HDT*, 166.

7. *HDT*, 34, 166; Itamar Singer, "A Political History of Ugarit," in Wilfred G. E. Watson and Nicholas Wyatt, eds., *Handbook of Ugaritic Studies* (Leiden: Brill, 1999), 635; Daria Gromova, "Hittite Role in the Political History of Syria in the Amarna Age Reconsidered," *UF* 39 (2007): 284.

8. Amnon Altman, "EA 59:27–29 and the Efforts of Mukiš, Nuḫašše and Niya to Establish a Common Front against Šuppiluliuma I," *UF* 33 (2001): 11–22, and bibliography, p.11, notes 35–36.

While this debate is important for reconstructing the history of the Levant in the mid-fourteenth century, it is less important for the issue at hand here. My concern is to comprehend the dynamics that produce conflicting accounts of the same event. No matter the chronology, it is evident that both texts were composed by the same authority at the Hittite court and read before the same Ugaritic king, Niqmaddu II.

The mutually exclusive nature of the two accounts of the circumstances through which Niqmaddu submitted to the Hittite king raises numerous questions. Regardless of which text was composed first, did the Hittite king think that he could simply recompose history as an Orwellian palimpsest, without arousing the suspicion, let alone ire, of the vassal king? How could such fabrication induce the vassal to want to trust the sovereign and comply with his demands? Both documents conclude with a stern warning that divine witnesses will duly punish anyone who alters the treaty tablet.[9] Yet, Šuppiluliuma clearly proceeds to rewrite history from one tablet to the next. How could Šuppiluliuma deny the account of history written on the earlier tablet, without concern for the ire of the gods who had attested to that version? These questions loom even larger if we accept the majority consensus that these differences appear in documents that were composed and sent within months of each other. Just as harmonization of the accounts is not an option if we wish to make sense of the two accounts, so, neither is a source-critical approach. These documents were found in situ, written by the same authority for the same recipient. What we lack here is a hermeneutic that allows us to understand how these kings of old could have construed such divergent accounts. I suggest that such a hermeneutic exists and goes to the heart of a more fundamental question: why did the Hittite rulers go to such effort in the first place to compose these histories and incorporate them in their diplomatic treaties?

The Hittite Treaty Historical Prologue and Political Culture in the Amarna Period

Seeking a lens into the function and purpose of the historical prologue of the Hittite vassal treaties, I would like to draw inspiration from a series of pioneering studies conducted on a related set of texts, the El-Amarna letters. This cache of more than three hundred diplomatic correspondences between the pharaohs of the mid-fourteenth century BCE and their vassals in the Levant overlaps significantly with the Hittite treaties under study here in terms of time, locale, states,

9. See CTH 46 A rev. 16′-17′ (*HDT,* 36) and CTH 47 A 52–53 (*HDT,* 167).

and even individuals. Šuppiluliuma I of Ḫatti, for one, appears in the letters, as does Aziru, king of Amurru, whose treaty with the Hittite throne we will examine shortly.

Since the discovery of the letters in 1887, scholars have recognized the importance of these texts for the study of philology and for recreating the political history of the period. In 1996, Raymond Cohen and Raymond Westbrook convened a workshop devoted to the letters, bringing together historians of the ancient Near East and scholars of the social sciences—international relations, in particular. The operating assumption of the workshop was that the Amarna letters, in conjunction with diplomatic texts from around the region, provide a particularly vivid picture of not only the political history of the period, but of its political culture.[10] These studies of the Amarna letters, I maintain, are equally important for a proper understanding of the function of the historical prologues of the Hittite treaties of the same period.

These scholars conclude that the letters reveal a political order that functioned in line with realist tenets of international relations. States fundamentally see other states as threatening. The strong prey on the weak and the weak do their best to survive, often by seeking alliance with stronger players. Yet even when they do seek cooperative arrangements, all political actors are aware that all states act in their own best interests, and will lie and cheat to achieve those ends, and that rulers can never be certain about the intentions of other state actors. Many of the correspondences make appeals to gods, or to oaths made in their name, so that treaties will be upheld—but these rarely limited a king's actions when realpolitik determined that survival left no choice but to break the oath or end the allegiance. Crucially, conventional morality is understood to have little or no place in this order. Actors hoped that their alliances will be long-lasting, but were well aware that more often than not, these alliances would be tenuous and temporary. In short, both the great kings of the region in Egypt, Ḫatti, and Assyria, as well as the more minor vassal kings of the Levantine city-states, were all shrewd players in the game of balance of power politics.[11]

On a surface reading, many of the Amarna letters seem preoccupied with issues of gift-giving and reciprocity. When the vassal sends his daughter to be married into the Pharaoh's court, what kind of entourage will receive her? When

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10. These studies were subsequently published in Raymond Cohen and Raymond Westbrook, eds., *Amarna Diplomacy: The Beginnings of International Relations* (Baltimore: Johns Hopkins University Press, 2000), hereafter, *Amarna Diplomacy*.

11. See Steven R. David, "Realism, Constructivism, and the Amarna letters," in *Amarna Diplomacy*, 55–63.

the Pharaoh sends a gift to the vassal, does the quality and quantity of gold meet the vassal's expectations? As Kevin Avruch notes, the nitty-gritty details raised in these correspondences are merely the "minor issue subgames." They are the medium through which the "major relationship metagames" of relative standing and status are played out. In these letters, the putative, manifest topic—the quality of a gift, for example—is merely a vehicle through which the parties jockey with each other and negotiate the nature of their relationship.[12]

As Daniel Druckman and Serdar Güner argue, the diplomatic correspondences of the Amarna letters, with their focus on the quality of the gifts, flattery, honorific epitaphs, and displays of bravado, reveal that the kings writing them were seeking to manage the impressions that they projected. Impression management refers to the ways in which a communication seeks to influence the perceptions, evaluations, and decisions of the recipient.[13] Like modern negotiators, they note, the Amarna correspondents alternate between hard and soft communications—what we might call a balance between the proverbial carrot and stick.[14] Basically, these letters reveal the kings of the period engaging in diplomatic signaling.[15]

To illustrate just how closely the parties read these correspondences, and how much was at stake in even the simplest formulation, consider the following passage from EA 42. The communication is written by Šuppiluliuma I of Ḫatti—the very same Hittite king whose treaties with Niqmaddu II of Ugarit have been our focus thus far—and responds to a letter he had received from the Egyptian king. Šuppiluliuma takes umbrage with the formulation of a sentence in the Pharaoh's letter, in which the Pharaoh's name appears above his own:

> As to the tablet that [you sent me], why [did you *put*] your name over my name? And who (now) is the one who upsets the good relations [*between us*], and is su[ch *conduct*] the accepted practice? My brother, did you write [*to me*] with peace in mind? And if [*you are my brother*], why have you exalted [*your name*], while I, *for* [*my part*], *am thou*[*ght of as*] a [co]rpse?[16]

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12. Kevin Avruch, "Reciprocity, Equality, and Status-Anxiety in the Amarna Letters," in *Amarna Diplomacy*, 154–64.

13. See Daniel Druckman and Serdar Güner, "A Social Psychological Analysis of Amarna Diplomacy," in *Amarna Diplomacy*, 174–88.

14. Ibid., 185.

15. See Christer Jönsson, "Diplomatic Signalling in the Amarna Letters," in *Amarna Diplomacy*, 191–204.

16. EA 42: 15–24 in William L. Moran, ed., *The Amarna Letters* (Baltimore: Johns Hopkins University Press, 1992), 115. See Avruch, "Reciprocity, Equality and State Anxiety," 162.

Šuppiluliuma's letter demonstrates that when a king received a diplomatic document—sent by royal courier, carefully engraved by an official scribe—he read it and interpreted it with the greatest of scrutiny. In contemporary times, leaders converse nearly at will. In the Amarna Age, by contrast, a king needed to weigh carefully the words that would be inscribed in the correspondence, as letters could take weeks or even months to transmit.

These insights allow us a clearer understanding of the purpose and function of the historical prologue of the Hittite treaties. The Hittite kingdom was the strongest force in its immediate region during the Late Bronze Age. It did not, however, possess the overwhelming might, say, of the Neo-Assyrian Empire of the eighth and seventh centuries BCE. Intimidation and fear of invasion by the Assyrian army were sufficient to bend smaller, neighboring states into submission. This was not the case for Ḫatti in the Late Bronze Age. Its rulers sought to leverage the relative strength they possessed by coaxing smaller, vulnerable states into cooperative vassal arrangements. At all times, though, the political balance in the region was in flux. The states south of the Taurus Mountains (such as Ugarit and Amurru, whose treaties with Ḫatti we will examine shortly) shifted often between the Egyptian orbit of influence and that of Ḫatti. The states of the region could also band together counter to the interests of the Hittite throne, as we saw in the two treaties with Niqmaddu II of Ugarit.

This constantly shifting political landscape meant that the Hittite kings could never take their vassals for granted. Once a vassal had agreed to submission, the Hittite king sought to formulate stipulations that would bring maximum benefit to Ḫatti, but which would also prove attractive for the vassal, thus inducing him to remain loyal. Hittite kings sought to achieve a balance between carrot and stick as they formulated treaties for their vassals. The impression that the Hittite king sought to create would reflect his perception of the balance of power between the two sides.

Here is where the crucial role of the historical prologue comes into play. The prologue is the most standard element in the treaties, and in many instances the longest as well. The Hittites were uninterested in portraying history as "it really was," in the formulation of the father of modern historiography, the nineteenth-century German scholar Leopald von Ranke. The Hittites devoted so much attention to this element of the treaty because it was here that they engaged in diplomatic signaling. To be sure, the actual stipulations of the treaty were of great concern to both sides. However, it was in the historical prologues that the Hittite kings sought to set the tone of the relationship, to manage impressions. The narratives they communicated to their vassals were a way of broadcasting a more threatening and domineering posture on the one hand or, alternatively, a

more flattering and convivial one on the other. A Hittite monarch's decision to tack one way or the other, or through a mix of signals balancing both postures as needed, reflected his perception of the political landscape at the moment of drafting. Through conveying the right balance of signals, the Hittite king hoped to maximize the benefit for Ḫatti, by building a long-lasting relationship with the vassal.

All sides to a treaty, I submit, understood that the prologue was the place where this signaling took place. Across the rich record of documentation in our hands from the period, we find kings expressing their displeasure with one another over a host of issues. But we never find a vassal complaining that the Hittite king's account of events was incorrect. This is the case even when the Hittite king himself offered conflicting accounts of that history, as in the present case of the treaties between Šuppiluliuma I and Niqmaddu II of Ugarit. Both sides, I suggest, understood that the historical narrative offered in the prologue was an exercise in diplomatic signaling, and read it and considered it on those lines only.[17]

The respective historical prologues of CTH 46 and 47, therefore, exhibit more than two sets of "facts." More significantly, as we noted, they each weave these facts into narratives that characterize the vassalage of Niqmaddu in distinctly different tones. In CTH 46, the vassalage that Šuppiluliuma offers Niqmaddu is an act of grace, and underscores the latter's utter dependence upon his Hittite overlord. In CTH 47, the facts are spun to create an image of Niqmaddu as a trusted and valued ally. It is difficult to pin down the chronology of these two documents against a complete backdrop of the diplomatic events of the time, and it is thus difficult for us to understand why Šuppiluliuma adopted one tone in one document, and a different tone in another. As I noted earlier, balances of power were fluid in this period, and it could well be that, even in a short span of time, political tides had shifted. The Hittite king could have taken a new political landscape as an opportunity to recalibrate the nature of his relationship with his Ugarit vassal. Inscribing a new tablet with a new historical narrative was a way of pressing the reset button on the relationship, to borrow a contemporary image, and signal to the vassal that their relationship was now on new footing.

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17. Hence, this approach to the function and purpose of the historical prologue is far removed from that taken by Gurney, who argued that the historical prologue was meant to arouse within the vassal "a sense of duty and gratitude" (O. R. Gurney, *The Hittites* [2d ed.; Hammondsworth: Penguin Books, 1962], 173). Whereas some scholars see the historical prologue as an element of the Hittite vassal treaty, it is, in fact, present as well in the parity treaty between Ḫatušili III and Ramesses II of Egypt (c. 1259 BCE). The need to manage impressions and impart a tone about the nature of the relationship is no less pressing in a parity treaty than in a vassal one. For a summary of other views of the function of the historical prologue in the Hittite treaty tradition, see Altman, *The Historical Prologue*, 25.

A final observation about diplomatic signaling will allow us further insight into how these monarchs might have related to the sharply divergent depictions of the historical origins of the vassalage present in these two documents. A contemporary example illustrates the point: when a spokesperson for the US Department of State says, concerning an adversary, that, "the military option is still on the table," such diplomatic signaling only has meaning in the context of previous dispatches on the issue. If the spokesperson had commented in an earlier release, "we are sending the US Seventh Fleet to the region," then the newer statement, "the military option is still on the table," signals a moderate, more restrained tone, even as it keeps the pressure on. By contrast, if the spokesperson had previously said, "all options are still on the table," then the newer statement, "the military option is still on the table," represents a ratcheting-up of the rhetoric by a notch. The point of this example is that diplomatic signaling always takes place within the context of the codes that both sides understand, and, most pointedly, the context of previous communications on the issue. Past communications provide a baseline for understanding the nuance and import of a given diplomatic statement.

This observation allows us to return to the question of twice-told histories in the Hittite historical prologues. Neither sovereign nor vassal had any expectation that these narratives would dutifully reflect history "as it really had been." Rather, all sides understood that these were exercises in diplomatic signaling. It is indeed true that the Hittite kings "updated the past to serve the needs of the moment," as Orwell described the motives for rewriting history. Crucially, however, and in stark contrast, the historical prologue of the Hittite vassal treaty was not a "palimpsest." To write new history was expressly *not* a process of erasure. Rather, the retention of the previous telling of the history was crucial, even as that history was rewritten. Diplomatic statements today can be construed properly only against what has been said previously on the issue. The same was true for the vassals, I submit, as they read the historical narratives of the vassalage sent them by the Hittite kings. Only by accessing the previous version of the history between the two kings would the vassal fully grasp the nuance of the new version of those events, and properly digest the diplomatic signaling inherent in the telling. Like all of the Hittite treaty prologues, the prologues to CTH 46 and CTH 47 are tendentious records, and may not give accurate testimony to the circumstances that lead Niqmaddu to submit himself to Šuppiluliamu. It is clear, however, that when Niqmaddu received the second communication, the first communication could have afforded him a baseline with which to interpret the nuances of the newly received tablet.

Archaeological evidence supports the hypothesis that during the Late Bronze Age, sovereigns and vassals alike archived, accessed, and read these treaty tablets.

The vast majority of the Hittite treaty texts that we have are the "file copies"—clay tablet inscriptions, often in multiple copies, that were found in the ruins of the archives immediately southeast of the Great Temple to the Storm God in the lower city at Ḫassuta. Here, limestone bases give evidence to the pillars that supported the shelves upon which the clay tablets were stored. The remains of staircases suggest that these archives were multi-storied structures.[18] The clay tablet catalogs or shelf lists that have been recovered (ancient precursors to the modern-day "card catalog") are revealing. The treaty copies could have been archived chronologically, so that, for example, a given section would contain all of the treaties of Šuppiluliuma I. The shelf lists suggest, however, that the treaties were arranged by vassal so that a scribe could easily access the diplomatic record with a given vassal, all the way back to its origins, even to periods that preceded living memory.[19]

The archaeological record is equally clear that vassal states also preserved and accessed the treaty tablets of a previous age. The evidence from Ugarit is particularly telling. Both CTH 46 and CTH 47 were found in a room in the Southern Palace at Ugarit known as the "Hittite archive," which was a repository for all of the diplomatic correspondence between Ḫatti and the court of Ugarit, across several generations. CTH 46 has been recovered in several Akkadian "file" copies and in a Ugaritic version as well.[20] The existence of multiple copies attests to a desire to maintain the written record against the risk of breakage. Two Hittite documents indicate that when a vassal reported that a copy of an earlier treaty had been lost or broken, he would send to Ḫatti so that a duplicate could be produced for him, one that would match the copy of the treaty on file in the Hittite archives.[21] All of these findings suggest that sovereign and vassal alike preserved the entire diplomatic record not merely out of antiquarian interest, but in order to access and reference prior correspondence.

18. On the archaeology of the storerooms of the Great Temple at Ḫattuša, see Peter Neve, "The Great Temple in Boğazköy-Ḫattuša," in David C. Hopkins, ed., *Across the Anatolian Plateau: Readings in the Archaeology of Ancient Turkey* (AASOR 57; Boston: ASOR, 2000), 84–85.

19. On the shelf lists for treaty tablets see Harry Hoffner, "Histories and Historians of the Near East: The Hittites," *Orientalia* 49 (1980): 323–24. That archival records were accessed in this fashion is well attested across the ancient Near East. See Richard C. Steiner, "Bishlam's Archival Search Report in Nehemiah's Archive: Multiple Introductions and Reverse Chronological Order as Clues to the Origin of the Aramaic Letters in Ezra 4–6," *JBL* 125, no. 4 (2006): 650.

20. Singer, "A Political History of Ugarit," 634.

21. See CTH 75—Treaty between Muwattalli II of Hatti and Talmi-Sharrumma of Aleppo," §2 (*HDT*, 93); Copy of Letter from Sharri-Kushuh of Carchemish to Niqmaddu II of Ugarit § 2 (*HDT*, 127).

I turn now to a second set of treaties: the treaties between the Hittite throne and the kings of the land of Amurru. This examination will allow us to ground further the phenomenon of rewriting history in the historical prologues, and to explore additional elements of its dynamics.

The Four-Told Account of How Aziru of Amurru Became a Vassal to Šuppiluliuma I of Ḫatti

The Amurru treaties were four successive vassal treaties established between the kings of Ḫatti and the rulers of Amurru, a coastal state in the Levant immediately south of Ugarit. The period in question is from the mid-fourteenth century to the late-thirteenth century BCE, when the hegemony of the Hittite empire reached its zenith. The four treaties represent the largest series of treaties in our possession between the Hittite empire and any of its vassals. The beginning of the period, the rule of Šuppiluliuma I, marks the point at which Hittite influence begins to extend south of the Taurus mountains and into the plains of the northern Levant. Amurru was situated at the southernmost reaches of Hittite hegemony and was a swing state throughout this period—sometimes casting its lot with Egypt to the south, and sometimes with Ḫatti to the north, and sometimes, even, feigning loyalty to both, simultaneously. Amurru was the main bone of contention between the rival powers at the time.[22]

The first treaty I examine is the initial treaty, in which Aziru of Amurru accepted vassalage to Šuppiluliuma I. The subsequent three treaties are what may be termed "renewal treaties," which were typically drafted when a new subordinate king succeeded his father on the throne and inherited his existing commitments. Renewal treaties sought to reinforce these commitments by adding a personal oath taken by the new subordinate king, binding him personally to the sovereign.[23] I will focus on the manner in which each treaty reviews and describes the circumstances surrounding Aziru's initial submission to Šuppiluliuma. All four renditions of the event differ markedly from one another. For the sake of brevity, however, I will examine only the first and third of the series. These offer the best example of how history in these treaties is at once rewritten and yet also retained for comparison.

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22. Horst Klengel, *Syria 3000 to 300 B.C.: A Handbook of Political History* (Berlin: Akademie Verlag, 1992), 107–19, 161–66. See also Itamar Singer, "A Concise History of Amurru," in Shlomo Izre'el, ed., *Amurru Akkadian: A Linguistic Study* (Atlanta: Scholars Press, 1991), 135–95.

23. Altman, *The Historical Prologue*, 54, 339–40.

CTH 49 is the initial treaty between Šuppiluliuma I of Ḫatti and Aziru of Amurru. This treaty was concluded when Šuppiluliuma succeeded in exerting enough power in the northern Levant to pry away Aziru from his former commitment to his Egyptian overlord.[24] The historical introduction reads as follows (i 14–26):

> Previously [. . .] the King of Egypt, the King of the land of Hurri, the king of the land [of Ashita?], the king of the land of Nuhashshi, the king of the land of Niya, the king of the land [of Kinza (?), the king of the land of Mukish], the king of the land of Aleppo, and the king of the land of Carchemish—all of these kings—suddenly became hostile [to My Majesty]. But Aziru, king of the land [of Amurru], came up from the gate of Egyptian territory and became a vassal [of] My Majesty, [King] of Hatti. And I, My majesty, Great King [accordingly rejoiced] very much. Did not I, My Majesty, Great King, accordingly rejoice very much? As I to Aziru [. . .] Because Aziru [knelt down] at the feet [of My Majesty, and] came from the gate of Egyptian territory, and knelt [down at the feet of My Majesty], I My Majesty, Great King, [took up] Aziru and ranked him (as king) among his brothers.[25]

I highlight several key points for the purpose of comparison to the later version: 1) Aziru came to Šuppiluliuma of his own volition; 2) in doing so, Aziru broke ranks with his former Egyptian overlord ("came up from the gate of Egyptian territory"), precisely at a moment of heightened tensions between Ḫatti and the Egyptian coalition; 3) although it is Aziru who submits to Šuppiluliuma, it is the Hittite King who rejoices exceedingly; and 4) Aziru is brought into the group of Hittite vassal kings, referred to here as the "brothers."[26]

Compare this with the parallel account found in CTH 92, the treaty between Ḫatušili III of Ḫatti, the third Hittite ruler after Šuppiluliuma, and Bentešina of Amurru, the fourth ruler of Amurru following Aziru. In the early part of the thirteenth century, Seti I and Ramesses II reasserted Egyptian power in the Levant, and the balance of power began to shift. Apparently this led the king of Amurru at the time, Bentešina, to reconsider his allegiance to Ḫatti, and to return Amurru to the Egyptian sphere. Tensions between Ḫatti and Egypt reached their apex in 1274 BCE, at the battle of Kadesh, in which neither side gained

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24. On this treaty generally see *HDT*, 36–40 and Altman, *The Historical Prologue*, 325–35.

25. *HDT*, 37.

26. Altman, *The Historical Prologue*, 325–26.

decisive victory. Benteŝina was exiled to Ḫatti by the Hittite king at the time, Muwattalli II. While in Ḫatti, Benteŝina allied himself with Muwattalli's brother Ḫatušili, who, in time, would usurp the Hittite throne. In return for Benteŝina's support, Ḫatušili III re-established him on his former throne in Amurru. The treaty presently under consideration, CTH 92, is the document that establishes this new order.[27] My interest here is to examine how the reworked account of how and why Aziru submitted himself to Šuppiluliuma several generations earlier complements Ḫatušili's diplomatic signaling to his vassal in his own day. The prologue reads:

(obv. 4–6) In the time of my grandfather, Šuppiluliuma, Aziru [king of the land of Amurru] revoked [his vassalage(?)] to Egypt, and [fell] at the feet of my grandfather Šuppiluliuma. My grandfather had [compassion] for him and wrote a treaty tablet for him. He wrote out the borders of the land of Amurru of his ancestors and gave it (the tablet) to him . . .

(obv. 11–15) Following my father, my brother Muwattalli acceded to the throne of kingship. To(!) my brother Muwattalli, Benteŝina was (politically) dead in [the land] of Amurru. Benteŝina had acceded to the throne of kingship in the land of Amurru, but my brother Muwattalli removed Benteŝina from the throne of kingship of the land of Amurru. He took him to Ḫatti. At that time I requested Benteŝina from my brother Muwattalli and he gave him to me. I transported him to(!) the land of Hakpis and gave him a household. He did not suffer any harm. I protected him.

(obv. 16–21) When Muwattalli, Great King went [to] his fate, I Ḫatušili, took my seat upon the throne of my father. I released Benteŝina for a second time to(!) [the land of Amurru]. I assigned to him the household of his father and the throne of his kingship . . .

(obv. 22–27) Benteŝina said this before My Majesty: "Say to my lord—You are giving life to me, a dead man. You returned me [for a second time(?)] to(!) the land of Amurru, to the throne of my father. Like a dead man, you have given life to me. Let my lord make a tablet of treaty and of oath. Let him seal and write it, to the effect that Benteŝina is king of the land of Amurru. In the future no one shall take the kingship of the land of Amurru from the hand of Benteŝina or from the hand of his sons or the hand of his grandsons." [Thus says] My Majesty: "I, My majesty, will not withhold from you(!) that which you, Benteŝina have requested from me."

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27. *HDT*, 100.

(obv. 28–33) [Now], I, Great King <wrote> a treaty tablet for Bentešina, corresponding to the tablet which Šuppiluliuma, Great King . . . for Aziru. I, Great King, wrote it for Bentešina, king of the land of Amurru, according to the text of the treaty of my grandfather, and I gave it to him . . ..[28]

Ḫatušili's diplomatic signaling is clear: he wishes to portray an image of strength by underscoring the vassal's utter dependence upon him. Extended attention is devoted to the political misfortunes that befell Bentešina, and the gradual political resurrection (note Bentešina's language: "you are giving life to me, a dead man") afforded him by Ḫatušili. The account of the circumstances through which Aziru became a vassal to Šuppiluliuma is reworked in accordance with this agenda. The relationship between Aziru and Šuppiluliuma in lines 4–6 emerges as an earlier precedent for what is now, in the present of the treaty, transpiring between Ḫatušili and Bentešina. Every element in those lines parallels a development in the more recent relationship between Ḫatušili and Bentešina. Just as Aziru had reneged on his former ties to the enemies of Ḫatti, so, too, does Bentešina now. Just as Aziru "fell at the feet" of Šuppiluliuma, so, too, does Bentešina humble himself before Ḫatušili now. Just as Šuppiluliuma displayed compassion for Azriu, so does Ḫatušili for Bentešina, now. Just as Šuppiluliuma wrote out a tablet of vassalage for Aziru, so, too, does Ḫatušili compose one for Bentešina now.

The reworked account of how Aziru became a vassal to Šuppiluliuma has all the makings of an Orwellian palimpsest. In significant ways, it departs from the account of that event as recorded in the original treaty, in CTH 49. In the earlier treaty, the Hittite king lauded Aziru for resisting the pressure of the confederation of nine kings who conspired against Ḫatti, whose ranks included all of his surrounding neighbors. Indeed, as we saw, it was Šuppiluliuma who rejoiced—twice, in the formulation of the treaty—over the establishment of the pact between Ḫatti and Amurru. Šuppiluliuma ranked Aziru among his "brothers"—the other valued vassals of the Hittite throne.

In the present treaty between Ḫatušili III and Bentešina, we witness none of that dynamic between those two earlier leaders. From this treaty, we would never know that Aziru had broken ranks with all his neighbors; we wouldn't know that Šuppiluliuma related to Aziru as a "brother" within the "family" of Hittite vassals. Most importantly, we wouldn't know that Šuppiluliuma had rejoiced upon learning of Aziru's decision to submit to Hittite vassalage. Here,

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28. Treaty between Ḫatušili III of Ḫatti and Bentešina of Amurru, *HDT*, 101–102.

instead, we read that when Aziru defected from Egypt, Šuppiluliuma had "compassion" on him.[29]

In Orwell's imagined world, recorded history was "scraped clean and reinscribed as often as necessary," and it would seem that this was the case with Ḫattusili's treaty with Bentešina. A new account of Aziru's vassalage to Šuppiluliuma was drafted, so that it could be invoked as a model and a precursor for Bentešina's own arrangement with Ḫattusili. Yet, while in Orwell's world the older accounts of history were discarded because they conflicted with the needs of the moment, the same is not true, I would suggest, in the dynamics of the present treaties, the treaties with Amurru.

Note that in the prologue of CTH 92 itself, Ḫatušili pledges before Bentešina (obv. 28–33), "[Now], I, Great King <wrote> a treaty tablet for Bentešina, corresponding to the tablet which Šuppiluliuma, Great King . . . for Aziru. I, Great King, wrote it for Bentešina, king of the land of Amurru, according to the text of the treaty of my grandfather, and I gave it to him." Although we do not have precise dates for the regnal years of the Late Bronze Hittite kingdom, it is certain that some eighty years separate the composition of CTH 49 and CTH 92. When Ḫatušili pledged to compose for Bentešina a treaty that corresponded to the terms of the original treaty with Amurru, neither he nor anyone else was doing so from living memory. They could only do so by accessing archival copies of that treaty. Ḫatušili, we know, kept his word: although CTH 92 has survived only in fragmentary condition, it is clear that the clauses of offensive and defensive alliance outlined in that treaty are identical to those found in the earlier one.

Archeologists have yet to locate the capital of the land of Amurru, and we cannot be certain that Bentešina had his own copy of the original treaty. Nonetheless, Ḫatušili's pledge to compose an identical copy for his vassal, and the fact that he held good to his word, suggests that he would have been pleased for his vassal to corroborate the fulfillment of his pledge. As scribes read out before him the contents of the two treaty tablets, Bentešina would have been able to affirm the faithfulness of his Hittite interlocutor.

Yet had the scribes of Amurru in fact reviewed both the old treaty and the new, they no doubt would have noticed that the account of Aziru's submission to vassalage had undergone significant reworking in the new tablet now before them. I would suggest that this was fully part of Ḫatušili's intent, and an integral part of the diplomatic signaling taking place. In the earlier treaty, Aziru had been a celebrated and valued vassal. By altering both the content and tone of the original story, Ḫatušili signals to Bentešina that he considers himself in a stronger

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29. Altman, *The Historical Prologue*, 376.

position than Šuppiluliuma had commanded in his own age. Comparing the two versions of that account, Bentešina would need to conclude that he was truly indebted to his Hittite overlord. He would now receive the same terms as had Aziru. Yet the diminished stature accorded Aziru in CTH 92 relative to his stature in CTH 49 would signal to the present king of Amurru that he was receiving those same terms as an act of grace. He would need to understand that Aziru's reduced stature in the present treaty was really a transposition of his own lowly stature upon the legacy of his forebear. The full force of the historical prologue of CTH 92 is understood—as are all diplomatic dispatches—when seen in the context of earlier communications. I cannot claim, of course, to have access to Ḫatušili's intentions when he authorized the reworking of the original story. Nor can I know how this was read and interpreted by his vassal, Bentešina. It is fair, however, to conclude that the reworking of history in these prologues represented an exercise in diplomatic signaling, and that these cues and codes could be best understood against the backdrop of previous communications between the parties.

Finally, I dramatize my interpretation of these data with an observation. As we have seen, the corpus of treaties from the Hittite empire exhibits reworked histories in the treaties from Ugarit (CTH 46 and 47) and in the four treaties with Amurru (CTH 49, 62, 92, and 105). I stress now that these are the only treaties in the Hittite corpus in which histories are retold from treaty to treaty. In every instance we find variance from telling to telling. We find not a single example in which full consistency is seen in the portrayal of an event across two treaties. This should not surprise us. It was only when the Hittite kings sensed they were traversing a new political landscape that the need arose to recalibrate the relationship and to tell anew the history of the vassalage in act of diplomatic signaling. So long as the relationship with the vassal was stable and the balance of power remained relatively undisturbed, it would have been pointless to retell verbatim, in subsequent correspondences with the vassal, that which was already known and established in earlier writing.

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Retold History in the Book
of Deuteronomy in Light of the Hittite
Treaty Tradition

THE DYNAMICS OF retelling history in the Hittite treaty prologue tradition provide an interpretive lens through which we may understand retold history in the book of Deuteronomy that conflicts with parallel accounts elsewhere in the Torah. To date, conventional source-critical approaches to Deuteronomy's retold history have not appealed to ancient literary convention. To appreciate the value and advantages of this unorthodox approach, I pose six critical questions concerning the phenomenon of retold history in Deuteronomy. Noting the shortcomings of the conventional approach in grappling with these questions, I proceed to demonstrate how engaging the hermeneutic of retelling history in the Hittite treaty literature provides more satisfactory answers.

Six Critical Questions and Their Answers
in the Source-Critical Tradition

1) *How may we account for the redaction of Deuteronomy with the rest of the Torah?* The received text of the Torah contains accounts in Deuteronomy that cannot be harmonized with parallel versions of these episodes earlier in the Torah. By what mechanism of redaction, or strategy of reading, might we make sense of the pervasive presence of accounts in the book of Deuteronomy that conflict with parallel narratives elsewhere?

2) *What characterizes Deuteronomy's adaptation of the earlier narratives?* Deuteronomy adapts and freely rewrites several major accounts from the books

of Exodus and Numbers: the appointment of officials (Exod 18:13–27+Num 11:10–25\\Deut 1:9–18); the sin of the spies (Num 13–14\\Deut 1:19–46); the conquest of the Transjordan (Num 20:14–21:35\\Deut 2:2–3:11); the revelation at Sinai (Exod 19:1–20:23\\Deut 5:2–30); and the sin of the golden calf (Exod 32:1–34:35\\Deut 9:8–21). Taken together, in what fashion do these rewritten accounts differ or depart from their parallel accounts? What overarching thematic trends do these adaptations share?

3) *What principle governs Deuteronomy's choice of narratives for rewriting?* Deuteronomy adapts narratives depicting the wilderness trek. As we have already noted, though, some narratives undergo extensive rewriting, while other narratives are referred to only obliquely or in passing. Others still, such as the act of Phineas (Num 25:1–18) and the defeat of Midian (31:1–54), are omitted altogether. Why are only some episodes chosen for extensive rewriting? Why does the author of Deuteronomy express no interest in rewriting even a single episode from the patriarchal narratives, or from the events of the Exodus?

4) *How may we account for Deuteronomy's reliance on a thorough knowledge of the Tetrateuch?* Deuteronomy makes brief reference to several accounts reported in the Tetrateuch. These include: the idolatry of Baal Peor (Deut 4:3); rebellions at Taberah, Massah, and Kibroth-Hattaavah (9:22); the death of Aaron (10:6; 32:50); the rebellion of Dathan (11:6); Balaam (23:4–5); Miriam's leprosy (24:8–9); and the rebellion at Meribah (32:51). Deuteronomy seems to rely on the reader's familiarity with the accounts as they appear in the Tetrateuch; indeed, at no point does Deuteronomy reference an event not found in the Tetrateuch.[1] Yet Deuteronomy rewrites the episodes mentioned earlier, seemingly with the aim of rejecting and replacing the parallels found in Exodus and Numbers. If Deuteronomy does not expect its readers to reference Exodus and Numbers, how does it expect readers to know about the episodes to which it only briefly alludes?

5) *Why does Deuteronomy employ first-person narration to tell its history?* From a narratological perspective, historical anecdotes in the Tetrateuch are conveyed by the implied omniscient narrator, and thus have an air of objectivity

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1. The one possible exception to this is Moses's recollection of the encounter with the Ammonites (Deut 2:17–2). The book of Numbers lacks any account of YHWH's instructions concerning the Ammonites, or a corresponding narrative. As Nathan MacDonald has noted, however, the encounter is phrased in language nearly identical to that found in Moses's description of the encounter with the Moabites (Deut 2: 9–11), thus raising the specter that the Deuteronomist has used the encounter with Moab as a template for this episode. See discussion in Nathan MacDonald, "Deuteronomy and Numbers: Common Narratives Concerning the Wilderness and Transjordan," *JAJ* 3, no. 2 (2012): 152.

to them.[2] In Deuteronomy, however, the rewritten accounts are expressed as reminiscences. Rather than carrying the authority of the omniscient narrator, they are infused with the subjectivity of the figure of Moses. Why does the author of Deuteronomy opt for this rhetorical option to convey his version of Israelite history?

6) *Why is rewritten history cast as first-person reminiscence a rhetorical feature unique to Deuteronomy?* We find extensive rewritten history in Chronicles. Yet, outside of Deuteronomy, we nowhere find in the Bible rewritten history expressed as a reminiscence, as it is in the early chapters of Deuteronomy. The notion that a "Deuteronomist" was responsible for the composition of the book of Deuteronomy as well as the books of the Former Prophets still maintains wide currency today, in the early twenty-first century.[3] We might have expected, then, that other prophetic leaders such as Samuel and Elijah would also recount Israel's history with free license to rewrite the past. Why is rewritten history in the guise of first-person reminiscence unique to Deuteronomy?

The dominant approach within source-critical literature maintains that Deuteronomy reworks traditions found in the various strands of the narrative portions of the Tetrateuch.[4] The pervasive discrepancies between the accounts in

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2. For a discussion of the omniscient narrator in the Hebrew Bible see Meir Sternberg, *The Poetics of Biblical Narrative: Ideological Literature and the Drama of Reading* (Bloomington: Indiana University Press, 1985), 84–128.

3. For recent discussions see Steven L. McKenzie, "The Still Elusive Deuteronomists," in Marrti Nissinen, ed., *Congress Volume Helsinki 2010* (Leiden: Brill, 2010), 401–8; Cynthia Edelburg and Juha Pakkala, eds., *Is Samuel Among the Deuteronomists? Current Views on the Place of Samuel in a Deuteronomistic History* (Atlanta: SBL Press, 2013).

4. This position is held especially by those who hold to some form of the Deuteronomistic History. See Joel S. Baden, *J, E, and the Redaction of the Pentateuch* (FAT 68; Tübingen: Mohr-Siebeck, 2009), 106–53, 153–72; John E. Harvey, *Retelling the Torah: The Deuteronomistic Historian's use of Tetrateuchal Narratives* (London: T&T Clark, 2004), 7–32; Cornelis Houtman, "Fortschreibung im Deuteronomium: Die Interpretation von Numeri 13 und 14 in Deuteronomium 1, 19–2, 1," *BZ* 48 (2004): 2–18; Marc Zvi Brettler, *The Creation of History in Ancient Israel* (London: Routledge, 1995), 62–78; David Glatt-Gilad, "The Re-interpretation of the Edomite-Israelite Encounter in Deuteronomy 2," *VT* 47 (1997): 441–55; Reinhard G. Kratz, "Der literarische Ort des Deuteronomiums," in Reinhard G. Kratz and Hermann Spieckermann, eds., *Liebe und Gebot; Studien zum Deuteronomium* (Göttingen: Vandenhoeck & Ruprecht, 2000), 101–20. Although there is less consensus concerning Deuteronomy's dependence on Exodus 32–34 for its account of the sin of the golden calf, Christine Hayes has argued convincingly that this is the case here as well. See Christine E. Hayes, "Golden Calf Stories: The Relationship of Exodus 32 and Deuteronomy 9–10," in Hindy Najman and Judith H. Newman, eds., *The Idea of Biblical Interpretation: Essays in Honor of James L. Kugel* (JSOTSS 83; Leiden: Brill, 2004), 45–93. Others maintain that the Deuteronomic History is prior to the

Deuteronomy and the parallel accounts in Exodus and Numbers are proof positive that the author of Deuteronomy never intended his work to be appended to the Tetrateuch. Rather, he sought to rewrite history and supplant those earlier accounts.[5] Deuteronomy was later added to the Tetrateuch in the final redaction of the Pentateuch, in which various, and even conflicting, traditions were brought together with the aim of creating an anthology of recognized sources.[6] Scholars have identified several overarching trends that characterize these adaptations. They note that the accounts are infused with Deuteronomic language. Exod 23:8 specifies judges who are "insightful" (פקחים), while Deut 1:13 speaks of judges who will be "wise men" (חכמים), corresponding to the language of Deut 16:19.[7] The judges appointed in Deut 1:16 are not referred to as שרים, as per Exod 18:21 and 25, but rather as שטרים, employing the language of Deut 16:18.[8] The account of Moses's entrée to Sihon king of Og (Deut 2:26) includes the language of suing for peace found in Deut 20:10, but absent from the parallel narrative

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Yahwist, and is thus an influence upon his narratives. See John van Seters, *The Life of Moses: The Yahwist as Historian in Exodus-Numbers* (Louisville: Westminster John Knox, 1994); Thomas B. Dozeman, "Geography and Ideology in the Wilderness Journey from Kadesh through the Transjordan," in Jan Christian Gertz, Konrad Schmid, and Markus Witte, eds., *Abschied vom Jahwisten; die Komposition des Hexateuch in der jüngsten Diskussion* (Berlin: Walter de Gruyter, 2002), 173–89. Yet others maintain that the accounts in Deuteronomy and in Numbers demonstrate mutual dependence, or draw from a common source. See Eckart Otto, *Deuteronomium im Pentateuch und Hexateuch* (Tübingen: Mohr Siebeck, 2000); Reinhard Achenbach, *Die Vollendung der Tora: Studien zur Redaktionsgeschichte des Numeribuches im Kontext von Hexateuch und Pentateuch* (BZABR 3; Wiesbaden: Harrassowitz, 2002); William Johnstone, "The Use of the Reminiscences in Deuteronomy in Recovering the Two Main Literary Phases in the Production of the Pentateuch," in Jan Christian Gertz, Konrad Schmid, and Markus Witte, eds., *Abschied vom Jahwisten; die Komposition des Hexateuch in der jüngsten Diskussion* (Berlin: Walter de Gruyter, 2002), 247–73; Nathan Macdonald, "Edom and Seir in the Narratives and Itineraries of Numbers 20–21 and Deuteronomy 1–3," in Georg Fischer, Dominik Markl, and Simone Paganini, eds., *Deuteronomium: Tora für eine neue Generation* (Wiesbaden: Harrassowitz, 2011), 83–103.

5. E. g., Baden, *J, E, and the Redaction of the Pentateuch*, 193; Juha Pakkala, "Deuteronomy and 1–2 Kings in the Redaction of the Pentateuch and Former Prophets," in Konrad Schmid and Raymond F. Person, Jr., eds., *Deuteronomy in the Pentateuch, Hexateuch, and the Deuteronomistic History* (Tübingen: Mohr Siebeck, 2012), 133–62. For an overview of the issue, see Konrad Schmid, "The Emergence and Disappearance of the Separation Between the Pentateuch and the Deuteronomistic History in Biblical Studies," in Thomas B. Dozeman, Thomas Römer, and Konrad Schmid, eds., *Pentateuch, Hexateuch, or Enneateuch: Identifying Literary Works in Genesis through Kings* (Atlanta: Society of Biblical Literature, 2011), 11–24.

6. See Jeffrey Tigay, "Anthology in the Torah and the Question of Deuteronomy," in David Stern, ed., *The Anthology in Jewish Literature* (Oxford: Oxford University Press, 2004), 15–31.

7. Harvey, *Retelling the Torah*, 14–15; Brettler, *The Creation of History*, 66.

8. Brettler, *The Creation of History*, 67.

(Num 21:21– 35).[9] In each episode the accounts of Deuteronomy emphasize the role of Moses to a greater degree than we find in the earlier versions of the Tetrateuch.[10] One scholar sees narratological significance in the final redaction of Deuteronomy with the rest of the Pentateuch. The third-person narration of the earlier narratives provides a baseline through which we can assess Moses's subjective, first- person account of those events.[11] Another view sees these accounts simply as a concise summary of what had preceded, with the most important issues highlighted.[12] Martin Noth maintained that the adaptations wrought by "Dtr at all times related the incidents which he select[ed] from his own point of view."[13]

However, these observations do not fully answer the questions I enumerated above. Indeed, in light of the divergence between accounts in Deuteronomy and those in the Tetrateuch, it seems reasonable to posit that the author of Deuteronomy never intended his work to be appended to the other books of the Torah. Yet, if that hypothesis is accepted, it is difficult to understand why, at so many other junctions, Deuteronomy references episodes that imply a readership familiar with many episodes known to us from Exodus and Numbers, such as the book's call to "remember what YHWH your God did to Miriam" (24:8–9), and the other episodes listed in my fourth opening question, above.[14] Since all of the episodes Deuteronomy invokes can be readily located in the books of the Tetrateuch, it does not seem that Deuteronomy is referencing some other version of the wilderness trek.

Similarly, source criticism has not offered a satisfactory explanation to two interrelated questions: what determined for the Deuteronomist which narratives would undergo extensive revision; and what was the overarching thematic program to the process of alteration? It is true that the new accounts contain more Deuteronomistic language, but this accounts for only the adaptation of an occasional word or phrase. It does not explain the agenda inherent in the wholesale rewriting of major details of these stories. It is true that these narratives all portray Moses with a greater and more involved role than is suggested by the parallel

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9. Ibid., 73.

10. Ibid., 66.

11. Jan Christian Gertz, "Kompositorische Funktion und literarhistorischer Ort von Deuteronomium 1–3," in Gertz, *Die deuteronomistischen Geschichtswerke* (Berlin: DeGruyter, 2006), 103–23.

12. Macdonald, "Deuteronomy and Numbers," 165.

13. Martin Noth, *The Deuteronomistic History* (JSOTSS 15; Sheffield: JSOT Press, 1981), 49.

14. Macdonald, "Deuteronomy and Numbers," 159.

accounts. And there is merit to explaining this emphasis as part of Moses's reflections on his own role in guiding Israel as her leader. Such a view would also well explain why these accounts are related in the first person. However, if we interpret these reminiscences as reflections on a life of leadership, we falter when we try to explain the choice of narratives given extensive revision. Particularly jarring in this respect is the absence of extended meditation on any aspect of the Exodus from Egypt. Did Moses have nothing to share about those events, or his role in them? Put differently, could it be that the author of Deuteronomy felt the need to rewrite the account of the appointment of officers (Exod 18:13–27), but had nothing to add or change with regard to Israel's most seminal moment, and Moses's greatest as a leader—namely, the Exodus from Egypt?

It should be stressed that the author of Deuteronomy demonstrates that he is familiar not only with the fact that an exodus occurred, but with the earlier texts that describe that event as well. Deut 1:30 states, "The Lord your God who goes forth before you" (יהוה אלהיכם ההלך לפניכם), which echoes Exod 13:21, "And God went before them (ויהוה הלך לפניהם). In verse 1:33, Scripture refers to the pillar of fire and pillar of cloud, first mentioned at Exod 13:21.[15] YHWH hardens Sihon's heart (הקשה) in Deut 2:30, in language that evokes the hardening of Pharaoh's heart in Exod 7:3 (ואקשה).[16] Deut 2:25 speaks of nations (עמים) that will hear (ישמעון) of God's might and will tremble (ורגזו) and quiver (חלו), all terms that appear in a single verse at the Song of the Sea, in Exod 15:14.[17]

John E. Harvey maintains that the accounts in Deuteronomy are more favorable to Moses than the earlier parallels. This, however, is not always the case. Consider the role of Moses in the sin of the spies. In the account in Numbers, Moses is neither implicated nor punished for that sin. In Deuteronomy's account, however, Moses is denied entry into the land because of the episode (1:37). Martin Noth claimed that, "Dtr at all times related the incidents which he select[ed] from his own point of view."[18] That, no doubt, is true, but only begs the question: just what is Dtr's point of view? How does that point of view explain the choice of narratives for extensive rewriting?

Finally, no attention has been paid in the scholarship to the question of why this phenomenon of rewritten history as reminiscence is distinct to Deuteronomy. The prophet Samuel offers a review of salvation history at the end of his life

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15. Harvey, *Retelling the Torah*, 11.

16. Ibid., 19.

17. Ibid., 20.

18. Noth, *The Deuteronomistic History*, 49.

(1 Sam 12:6–12); Joshua, too, reviews Israel's history as the curtain falls on his tenure as leader (Josh 24: 2–13). Yet both of these histories relate details about earlier episodes in salvation history that are largely in concert with the accounts of those details found elsewhere. If Moses was free to rewrite history in his own telling, it is curious that neither Joshua nor Samuel seem to have been afforded the same license by the authors of those respective works. This question gains even greater urgency if there is an assumption of a Deuteronomistic school that is responsible for the production of all of these compositions. Why is the phenomenon found only in the book of Deuteronomy, but not any of the other books of the so-called Deuteronomistic school?

In short, conventional source-critical approaches to the phenomenon of rewritten history as reminiscence in the book of Deuteronomy leave several critical questions unanswered. Considering those shortcomings, we may outline what a more fruitful paradigm would deliver. This paradigm should explain how Deuteronomy can both rely on the reader's familiarity with the accounts of the Tetrateuch, and at the same time, so baldly deviate from those accounts; it should give a characterization of the overall agenda of the adaptation of those accounts; it should explain the choice of which accounts to rewrite, and which to ignore; it should elucidate why rewritten history in Deuteronomy takes the form of reminiscence, and not standard third-person narration; finally, it should explain why this rhetorical form is employed in Deuteronomy, and nowhere else in biblical literature. Understanding rewritten history in Deuteronomy through the heuristic lens of rewritten history in the Hittite treaty prologue tradition, I claim, provides just such a paradigm.

The Hittite Treaty Tradition and the Book of Deuteronomy

Before I turn to examining how the Hittite treaty prologue tradition elucidates the phenomenon of retelling history in Deuteronomy, it is important to underscore Deuteronomy's strong affinity with many aspects of the Hittite treaty tradition. When I turn to that tradition as a heuristic aid to understand the retelling of history in Deuteronomy, it is against the deep backdrop of these affinities.

Although contemporary scholarship tends to stress the links between Deuteronomy and Neo-Assyrian treaty traditions, many aspects of the Hittite treaty tradition are found in Deuteronomy and elsewhere in the Pentateuch that have no parallel in the Neo-Assyrian tradition. Blessings are matched with curses (cf. Lev 26:3–46; Deut 28:1–68) only in the Hittite treaties, but never in the Neo-Assyrian ones. Instructions for deposition of the treaty (cf. Exod 25:11; Deut 9:5)

and its periodic reading (cf. Deut 31:10–13) are likewise features found only in the Hittite materials and not in the Neo-Assyrian treaty or loyalty oath texts. Promises made by the sovereign king to the vassal and expressions of affection toward him—elements so cardinal in the Torah's portrayal of God's disposition toward Israel—are found only in the Hittite treaties, never in the Neo-Assyrian ones. [19] Elsewhere I have demonstrated that the apostasy clauses of Deuteronomy 13—long thought to imitate the sedition clauses of Neo-Assyrian treaties—are much closer in language and in structure to the fifteenth-century Hittite Ismerika treaty.[20]

One strand of scholarship views the retold narratives of the opening chapters of Deuteronomy as an historical introduction to the stipulations found in Deuteronomy chapters 12–26. The historical prologue, which emphasizes the beneficence of the sovereign as the basis for the loyalty of the subordinate is, likewise, a feature exclusive to the Hittite treaties.[21] The beneficence could take different forms. Sometimes the Hittite king performed an act of salvation on behalf of the vassal. Mendenhall, who first drew attention to the parallels between the Hittite treaties and the biblical notions of covenant, saw the Exodus story prior to the Sinai covenant as such a prologue.[22] The historical prologue of Deuteronomy

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19. See K. A. Kitchen, *On the Reliability of the Old Testament* (Grand Rapids, MI: Eerdmans, 2003), 283–94; K. A. Kitchen, "The Fall and Rise of Covenant, Law and Treaty," *TB* 40, no. 1 (1989): 118–35; Hayim Tadmor, "Treaty and Oath in the Ancient Near East: A Historian's Approach," in Gene M. Tucker and Douglas A. Knight, eds., *Humanizing America's Iconic Book: Society of Biblical Literature Centennial Addresses 1980* (Chico, CA: Scholars Press, 1980), 142–52; G. E. Mendenhall and G. A. Herion, "Covenant," *ABD* 1:1179–1202; Moshe Weinfeld, "Covenant Making in Anatolia and Mesopotamia," *JANES* 22 (1993): 135–39. Distinct similarities between Hittite law and Deuteronomic law have also been noted, such as the killing of a person by an unknown slayer (HL 6 = Deut 21:1–9) and levirate marriage (HL 192–93 = Deut 25:5–10). On the similarities between biblical and Hittite law see Itamar Singer, "The Hittites and the Bible Revisited," in Gene M. Tucker and Douglas A. Knight, eds., *"I Will Speak the Riddle of Ancient Times": Archaeological and Historical Studies in Honor of Amihai Mazar on the Occasion of his Sixtieth Birthday* (vol. 2; Winona Lake, IN: Eisenbrauns, 2006), 723–56; Billie Jean Collins, *The Hittites and their World* (Atlanta: Society of Biblical Literature, 2007), 197–213; Yitzhak Feder, *Blood Expiation in Hittite and Biblical Ritual* (Atlanta: Society of Biblical Literature, 2011), 123–25.

20. Joshua Berman, "CTH 133 and the Hittite Provenance of Deuteronomy 13," *JBL* 130, no. 1 (2011): 25–44. These findings have been challenged in Bernard M. Levinson and Jeffrey Stackert, "Between the Covenant Code and Esarhaddon's Succession Treaty: Deuteronomy 13 and the Composition of Deuteronomy," *JAJ* 3 (2012): 133–37. See my response to these critiques in Joshua Berman, "Historicism and Its Limits: A Response to Bernard M. Levinson and Jeffrey Stackert," *JAJ* 4 (2013): 297–309.

21. Moshe Weinfeld, *Deuteronomy and the Deuteronomic School* (Oxford: Clarendon Press, 1972), 69–74.

22. G. E. Mendenhall, "Covenant Forms in Israelite Tradition," *BA* 17 (1954): 50–76.

1–10, however, makes little mention of the Exodus from Egypt. Rather, we should see these chapters and especially chapters 1–3 as an exemplar of the form of the prologue that Amnon Altman refers to as the Hittite land grant treaty. In these treaties, the Hittite king would install the vassal of his choice to rule over a defined territory. The Hittite king bore the ultimate source of title over the territory and hence dictated the terms of the grant.[23] This is the essential thrust of Deuteronomy 1–3. YHWH prepares to give the Israelites territory over which to rule and in return demands obedience to the treaty He imposes. Deuteronomy 1–3 employs specific motifs found in these land grant treaty prologues. As Weinfeld notes, the sovereign in these treaties urges the vassal to take possession of the land as a gift: "See, I gave you the Zippašla mountain land, occupy it."[24] This command resonates with Deut 1:8, 21: "See, I have given over the land to you, go and inherit it." As we saw in the previous chapter, in CTH 92 the Hittite king Ḫatušili III declares to his vassal Bentešina that his own grandfather had written out the borders of the vassal kingdom, an act which was taken to be constitutive of the borders of that territory: "My grandfather . . . wrote a treaty tablet for him. He wrote out the borders of the land of Amurru of his ancestors and gave it (i.e., the tablet) to him."[25] Similarly, YHWH lists the borders of the promised land for Israel in Deut 1:7–8.[26] In several Hittite treaties the king delineates the vassal's territory and stresses that the latter is to avoid confrontation with other neighboring vassals of the Hittite king.[27] In Deuteronomy we find likewise, "you will be passing through the territory of your brothers, the children of Esau, who dwell in Seir. . . . Do not provoke them, for I will not give you of their land, so much as a foot can

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23. Amnon Altman, *The Historical Prologue of the Hittite Vassal Treaties* (Ramat Gan: Bar-Ilan University Press, 2004), 55, 144. Note that this form of grant was distinct from the land grants known to us from the middle Babylonian period made to valued officials, where no obligations were imposed upon the grantee. See ibid., 145.

24. A Geotze, Madduwattaš, MVAG 32:1 (1927) Vs. 19, 43–44. Translated in Weinfeld, *Deuteronomy and the Deuteronomic School*, 72.

25. Treaty between Hattusili III and Benteshina of Amurru (CTH 92 obv. 4–6), translated in Gary Beckman, *Hittite Diplomatic Texts* (2d ed.; Atlanta: Society of Biblical Literature, 1999 [hereafter *HDT*]), 101.

26. Nili Wazana, *All the Boundaries of the Land: The Promised Land in Biblical Thought in Light of the Ancient Near East* (Jerusalem: Bialik Institute, 2007 [Hebrew]), 37. Curiously, Šuppiluliuma I of Ḫatti delimits his own empire, saying, "The Euphrates [is my frontier(?)]. In my rear I established Mount Lebanon as my frontier." (CTH 51 § 10 translated in *HDT* 45). Cf. the highly similar language in Deut 1:7.

27. See CTH 106 §§ 9–10 (*HDT*, 109–10); CTH 67 § 8 (*HDT*, 71); CTH 68 § 25 (*HDT*, 80–81); CTH 69 § 8 (*HDT*, 84). See discussion in Wazana, *All the Boundaries*, 37; and in Weinfeld, *Deuteronomy and the Deuteronomic School*, 72.

tread on, for I have given the hill country of Seir as an inheritance to Esau" (Deut 2:4; cf. 2:9 and 19, with regard to Moab and Ammon respectively).

Politics can make for strange bedfellows, and sometimes the Hittite king would grant a territory to a vassal that had a history of rebellious behavior toward the Hittite throne. Power politics of the region during the fourteenth and thirteenth centuries BCE were such that allegiances between states were in constant flux. Even if the ruler of such a state had reneged on his earlier vassalage, the Hittite kings frequently sought to re-establish ties when it was politically expedient to do so. When a once-rebellious king agreed again to accept submission, the prologue of the treaty would enumerate the seditious acts of the vassal, underscoring the debt of gratitude now owed the Hittite king for his beneficence.[28] The historical introduction of Deuteronomy 1–3 not only underscores the grant of the land to the Israelites, but also stresses that they are hardly deserving of such grace, having reneged on their vassalage to the Lord. They rebelled against him at Kadesh when they refused to fight for the land following the report of the spies (1:26) and then again, when they embarked on a campaign against the Lord's wishes (1:43).

The question at what point Hittite culture interacted with Israelite culture and through what mechanism remains more an issue of conjecture, rather than of debate.[29] It is a curious reality that while state vassalage was practiced throughout the second and first millennia BCE, written vassal treaties are extant nearly exclusively from the Late-Bronze Hittite and Neo-Assyrian periods, and that historical prologues are exclusive to the Hittite corpus. It may be that in due time we will unearth more treaties from other periods and locales and that the treaty elements within Deuteronomy may represent a highly refracted reworking of a tradition that we witness today only within Hittite material. We have seen, however, many lines of congruence between the historical prologue of the Hittite treaties and the opening chapters of Deuteronomy. This should deepen our growing awareness that, in the words of the late Harry Hoffner, "there remain far too many points of similarity—especially in legal, ritual, and cult matters—between

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28. Cf. CTH 66—Treaty between Muršili II of Ḫatti and Niqempa of Ugarit (*HDT*, 64–68); CTH 68—Treaty between Muršili II of Ḫatti and Kupanta-Kurunta of Mira Kuwaliya (*HDT*, 74–81); CTH 92—Treaty between Ḫattušili III of Ḫatti and Benteš ina of Amurru (*HDT*, 100–102); CTH 105—Treaty between Tudhaliya IV of Ḫatti and Šaušgamuwa of Amurru (*HDT*, 103–107); Altman, *The Historical Prologue*, 55.

29. See appraisals in Harry A. Hoffner, "Ancient Israel's Literary Heritage Compared with Hittite Textual Data," in J. K. Hoffmeier and A. Millard, eds., *The Future of Biblical Archaeology: Reassessing Methodologies and Assumptions* (Grand Rapids, MI: Eerdmans, 2004), 172–82; Itamar Singer, "The Hittites and the Bible Revisited," 753–54.

Hittite culture and the Bible for us to dismiss them as coincidental or accidental." Having established the affinities between various passages in Deuteronomy and the Hittite treaty prologue, we may now examine Deuteronomy's propensity to retell history in light of the Hittite treaty convention of retelling history in the renewal treaties between sovereign and the new generation of the vassal. To be sure, the author of Deuteronomy did not expect that a broad readership would be familiar with the niceties of Hittite treaty formulation. My assumption, however, is that the practice of retelling accounts in those treaties is a reflection of what was common practice: when an authority figure—a king in a treaty or a bard in a village—retells a story, his audience understood it as exhortation. It focused on how the message had changed, and not on the strict factual nature of the claims.[30]

The Retelling of History in Deuteronomy 1–10

To grasp how the Hittite treaty prologue tradition sheds light on the retelling of history in Deuteronomy, we need to appreciate that Moses's speeches communicate to two audiences. The first audience consists of a literary figure: the constructed character of the people of Israel, poised to enter the land at the end of the fortieth year in the desert. The Torah nowhere states that the Children of Israel were given a textual version of the stories of the wandering in the wilderness. Put differently, this audience is not aware of the textualized account of those stories as we have them in the Tetrateuch. At most, the oldest of those listening may have maintained a living memory of the events that happened nearly forty years earlier, such as the sin of the golden calf or the sin of the spies. However, very few of the discrepancies that we notice between Deuteronomy and the parallel accounts of the earlier books could be apparent to those constructed characters listening to Moses in the book of Deuteronomy. Nearly all of those discrepancies concern words spoken between major players, rather than the events themselves. For example, in Deuteronomy 1, Moses claims that he initiated the idea to appoint officers (1:13). In Exodus 18, it is Jethro who initiates the idea, and raises it with Moses alone (18:21). Even someone listening to Moses some forty years later, and who could remember the process of appointing officers, would unlikely have known about that conversation between Jethro and Moses. Or, to take another example, consider the initiative to send spies to the land from Kadesh Barnea. In Numbers,

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30. My analysis assesses how the rhetoric of the early chapters of Deuteronomy function on the narratological level. I have not, however, contextualized my discussion on the historical level. There is conflicting evidence adduced for a dating of Deuteronomy, and the date of its composition greatly debated. I leave it, therefore, for others to determine whether the analysis here accords with one proposed provenance or another.

it is YHWH who initiates the idea (Num 13:1–2), while in Deuteronomy, Moses claims that it was the people who initiated the idea (Deut 1:22). Older survivors of the wilderness trek may well remember the crisis that ensued when the spies returned with their report—but they were certainly not privy to YHWH's words to Moses at Kadesh Barnea, instructing him to send spies to the land. Thus, when Moses ascribes the initiative to the people themselves, those listening to him have no resources with which to check or corroborate his account. Put differently, for this primary audience within the text, there are no discrepancies between earlier accounts and what they hear now, because they have no access to the earlier accounts, as present-day readers do. For this audience, the events of the past are recalled, but not retold. This audience encounters no palimpsest, no process of erasure of a previous telling.

When Moses recalls history for this audience, he does so in the spirit that we encountered in the Pharaoh's communications to his vassals in the Amarna letters, and in the communications of the Hittite kings with their vassals. Moses speaks on behalf of YHWH, the sovereign king to Israel, his vassal. The purpose of the communication is to set the tone of the relationship, to engage in a mix of hard and soft communications, to employ the proverbial carrot and stick, and to manage impressions. The sovereign king, YHWH, looks to renew the treaty with his often-time rebellious vassal, Israel, as a new generation steps to the fore. Deuteronomy casts itself as the final remarks of Moses on the plains of Moab at the end of the forty years in the desert. It is an extended account of the renewal of the covenant, now with the new generation. Thus it is only natural that the events recalled in time in Deuteronomy's opening chapters span the history of Israel's vassalage, from Horeb to Moab. Moses is not reminiscing about his period as leader; rather, he reflects on Israel's history as YHWH's vassal—and that begins only at Horeb, and thus these chapters have no sustained attention to any aspect of the Exodus, even as that event is acknowledged. Moses underscores the consequences of incorrigible waywardness, and the salvation that YHWH has demonstrated he can provide. Representing the sovereign YHWH, Moses manages a medley of messages designed to arouse fealty within the heart of the vassal going forward.

However, Moses's reminiscences are directed additionally at a second audience: the readers of Deuteronomy and the redacted Pentateuch. The author of Deuteronomy crafts the words of Moses as addressed to the generation poised to enter the land, but the author of Deuteronomy writes these accounts for the primary consumption of readers of his own day, and perhaps subsequent generations as well. These readers are meant to see themselves as the descendants of those same Israelites who listen to Moses's reminiscences on the plains of Moab. Put differently, these readers are a later generation vassal to YHWH. When they read

of the events of the wilderness, they read their own earliest history: the history of their forefathers' relationship with the sovereign, YHWH.[31] All of the dynamics that characterize Deuteronomy's internal communication—between Moses and the Children of Israel in the fortieth year—hold true for the messages the Deuteronomist wishes to communicate to readers of his day as well. Moses, we said, represents the sovereign king, YHWH, as he sets a tone for his relationship with vassal Israel. The speeches, and within them the reminiscences about events past, represent a balance of hard and soft communications, designed to win over the fealty of his generation. But, the author of Deuteronomy also represents the sovereign YHWH in his own day. His crafted and constructed speeches in the mouth of Moses are his own communication to the vassal Israel in his day. Those same hard and soft communications—that proverbial carrot and stick—are designed to win over his readership, the latter-generation vassal of YHWH.

Here is where the Hittite treaty tradition of retelling history is illustrative. When the Deuteronomist has Moses retell history as Israel renews its covenant with YHWH on the plains of Moab, it is with the same conventions that guide the retelling of history by the sovereign Hittite kings in the renewal treaties that they forged with successive generations of vassals. As we saw, the Hittite kings took a new political landscape as an opportunity to recalibrate the nature of his relationship with their vassals. Inscribing a new tablet with a new historical narrative was a way of "pressing the reset button" on the relationship, to borrow a contemporary image, and signal to the vassal that their relationship was now on new footing. A Hittite monarch's decision to tack one way or the other, or through a mix of signals, reflected his perception of the political landscape at the moment of drafting. Critically though, this process differed from Orwell's imagined world, where recorded history was "scraped clean and reinscribed as often as necessary." For the Hittite kings, past versions of the vassal history were never erased. Rather, they were preserved in the archival record, and accessed, read, and compared with the new retelling of the history. Only by accessing the previous version of the history between the two kings would the vassal fully grasp the nuance of the new version of those events, and properly digest the diplomatic signaling inherent in the telling.

Readers of the Pentateuch encounter two textualized versions of several key events in the wilderness trek. The first—those in Exodus and Numbers—serves as a baseline through which to understand the nuances and changes inherent in the second—the versions of those stories in Deuteronomy. Neither the authors of

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31. On the dual character of Deuteronomy's audience and poetics, see Jean-Pierre Sonnet, *The Book within the Book: Writing in Deuteronomy* (Leiden: Brill, 1997).

Exodus and Numbers, nor the author of Deuteronomy, are historians in the modern sense. Their primary interest is not to chronicle the past entirely "as it really was." They craft the core details of an event in the same spirit with which all premodern writers wrote about the past—namely, with an eye toward exhortation.

Moses calls upon the Israelites to recall that which had happened, "at that time" (1:16, 18; 2:34; 3:4, 8, 12, 18, 21, 23). While Moses, of course, is not the sovereign king YHWH, but merely his emissary, the narratological tone is highly similar to that which we encounter in the Hittite treaties: the Hittite sovereign calls upon the vassal to recall events that are putatively known to both sides, and to draw the appropriate lessons. Discrepancies between the original treaties and the later ones, I claimed, were evidence of diplomatic signaling. Far from erasing the past and deceiving the servant kings, the Hittite kings intended the vassals to note the ways in which the history had been reworked. The changes that the vassal could plainly see for himself were an index of change in the sovereign king's disposition toward him. Sometimes the retold history could be more charitable toward the vassal, as in the difference in tone between the prologues of CTH 46 and CTH 47. At other times, it could signal to the vassal that his stature had diminished in the eyes of the sovereign, as we saw in the account of Aziru's submission to Šuppiluliuma in CTH 92, relative to the original version of the story found in CTH 49. Neither in the record of the Amarna letters nor in the diplomatic literature of the Hittite kingdom does a vassal ever challenge a sovereign's account of the past as inaccurate. Factual accuracy is not the point of these accounts; diplomatic signaling is.

Retold history in Deuteronomy serves just this function for the Deuteronomist's audience, when read in comparison with the accounts of the events found in Exodus and Numbers. For the author of Deuteronomy, the rewriting of history is not a process of erasure, so that a new, blank palimpsest may be inscribed. For the author of Deuteronomy, Moses's reminiscences would be all the better understood when read in comparison with the earlier telling of those same stories in Exodus and Numbers. These retold stories underscore three core messages. First, some of the reminiscences tell of Israel's waywardness. These include the account of appointing officers (1:13–18), the account of the sin of the spies (1:19–45), and the account of the sin of the golden calf (9:7–10:5). Second, some tell of obedience. This category includes the revelation at Horeb (5:4–30). And third, others tell of YHWH's salvation: these include the accounts detailing the campaigns in the Transjordan (2:1–3:17). For the careful reader of Deuteronomy, a clear trend emerges when the retold accounts are compared to their earlier parallels: all of these messages are more sharply delineated in the retelling on the plains of Moab than they are in the earlier versions of Exodus and Numbers. Israel's waywardness is more pronounced

in the account of the golden calf and the sin of the spies in Deuteronomy than in the parallel accounts of the Tetrateuch. Israel's obedience is more sharply delineated in the Horeb revelation of Deuteronomy than in the parallel Exodus account. And YHWH's salvation in the campaigns of the Transjordan is more overt in the retelling in Deuteronomy than in the original accounts of Numbers.

I proceed to show how this consistent agenda of sharpening the respective messages—waywardness, obedience and salvation—is what guides Deuteronomy's adaptation of earlier narratives.

Accounts of Israel's Waywardness: The Appointment of Officers

It is hardly surprising that Moses dwells at length on the sin of the spies when recounting Israel's waywardness in the desert. However, the first event recalled in Deuteronomy is the appointment of officers at Horeb. Here, seemingly, no offense was committed, and it is unclear why Moses would choose to begin by recounting what was seemingly a benign event. However, as the medieval rabbinic exegete Nahmanides noted, the rhetoric of Deuteronomy casts the appointment of officers as directly responsible for the sin of the spies. Moses concludes his mandate to the officers by saying, "that which is difficult for you, bring it to me (תקרבון אלי) and I shall hear it" (Deut 1:17). Moses quickly moves on from that episode and recounts that they travelled to Kadesh Barnea, where the people approached Moses (ותקרבון אלי) (Deut 1:22), adopting the language with which he commissioned them to turn to him.[32] Clearly, not all of the Israelites approached Moses, instead turning to their appointed representatives— the officers. For Nahmanides, the story of the appointment of officers is recounted, because the officers were the ones who pushed to send spies in the first place.

A close reading of this opening pericope reveals a sustained interest in laying the blame for the officers at the feet of the people, whereas in the parallel account in Exodus 18:13–27, the people are entirely blameless, indeed even meritorious. They are depicted there as eager to learn the divine will (Exod 18:15) and to receive from Moses divine norms and instruction (18:16). The very idea to appoint officers is raised by Jethro (18:21–23). The people have no input at all in the process of selecting appropriate individuals, as Moses makes the selections himself (18:25). From a narratological standpoint, the story ends with approval and closure: Moses sets into place the wise counsel offered him by Jethro, who is then cordially sent to return to his land (18:26–27).

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32. Nahmanides to Deuteronomy 1:9.

In several ways, Moses's retelling of this account places a greater onus on Israel. In Exodus the impetus to appoint judges was purely bureaucratic and technical: the workload was too great for a single man (18:14–17). In Deuteronomy, however, the need for officers stems from Moses's desperation that he could not bear "your troubles, your burdens and your bickering" (1:12). The verse clearly draws inspiration from Num 11:10–15, a section that paints the people as incorrigibly difficult to lead. In Deut 1:13 Moses calls upon the people to put forward worthy candidates, and Deut 1:14 registers the complicity of the people to the idea of judges. The candidates that they are to put forward are to have the quality of ידעים לשבטיכם—that is, "known to your tribes." These were representatives of the people, and thus the Israelites would not be able to later exonerate themselves on the claim that these officers were foisted upon them. All of this serves to affirm Nahmanides's contention that the appointment of officers is a prelude to the story of the spies, and that Moses opens his hortatory by underscoring that Israel is responsible for the leaders she produced. It was Israel's waywardness in the first place that necessitated appointing officers, and the men who filled those posts were individuals known to and selected by the people. In Exodus the account concludes with full closure: Moses follows Jethro's advice, the system is successfully put into place (18:26), and Jethro returns to his land. In Deuteronomy, however, Moses does not celebrate the implementation of the hierarchical order. Rather, following his mandate to the officers (verses 16–18), Moses quickly moves to the scene at Kadesh Barnea, where these officers moved into action, calling for the sending of spies (verses 19–22).

Accounts of Israel's Waywardness: The Sin of the Spies

Deuteronomy has reshaped the parallel account from the book of Numbers in wholesale fashion to underscore Israel's culpability for the disaster.[33] This is exhibited in a number of parameters:

1) *The impetus for sending spies*: In Numbers, the narrative opens with YHWH's express initiative to send spies (13:1–2). In Deuteronomy, however, the account of the spies opens with Moses exhorting the people to go up from Kadesh Barnea and to capture the land (1:20–21). Rather than responding enthusiastically to Moses's call, the people initiate the proposal to send spies (1:22).

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33. On the greater culpability of Israel in Deuteronomy's version of the narrative, see Richard D. Nelson, *Deuteronomy* (Louisville, KY: Westminster John Knox, 2002), 25.

2) *The content of the spies' report and the people's response*: In Numbers, the spies offer an extended report of seventy-one words (13:28–33), triggering the people's despair (14:1–4). In Deuteronomy 1, however, the poetics employed by the author create a more damning portrait of the people.[34] The direct speech of the spies' report is entirely positive. Nonetheless, the people sulk and despair (1:25–27): "They returned and delivered their report saying, 'the land which the Lord our God has given us is a good land.' But you did not want to go up, and instead you violated the command of your God. And you sulked in your tents saying, 'it is because the Lord hates us that He has taken us out of the land of Egypt, to hand us over to the Emorites to obliterate us.'" It is only through the people's ruminations that we understand that, in fact, the spies had added defamatory comments about the land as well. The spies' own words, however, in verse 25 are positive, thus underscoring the people's incorrigibility. In all, the disparaging comments about the land in Deuteronomy amount to only thirteen words (1:28).

3) *The response of the leadership*: In Numbers 14:1–10, the people despair after the spies' lengthy critique of the land. In response, Moses and Aaron display weak leadership, merely falling on their faces, providing neither a morale boost to their followers, nor other positive directives. Only Caleb and Joshua speak, leaving the people despondent, as they had appealed to their leaders, Moses and Aaron. In Deuteronomy, by contrast, Moses offers a full-throated rebuke to their despair (1:29–33), drawing attention to all that YHWH had done for them, underscoring their faithlessness and ingratitude.

4) *The punishment*: In Numbers 14:11–25, Moses prays for Israel and God forgives them, allowing the Israelite nation to survive and continue in the long run; only those old enough to have seen God's salvific acts are sentenced to die out in the wilderness. However, in Deuteronomy (1:34–40) only the sentence condemning the first generation to death is retained; Moses makes no mention of the forgiveness he had won from YHWH. Moreover, Moses here claims that he, too, will not merit seeing the land, admonishing the people that his punishment was "due to your onus" (1:37).

5) *The doomed attempt to belatedly invade the land*: In Numbers the people regret their faithlessness, expressing their desire to now go and capture the land. Moses dissuades them, telling them that this is against God's will (14:41–42), presumably because He had already decreed that all were meant to perish in the desert (14:29–35). They defiantly persist and are obliterated by the Canaanites and Amalekites (14:45). In Deuteronomy, however, the warning to desist from

34. See discussion in Brettler, *The Creation of History*, 186 n. 68.

invading is not issued by Moses on the basis of God's earlier decree that they are to perish in the desert. Rather, YHWH expressly warns them not to go, insisting that He has abandoned them, and that they will be slaughtered if they try (1:42). Moses conveys YHWH's words, saying, "I told you, and you did not listen, and you rebelled against the word of the Lord, and conspired to go up to the hills" (1:43). Put differently, in Deuteronomy the people directly contravene the express word of God to them. They return and cry to the Lord, and He shuns them (1:44).

Accounts of Israel's Waywardness: The Sin of the Golden Calf

Deuteronomy's account of the sin of the golden calf likewise heightens Israel's malfeasance relative to the portrayal in the parallel narrative, in Exodus 32. There, Aaron shares the blame with Israel for the catastrophe; indeed, Aaron is the initial focus of Moses' wrath in that narrative. When Moses descends the mount and sees the calf, he turns first only to Aaron, castigating him for his failure of leadership (32:21–24). The exposition sums this up, placing the primary blame on Aaron's shoulders (32:25): "Moses saw that the people were out of control—since Aaron had let them get out of control—so that they were a menace to any who might oppose them."[35] The summary at 32:35 likewise divides the blame between Aaron and the people: "The Lord sent a plague upon the people, for the calf that they had made, for the calf that Aaron had made." By contrast, Deuteronomy lays the blame squarely on Israel's shoulders, especially in verses 9:16 and 9:21. Aaron's culpability is related in a single verse, and no direct mention is made of the calf. In fact, apposition is created between Aaron's failing and theirs (9:20–21): "And the Lord was greatly angry with Aaron, wanting to obliterate him, and so I pleaded on Aaron's behalf as well, at that time. As for *your* sin, that *you* made the calf, I took it and smelted it in fire, and ground it down until it was fine dust, and I scattered the dust in the wadi descending from the mountain."[36]

Accounts of YHWH's Salvation: The Campaigns of the Transjordan

If the reworking of the previous narratives underscores the theme of waywardness and Israel's guilt, the narratives of the conquest of the Transjordan in Deut 2

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35. Hayes, "Golden Calf Stories," 57.

36. Ibid., 79.

are reworked to accentuate YHWH's salvation.[37] In Num 20, the Israelites plead multiple times to be allowed to traverse the land of Edom, and even to pay for provisions. They desist after being rebuffed by the threatening Edomites (20:13–21). In Numbers 21:24, Israel is unable to penetrate the Ammonite border. By contrast, the Deuteronomist suggests that Edom and Moab were intimidated by Israel (2:4) and did, in fact, sell provisions to them (2:29). Israel's rebuffed request to transverse the territory of Moab (cf. Deut 23:4–5) is omitted here. The defeat over Sihon and the accompanying record of the spoils gained is more richly detailed in Deuteronomy (2:33–37) than in Numbers (21:25–26). The reworking is clear: the sin of the spies represented the apex of Israel's wayward period. The post-Kadesh period, however, was a period in which the people placed their trust in the Lord in their encounters with the foes of the Transjordan, and thus a period of great grace by YHWH. The lesson for those latter-day vassals—that is, the readers of Deuteronomy—is that divine grace awaits them, particularly in the military and security sphere, if they, too, are prepared to trust in the Lord's word.

An Account of Israel's Obediently Loyal Spirit: The Revelation at Horeb

In Moses's retelling of the revelation at Sinai, the account is reworked to pronounce Israel's obedience. Israel's leaders plead with Moses to be spared from hearing the divine voice directly, and instead request that the divine instruction be communicated through the mediation of Moses, concluding, "and we shall hear, and we shall obey" (5:24). Here, in a striking addition to the Exodus account of the revelation at Sinai, the Deuteronomist records God's expressed pleasure with the people: "YHWH heard the words that you expressed to me, and said, 'I have heard the things that this people has expressed to you, and they have spoken in a favorable manner. Would that their heart remain so committed to revere Me and to observe all of My commandments for evermore, such that it would be good with them and their descendents for the future.'" The pericope concludes with Moses exhorting the people to hear and obey the Lord's commandments (6:3).

Retelling History in Deuteronomy: Rethinking the Source-Critical Paradigm

If we view the retelling of history in Deuteronomy through the heuristic lens of retelling history in the Hittite Treaty tradition, this yields several advantages

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37. See Glatt-Gilad, "The Re-interpretation of the Edomite-Israelite Encounter," 441–55.

over conventional source-critical approaches to the phenomenon. To conclude, I return to the six questions that face critical scholarship when we consider the phenomenon of retold history in the book of Deuteronomy.

1) *How may we account for the redaction of Deuteronomy with the rest of the Torah?* Source critics have typically assumed that Deuteronomy was incongruous with the other books of the Torah, because its accounts of history stand at such a divide from those contained in the other books. Positing that Deuteronomy was written to supplant those earlier accounts, source critics must then adduce theories of composition that explain why such blatantly contradictory works were later fused together. These theories, of course, are adduced without any express historical attestation to the hypothesis of this unusual redaction, and without any epigraphic finds to substantiate it. However, when seen through the prism of the Hittite treaty prologue tradition, the redaction of Deuteronomy with the first four books of the Torah is well understood. To be sure, Deuteronomy offers versions of events that cannot be harmonized with parallel accounts in the earlier books of the Torah. But this is wrongly classified as "inconsistency," and as a sure sign that Deuteronomy could not have been written to be read with those other books. Instead, Deuteronomy employs the convention of retelling history at the moment of covenant renewal found in the Hittite treaty tradition just as Israel re-commits herself to YHWH at the covenant of the Plains of Moab. The retelling of history is not akin to the erasure and reinscription characteristic of a palimpsest. Rather, the earlier conflicting version of the history is preserved so that the vassal—here the readers of Deuteronomy and the redacted Pentateuch— may compare and measure the various tellings of that history. The vassal seeks out the nuances of those differences, because they are markers of the sovereign's signaling to his vassal.

2) *What characterizes Deuteronomy's adaptation of the earlier narratives?* By and large, source critics have addressed the reworkings of the earlier narratives in piecemeal fashion, and have not sought out trends that cut across all of the Deuteronomist's work of narrative adaptation. Yet, surely if we find so many narratives distinctly told as Moses's reminiscences, there must be some method to his work. Deuteronomistic language is indeed employed at various junctions, but that does not explain the larger adaptations that are at work here. However, if we understand that the sovereign king, YHWH, wishes to manage impressions here, and win Israel's fealty going forward, we may well understand that the reworked narratives are adapted to highlight and underscore, respectively, the themes of waywardness and its consequences, trust in

the Lord's salvation against foes, and obedience to the divine word. The consistent aim of sharpening these three lessons governs the adaptation of the accounts of the appointment of officers, the sin of the spies, the revelation at Horeb, and the sin of the golden calf.

3) *What principle governs Deuteronomy's choice of narratives for rewriting?* For source critics, the Deuteronomist is an historian, one who has a different interpretation of Israel's history than do the authors of his sources (Exodus and Numbers). Yet, if the Deuteronomist does indeed have his own view of history, it is unclear why he limits his reworking of prior materials to a handful of wilderness narratives, while seemingly having nothing to say about the patriarchal period, nor about the Exodus. When seen through the lens of the Hittite treaty tradition, the Deuteronomist's choice of narratives for reworking are well understood. Deuteronomy does not have an agenda of completely rewriting Israel's history from a new perspective. Rather, it casts Moses as representing the sovereign vassal YHWH at the moment of covenantal renewal with the vassal Israel. In editorial form characteristic of the Hittite treaty prologue tradition, Moses chooses key moments in the history of the vassalage—from Horeb to Moab—and recasts them to accord with the needs of the moment in the relationship between sovereign and vassal. Thus, the patriarchal period and the events of the Exodus are acknowledged, but are not Moses's focal point in his speeches. Events of waywardness in the wilderness that did not encompass the whole of the people are of no concern for Moses's hortatory, because he is addressing the behavior of the whole people; and so, omitted from discussion are episodes such as the rebellion of Korah (Num 16–17), or the courage of Phineas (Num 25:1–15), or the sin of the gatherer of wood (Num 15:32–36).

4) *How may we account for Deuteronomy's brief references to several events reported in the Tetrateuch?* Source critics are at pains to explain this phenomenon. If the Deuteronomist has composed a work designed to supplant the accounts of the Tetrateuch, why does he so often reference many other accounts contained in those books? If we understand, however, that Deuteronomy recalls and retells history in accordance with the Hittite treaty tradition, the phenomenon is well understood. Not all prior encounters between sovereign and vassal must be rehearsed and recasted; some may simply be referenced obliquely, and this is what Deuteronomy does with many episodes referred to at greater length in those earlier tellings in Exodus and Numbers. Moses is content to rely on his audience's memory, while the Deuteornomist relies on the latter-day reader's familiarity with the textualized version of these stories

in the Tetrateuch. It is again noteworthy that at no point does Moses call upon Israel to "recall" even one event that is not reported in the earlier books, suggesting that Deuteronomy assumes its readers have access to those books and is familiar with them.

5) *Why does Deuteronomy employ first-person narration to tell its history?* For conventional source-critical approaches, the Deuteronomist is an historian, who looks to supplant the works of earlier historians in presenting his take on Israel's history. The accounts of Exodus and Numbers, of course, employ third-person narrative, projecting the status of the omniscient narrator. It is unclear why the Deuteornomist would want to undercut the authority of his own version of history by projecting it through the subjectivity of a human agent (Moses). However, when retold history is seen through the lens of the Hittite treaty tradition, the recourse to first-person narration is understood. The historical prologues of the Hittite treaties are always voiced by the sovereign. They are emphatically subjective; they are the attempt by the sovereign king to manage impressions and exhort his vassal to fealty. The use of first-person reminiscing in Deuteronomy parallels this, and allows for rhetorical urgency to be conveyed for Israel—and the reader—to heed the words of exhortation being spoken.

6) *Why is the first-person reminiscence a rhetorical feature unique to Deuteronomy?* Source critics have not attended to this question. Yet, precisely because many source-critics ascribe to some form of Deuteronomistic composition of the book of the former prophets, it is surprising that we never again in these works encounter retold history that recasts and adapts earlier accounts in such radical fashion. The claim here is that Deuteronomy is distinct in the books of the Bible in this regard, because of its notable affinity for the modalities and conventions of the Hittite treaty tradition. Moses is recalling prior history at a moment of covenantal renewal. The author of Deuteronomy, therefore, employs this rhetoric, one of many that he borrows from the Hittite treaty tradition. Authors of other biblical books, as well as their audiences, may have not been aware of this convention.

Historiography, of course, is not the only genre of reworked text found in Deuteronomy, as many legal passages reverberate with resonances of other Pentateuch law collections. I have maintained here that Deuteronomy's narratives accounts may be read in concert with the accounts found in the other books of the Tetrateuch. That claim, however, would seem to be undermined by the manifold contradictions between the laws of Deuteronomy and the parallel laws found in the Torah's other law corpora. No account, then, of how Deuteronomy

reworks other historical narratives can be complete without an accounting of how that dovetails with its reworking of law as well. This requires consideration of the nature of law in the Bible, and of whether Deuteronomy is a replacement for other legal texts, or a complement to them. To this we turn in Part II of this book.

Inconsistency in Law

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The Pivotal Characterization: Ancient Law as Non-Statutory Law

THE EARLY GREAT works of Pentateuchal criticism reveal a surprising lack of interest in the area of law. Consider the works of Benedict Spinoza (*Tractatus Theologico-Politicus*, 1670), Jean Astruc (*Conjectures sur les mémoires originaux don't il paroit que Moyse s'est servi pour composer le livre de la Génèse*, 1753), Johann Gottfried Eichhorn (*Einleitung in das Alte Testament*, 1780–83), Wilhelm Martin Leberecht de Wette (*Beiträge zur Einleitung in das Alte Testament*, 1806), and Georg Heinrich August Ewald (*Die Komposition der Genesis Kritisch Untersucht*, 1822). Many of the questions that occupy critical scholarship today were already in play in the works of these early critics. They were keen readers who sensed that the Pentateuch comprised multiple sources. By the time we reach the work of Eichhorn, we already see well-developed theories of a J and an E source. Yet not one of them attends to the conflicts and contradictions that would lead later critics to identify four sources of law: the Covenant Code; the Holiness Code; the Deuteronomic Code; and the Priestly laws. Most striking is the work of de Wette, who considers the relationship between legal materials in Exodus and Deuteronomy and notes a short list of passages where he identifies discord between the books. As we would expect, he includes in this list the differing prescriptions for the paschal sacrifice between Exodus 12 and Deuteronomy 16. Surprisingly, though, he then produces a much longer list of passages in which he finds accord between the two books. Here he lists the laws of the festivals, of manumission, of pledges, and of care for a neighbor's lost cattle—areas of law where later scholars would identify discord.[1]

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1. Wilhelm Martin Leberecht de Wette, *A Critical and Historical Introduction to the Canonical Scriptures of the Old Testament*, trans. Theodor Parker (2 vols.; 4th ed.; New York: D. Appleton & Co., 1864), 2:132 (§ 154) note a.

Bernard Jackson has cautioned us to be aware that all modern scholars necessarily deploy that conception of law which they have internalized from their modern social and cultural experience. It is worth making this modern, Western conception explicit, he claims, in order to assess properly its applicability to the study of ancient law.[2] Throughout the next several chapters, I maintain that the way in which we moderns think about the word "law" is largely a product of intellectual currents that arose in the late nineteenth century. The situated character of our assumptions comes into view only when we attain a well-developed alternative interpretative framework. To understand this lacuna in the work of the early critics—and, more importantly, to understand the biblical laws themselves—we must seek out how earlier generations related to the fundamental questions: what is law? How is it determined? What is the role of sanctioned texts in determining that law?

In this introductory section I explore a great debate about the nature of law that swept across Western Europe in the nineteenth century. One approach, what I shall term a *statutory* approach to jurisprudence, ultimately won out. This approach to law has been intuitive for citizens of modern nation-states since the late nineteenth century. Yet in the earlier half of the nineteenth century, it was the *common-law* approach to jurisprudence that predominated. This approach went largely out of favor at around the mid-century point, and we have lost touch with its basic assumptions. Re-engaging the common-law tradition will enable us to see how modern assumptions about law permeate discussions of biblical law, and how these assumptions are a function of time and place. This will allow us to move forward in the following chapters and reassess the basic questions raised by the critical study of biblical law: what were the hermeneutics of legal drafting in the production of the biblical laws? What are the mechanisms that governed legal revision in ancient Israel? How are we to characterize the relationship between the Torah's four law corpora? How did these disparate law collections come together in the formation of the Pentateuch?

Two Views of Law in Nineteenth-Century Jurisprudence

Nineteenth-century legal theorists debated the sources and authority of law and the relationship between law and texts. Theorists in England and Germany

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2. Bernard S. Jackson, *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1–22:16* (Oxford: Oxford University Press, 2006), 23.

informed each other through their legal writings across much of the century.[3] For one school, what I term the statutory approach to law, the relationship between law and texts was straightforward: the law itself is contained in a codified text. Codification for these theorists entailed two cardinal elements: 1) the law emanates from a sovereign—it is issued by a lawmaker, such as a king or a legislative body. Moreover, the law is laid down by the lawmaking body and is imposed upon the citizenry. And, 2) the law is a finite, complete system. Only what is written in the code is the law. The law code supersedes all other sources of law that preceded the formulation of the code and no other sources of authority have validity other than the code itself. Therefore, courts must pay great attention to the wording of the text and cite it in their decisions. Where the code lacks explicit legislation, judges must adjudicate with the code as their primary guide.[4] Many contemporary minds find the statutory approach to law intuitive and even unremarkable. Its roots go back, as we shall see, to classical Greece, and statutory elements were part of the legal systems of Europe throughout the Middle Ages. Yet in the early nineteenth century the vast majority of Germans, Englishmen, and Americans thought about law in very different terms. The prevailing view was a common-law approach to jurisprudence.

Within common-law systems, the law is not found in a written code which serves as the judges' point of reference and which delimits what they may decide. Adjudication is a process whereby the judge concludes the correct judgment based on the mores and spirit of the community and its customs. Law gradually develops through the distillation and continual restatement of legal doctrine

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3. The leading proponents of statutory jurisprudence in England were Jeremy Bentham (1748–1832) and John Austin (1790–1859), and in Germany, Anton Friedrich Justus Thibaut (1772–1840). The common-law tradition in England had many expositors in the early modern period, while its German counterpart, the historical jurisprudence movement, is most closely associated with Friedrich Carl von Savigny (1779–1861). On the common-law tradition, see A. W. B. Simpson, "The Common Law and Legal Theory," in A. W. B. Simpson, ed., Oxford *Essays in Jurisprudence—2nd Series* (Oxford: Clarendon Press, 1973), 77–99; Michael Lobban, *The Common Law and English Jurisprudence 1760–1850* (Oxford: Oxford University Press, 1991). On the transition from common-law jurisprudence to statutory jurisprudence, see Roger B. M. Cotterrell, *The Politics of Jurisprudence: A Critical Introduction to Legal Philosophy* (2d ed; London: LexisNexis, 2003), 21–80; Gerald J. Postema, *Bentham and the Common Law Tradition* (Oxford: Clarendon Press, 1986); Gunther A. Weiss, "The Enchantment of Codification in the Common Law World," *Yale Journal of International Law* 25 (2000): 435–532. With particular emphasis on Savigny and historical jurisprudence see Margaret Barber Crosby, *The Making of a German Constitution: A Slow Revolution* (New York: Berg Publishers, 2008), 57–98.

4. Simpson, "The Common Law and Legal Theory," 81–82; Weiss, "The Enchantment of Codification," 458–70.

through the decisions of courts. When a judge decides a particular case, he or she is empowered to reconstruct the general thrust of the law in consultation with previous judicial formulations.[5] Critically, the judicial decision itself does not create binding law; no particular formulation of the law is final.[6] As a system of legal thought, the common law is consciously and inherently incomplete, fluid and vague.[7]

Key here is the role sanctioned texts play in determining the law. When decisions and precedents were collected and written down, these texts did not become the *source* of law, but rather a *resource* for later jurists to consult. The early nineteenth-century common-law theorist John Joseph Park explained how the common law developed:

> Every proposition once decided becomes a datum from which to reason to the conclusion upon a new combination . . . The law, as an aggregate result of it . . . has grown up into a dialectic system, boundless in the extent and variety of its propositions and reasonings . . . every part of that whole fits into some number of other parts, like the pieces of a child's puzzle map.[8]

Judges address new needs and circumstances by reworking old law, old decisions, and old ideas.[9] Although the common law attached great importance to the venerated customs of the past, the key was not the unchanging identity of its components, but rather a steady continuity with the past. Sir Matthew Hale, perhaps the greatest common-law theorist of the seventeenth century, held that the common law could change and yet still be considered a continuous system, just as "the Argonaut's ship was the same when it returned home, as it was when it went out, though in the long voyage it had successive amendments, and scarce came back with any of its former materials."[10] Some sources of the law had textual form, such as books of authority, records of previous judgments, and approved precedents. However, these texts formed a system of *reasoning*. A judge would access

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5. Postema, *Bentham and the Common Law Tradition*, 10.

6. Simpson, "The Common Law and Legal Theory," 89.

7. Cotterrell, *Politics of Jurisprudence*, 23.

8. John Joseph Park, *A Contre-Projet to the Humpheresian Code* (London, 1827), 21, 25, cited in Lobban, *The Common Law and English Jurisprudence*, 220–21.

9. Postema, *Bentham and the Common Law Tradition*, 13.

10. Sir Matthew Hale, *A History of the Common Law*, ed. C. M. Gray (3d ed; Chicago, 1971), 40; cited in Postema, *Bentham and the Common Law Tradition*, 6.

these written modes of thinking as he adjudicated a case.[11] Some elements of the common-law tradition originated with royal statutes and acts of Parliament. Yet, as A. W. B. Simpson notes in a seminal essay about the common-law tradition, judges did not view the text of the statute as immutable law. Instead, the statute—like all other written sources within the common-law tradition—would be "rapidly encrusted with interpretation" by the judge deciding the case.[12]

As I examine the world of ancient Near Eastern law in light of these two approaches to jurisprudence, it is instructive to understand how and why sensibilities about jurisprudence shifted dramatically from a common-law approach to a statutory approach in the second half of the nineteenth century. Common-law flourishes in homogeneous communities where common values and cultural touchstones are nourished and maintained by all. A judge's ruling will reflect what the leading German legal theorist of the early nineteenth century, Friedrich Carl von Savigny, called the *Volksgeist*—the collective conscience of the people.[13] Where cohesion breaks down, however, it is difficult to anchor law in a collective set of mores and values. Nineteenth-century Europe witnessed large-scale urbanization and the rise of the modern nation-state. Great numbers of disparate individuals were coalescing in social and political entities of ever-larger scope. A clearly formulated set of rules could unite a heterogeneous populace around a single code of behavior.[14] Moreover, a code could help constitute a sense of political identity and serve as a symbol of national unity and prestige. Political unification went hand in hand with legal unification by means of codification.[15]

The contrast between statutory and common-law approaches to law and legal texts enables us to distinguish between Hellenistic and Roman conceptions of law on the one hand, and ancient Near Eastern conceptions on the other. The distinction will help cast in bold relief the degree to which we need to appreciate biblical law and biblical legal texts within the common-law tradition.

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11. Lobban, *The Common Law and English Jurisprudence*, 6–7.

12. Simpson, "The Common Law and Legal Theory," 99. On the limited place of royal statute and acts of Parliament within common-law theory, see Postema, *Bentham and the Common Law Tradition*, 14–27.

13. While statutory elements had long been central to German jurisprudence through the influence of Justinian's code, Savigny introduces into German jurisprudence elements that had been far more dominant in the English legal tradition. See Crosby, *Making of a German Constitution*, 76; Cotterrell, *Politics of Jurisprudence*, 37–41.

14. Simpson, "The Common Law and Legal Theory," 98.

15. Weiss, "The Enchantment of Codification," 467. Under the seminal influence of H. L. A. Hart's *The Concept of Law* (1961), modern jurisprudence generally seeks a balance between the two poles.

The first written Greek laws date to the middle of the seventh century BCE, and proliferate at just the period when Greek city-states were in a process of state-formation, and developing more formal political systems.[16] Law codes in the late Archaic period were composed, then, under circumstances similar to those that led to the codification of law in Europe as nation-states formed in the late nineteenth century. Raymond Westbrook notes that later, in the Hellenistic and Roman periods, the citation of laws by judges proliferated. He observes that, as in modern statutory jurisprudence, the words of these ancient texts served as the ultimate reference point for the meaning of law: what is not in the text is not regarded as law.[17]

This stands in sharp contrast to the evidence garnered concerning the law collections of the ancient Near East. The Laws of Hammurabi (LH) are the best attested of the group, and observations about LH stand for the rest. From the discovery of the stele at Susa in 1901, scholars assumed that LH was the law code of ancient Mesopotamia. The subsequent discovery of more than fifty fragments of LH spanning a period of more than 1500 years strengthened this contention.[18] These fragments revealed virtually no editing of content over that time, suggesting that LH had attained canonical status and was unrivaled as the source of law.

Since the latter half of the twentieth century, however, scholars have backed away from the characterization of LH as a statutory code. Although wild fluctuations of inflation and deflation were well-known throughout the ancient Near East, the fines that LH mandates for various offenses remain unchanged across the 1500-year epigraphic record. More telling is the absence of any mention of some significant areas of day-to-day life in LH. The omission of stipulations relating to inheritance, for instance, is inexplicable if LH was indeed the binding law code of a culture. Even more telling is the absence of corroborating evidence from the archaeological record. Archaeologists have discovered copies of LH only in royal archives, but never at the sites of local courts, and never together with the literally thousands of court dockets that have come to light from Mesopotamia.

16. Rosalind Thomas, "Writing, Law and Written Law," in Michael Gagarin and David Cohen, eds., *The Cambridge Companion to Ancient Greek Law* (Cambridge: Cambridge University Press, 2005), 42.

17. Raymond Westbrook, "Introduction," in Raymond Westbrook and Gary Beckman, eds., *A History of Ancient Near Eastern Law* (Leiden: Brill, 2003), 19. For examples of the citation process at work in these texts see Raymond Westbrook, "Cuneiform Law Codes and the Origins of Legislation," *ZA* 79 (1990): 214 n. 47.

18. For an overview of the reception history of LH in Mesopotamian sources, see Victor Avigdor Hurowitz, "What was Codex Hammurabi, and What Did It Become?," *Maarav* 18:1–2 (2011): 89–100.

Moreover, not one of these dockets ever refers to or cites LH as a source of law. In fact, not a single court docket from anywhere in the ancient Near East ever refers to any other law collection, either. The practice of citation is strikingly absent from the record. Finally, and most crucially, many court dockets from the period record proceedings of cases whose remedy LH addresses. Nonetheless, in many of these the judge rules counter to the remedy offered in LH.[19] These findings raise two enduring and interrelated questions: if law collections such as LH did not contain the law, where could the law be found? And if these compositions were not legal codes, what was the nature of these texts?

Raymond Westbrook's analysis is now the consensus: the bulk of law in Mesopotamia was customary law.[20] A judge would determine the law at the moment of adjudication by drawing on an extensive reservoir of custom and accepted norms. It would continually vary from locale to locale. One could not point to an accepted text of the law—neither LH, nor any other text, for that matter—as the final word on what the law was or prescriptively should be. Indeed, the association of "law" with written, codified law is an anachronistic imposition of our own culture.[21] It is no surprise, therefore, that neither Mesopotamian, nor Egyptian, nor Hittite cultures know of a word equivalent to the Greek words for written law, *thesmos*, and later, *nomos*.[22]

The law collections, instead, are anthologies of judgments—snapshots of decisions rendered by judges, or perhaps even by the king himself.[23] The collections

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19. F. R. Kraus, "Ein zentrales Problem des altmesopotamischen Rechtes: Was ist der Codex Hammu-rabi?," *Geneva* 8 (1960): 283–96; Jean Bottéro, "The 'Code' of Hammurabi," in Bottéro, *Mesopotamia: Writing, Reasoning, and the Gods*, trans. Z. Bahrani and M. Van De Mieroop (Chicago: University of Chicago Press, 1992), 156–84; Martha T. Roth, "The Law Collection of King Hammurabi: Toward an Understanding of Codification and Text," in E. Lévy, ed., *La Codification des Lois dans L'antiquité: Actes du Colloque de Strasbourg 27–29 novembre 1997*, Université Marc Bloch de Strasbourg; Travaux du Dentre de Recherche sur le Proch-Orient et la Grèce-Antiques 16 (Paris: De Boccard, 2000), 9–31.

20. Westbrook, "Introduction," 21.

21. Meir Malul, *Society, Law and Custom in the Land of Israel in Biblical Times and in the Ancient Near Eastern Cultures* (Ramat Gan: Bar Ilan University Press, 2006 [Hebrew]), 12.

22. For Mesopotamian culture, see Bottéro, "The 'Code' of Hammurabi," 179; for Hittite culture see Harry Hoffner, *The Laws of the Hittites: A Critical Edition* (Documenta et Monumenta Orientis Antiqui 23; Leiden: Brill, 1997), 1; for Egypt see Russ VerSteeg, *Law in Ancient Egypt* (Durham: Carolina Academic Press, 2002), 3–14. The same is true in Hindu culture. The rich vocabulary of Sanskrit does not know of a term parallel to our word "law"—i.e., a set of rules imperatively imposed in a given locale and period of time. See Robert Lingat, *The Classical Law of India*, trans. J. Duncan M. Derrett (Berkeley: University of California Press, 1973), xii. On Greek terms for law as written code, see Thomas, "Writing, Law and Written Law," 51.

23. Westbrook, "Introduction," 21.

were a model of justice meant to inspire; a treatise, with examples on the exercise of judicial power.[24] They were records of *precedent*, but not of *legislation*.[25] The domain of these texts was the world of the court-scribe, where they instilled a unified legal vision. This assessment of ancient Near Eastern law correlates with observations by Sir Henry Maine about premodern law systems in his seminal survey, *Ancient Law*:

> It is curious that, the farther we penetrate into the primitive history of thought, the farther we find ourselves from a conception of law which at all resembles a compound of the elements which Bentham determined [author's note: i.e., codified law]. It is certain that, in the infancy of mankind, no sort of legislature, not even a distinct author of law, is contemplated or conceived of. Law has scarcely reached the footing of custom; it is rather a habit . . . The only authoritative statement of right and wrong is a judicial sentence after the facts, not one presupposing a law which has been violated, but one which is breathed for the first time by a higher power into the judge's mind at the moment of adjudication.[26]

Common-law sensibilities about law and legal texts complement a range of scholarly observations concerning biblical law. Collections of apodictic and casuistic clauses in the Pentateuch appear to modern readers as codified law. As scholars have noted, though, the Bible nowhere instructs judges to consult written sources.[27] Narratives of adjudication, such as the trial of Solomon (1 Kgs 3), likewise lack references to written sources of law.[28] No one collection of laws, nor even all of the corpora taken together, display a striving to provide a comprehensive set of rules to be applied in judicial cases.[29] Biblical laws often bear

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24. Bottéro, "The 'Code' of Hammurabi," 167.

25. Westbrook, "Cuneiform Law Codes," 203.

26. Henry Summer Maine, *Ancient Law: Its Connection with the Early History of Society, and Its Relation to Modern Ideas* (New York: Henry Holt, 1954), 5. See discussion at Cotterrell, *Politics of Jurisprudence*, 40.

27. Cf. Exod 18:13–26; Deut 1:16–17; 16:19–20; 2 Chr 19:4–7.

28. Bernard S. Jackson, *Wisdom-laws*, 31; Dale Patrick, *Old Testament Law* (Atlanta: Knox Press, 1985), 191, 193–98.

29. Patrick, *Old Testament Law*, 198. Even in Ezra-Nehemiah, law is taught and interpreted, but does not form the source of adjudication. Rather, Torah is to be followed as a religious duty, not sanctioned by courts and enforcers. See Jackson, *Wisdom-laws*, 116; and Michael Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford: Clarendon Press, 1985), 35–36. See on this

motive clauses that do not address judges, but address the Israelite nation as a moral agent.[30]

Legal vs. Non-Legal Genres: A False Dichotomy?

The non-statutory nature of biblical law sheds light on an important—if mistaken—dichotomy prevalent in much discussion of biblical law. One long-standing scholarly opinion maintains that the law collections of the Pentateuch present the law that was authoritative in ancient Israel and Judah, or that the authors of the codes intended their compilations to achieve legal authority.[31] A dichotomy implicitly arises between the authoritative standing of the law collections as codes, and the implied lack of legal authority of other genres, such as narrative. However, the record of early modern common-law jurisprudence complicates such an easy dichotomy.

Consider the oeuvre of Jacob Grimm (1785–1863). Grimm is best known today for the collaborative effort with his brother that produced the anthology of German folk tales *Kinder und Hausmärchen* in 1812. Yet Grimm was also one of the leading jurists of his day. In fact, his legal writings are intimately related to his work as a folklorist. Grimm was the foremost student of Friedrich Carl von Savigny, the founder of the historical school of German jurisprudence. Savigny believed law must emanate from the mores of the people. He initiated a vast effort to recover texts and traditions that would reflect the values and principles of German culture. The Grimm brothers' interest in German folklore stemmed from their conviction that those specimens of culture contained the remnants of German law and liberties. Judges should adjudicate on the basis of a range of customary law sources, including maxims, mythology, folklore, poetry, and the like. Grimm actually derived specific property laws from some of the tales found in his collection.[32]

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extensively Michael LeFebvre, *Collections, Codes, and Torah: The Re-characterization of Israel's Written Law* (LHBOTS 451; New York: T & T Clark, 2006). This contrasts with the nature of the earliest Greek laws, which show an overwhelming preoccupation with setting penalties, with specifying the officials responsible for dealing with misdemeanors, and with checking up on those officials. See Thomas, "Writing, Law and Written Law," 44. Likewise, the Gortyn code (fifth century BCE) is remarkable for its immense detail and the complexity of its laws covering many possible eventualities in areas of life such as inheritance, adoption, and heiresses. See ibid., 48.

30. Patrick, *Old Testament Law*, 198.

31. See an overview of these opinions in Bruce Wells, "What is Biblical Law? A Look at Pentateuchal Rules and Near Eastern Practice," *CBQ* 70, no. 2 (2008): 226–28.

32. On Grimm and the historical school see Crosby, *The Making of a German Constitution*, 110–14.

Within such a legal culture, the dichotomy between "legal" materials and "narrative" or "folk" genres begs nuance. Maxims and folk tales are potentially "legal" materials, no less than judicial precedents. In a culture where there is no statutory law, and instead jurists probe the sources of their cultural tradition and adjudicate within that spirit, all specimens of culture become potentially the bearers of legal instruction. Nor was this phenomenon limited to German jurisprudence. England, the home of the common-law tradition, displayed the same propensity. In the first half of the seventeenth century (a critical period for common-law development), maxims were the essential core of the common law, and were woven into the fabric of English life.[33]

Considering that our modern dichotomy between "legal" and "non-legal" materials is far from universal, we should not assume that the Pentateuch's law collections alone served as authoritative law, or were intended to serve as such. To claim so is to impose a dichotomy: what is written in the collections is legal—which is to say *statutory*—and what is not written in those codes is merely hortatory, sermonic, historical, or narrative. Instead, we ought to think of law in the Bible and other genres of biblical writing in terms that reflect a common-law culture. The law collections of the Pentateuch, like the law collections of the ancient Near East, were prototypical compendia of legal and ethical norms, rather than statutory codes.[34] Their inclusion in the Pentateuch served to publicize digests of the divine requirements for "justice and righteousness."[35] One could not point to *the* law. Rather, the totality of these texts—"narrative" as well as "legal"—were the resources from which future norms could be worked out. This unwritten law was woven into the fabric of society, and enunciated in the course of judicial deliberation.[36]

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33. Cotterrell, *Politics of Jurisprudence*, 24; Lobban, *The Common Law and English Jurisprudence*, 6.

34. See, on a related note, Bernard Jackson, "Models in Legal History: The Case of Biblical Law," *Journal of Law and Religion* 18, no. 1 (2003): 5. Cf. Bernard Jackson, "Modelling Biblical Law: The Covenant Code," *Chicago Kent Law Review* 70, no. 4 (1995): 1761. David Wright proposes that the casuistic and apodictic clauses of the Covenant Code were composed together with some of the narrative material found in the Exodus continuum—see David Wright, *Inventing God's Laws: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* (New York: Oxford University Press, 2009), 322–45.

35. See Fishbane, *Biblical Interpretation in Ancient Israel*, 95; Jackson, *Wisdom-laws*, 49; Patrick, *Old Testament Law*, 189, 203; Malul, *Society, Law and Custom*, 22.

36. Patrick, *Old Testament Law*, 198.

A Return to the Early Critics?

I return to my opening observation that the early critics of the Pentateuch seemed to have taken no notice of what later scholars would identify as incompatible inconsistencies within biblical law. There is good reason why these critics did not comment on these seeming conflicts or, in the case of de Wette, didn't perceive conflict at all: they lived and wrote before there was a common conception of statutory law. The Germany of the eighteenth and early nineteenth centuries that was home to Eichhorn, deWette, and Ewald was a common-law culture where Savigny's historical jurisprudence reigned supreme. It was only in the mid-nineteenth century that intellectual currents began to change, and radically so. The year 1848 witnessed revolutions calling for a large German nation-state. As noted earlier, there is a direct correlation in modern societies between the rise of the nation-state and the drive for codification of a statutory code. The first drafts of a German statutory code were composed in 1865; Germany united under Bismarck in 1871. It is no coincidence then, that it was in 1866 that Karl Heinrich Graf would emerge as the first critic to focus study on law collections, claiming that there was a large corpus of priestly legal material that stood in contrast to a large corpus of Deuteronomic legal material. Influenced by Graf's magnum opus, *Die geschichtlichen Bücher des Alten Testaments*, Wellhausen enthusiastically adopted his approach, and Graf's implicit view of the law collections of the Pentateuch as statutory codes grew in acceptance as the very notion of statutory codes became rooted in the cultures of the modern nation states of Europe. Graf, then, is the father of the modern study of biblical law and its godfathers are the English and German legal theorists who gave us the notion of the statutory code. To view biblical law, then, as common law is not to reject the tradition of critical thought. Rather, it is to return to a criticism carried out when notions of what law is, and how legal texts function, were quite different from ours today. By recovering the common-law tradition of jurisprudence as a lens into the world of biblical law, we are reminded how the best criticism is often that which is leavened with the sensitivities of premodern ways of thinking.

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The Misapplication of "Strict Construction" and the Semblance of Contradiction

THE MODERN NOTION of statutory jurisprudence mandates that judges must adhere to the exact words of the code, because the code, by definition, is autonomous and exhaustive. The law is a finite, complete system, and only what is written in the code is the law. Therefore, the jurist must pay close attention to the wording of the text. This hermeneutic, sometimes referred to as the jurisprudence of *strict construction*, has had a profound impact on the comparative study of the Pentateuch's law collections. Negative arguments from silence are commonplace; a rule present in one code but absent from a second is proof positive that the provision was absent from that second legal system, or even condemned by it.[1] The late Raymond Westbrook was notable in the exception he took to this approach to reading biblical law. He observed that the problems discussed by the law collections of the ancient Near East were multifaceted, and that it was unusual for a single code to cover every aspect of a given issue. Rather, each code attended only to the details of a case as deemed necessary to a narrow meditation on a particular issue.[2] In this chapter, I show how discussions concerning the inapplicability of strict construction in the understanding of ancient Near Eastern law can illuminate our grasp of seemingly contradictory passages of biblical law.

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1. Raymond Westbrook, *Studies in Biblical and Cuneiform Law* (CahRB 26; Paris: J. Gabalda, 1988), 5.

2. Ibid., 6.

Laws of Eshnunna 25–29

Barry L. Eichler draws our attention to a case that appears in a number of the ancient law collections[3]: a married man has gone missing. His wife remarries legitimately, but then the first husband returns. What shall be the remedy? Consider the relationship between the following three prescriptions:

> Laws of Eshnunna (LE) 29: If a man should be captured or abducted during a raiding expedition or while on patrol (?), even should he reside in a foreign land for a long time, should someone else marry his wife and even should she bear a child, whenever he returns he shall take back his wife.[4]

> Laws of Hammurabi (LH) 135: If a man should be captured and there are not sufficient provisions in his house, before his return his wife enters another's house and bears children, and afterwards her husband returns and gets back to his city, that woman shall return to her first husband; *the children shall inherit from their father.*[5]

> Middle Assyrian Laws (MAL) A 45: If a woman is given in marriage and the enemy takes her husband prisoner . . . she shall allow two years to pass, and then she may reside with the husband of her own choice . . . if later the lost husband should return to the country, he shall take back his wife who married outside of the family; *he shall have no claim to the sons she bore to her later husband, it is her later husband who shall take them.*[6]

LE was composed some 150 years prior to LH, and therefore, scholars widely assume that the author of LH was familiar with LE and adapted some of the earlier collection's laws, particularly in the area of marriage.[7] Eichler draws our attention to the final clause in the law from LH, concerning the custody of the children from the second marriage, an issue which LE 29 fails to address. A hermeneutic of

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3. Barry L. Eichler, "Literary Structure in the Laws of Eshnunna," in Francesca Rochberg-Halton, ed., *Language, Literature, and History: Philological and Historical Studies Presented to Erica Reiner* (New Haven, CT: American Oriental Society, 1987), 71–84.

4. Translation taken from Martha Roth, *Law Collections from Mesopotamia and Asia Minor* (Atlanta: Scholars Press, 1997), 63.

5. Translation taken from ibid., 107.

6. Translation taken from ibid., 170–71.

7. See Barry Eichler, "Examples of Restatement in the Laws of Hammurabi," in Nili Sacher Fox et al., eds., *Mishneh Todah: Studies in Deuteronomy and Its Cultural Environment in Honor or Jeffrey H. Tigay* (Winona Lake, IN: Eisenbrauns, 2009), 356–400.

strict construction would dictate that LE has nothing to say about the custody of the child. If its author did have an opinion he would have expressed it, as did the author of LH 135 and the later author of MAL A 45.

Eichler, however, demonstrates that this conclusion is unwarranted. He suggests that LE brings together a series of laws to form a treatment of a particular subject—as do ancient Near Eastern law collections generally. Laws, he claims, were not drafted in order to clarify exhaustive remedies for every facet of the cases involved. Rather, the laws focus solely on aspects of the case that elucidate the larger concept discussed by the concatenation of several laws.[8] Eichler states that LE 29 must be assessed in the context of the discussion of LE 25–29. These laws probe aspects of the husband's rights in marriage: the recompense the groom receives if the bride's father marries her off to another man; the punishment for a man who rapes a betrothed woman; the consequences for a man who marries a woman without concluding a contract with the bride's parents; the consequences of her adultery once they are legally married; and finally §29, a man's right to retake his wife if he she has remarried in his absence.

Eichler argues that although LE 29 explicitly considers that the woman may bear children to her second husband, it addresses solely the question of the woman's marital status now that her first husband has returned, because these laws of LE are concerned with a husband's rights over his wife as obtained through marriage. The question of the custody of the children is extraneous to the question of her marital status, and hence not discussed. The inclusion of the children from the second husband in the framing of the law serves solely to underscore the strength of the original marriage bond, and the need for annulment of the new marital relationship.[9] Inasmuch as LE was not composed as statutory law, it is unwarranted, says Eichler, to conclude that the author of LE had no thoughts on the subject.[10] Eichler draws similar attention to LE 28:

> If he concludes the contract and the nuptial feast for(?) her father and mother and he marries her, she is indeed a wife; the day she is seized in the lap of another man, she shall die, she will not live.[11]

Although the section discusses adultery, it addresses the woman's punishment alone, because §28 as a whole is a meditation on the definition of a "legal wife."

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8. Ibid., 369.

9. Eichler, "Examples of Restatement," 376.

10. Eichler, "Literary Structure in the Laws of Eshnunna," 75–81.

11. Translated in Roth, *Law Collections*, 63.

The law does not seek to address the total adjudication of an adulterous circumstance, but rather it underscores the exclusive right of a husband over his legal wife.[12]

Conversely, we may add a corollary concerning the drafting of LH 135. According to some scholars, the author of LH perceived a legal lacuna in LE 29—custody of the children from the second marriage—which he sought to remedy.[13] Eichler's logic of a vertical reading of laws—whereby a series of laws constitutes a meditation on various aspects of a single issue—holds here as well, and explains why LH 135 addresses the fate of the children, whereas LE 29 did not. LH 133–135 present us with a sustained treatment concerning the marriage rights of a man taken captive in battle. When it raises the difficult case of a man who returns home to discover that his wife has legitimately remarried in his absence, it explores the case more fully, and rules that the children from the second husband will inherit only from him, but not from the first husband. The ruling pertains directly to the interest of the series as a whole: namely, the marriage rights of a man taken captive. In this series, as well, we can see how the laws relate only to the issue at hand, and do not exhaustively cover issues outside of the central topic of the series. Consider LH 133:

> If a man should be captured and there are sufficient provisions in his house, his wife [. . . , she will not] enter [another's house]. If that woman does not keep herself chaste but enters another's house, they shall charge and convict that woman and cast her into the water.[14]

The adulterous encounter here involves, of course, two offenders. The law, however, refers only to the punishment meted out to the wife. As his lawful wife, the woman owes an allegiance to her husband that is distinct from the civic duty of a man to respect the marital bond of another man. The law focuses exclusively on her betrayal in light of the provisions that she enjoyed from his estate in his absence.

The implications for a hermeneutics of biblical law from this examination are enormous. To be sure, the law collections of the Pentateuch are witness to

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12. Ibid., 73.

13. As per Eichler, "Examples of Restatement," 378. Joseph Fleishman argues that it is implicit in LE 29 that the children of the second husband shall remain with him. See Joseph Fleishman, *Parent and Child in Ancient Near East and the Bible* (Jerusalem: Magnes, 1999), 110–14 (Hebrew).

14. Translated in Roth, *Law Collections*, 106.

processes of legal revision. Many laws do change from collection to collection, and are exclusive of one another, such as the differing prescriptions for the paschal sacrifice in Exodus 12 and Deuteronomy 16. We should reject, however, the reflexive impulse to interpret restated laws as mutually exclusive at every point where there is no congruence between them. Within statutory jurisprudence, textual silence in a code speaks with a full voice. Strict construction, however, should not automatically guide the interpretation of a text whose culture has no knowledge of statutory law. When we discover that one law corpus in the Torah contains provisions concerning a certain issue that are not mentioned in a parallel legal passage, this does not prove that the parallel passage rejects the provision it has omitted. I proceed now to demonstrate how this insight can illuminate our understanding of the relationship between the various iterations of the laws of manumission.

The Biblical Laws of Manumission

The laws of manumission of servants are found in three texts: Exod 21:2–6, Lev 25:39–46, and Deut 15:12–18. While the sections in both Exodus and Deuteronomy speak of six years of service and release in the seventh, the passage in the so-called Holiness Code of Leviticus 25 speaks only of release in the Jubilee year. Scholars have long debated the chronological priority of the three codes, although nearly all maintain that the author of the passage in Leviticus was familiar with the formulation of the law in Exodus, and reuses language that he found there.[15] Here, I would like to focus on a different question: what is the stance of the author of the law of Leviticus 25 vis-à-vis the law in Exodus? Does he see his law as complementing the law in Exodus, or does he see his law as superseding it? Scholars have long been divided on this issue.[16] I draw attention here to

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15. For the view that Leviticus 25 revises Deuteronomy 15, see Bernard M. Levinson, "The Manumission of Hermeneutics: The Slave-laws of the Pentateuch as a Challenge to Contemporary Pentateuchal Theory," in André Lemaire, ed., *Congress Volume, Leiden, 2004* (VTSup 109; Leiden: Brill, 2006), 281–324; and Jeffrey Stackert, *Rewriting the Torah: Literary Revision in Deuteronomy and the Holiness Legislation* (Tübingen: Mohr Siebeck, 2007), 141–64. For the view that Deuteronomy 15 is dependent on Leviticus 25, see Sara Japhet, "The Relationship between the Legal Corpora in the Pentateuch in Light of Manumission Laws," in Sara Japhet, ed., *Studies in the Bible* (Scripta Hierosolymitana 31; Jerusalem: Magnes Press, 1986), 63–89; Gregory C. Chirichigno, *Debt-Slavery in Israel and the Ancient Near East* (JSOTSup, 141; Sheffield: JSOT Press, 1993), 329.

16. For the view that the laws are complementary, see Jan Joosten, *People and Land in the Holiness Code: An Exegetical Study of the Ideational Framework of the Law in Leviticus 17-26* (VTSup 67; Leiden: Brill, 1996), 159, n. 85; Chirichigno, *Debt-Slavery in Israel*, 342–43. For

the way that statutory presuppositions about biblical law have influenced—nay, corrupted—proper interpretation of the issue.

For several expositors, the fact that Leviticus 25 makes no mention of release in the seventh year is prima facie evidence that this author rejects the notion of any release prior to the Jubilee. Scholars will frame the issue in terms that borrow from the lexicon of statutory jurisprudence. S. R. Driver writes that the author of Leviticus 25 sought to supersede the law in Exodus 21, as "the legislator of Leviticus betrays little . . . consciousness of the law of Exodus."[17] For Driver, the author of Leviticus 25 is a *legislator*, which is to say, a jurist who composes statutory law in a complete and exhaustive fashion. What does not appear is outside the law; for Driver, manumission in the seventh year is nowhere mentioned here, and is thus outside of the law for the author of this passage. Jacob Milgrom likewise sees the so-called Holiness Code as legislation and wonders how the authors of Leviticus 25, "the repository of such idealistic, humanitarian legislation as the sabbatical and jubilee, have devised a law that postpones the manumission of slaves from seven years (Exodus and Deuteronomy) to fifty years."[18] For Milgrom, the law of release in the seventh year is nowhere mentioned in Leviticus 25, and thus does not exist for this jurist. Even without using the language of statutory jurisprudence, other expositors clearly espouse the same underlying hermeneutic. Thus, one scholar objects to seeing the law in Leviticus as complementary of the law in Exodus, as this would require us to read both Exodus 21 and Leviticus 25 to receive the Torah's full guidance on the issue. To do so, in his words, is to "treat the Bible as a kind of jigsaw puzzle."[19] Implicit here is the statutory presupposition that legal drafting must be exhaustive. All cases dealing with manumission should be brought together; if a later source fails to mention a law noted elsewhere, it must be that this later source is either unaware of the provisions found elsewhere, or otherwise disagrees with them.

The lessons, though, from LE 25–29 and LH 133–135 belie the validity of these suppositions. Both LE 28 and LH 133 addressed a case of adultery, and in each referred only to the punishment to be meted out to the adulterous woman. If these provisions are read as statutory law, the necessary conclusion is that the

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the view that the laws are incompatible, see Levinson, "The Manumission of Hermeneutics," 306–16; Stackert, *Rewriting the Torah*, 153–61.

17. S. R. Driver, *A Critical and Exegetical Commentary on Deuteronomy* (New York: Scribner, 1895), 185.

18. Jacob Milgrom, *Leviticus* (AB 3B; New York: Doubelday, 1991), 2251.

19. Henry J. Ellison, "'The Hebrew Slave,' A Study in Early Israelite Society," *Evangelical Quarterly* 45 (1973): 30.

adulterous man should go free; his treatment is entirely ignored in each. Surely, however, it cannot be that the drafters of these laws believed that the adulterous man should escape all punishment. Rather, as we demonstrated following Eichler, ancient Near Eastern law collections cannot be read in statutory fashion. Instead, they must be read "vertically," to use Eichler's term,[20] which is to say that consecutive laws are a meditation on a very specific aspect common to those laws. Therefore, the laws relate only to the central theme under discussion, and not to all ramifications of the case. LE 25–29 expound on marriage rights in general; LH 133–135 on the rights of a man who returns home from captivity. The punishments meted out in LE 28 and LH 133, respectively, are only those that pertain to the central theme at hand in each. The idea that a central theme determines the remedies that will be expressed in the law was central to Eichler's reading of LE 29: no mention was made of the children of the second husband when a captive man returns home, because this string of laws in LE pertains solely to a husband's marriage rights concerning his wife. LE 29, therefore, adjudicates only the fate of the wife, without attending to the question of the fate of the offspring from the second man.

Scholars who read the manumission passages of Exodus 21 and Leviticus 25 according to the statutory jurisprudence of strict construction typically assume that both passages are addressing the same case, or "undifferentiated Israelites," as Milgrom puts it.[21] A more careful reading, however, reveals important differences in the cases delineated by each. The passage in Exodus discusses three cases: a) where a man entered servitude unmarried, and remained such throughout the period of servitude (21:3a); b) where he entered servitude married (21:3b); and c) where he entered servitude unmarried, and was provided a wife by his owner, who then gave birth to children with him (21:4). Exodus 21 does not explicitly address the case where a man enters servitude married and with children. By contrast, Leviticus 25:39–42 discusses *only* the case where a man with children enters a period of debt-service (cf. 25:41a, "he shall go out, he and his sons"; cf. 25:54).[22] Were the author of Leviticus 25 writing in rejection of the law of Exodus 21, we would expect him to either draft his case in a fashion that truly refers to Israelites in an undifferentiated way, and covers all Israelites, or, alternatively, to address the very same cases as raised in Exodus, and offer an alternative remedy for them.

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20. Eichler, "Examples of Restatement," 369.

21. Milgrom, *Leviticus*, 2253. See likewise Stackert's contention that both Deut 15 and Lev 25 refer to "an impoverished Israelite who sells himself to another Israelite" (143).

22. As first argued by Chirichigno, *Debt Slavery*, 335–36.

The fact that Leviticus 25 addresses the one case of marital status not mentioned in Exodus 21 cannot be ignored.

Adrian Schenker has offered an alternative reading of Leviticus 25 that is both sensitive to the distinct cases raised in Exodus and Leviticus, and also employs the hermeneutic suggested by Eichler: the passage must be assessed in light of the thematic focus of the laws it cites. It is not an exhaustive treatment of the cases it raises, but rather, seeks to elucidate one particular theme.[23] In Leviticus 25, this theme is the Jubilee year. The chapter's cases form a legal novella. Verse 25:10 introduces the main thematic and lexical elements of the Jubilee: "you shall return each man unto his possession (אחזה), and each man unto his family" (משפחה). These key words are refrains throughout the rest of the chapter.[24] The sections of the chapter depict the growing desperation of an impoverished Israelite family, struggling with debt. This family first tries to emerge from debt by selling off its land assets (25:25–34). If this is insufficient, the family takes out loans (25:35–38), migrating in order to attain the loan. The former landowner is now a "stranger and a sojourner" (גר ותושב) (25:35). If this, too, is insufficient, the paterfamilias sells himself into a labor agreement, whereby he becomes a hired worker (25:40), receiving housing and sustenance for his family.[25] The trajectory suggests that it is worse to be a hired worker under such an agreement, than an itinerant migrant within the land of Israel.[26] At the nadir of this financial collapse, the family is sold to a non-Israelite owner (25:47–55). With its distinct narrative of the financial ruin of a landowner with sons, Leviticus 25:39–41 thus neither changes nor replaces the laws of Exodus 21:2–6, but instead complements them. This landowner does not go "free" (חפשי) as does the non-landowning servant of Exod 21:2, but rather he "returns (שב) to his family and to his estate he shall return (ישוב) (25:40)."[27] Were the head of the household simply to go free after a designated amount of time, there would be no remedy for his destitution—for he has already sold his land. The head of the household can only regain economic

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23. Adrian Schenker, "The Biblical Legislation on the Release of Slaves: The Road From Exodus To Leviticus," *JSOT* 78 (1998): 23–41.

24. Ibid., 25.

25. Ibid., 27–28, 32.

26. Ibid., 32.

27. Christopher J. H. Wright, *God's People in God's Land: Family, Land and Property in the Old Testament* (Grand Rapids: Eerdmans, 1990), 32. For further discussion on the complementarity of the servant laws in Exodus 21 and Leviticus 25, see Benjamin Kilchör, *Mosetora und Jahwetora: Das Verhältnis von Deuteronomium 12-26 zu Exodus, Levitikus und Numeri* (BZABR 21; Wiesbaden: Harrassowitz, 2015), 141–47.

stability by regaining the use of his land. This is the remedy of Leviticus 25:41: the paterfamilias receives sustenance as a hired worker until the Jubilee year, at which time he leaves the labor agreement and returns to his estate.[28] A vertical reading of these laws reveals that its consistent focus is upon the land, and return to the land, and thus there is no place in this chapter for attention to the laws of the non-landowning Israelite or to the maidservant—because neither is a landowner.[29]

Some expositors who maintain that the laws in Exodus 21 and Leviticus 25 refer to identical, unindividuated Israelites claim that verse 25:42 seems to preclude the entire presupposition of the law section of Exod 21:2–6. The Exodus law repeatedly refers to the servant as an עבד—a slave (21:2, 5). Leviticus 25:42 declares categorically that "they are my servants, whom I have taken out of Egypt; they shall not be sold as bondsmen." For these scholars, the fact that Israel is considered here in this passage "God's servants" is a direct rejection of the ascription of the term עבד to Israelites as found in Exod 21:2, 5.

However, a closer look at the language of Lev 25:39–46 reveals that that verse 42 rejects not the law of Exodus, but rather stands in binary opposition between the law of the Israelite landowner, who becomes a hired worker, and the non-Israelite bondsman, who becomes a servant for his Israelite master in verses 44–46.

In Table 6.1 we see that Lev 25:39–46 forms two parallel panels. Each begins by establishing the ethnicity of the servant who is "with you" (לך). Verse 40 emphatically declares that the Israelite in question shall not formally be a slave (עבד) at all, but rather a hired worker. Verse 44b matches this, employing the demonstrative pronoun "from *them*"—referring to the non-Israelites delineated in verse 44a. The matched parallels continue in verses 41 and 45a, respectively. Verse 41 rules that adult servants and their children shall return to their families (משפחה) and to the possession (אחזה) of their fathers. The key words משפחה and אחזה are given new valence in the corresponding verse, 45a. This verse states that non-Israelite servants and their families (משפחה) may become possessions (אחזה) for the Israelite in perpetuity. Moving forward, verse 42 states that Israelites may not be *sold* as slaves (ממכרת עבד), the meaning of which becomes clear when contrasted with the corresponding verse in the panel, verse 45b: to be "sold as a slave" means to be sold in perpetuity, and this may only be done to *them*—בהם תעבדו. The matching panels conclude with the common injunction against ruling over Israelite brethren ruthlessly.

28. My thanks to Benjamin Kilchör for sharing with me this interpretation of the law.

29. Schenker, "The Biblical Legislation," 32.

Table 6.1 A Comparison of the Laws of the Israelite and Non-Israelite Servants in Lev 25:39–46

	Non-Israelite Servant Lev 25:44–46		Israelite Servant Lev 25:39–43	
Ethnic affiliation of the servant	(44) And as for your male and female slaves whom you may have— from the nations that are around you,	וְעַבְדְּךָ וַאֲמָתְךָ אֲשֶׁר יִהְיוּ-לָךְ מֵאֵת הַגּוֹיִם אֲשֶׁר סְבִיבֹתֵיכֶם	And if your brother *who* dwells by you becomes poor, and sells himself to you,	(39) וְכִי-יָמוּךְ אָחִיךָ עִמָּךְ וְנִמְכַּר-לָךְ
Nature of the service	from them you may buy male and female slaves.	מֵהֶם תִּקְנוּ עֶבֶד וְאָמָה.	you shall not compel him to serve as a slave. As a hired servant, as a sojourner he shall be with you; until the Year of Jubilee he shall serve you	לֹא-תַעֲבֹד בּוֹ עֲבֹדַת עָבֶד. (40) כְּשָׂכִיר כְּתוֹשָׁב יִהְיֶה עִמָּךְ עַד-שְׁנַת הַיֹּבֵל יַעֲבֹד עִמָּךְ.
Duration of service of families	(45) Moreover you may buy the children of the strangers who dwell among you, and their families who are with you, which they beget in your land; and they shall become your possession.	וְגַם מִבְּנֵי הַתּוֹשָׁבִים הַגָּרִים עִמָּכֶם מֵהֶם תִּקְנוּ וּמִמִּשְׁפַּחְתָּם אֲשֶׁר עִמָּכֶם אֲשֶׁר הוֹלִידוּ בְּאַרְצְכֶם וְהָיוּ לָכֶם לַאֲחֻזָּה.	And then he shall depart from you—he and his children with him—and shall return to his own family; to the possession of his fathers he shall return	(41) וְיָצָא מֵעִמָּךְ הוּא וּבָנָיו עִמּוֹ וְשָׁב אֶל-מִשְׁפַּחְתּוֹ וְאֶל-אֲחֻזַּת אֲבֹתָיו יָשׁוּב.
Who may serve in perpetuity	And you may take them as an inheritance for your children after you, to inherit as a possession; forever you shall enslave *them*.	וְהִתְנַחַלְתֶּם אֹתָם לִבְנֵיכֶם אַחֲרֵיכֶם לָרֶשֶׁת אֲחֻזָּה לְעֹלָם בָּהֶם תַּעֲבֹדוּ.	For they are My servants, whom I brought out of the land of Egypt; they shall not be sold as slaves	(42) כִּי-עֲבָדַי הֵם אֲשֶׁר-הוֹצֵאתִי אֹתָם מֵאֶרֶץ מִצְרָיִם לֹא יִמָּכְרוּ מִמְכֶּרֶת עָבֶד.
Cannot rule over brother ruthlessly	(46) But regarding your brethren, the children of Israel, you shall not rule over one another ruthlessly.	וּבְאַחֵיכֶם בְּנֵי-יִשְׂרָאֵל אִישׁ בְּאָחִיו לֹא-תִרְדֶּה בוֹ בְּפָרֶךְ.	You shall not rule over him ruthlessly, but you shall fear your God.	(43) לֹא-תִרְדֶּה בוֹ בְּפָרֶךְ וְיָרֵאתָ מֵאֱלֹהֶיךָ.

Bernard M. Levinson has astutely noted that the law in Leviticus 25:39–46 invokes language from the slave law of Exod 21:2–6.[30] That law opens with the phrase כי תקנה עבד עברי—"if you purchase a Hebrew slave." It concludes with the phrase, ועבדו לעלם—"he may serve him forever," a reference to the procedure for permanent indenture. Levinson notes that the Leviticus law invokes these terms concerning the non-Israelite servant. Lev 25:44 states that with regard to non-Israelites, מהם תקנו עבד ואמה—"from them you may purchase male and female slaves." Permanent indenture is reserved for such individuals, of whom Leviticus says (45b), לעלם בהם תעבדו—"forever you shall enslave them." For Levinson, the reapplication of these phrases is polemic, and serves to abrogate the earlier law of Exod 21:2–6. His conclusion, however, is unwarranted. Had the author of Leviticus wished to abrogate the law in Exodus—that a servant is released after six years of service—he would have done so by reconfiguring the words from the Exodus law (21:2) that speak of release in the seventh year—ובשביעית יצא לחפשי מעמך. Moreover, had this been his intention, the author of Leviticus 25 would have reworked the language of Exod 21:2–6 within his pericope that discusses *Israelite* service, that is, in verses 39–43. Instead, this jurist reworks only the language of open-ended service—ועבדו לעלם—within the context of non-Israelite slaves—לעלם בהם תעבדו (verse 46). Rather, it seems that by invoking the language of Exod 21:2–6, the author of Leviticus 25 wished to make a statement about open-ended servitude. While Exodus 21:2–6 allows a provision for open-ended Israelite servitude, it is clearly not a desideratum, even for that jurist. The later author of Leviticus 25 now endorses a commended option for open-ended servitude: as opposed to the undesired retention of the Israelite servant, this author calls upon Israelites to avail themselves of non-Israelite servants in perpetual indenture—לעלם בהם תעבדו—"forever, you shall enslave *them*." By this reading, the invocation of the clauses from Exod 21:2–6 serves to buttress the apposition between the law of the paterfamilias (verses 39–43) and the law of the non-Israelite servant (verses 44–46), as presented here.

This review of the scholarship concerning the laws of manumission in Exodus and Leviticus allows us to see how the hermeneutic of strict construction can corrupt the study of biblical law. Rather than respecting the distinct focus of each passage, scholars took as axiomatic that each was an exhaustive statement on the subject of manumission, and that the passages were of necessity exclusive of one another. However, just as a treatment of a subject in LE or LH respectively will always be limited and focus around a central theme, so too, the two law corpora in question here, took up the issue of manumission, each with its own focus.

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30. Levinson, "The Manumission of Hermeneutics," 306–16.

From here I move to the semblance of contradiction created within a string of laws when each is read independently with the hermeneutic of strict construction. Here, too, we will see how this issue has challenged the study of a section of Mesopotamian laws, and how the insights garnered from the proper interpretation of those laws can shed light on a passage of biblical law.

The Laws of Theft in LH §6 and §8

LH §6 and §8 have presented scholars with an interpretive crux since the code's discovery over a century ago, as the two laws seem to contradict one another. LH 6 is categorical in its prescription:

šumma awīlum makkūr ilim u ekallim išriq	If a man steals possessions belonging to the god or to the palace,
awīlum sû iddâk	that man shall be killed,
u ša šurqam ina qātišu imḫuru iddâk	and also he who received the stolen goods from him shall be killed.

LH 8 however prescribes a much more lenient punishment:

šumma awīlum lu alpam lu immeram lu imēram lu šaḫâm ulu elip-pam išriq	If a man steals an ox, a sheep, a donkey, a pig, or a boat-
šumma ša ilim šumma ša ekallim adi 30-šu inaddin	if it belongs either to the god or to the palace, he shall give thirtyfold;
šumma ša muškēnim adi 10-šu iriab	if it belongs to a commoner, he shall replace it tenfold;
šumma šarrāqānum ša nadānim la išu iddâk	if the thief does not have anything to give, he shall be killed.

Scholars have proposed two strategies to resolve this seeming contradiction. Some have suggested a strategy of harmonization, positing that the two laws refer to different categories of stolen possessions. Whereas LH 8 is explicit in that it addresses the theft of an ox, sheep, donkey, pig, or boat, LH 6 refers to *namkūru*, "property." Some have averred that in contradistinction to the prosaic items mentioned in LH 8, *namkūru* in LH 6 must refer to especially valuable items, such as gold and silver.[31] The difficulty here is that *namkūru* is found throughout LH, and

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31. See Paul Koschaker, *Rechtsvergleichende Studien zur Gesetzgebung Hammurapis* (Leipzig: Veit, 1917), 74; Pierre Cruveilhier, *Commentaire du Code d'Hammourabi* (Paris: Leroux,

at all times refers broadly to "possessions," or "estate," and not specifically items of great value.[32] A second approach proposes to resolve the tension between the laws diachronically, by seeing each as the product of a different school, place, or time.[33] However, this approach carries with it a number of other difficulties. Neither of these laws is found in any of the earlier law collections known to us. Furthermore, nowhere else in LH—or in any of the ancient Near Eastern law collections, for that matter—do we find two conflicting traditions of the same law preserved in a single law code, let alone so close to each other in sequence. For scholars who advance this diachronic approach, the presence of two traditions within the text of LH represents an anthological approach to the composition of the laws. Why, then, did the drafters of these collections choose not to preserve the variant iterations of any other laws? The problem is compounded when we consider the subject matter of LH 6 and 8. These are not laws that address petty theft, but rather, theft of possessions that belong to the king and to the temple. It is difficult to imagine Hammurabi's scribes reading him the laws and explaining to him that, concerning the crime of theft from his own property, there were two traditions. And, it is difficult to imagine Hammurabi countenancing a monetary payment for such theft, when another tradition had maintained that such an affront to the king warranted the death of the thief. Moreover, Hammurabi declares in the prologue to the laws that he is "the wise one . . . who has mastered all wisdom," and that he "provides just ways for the people of the land [in order to attain] appropriate behavior."[34] He further states in the epilogue that his "pronouncements are choice, and his ability unrivaled."[35] The presence of conflicting laws within the collection undermines these very claims, because they reveal an equivocal voice on the issue.

In their commentary to the Laws of Hammurabi, G.R. Driver and John C. Miles advocate a third approach: one that harmonizes the two laws, but

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1938), 48; Georges Boyer, "Les Articles 7 et 12 du Code de Hammurabi," in Boyer, *Mélanges d'Histoire du Droit Oriental* (Paris: Sirey, 1965), 16; David Heinrich von Müller, *Die Gesetze Hammurabis und ihr Verhältnis zur mosaischen Gesetzgebung sowie zu den 12 Tafeln* (Vienna, Verlag der Israel-Theol. Lehranstalt, 1903), 79; Raymond Westbrook, and Claus Wilcke, "The Liability of an Innocent Purchaser of Stolen Goods in Early Mesopotamian Law," *Archiv für Orientforschung* 25 (1974): 112 n. 7.

32. LH 165–67, 170, 171, 180–83, 191. See Bernard S. Jackson, "Principles and Cases: The Theft Laws of Hammurabi," in Jackson, *Essays in Jewish and Comparative Legal History* (Leiden: Brill, 1975), 72; cf. similarly *CAD* N, 231–33.

33. Müller, *Die Gesetze Hammurabis*, 84–5; Maurice Jastrow, "Older and Later Elements in the Code of Hammurapi," *JAOS* 36 (1916), 13; Jackson, "Principles and Cases," 73 n. 32.

34. Translations in Roth, *Law Collections*, 80–81.

35. Ibid., 134.

without stretching the simple meaning of the word *namkūru*, "possessions" in LH 6. They draw attention to the fact that stolen items in LH 8—ox, sheep, donkey, pig, or boat—are all commodities found outdoors. They hypothesize that the possessions alluded to in LH 6 through the word *namkūru* refer to items stolen from within closed quarters—in the bounds of the palace or the temple. They aver that items found within these precincts are sacred and their theft warrants death; items found outside of those precincts are profane, and thus their theft warrants only a monetary fine.[36] Bernard Jackson, however, has noted that LH 6 does not expressly state that the items stolen are indoors, and neither law explicitly mentions sacred or profane categories.[37]

Barry L. Eichler suggests an intriguing adaptation of the suggestion put forth by Driver and Miles. Following those expositors, Eichler notes that the items mentioned in LH 8 are found outside; moreover, they are often unfettered and unbound and can move freely at large. Yet, for Eichler, understanding of these laws can only be attained by attending to the syntax that the jurist employs in his drafting of each. In LH 6 the protasis contains both a direct object—the item stolen—and an indirect object—the injured party of the theft: "If a man steals possessions belonging to the god or to the palace." However, in LH 8 the protasis is constructed in such a way that the indirect object is not clarified until later in the sentence: "If a man steals an ox, a sheep, a donkey, a pig, or a boat" and only then is the indirect object explicated: "if it belongs either to the god or to the palace," etc. Put differently, the drafting of LH 8 could have more closely resembled the syntactic structure of LH 6: "If a man steals from a god or the palace an ox, a sheep, a donkey, a ping or a boat, he shall pay thirty-fold; if he steals one of these from a commoner, he shall pay ten-fold," etc. For Eichler, the shift in syntax between the laws, coupled with the specificity of items listed in LH 8, underscores the primary legal difference between LH §6 and §8: it is a question of *mens rea*. In LH 8, Eichler claims, the thief is not aware of the identity of the owner of the possession he steals at the moment of the theft. He has stolen an item that is unfettered, and outside of the limits of anyone's particular domicile. The ox, sheep, etc. could belong to anyone. The syntax of LH 8 underscores this. The perpetrator does not steal an ox, sheep, etc. *from* a god or a palace. He is unaware of the identity of the aggrieved party. If it turns out that the possession belonged to a god or the palace, then he must pay a hefty fine of thirty-fold restitution, etc. By contrast, the protasis of LH 6 includes the indirect object; it clearly explicates

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36. G. R. Driver and John C. Miles, *The Babylonian Laws* (2 vols.; Oxford: Clarendon Press, 1952), 1:81.

37. Jackson, "Principles and Cases," 71.

the identity of the aggrieved party. For Eichler, LH 6 speaks of a theft in which the thief takes something that clearly belongs to the god or the palace. The *mens rea* here is incalculably greater, and hence the penalty is death.[38]

Eichler's astute attention to the syntax of LH 8 is open to critique: why did the author of LH 6 not make explicit that he was addressing specifically items taken from within the precincts of the temple or palace? Here is where the notion of strict construction becomes an obstruction to proper understanding. Strictly and formally speaking, there is nothing in the language of LH 6 that would seem to limit its purview to items located within the palace or the temple. Surely, without LH 8, no one would think to ascribe such a limitation to LH 6. From the perspective of statutory composition, the drafting of LH 6 is deficient, as it should have made clear that it referred solely to items taken from within the palace or the temple.

However, it is an imposition of our own anachronistic jurisprudence to insist that LH 6 be read with the clarity of a modern statute. There is good reason to explain the somewhat ambiguous drafting of the law otherwise. LH 6 is the first law of a section of laws (§§ 6–14) that address theft. From an ideological standpoint, it is fitting that the very first law of theft addresses the most grievous form of larceny—that perpetrated deliberately against a god or against the king. The law is expressed in declarative language: "If a man steals possessions belonging to the god or to the palace, that man shall be killed." The point here is as much exhortative as it is juridical. We find a similar example of a hortatory statement that does not fully explicate the case in question in the opening law of the Laws of Ur-Nammu: "If a man commits a homicide, they shall kill that man."[39] The definition of "homicide" is not clarified here.

Indeed, there is no way to tell from the drafting of LH 6 that its juridical intent is to cover items located inside the palace and temple alone. In the first reading of the clause, it conveys a powerful hortatory message commensurate with its subject matter: the sanctity and stature of the king and of the god. Indeed, LH 6 and 8 are the only two laws in all of LH that address the king or the gods in any way. LH 6, then, functions on two levels. On its first reading, on its own, it is a hortative statement, espousing the statutes of the king and the god. When the audience then reads LH 8 two laws later, it is forced to reread the former, now in light of the latter. To steal from a god with a full *mens rea*, can only mean to steal from within the precincts of the palace or the temple. To have fully explicated that already in LH 6, however, would have detracted from the hortatory aim of the first of the laws of theft. Thus, it is a point that only becomes clear once the rest of the laws are read in succession. Read as statutory constructs, LH §6 and

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38. My thanks to Barry L. Eichler for relating this understanding to me in personal communication.

39. Translation from Roth, *Law Collections*, 17.

§8 contradict one another. However, read in accordance with the conventions of ancient Near Eastern legal texts, these laws reveal a subtle interplay between hortatory statement and juridical instruction.

Laws of Homicide in Exod 21:12–14

This approach to the tension between the drafting of LH §6 and §8 can illuminate a similar tension that we find in the homicide laws of Exod 21:12–14:

<div dir="rtl">

(12) He who fatally strikes a man shall be put to death | מכה איש ומת מות יומת

(13) If he did not do it by design, but it came about by an act of God, I will assign you a place to which he can flee. | ואשר לא צדה והאלהים אנה לידו ושמתי לך מקום אשר ינוס שמה

(14) When a man schemes against another to kill him treacherously, from my very alter you shall take him to be put to death. | וכי יזד איש על-רעהו להרגו בערמה מעם מזבחי תקחנו למות

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I focus here on the relationship between the opening participial provision in verse 12, and the two subsequent verses. Verse 12 seems categorical in its prescription, whereas verse 13 qualifies when a man may be killed for delivering a blow that killed another. Many expositors approach these laws using statutory assumptions. For these scholars, verse 12 is categorical and absolute: if the result of the blow is death, the penalty must be death. There are no qualifications. The provision, making no distinction of intent, represents an early stage of Israelite jurisprudence. For these scholars, later jurists with a more sophisticated and nuanced view brought differentiation to the issue, and this is represented in verses 13–14, which distinguish between deliberate and non-deliberate causes of death. The fact that the verses employ varying syntactic structures is proof positive that verse 12 once stood on its own as the entire statement on the issue, and was initially part of a series of participial provisions that encompassed what are now verses 12, and 15–17.[40]

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40. Eckart Otto, *Wandel der Rechtsbegründungen in der Gesellschaftsgeschichte des anitken Israel: Eine Rechtsgeschichte des "Bundesbuches" Ex XX 22-XXIII 13* (Leiden: Brill, 1988), 64; Albrecht Alt, "The Origins of Israelite Law," in Alt, *Essays on Old Testament History and Religion* (Sheffield, UK: JSOT Press, 1989), 110; Brevard Childs, *Exodus: A Commentary* (London: SCM Press, 1974), 470; Frank Crüsemann, *Die Tora: Theologie und Sozialgeschichte des alttestamentlichen Gesetzes* (Munich: Kaiser Verlag, 1992), 205; Gershon Brin, *Studies in Biblical Law* (Sheffield: Sheffield Academic Press, 1994), 32.

There is elegance to the approach; each verse is respected for the simple meaning of its language. It puts a premium on syntactic formulation as a marker of fissure within the text. Moreover, it allows the expositor to propose a narrative of the religious and moral development of Israelite culture. But it is an approach that is deeply flawed. In the first place, it creates a received text that is impossible to read. In order to comprehend the textus receptus, the reader must do the diachronic work that these scholars have; otherwise, a synchronic reading of the text is fraught with bald contradictions: verse 13 qualifies the application of the death penalty for a fatal blow, while verse 12 does not, for example. This approach also assumes strategies of redaction that are difficult to understand. If later jurists found the provision of verse 12 overly harsh, why did they retain the verse as is? Why did they not simply amend the text in a fashion that would fully represent their more nuanced sensitivities?

Moreover, none of the expositors who adopt this approach attempt to locate these laws within the jurisprudential surroundings of the ancient Near East. There is no reason to believe that early Israelites would have been incapable of grasping the nuance between deliberately caused death, and accidental death. Indeed, nuanced distinctions of *mens rea* are implicit in the theft laws of LH §6 and §8, as understood by Eichler. Moreover, the Hittite Laws §§1–4 also make a distinction between death brought about "in a quarrel," and "by accident" (lit. "if your hand erred").[41] Both of these laws collections predate the Covenant Code by several centuries, even by the most conservative estimates.

More egregiously, these expositors ignore the degree to which the homicide laws of Exod 21:12–14 draw from the legal formulaic conventions of ancient Near Eastern jurisprudence. Raymond Westbrook draws our attention to a direct parallel to Exod 21:12, found in §1 of the Laws of Ur-Nammu: "If a man kills, that man shall be put to death." The Sumerian law is couched in the same stark tones as the biblical law, and is short on details, or qualifying clauses.[42] It is clear that the blunt tone of the clause, its lack of detail, and its position as the first law of that code, all suggest that its primary function is ideational and declarative, rather than precise and statutory. Indeed, several stylistic aspects of Exod 21:12 reinforce the claim that this verse should not be read as a statutory law. Consider the

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41. For the text of these laws, see Roth, *Law Collections*, 217; for discussion about the relevance of these laws to Exod 21:12, see Benno Jacob, *The Second Book of the Bible: Exodus*, trans. Walter Jacob (Hoboken: Ktav, 1992), 636. On intent generally in ancient law, see David Daube, *Ancient Jewish Law: Three Inaugural Lectures* (Leiden: Brill, 1981), 49–56.

42. Raymond Westbrook, "What is the Covenant Code?" in Bernard M. Levinson, ed., *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development* (Sheffield, UK: Sheffield Academic Press, 1994), 15–36.

grammatical form of the infinitive absolute מות יומת, "he shall surely die." Reuven Yaron has noted that in ancient Semitic languages, this form is commonly found as a stylistic device, but is never used in a legal code.[43] Found within the Covenant Code at 21;12, 15, 16, 17, and 22:18, the primary significance of the infinitive absolute is not in the legal sphere, but rather in the very emphasis that it denotes, as an end in itself.[44]

But perhaps most significant stylistic element of Exod 21:12 is the participial form of the verse, whereby the subject is not separately mentioned, but is derived from the verb. We find in the Torah that the participial construction is reserved for only capital offenses, such as blasphemy (Lev 24:16), sabbath desecration (Exod 31:14–15), adultery (Lev 20:10), sorcery (22:17), bestiality (22:18), and murder (Gen 9:6). It is never used for lesser crimes.[45] It expresses what Benno Jacob rightly terms "the pathos of outrage," by characterizing and pointing to the criminal in the most direct manner.[46]

Other expositors, therefore, have preferred to see verse 12 as a proclamation of the seriousness of violent killing, whereas verses 13–14 add in the actual legal provisions.[47] As Bernard Jackson notes, verse 13 could not have had a prior stand-alone existence in another composition, as it refers to the details of the case broadly outlined in verse 12.[48] Some scholars have suggested that the composition of verses 12–13 represents an integrated whole, composed synchronically. The shift in syntactic formulation between the verses should not be taken as prima facie evidence of diachronic growth of the text. The various Mesopotamian law

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43. Reuven Yaron, "Stylistic Conceits II: The Absolute Infinitive in Biblical Law," in David P. Wright, David N. Freedman, and Avi Hurvitz, eds., *Pomegranates and Golden Bells: Studies in Biblical, Jewish, and Near Eastern Ritual, Law and Literature in Honor of Jacob Milgrom* (Winona Lake, IN: Eisenbrauns, 1995), 450.

44. Ibid., 460; Bernard S. Jackson, *Wisdom-laws: A Study of the Mishpatim of Exodus 21:1–22:16* (Oxford: Oxford University Press, 2006), 131.

45. Jacob, *The Second Book of the Bible*, 631.

46. Ibid., 631. The participial form is elsewhere found as a proclamation at 2 Sam 14:10. See Jackson, *Wisdom-laws*, 149; See Reuven Yaron, *The Laws of Eshnunna* (Jerusalem: Magnes Press, 1988), 105f, 109f.

47. Dale Patrick, *Old Testament Law* (London: SCM Press, 1985), 73; Otto, *Wandel der Rechtsbegründungen*, 31ff; Ludger Schweinhorst-Schonberger, *Das Bundesbuch (Ex 20,22–23,33): Studien zu seiner Entstehung und Theologie* (Berlin: de Gruyter, 1990), 39f, 123; Frank Crüsemann, *The Torah: Theology and Social History of the Old Testament Law*, trans. Allan W. Mahnke (Edinburgh: T&T Clark, 1996), 150; Andreas Ruwe "Das Zusammenwirken von 'Greichtsverhandlung,' 'Blutarche' und 'Asyl,'" *ZABR* 6 (2000): 190–221; Jackson, *Wisdom-laws*, 120.

48. Jackson, *Wisdom-laws*, 120 n. 2.

collections reveal a mix of syntactic formulations of the law.[49] The formulation of verse 13 ואשר לא צדה is distinct within the corpus of the Covenant Code, as no other provision begins in this fashion. However, it may be אשר here does not function as a conjunction, but as a pronoun coordinated with the participle in verse 12, מכה. The verses, then, work in tandem: "he who fatally strikes another, shall surely be put to death, but he who did not plot to slay him treacherously," etc.[50] David Wright notes that, "the nature of Near Eastern law and casuistic law in particular is to add qualifications to what appear to be categorical statements."[51] This is precisely the dynamic that we saw in the relationship between LH 6 and 8. Recall that §6 opened the laws of theft with a categorical declaration that theft from the king or from the god was punishable by death. Only the nuanced phrasing of §8 encourages a rereading of that provision, and a revised understanding that it adjudicates cases where the theft occurred within the precincts of the palace or temple. It is in this spirit that Benno Jacob offers an astute explanation for the exceptional syntax of verse 13, which, as noted, is attached to and follows the information related in verse 12. He notes that verse 13 addresses a killer and a victim, and yet in exceptional fashion, the provision does not open with the deed. The syntactical form only obliquely refers to the offender, and not at all to the victim. In his words, "an air of innocence hovers about it."[52] Put differently, verse 13 addresses accidental homicide. Its syntax, opening with ואשר allows the jurist to underscore the striker's essential innocence.

49. See T. J. Meek, "The Origin of Hebrew Law," in Meek, *Hebrew Origins* (New York: Harper & Brothers, 1960), 72; Joe M. Sprinkle, *The Book of the Covenant: A Literary Approach* (Sheffield, UK: Sheffield Academic Press, 1994), 74; cf. Gordon J. Wenham, "Legal Forms in the Book of the Covenant," *Tyndale Bulletin* 22 (1971), 95–102, esp. 101.

50. David P. Wright, *Inventing God's Law: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* (New York: Oxford University Press, 2012), 163; see likewise, Umberto Cassuto, *A Commentary on the Book of Exodus*, trans. Israel Abrahams (Jerusalem: Magnes Press, 1967), 269.

51. Wright, *Inventing God's Law*, 165.

52. Jacob, *The Second Book of the Bible*, 633.

7

Honoring a Law Code and Diverging from Its Dictates in the Neo-Babylonian King of Justice *and in the Book of Ruth*

IN THE EPILOGUE to his eponymous law code, Hammurabi is unequivocal about how he expects future rulers to view his laws, which in his words are "choice," and the product of his "unrivaled ability":

> May any king who will appear in the land in the future, at any time, observe the pronouncements of justice that I inscribed upon my stela. May he not alter the judgments that I rendered and the verdicts that I gave . . . (But) should that man not heed my pronouncements, which I have inscribed upon my stela, and should he . . . overturn the judgments that I rendered, change my pronouncements . . . may the great god Anu, father of the gods, who has proclaimed my reign, deprive him of the sheen of royalty, smash his scepter, and curse his destiny.[1]

For Hammurabi, to respect his composition is to follow its dictates. To deviate from its pronouncements is the highest indignity and warrants a litany of curses. Strikingly, though, the reception history of LH reveals a different attitude: a king could commission a composition that both venerated LH, *and* deviated from its dictates.

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1. LH xlviii 95–xlix 52. Translation taken from Martha Roth, *Law Collections from Mesopotamia and Asia Minor* (Atlanta: Scholars Press, 1997), 136.

In this chapter I attend to an unusual literary phenomenon found in both Mesopotamian and biblical traditions: namely, the manner in which the consecutive order of clauses in a law collection serves as the structure of the plot of a later, narrative composition. Elsewhere I have demonstrated that the plot of the book of Ruth closely follows the series of laws found in Deut 24:16–25:10, beginning with the command that sons shall not die for the sins of their fathers (24:16), and concluding with the law of levirate marriage (25:5–10).[2] The author of Ruth, I claimed, wove semantic allusions to each of six consecutive laws into his narrative, and did so in order. Victor Avigdor Hurowitz has noticed a similar phenomenon in the use of LH 1–5 in the Neo-Babylonian work, "Nebuchadnezzar King of Justice."[3] That text describes a land plagued by social inequity and judicial corruption before the advent of an anonymous, just king who reforms society through legislation, building courts, and judging the poor and the downtrodden. The section of this composition that details the cases adjudicated by the king reveals that the cases correspond to those raised in LH 1–5.

What is remarkable about this phenomenon is that, while the author of Ruth pays homage to Deuteronomy by employing its laws as a structuring template, the practice of law in the story itself is at variance with those very laws to which it alludes. Likewise, the author of "King of Justice" pays homage to LH by employing its laws as a literary template, and yet the judgments rendered by the King of Justice are at variance with those found in the laws of LH to which it alludes. In the first part of this chapter, I briefly sketch and recap my earlier findings about the dependence of Ruth upon the structure of the laws in Deuteronomy, and Hurowitz's findings about the dependence of the "King of Justice" upon and the Laws of Hammurabi. This will give us a sense of the highly similar poetics at work in these two texts, and will pave the way for the second part of this chapter, where I account for the seemingly inherent contradictions in each of these works. On the one hand these later, narrative compositions, Ruth and "King of Justice," seem to each have high regard for the canonical law collection of their respective traditions, the laws of which dictate their respective narrative structures. Yet, in both compositions, the practice of those very same laws diverges

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2. Joshua Berman, "Ancient Hermeneutics and the Legal Structure of the Book of Ruth," *ZAW* 119 (2007): 22–38.

3. Victor Avigdor Hurowitz, "Hammurabi in Mesopotamian Tradition," in Yitshak Sefati et al., eds., *"An Experienced Scribe Who Neglects Nothing": Ancient Near Eastern Studies in Honor of Jacob Klein* (Bethesda: CDL Press, 2005), 497–532.

from what those authoritative codes lay down as the law. The phenomenon challenges us to understand how these ancient writers related to venerated legal texts and the provisions they contain. I will assess two models of explanation for the phenomenon, one by Hurowitz in his study of "King of Justice," and one by Bernard M. Levinson in a number of his works on the revision of biblical law. Finding each one problematic, I will draw upon the non-statutory nature of Mesopotamian and biblical law developed in chapter 5 to explain how the author of Ruth and the author of "King of Justice" each related to the canonical law collection of his respective tradition.

The Dependence of "King of Justice" on the Laws of Hammurabi

Hurowitz demonstrates that, across the entire composition, the author of "King of Justice" employs terms to describe his protagonist that are taken from Hammurabi's self-depictions in the prologue and epilogue to LH. The linguistic similarities are at some places so close and extended that literary dependence seems likely.[4] For example, the lawlessness in the land prior to the rise of the King of Justice is described (obv. II 3) as *dannu enšu iḫabbil ana dīnu la maṣi malâšu* ("the strong oppresses the weak who cannot afford a trial"). Hammurabi, by contrast, was selected (I 37–38; xlvii 59–69), *dannum enšam ana lā ḫabālim* ("[in order] that the strong not oppress the weak"). Prior to the advent of the King of Justice, we are told (obv I 5), *šakanakku u rubû itti akû u almat la izzazzū maḫar dayyāni* ("governors and princes do not stand with the cripple or the widow before the judges"). Hammurabi describes his mission in the epilogue to his laws as follows (xlvii 59–62): *dannu enšam ana lā ḫabālim, ekûtim almattim šūtešurim* ("[in order] that the strong will not oppress the weak, and [in order] to do justice for the cripples and widow").[5] The specific parallels to Hammurabi's laws in the cases adjudicated by the King of Justice leave no question about the matter. I summarize Hurowitz's observations in Table 7.1.

The left-hand column of Table 7.1 lists three consecutive cases that the King of Justice adjudicates after building his courthouse. The right-hand column lists the first five laws of LH—laws that form the basis for the formulation of the

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4. Ibid., 511.

5. Ibid., 508.

Table 7.1 The Judgments of the King of Justice and LH 1–5

Case	King of Justice		Laws of Hammurabi	
Re-opening a case under false pretenses	**(obv. III 8–9):** a man whose judgment was judged, whose tablet of verdict was written down and sealed by seal,	*amēlu ša* **dīnšu** *dīnu ṭuppi* **purussâšu** *šaṭrūma baramte* **kunukki**	*šumma dayānum* **dīnam** *idīn* **purussâm** *iprus* **kunukkam** *ušēzib warkānum dīnšu īteni*	**LH 5**: If a judge renders a judgment, decides a legal decision, and deposits a sealed opinion, after which he reverses his judgment. . .
	and who subsequently changed and returned to judgment	*arkānu inīma* **itūra ana dīnim.**	*ul* **itârma itti dayyānī ina dīnim ūl uššab.**	they shall unseat him from his judgeship in the assembly, and he shall never again sit in judgment with the judges
Accusation of murder without proof to convict	**(obv. III 21):** A man accused another man of murder but did not convict him. . .	*amēlu* **eli** *amēli* **nērtu iddīma la uktīn**	*šumma awīlum awīlam ubbirma* **nērtam elīšu iddīma la uktīnšu**	**LH 1 (protasis):** If a person accuses another person of murder but does not convict him
	the king ordered them (to be taken). . . to the bank of the Euphrates. . . for trial.		*mubbiršu iddâk*	**LH 1 (apodosis):** His accuser shall be executed.
				LH 2 (protasis): If a man charges another man with practicing witchcraft but cannot bring proof. . .
				LH 2 (apodosis): he who is charged. . . shall go to the divine River Ordeal.
Offering false testimony	**(obv IV 24–27):** A man denounced another man. He swore an oath by Shamash (that he had not), and had no fear of the magic circle [of Shamash]			**LH 3**: If a man comes forward to give false testimony . . .
				LH 4: If he comes forward to give (false) testimony. . .

courthouse narrative of the King of Justice. The first case describes a plaintiff who returns to the court after a trial has ended in order to have the verdict reversed, on the basis of newly entered testimony—testimony determined to be false. The act of the criminal is strikingly reminiscent to the protasis of LH 5, where a judge calls for a case to be reopened, presumably because his impartiality has been compromised. In both cases however, the party responsible for calling for the case to be reopened is found to have argued under false pretense. The middle column dramatizes how the author of "King of Justice" employs language directly lifted from the text of LH 5.

In the second case taken up by the King of Justice, a man accuses another of murder, but does not present enough proof for a conviction. The case is exactly parallel to that found in the protasis of LH 1. Yet the King of Justice does not adopt the apodosis of LH 1 as the remedy (namely, that the accuser should be executed). Instead, the author of the "King of Justice" borrows from the apodosis of LH 2 to provide a remedy for the case in the protasis of LH 1. In LH 2, an individual has been accused of witchcraft. Lacking sufficient evidence to convict him, the court sentences the accused to the river ordeal. The King of Justice borrows the motif of the river ordeal and applies it to both the accused murderer and his accuser.

The portion of the tablet narrating the third case is damaged, but clearly tells of a man who slanders or libels another, and takes an oath in the name of Shamash. It seems that the accuser here testifies falsely under oath. The particulars of the case and its remedy are lost to us. But false testimony is the crime addressed in LH 3 and LH 4, where a man testifies falsely against another man concerning capital offenses in LH 3 and then monetary offenses in LH 4.

To summarize: the author of the "King of Justice" has structured his narrative around a deliberate set of overtures and references to the first five laws of LH, which form a distinct unit within LH, as LH 6 opens a series of laws dealing with theft. The author of "King of Justice" varies his strategies of reference. Some of the references are motivic, whereas others are semantic. Despite all these similarities, in no instance do we find that he refers to the same case and offer the same remedy as found in LH. In fact, we find quite the opposite: in the second case tried by the King of Justice, the case is exactly that found in the protasis of LH 1, and yet his remedy is a stark departure from the one proposed in the apodosis of LH 1.

The Dependence of Ruth on Deut 24:16–25:10

Highly similar literary strategies are employed by the author of the book of Ruth with reference to the laws of Deuteronomy 24–25. These parallels may be summarized in tabular fashion:

Table 7.2 The Parallel Structure of the Book of Ruth and Deuteronomy 24:16–25:10

Book of Ruth		Deuteronomy 24:16–25:10	
Machlon and Chilion die for their own sins, separate from their father	(1:2) . . . וְשֵׁם שְׁנֵי בָנָיו מַחְלוֹן וְכִלְיוֹן אֶפְרָתִים מִבֵּית לֶחֶם יְהוּדָה וַיָּבֹאוּ שְׂדֵי מוֹאָב וַיִּהְיוּ שָׁם: (ג) וַיָּמָת אֱלִימֶלֶךְ אִישׁ נָעֳמִי וַתִּשָּׁאֵר הִיא וּשְׁנֵי בָנֶיהָ: (ד) וַיִּשְׂאוּ לָהֶם נָשִׁים מֹאֲבִיּוֹת שֵׁם הָאַחַת עָרְפָּה וְשֵׁם הַשֵּׁנִית רוּת וַיֵּשְׁבוּ שָׁם כְּעֶשֶׂר שָׁנִים: (ה) וַיָּמוּתוּ גַם שְׁנֵיהֶם מַחְלוֹן וְכִלְיוֹן . . .	(24:16) לֹא יוּמְתוּ אָבוֹת עַל בָּנִים וּבָנִים לֹא יוּמְתוּ עַל אָבוֹת אִישׁ בְּחֶטְאוֹ יוּמָתוּ:	*Fathers die for their own sins; sons for theirs.*
Naomi=widow Ruth=stranger, widow (orphan?) Residents of Bethlehem fail to provide proper welcome	(1:3) וַיָּמָת אֱלִימֶלֶךְ אִישׁ נָעֳמִי וַתִּשָּׁאֵר הִיא וּשְׁנֵי בָנֶיהָ: (5) וַיָּמוּתוּ גַם שְׁנֵיהֶם מַחְלוֹן וְכִלְיוֹן וַתִּשָּׁאֵר הָאִשָּׁה מִשְּׁנֵי יְלָדֶיהָ וּמֵאִישָׁהּ: (2:11) וַיַּעַן בֹּעַז . . . וַתַּעַזְבִי אָבִיךְ וְאִמֵּךְ וְאֶרֶץ מוֹלַדְתֵּךְ וַתֵּלְכִי אֶל עַם אֲשֶׁר לֹא יָדַעַתְּ תְּמוֹל שִׁלְשׁוֹם:	(17) לֹא תַטֶּה מִשְׁפַּט גֵּר יָתוֹם וְלֹא תַחֲבֹל בֶּגֶד אַלְמָנָה: (19) כִּי תִקְצֹר . . . לַגֵּר לַיָּתוֹם וְלָאַלְמָנָה יִהְיֶה (20) כִּי תַחְבֹּט . . . לַגֵּר לַיָּתוֹם וְלָאַלְמָנָה יִהְיֶה: ס (12) כִּי תִבְצֹר . . . לַגֵּר לַיָּתוֹם וְלָאַלְמָנָה יִהְיֶה:	*Just treatment of the stranger, the widow and the orphan*
Boaz excels at providing for "the stranger, the orphan and the widow"	(1:22) . . . וְהֵמָּה בָּאוּ בֵּית לֶחֶם בִּתְחִלַּת קְצִיר שְׂעֹרִים: (2:7) וַתֹּאמֶר אֲלַקֳטָה נָּא וְאָסַפְתִּי בָעֳמָרִים אַחֲרֵי הַקּוֹצְרִים . . . (2:15–16) גַּם בֵּין הָעֳמָרִים תְּלַקֵּט וְלֹא תַכְלִימוּהָ: וְגַם שֹׁל תָּשֹׁלּוּ לָהּ מִן הַצְּבָתִים וַעֲזַבְתֶּם וְלִקְּטָה וְלֹא תִגְעֲרוּ בָהּ: (2:4) . . . וַיֹּאמְרוּ לוֹ יְבָרֶכְךָ יְהוָה:	(19) כִּי תִקְצֹר קְצִירְךָ בְשָׂדֶךָ וְשָׁכַחְתָּ עֹמֶר בַּשָּׂדֶה לֹא תָשׁוּב לְקַחְתּוֹ לַגֵּר לַיָּתוֹם וְלָאַלְמָנָה יִהְיֶה לְמַעַן יְבָרֶכְךָ יְהוָה אֱלֹהֶיךָ בְּכֹל מַעֲשֵׂה יָדֶיךָ:	*Field rights of the under-privileged*
Boaz instructs that Ruth not be publicly shamed	(2:9) וַתָּקָם לְלַקֵּט וַיְצַו בֹּעַז אֶת נְעָרָיו לֵאמֹר גַּם בֵּין הָעֳמָרִים תְּלַקֵּט וְלֹא תַכְלִימוּהָ: (2:16) וְגַם שֹׁל תָּשֹׁלּוּ לָהּ מִן הַצְּבָתִים וַעֲזַבְתֶּם וְלִקְּטָה וְלֹא תִגְעֲרוּ בָהּ:	(25:3) אַרְבָּעִים יַכֶּנּוּ לֹא יֹסִיף פֶּן יֹסִיף לְהַכֹּתוֹ עַל אֵלֶּה מַכָּה רַבָּה וְנִקְלָה אָחִיךָ לְעֵינֶיךָ: ס	*Saving a man from public shame*
Boaz takes Ruth through levirate marriage	(4:1) וּבֹעַז עָלָה הַשַּׁעַר . . . (4:5) וַיֹּאמֶר בֹּעַז . . . אֵשֶׁת הַמֵּת <קָנִיתִי> קָנִיתָה לְהָקִים שֵׁם הַמֵּת עַל נַחֲלָתוֹ: (4:10) . . . לְהָקִים שֵׁם הַמֵּת עַל נַחֲלָתוֹ וְלֹא יִכָּרֵת שֵׁם הַמֵּת מֵעִם אֶחָיו . . . (4:13) וַיִּקַּח בֹּעַז אֶת רוּת וַתְּהִי לוֹ לְאִשָּׁה וַיָּבֹא אֵלֶיהָ וַיִּתֵּן יְהוָה לָהּ הֵרָיוֹן וַתֵּלֶד בֵּן:	(5) לֹא תִהְיֶה אֵשֶׁת הַמֵּת הַחוּצָה לְאִישׁ זָר יְבָמָהּ יָבֹא עָלֶיהָ וּלְקָחָהּ לוֹ לְאִשָּׁה וְיִבְּמָהּ: (6) וְהָיָה הַבְּכוֹר אֲשֶׁר תֵּלֵד יָקוּם עַל שֵׁם אָחִיו הַמֵּת וְלֹא יִמָּחֶה שְׁמוֹ מִיִּשְׂרָאֵל: (7) וְאִם לֹא יַחְפֹּץ הָאִישׁ לָקַחַת אֶת יְבִמְתּוֹ וְעָלְתָה יְבִמְתּוֹ הַשַּׁעְרָה אֶל הַזְּקֵנִים וְאָמְרָה מֵאֵן יְבָמִי לְהָקִים לְאָחִיו שֵׁם בְּיִשְׂרָאֵל . . .	*Levirate marriage*

The right-hand column of Table 7.2 displays nearly the complete text of Deuteronomy 24:16 to 25:10, in order. The left-hand column displays sequential episodes from the book of Ruth, and shows how they adopt language and motifs from that string of commandments in Deuteronomy. The string in Deuteronomy begins with the injunction against punishing sons for the sins of their fathers, or vice versa. And at the outset of the book of Ruth, Elimelekh perishes, presumably for abandoning his land and people, while separately, Machlon and Chilion perish, for having taken Moabite wives.[6] Proceeding to the next law, Deuteronomy prescribes proper treatment of the stranger, the widow, and the orphan. As they approach Bethlehem, Naomi (a widow) and Ruth (a stranger, a widow, and, perhaps, also an orphan of sorts) are due for proper treatment. The townsfolk make no efforts to receive them. The third row of comparison demonstrates that Boaz, in contrast to the townsfolk, excels in granting the widow-stranger-orphan Ruth her just due. Note here that the prosaic greeting offered to him by the fieldworkers in verse 2:4, יברכך יהוה, "may YHWH bless you," is exactly the blessing promised in Deut 24:19 to he who allots fallen sheaths to the poor.

In the fourth row, the law in Deuteronomy is explicit that a sentenced man must not be publicly shamed, even as Boaz explicitly forewarns that Ruth is not to be shamed in the field. The fifth row highlights parallels concerning the performance of the commandment of levirate marriage.[7]

To summarize: like the author of the "King of Justice," the author of Ruth has turned to a string of laws found in a venerated law code to inform the plot structure of his narrative. Moreover, like the author of "King of Justice," the author of Ruth has employed extensive semantic allusions alongside motivic references to that code. Most significantly, the author of Ruth, like the author of the "King of Justice," describes a practice of the law in his time that is at variance with that prescribed by the very laws that inform his plot structure. As many have pointed out, the practice of gleaning sheaths and the details of the levirate marriage described in Ruth depart significantly from the particulars of the practices enjoined in Deuteronomy 24 and 25.[8]

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6. Robert L. Hubbard, *The Book of Ruth* (Grand Rapids, MI: Eerdmans, 1988), 91; Feivel Meltzer, *Ruth* (Jerusalem: Mossad Harav Kook, 1973), 3 [in Hebrew]; Berman, "Ancient Hermeneutics," 7.

7. In my original article, I discussed several additional embellishments to this basic, schematic parallel. See Berman, "Ancient Hermeneutics," 22–38.

8. Georg Braulik, "The Book of Ruth as Intra-Biblical Critique of the Deuteronomic Law," *Acta Theologica* 19 (1999): 1–20; James Alfred Loader, "Of Barley, Bulls, Land and Levirate," in Florentino G. Martinez et al., eds., *Studies in Deuteronomy: In Honour of C. J. Labuschagne on the Occasion of His 65th birthday* (VTSup 53; Leiden: Brill, 1994), 123–38; D. R. G. Beattie, "The Book of Ruth as Evidence for Israelite Legal Practices," *VT* 24 (1974): 251–67; Hubbard, *Book of Ruth*, 48–63.

How are we to account for the seemingly contradictory manner in which each of these authors relates to the venerated law code of his tradition? Why does he so venerate the law code, that it can determine the structure of his narrative on the one hand, yet, on the other hand, suggest remedies of law that seem to dismiss the authority of that very same code?

Hurowitz described the hermeneutics whereby the author of "King of Justice" applies the apodosis of LH 2 to the case of the protatis of LH 1 as "halakhic midrash," by which he means that the anecdote is based on the earlier law, yet also clarifies something about that law.[9] Presumably Hurowitz refers to the reuse of language from an earlier authoritative text in order to produce a new law, as is found in rabbinic midrash.[10] This is akin to what the author of "King of Justice" has done; he has rearranged the order of materials found in his source document, LH, and thereby produced, in effect, a law that is substantively different than what is recommended in the venerated code itself.

Invoking the process of "halakhic midrash," however, creates more problems than it solves. To begin with, even in their wordplay, the rabbis were careful to work exclusively with the words of the Torah itself. In the "King of Justice," however, the apodosis of LH 2 is adopted, yet without any semantic allusions to that text; the allusion is strictly motivic. Moreover, wordplay of this sort, even within rabbinic hermeneutics, is unattested prior to the second century BCE, let alone the fifth century BCE, when "King of Justice" was written.[11] The greatest problem, however, is this: when the rabbis engaged in wordplay in order to produce a new law, they did so only because they believed the text of the Torah to be divinely dictated. A divine text, they reasoned, communicates on many levels far beyond its simple, literal meaning. The "new" law that they derived, in their terms, was hardly "new" at all—it was always latent within the text itself. By contrast, there is no evidence that Mesopotamian writers viewed the text of Hammurabi as divinely dictated—indeed, even Hammurabi himself attests otherwise. Moreover, Hurowitz states that by applying the apodosis of LH 2 (the river ordeal) to the case of unsubstantiated accusation of murder, the author of "King of Justice" was "solving a difficulty"—that is, a legal difficulty—that was present in LH.[12] While

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9. Hurowitz, "Hammurabi in Mesopotamian Tradition," 512.

10. Meir Weiss Halivni, *Midrash, Mishnah, and Gemara: The Jewish Predilection for Justified Law* (Cambridge, MA: Harvard University Press, 1986), 18–37; David Daube, "Rabbinic Methods of Interpretation and Hellenistic Rhetoric," *HUCA* 22 (1949): 239–64.

11. See David Weiss Halivni, *Peshat and Derash: Plain and Applied Meaning in Rabbinic Exegesis* (New York: Oxford University Press, 1998).

12. Hurowitz, "Hammurabi in Mesopotamian Tradition," 514.

the rabbis often derived laws that stood at a variance from the literal meaning of the laws of the Torah, they would not have articulated their endeavor as one of "correcting" a problem in the Torah, or "superseding" an inferior law. For all of these reasons, therefore, I find the description of the hermeneutics at play in "King of Justice" as akin to "halakhic midrash" to be problematic.

In many of his writings, Bernard M. Levinson offers an alternative approach to the exegetical issue at hand. For Levinson, legal revision in the Bible—such as we see in Ruth, where levirate marriage does not adhere strictly to the Deuteronomic law—represents a covert exegetical activity. Through exegesis, he claims, prior authoritative texts are subverted in order to make legal innovation possible. He further claims that biblical writers employed a wide range of rhetorical tools, employing literary sophistication that allowed them to conceal the conflict between the new laws they created, and the authoritative texts they were subverting, even as those new laws invoke the language of the original texts.[13] For Levinson, the new norms depicted in Ruth indirectly adapt old laws. The author of Ruth employs a range of literary strategies to authorize and conceal his reworking of authoritative law.[14]

As several scholars have noted, Levinson's theory of a "rhetoric of concealment" falters when we consider the audience for the book of Ruth that such a theory implies. If Levinson assumes an ignorant audience for the book of Ruth, the author would have had no need to employ exegetical tools that retain the language and structure of Deuteronomy from which it borrows as he revised the laws. Conversely, if Levinson assumes that the audience of Ruth was, in fact, familiar with the sequence of Deuteronomic laws, it is difficult to see how his audience could be deceived by alleged exercises in concealment.[15]

I would like to propose a third approach. The approaches adopted by Hurowitz and Levinson rest on statutory assumptions about the nature of ancient Near Eastern and biblical law. Adopting common-law assumptions about Mesopotamian and biblical law will enable us to better explain how the authors of Ruth and "King of Justice" could invoke canonical law collections, and yet at

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13. Bernard M. Levinson, "'You Must Not Add Anything to What I Command You': Paradoxes of Canon and Authorship in Ancient Israel," *Numen* 50 (2003): 17, 24; Levinson, *Legal Revision and Religious Renewal in Ancient Israel* (Cambridge: Cambridge University Press, 2008), 48–49, 92.

14. Levinson, "You Must Not Add Anything," 24–25; Levinson, *Legal Revision*, 33–45, 48.

15. Michael LeFebvre, *Collections, Codes and Torah* (LHBOT 451; New York: T&T Clark, 2006), 71 n. 54; Joe Sprinkle, "Review of Bernard Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation*," *JETS* 42 (1999): 720–21; Hindy Najman, *Seconding Sinai: The Development of Mosaic Discourse in Second Temple Judaism* (Leiden: Brill, 2003), 22–23.

the same time reject their rulings. Key here is the role sanctioned texts play in determining the law in a common-law tradition. When decisions and precedents were collected and written down, these texts did not become the *source* of law, but rather a *resource* for later jurists to consult. Texts formed a system of *reasoning*. A judge would access these written modes of thinking as he adjudicated a case. One could not point to an accepted text of the law—neither LH, nor any other text, for that matter—as the final word on what the law was or prescriptively should be. The law collections, instead, are anthologies of judgments—snapshots of decisions rendered by judges, or perhaps even by the king himself.[16] The collections were a model of justice meant to inspire; a treatise, with examples on the exercise of judicial power.[17] They were records of *precedent*, but not of *legislation*.[18]

The lens of common-law jurisprudence sheds light on how the authors of Ruth and "King of Justice" may have viewed and employed venerated law collections in their respective narrative works. For the author of "King of Justice," Hammurabi was a paragon of justice, and the king in "King of Justice" is, throughout, described in terms than invoke Hammurabi's description of himself in the prologue and epilogue of LH. I suggest, however, that the author of "King of Justice" did not view LH as a code of binding, statutory law. Indeed, statutory law as we think of it today did not exist at all in his time. Rather, he viewed LH as a crowning and venerated achievement in the field of jurisprudence. It was a record of judgments by earlier judges, perhaps even by Hammurabi himself. The author's regard for LH is not for the absolute authority and ultimate wisdom of each and every law. Had that been the case, he would have hardly had his protagonist contravene an explicit ruling in LH. Rather, he regards LH as a venerated work, as a work that had guided generations of scribes in the ins and outs of proper jurisprudence. His regard for LH is for its influence as a whole work. Thus, by invoking the structure of laws 1–5, he demonstrates a nod toward the work as a whole. At the same time, he does not view the prescriptions of LH as binding, and takes the liberty to adjudicate cases according to his own sense of justice. His revision of the *laws* of LH, does not entail a rejection of the *text* of LH, nor of its status within Mesopotamian scribal tradition. We may invoke the words of John Joseph Park, the nineteenth-century common-law theorist cited earlier, who noted that texts

16. Raymond Westbrook, "Introduction," in Raymond Westbrook and Gary Beckman, eds., *A History of Ancient Near Eastern Law* (Leiden: Brill, 2003), 21.

17. Jean Bottéro, "The 'Code' of Hammurabi," in Bottéro, *Mesopotamia: Writing, Reasoning, and the Gods*, trans. Z. Bahrani and M. Van De Mieroop (Chicago: University of Chicago Press, 1992), 156–84.

18. Raymond Westbrook, "Cuneiform Law Codes and the Origins of Legislation," *ZA* 79 (1990): 203.

within the common-law tradition always remain "a datum from which to reason." For the author of "King of Justice," LH remained a venerated text, a touchstone of his tradition, indeed, "a datum from which to reason."

Much the same dynamic remains central with regard to law in the book of Ruth. Levinson ascribes a theology to the authors of the law collections of the Pentateuch whereby legal clauses are immutable forms due to their divinity; this implicitly ascribes to them statutory assumptions about the nature and authority of a legal text.[19] Indeed, Levinson himself refers to the laws of the Pentateuch as "formal statutes."[20]

In light of the problems raised above for Levinson's thesis, I would suggest that the author of Ruth did not perceive the laws of Deuteronomy (or of Leviticus for that matter) as statutory law. Indeed, the various biblical law corpora do call upon Israel to "observe" and "keep" these precepts; but the observance of the precepts apparently was something that was given over, from earliest times, to interpretation and discretionary judgment. Indeed, the author of Ruth saw no dissonance between the observance of levirate marriage in his time, and the literal dictate of the law of the levirate in Deuteronomy 25. Rather, he saw Deuteronomy as a great repository of divine, or perhaps Mosaic, wisdom, and of ethical and covenantal teachings that had evolved in its application, until the form that it had taken in his day.[21] The author of Ruth may well have considered the different iterations of these laws as part of a continuous system, as did Sir Matthew Hale (cited in my initial discussion of common-law jurisprudence), when he described the fluid nature of the common law: just as "the Argonaut's ship was the same when it returned home, as it was when it went out, though in the long voyage it had successive amendments, and scarce came back with any of its former materials." The author of Ruth structured his plot in accordance with the string of commandments in Deuteronomy 24–25 as an overture to the standing of Deuteronomy as a repository of wisdom for his tradition.[22]

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19. Levinson, "You Must Not Add Anything," 7, 15; See likewise, Levinson, *Legal Revision*, 48, that pentateuchal laws are divine, and therefore could not be openly qualified or amended.

20. Levinson, "You Must Not Add Anything," 23.

21. See further on this, chapter 9, "Legal Revision in the Torah Law Collections: Supersessionist or Complementary?".

22. As I have discussed elsewhere, the casting of a law code as a template that structures a late narrative is a literary strategy within biblical literature that is not unique to the book of Ruth. Many scholars have noted that the account of Solomon's sins in 1 Kgs 10:26–11:4 hews to the list of monarchal prohibitions in Deut 17:14–20. The observation is ancient, and already appears in b. Sanh 21b, and is adopted by medieval rabbinic exegetes such as Qara. See Berman, "Law Code as Plot Template in Biblical Narrative (1 Kgs 9.26–11.13; Josh 2.9–13)," *JSOT* 40, no. 3 (2016): 337–49.

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Blending Discordant Laws in Biblical Narrative

IN THE 1980S, scholars delineated the dynamics of what Michael Fishbane termed the "legal blend" in post-exilic biblical literature.[1] This referred to the oft-found phenomenon in Ezra-Nehemiah and Chronicles whereby the practice of a law is expressed as a conflation of two earlier diverging iterations of the law as found in the legal corpora of the Pentateuch. Perhaps the most heralded of these has been the Chronicler's description of the paschal sacrifice in the time of Josiah. Exod 12:9 is explicit that the paschal sacrifice is to be roasted in fire (צלי אש), and may not be boiled in water. The author of Deuteronomy 16:7, however, sought to align the paschal sacrifice with other cultic offerings, and prescribed boiling (ובשלת). The Chronicler created a legal blend of these two received traditions by conflating lexical elements of each statement of the law in his description of the paschal offering in the time of Josiah (2 Chr 35:13): ויבשלו הפסח באש כמשפט.[2] The conflation is surprising, because the two original iterations of the law seem mutually exclusive in their provisions.

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1. Michael Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford: Clarendon Press, 1985), 110–19; 134–36; D. J. A. Clines, "Nehemiah 10 as an Example of Early Jewish Biblical Exegesis," *JSOT* 21 (1981): 113; H. G. M. Williamson, "History," in D. A. Carson and H.G.M. Williamson, eds., *It Is Written: Scripture Citing Scripture: Essays in Honour of Barnabas Lindars, SSF* (Cambridge: Cambridge University Press, 1988), 26.

2. I refrain here from providing a translation, as the translation itself is a subject of great debate. For our purposes, however, it is sufficient to note that all expositors see the Chronicler's work as an attempt to blend the two earlier traditions. For an overview, see Ehud Ben Zvi, "Revisiting 'Boiling in Fire' in 2 Chronicles 35:13 and Related Passover Questions: Text, Exegetical Needs and Concerns, and General Implications," in Isaac Kalimi and Peter J. Haas, eds., *Biblical Interpretation in Judaism and Christianity* (LHBOTS 439; New York: T&T Clark, 2006), 238–50.

Another well-known example is Nehemiah's description of the sabbatical year. The Covenant Code had prescribed that, during the sabbatical year, Israel was to refrain from agricultural activity (Exod 23:11): "but in the seventh you shall let it rest and lie fallow" (והשביעת תשמטנה ונטשתה). Deuteronomy, however, spoke of the sabbatical year solely in terms of economic activity. In this year (15:1), "each creditor (בעל משה ידו) shall remit the due that he claims from his neighbor." Nehemiah conflates language from each iteration of sabbatical year legislation (10:32 [ET 31]): ונטש את השנה השביעית ומשא כל יד, "we will forego the produce of the seventh year and every outstanding debt." The first phrase draws from the verse in the Covenant Code, the language of השביעת, and the root נ.ט.ש., and with it the idea of a year in which the land lies fallow. The second clause of the verse in Nehemiah invokes the language of Deuteronomy 15:1, בעל משה ידו, calling for the cancellation of debts.[3] In some instances, the author of Ezra-Nehemiah weaves together as many as three sources in his description of legal practice. Consider the note in Ezra 3:4: "They made the festival of Sukkot as is written, with its daily burnt offerings in the proper quantities, on each day as is prescribed for it." Close scrutiny of the Hebrew shows how the author drew eclectically from the sources nominally referred to as the Priestly, Holiness, and Deuteronomic prescriptions concerning the festival of Tabernacles:

ויעשו את חג הסכת	חג הסכת תעשה לך (Deut 16:13)
ככתוב	
ועלת יום ביום	
במספר כמשפט	במספר (ם) כמשפט ([7x] Num 29)
דבר יום ביומו	עלה זבח ונסכים דבר יום ביומו (Lev 23:37)

In each of the borrowed phrases, the language is distinct to one particular law source: "making" the festival (root ע.ש.י.) is found only in Deut 16:13; the description of sacrifices described as "in the proper quantity as prescribed" (במספרם כמשפט) is found only in Numbers 29 [7x]; the epithet "on each day" (דבר יום ביומו) is distinct to the language of Lev 23:37.

Michael Fishbane offers a narrative to account for how and why the legal blend became such a prominent feature of the literature of the period. In the pre-exilic period, Israel's legal traditions were diverse and contradictory, having stemmed from a variety of priestly and lay communities. The exigencies of exile and return created an urgent need for a vehicle that would grant legitimacy to these various communities and their attendant legal traditions. Their amalgamation into

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3. Fishbane, *Biblical Interpretation in Ancient Israel*, 134.

a single text represented a great historical compromise. A new exegetical agenda developed that allowed the disparate laws to be contained within a single authoritative text. This agenda placed a premium on the scholarly study and comparison of texts, and reflected the growing text-culture that was Achaemenid Judea. Rational modes of exegesis were developed to harmonize and correlate all the different legal corpora; and the literary phenomenon of the legal blend was an outgrowth of this process.[4]

Scholarly discussions have identified legal blends in the books of Ezra-Nehemiah and Chronicles in descriptions of normative practice. In this chapter, I will demonstrate that we also find the legal blend employed toward "aggadic" or rhetorical ends. Fishbane demonstrated how prophetic literature utilized legal material in this fashion.[5] In their hortatory use of pre-existing legal materials, the prophets often had no intention of reinterpreting law or of portraying their normative application as part of a *corpus juris*. Thus, the injunctions concerning the Day of Atonement (Lev 16 and 23:26–32) serve as an ideological matrix for their inversion and reapplication about fasting in Isaiah's discourse concerning asceticism (58:1–12).[6] The aggadic exegesis exists in such instances solely for its own rhetorical sake.[7] The law is extracted from its original focus and emerges within a new configuration of meaning.[8] I shall demonstrate here that a wide range of biblical texts use not only a single law source toward such rhetorical ends, but indeed, blend divergent iterations of the same law from across what are normally construed as distinct legal corpora.

In what follows here, I examine seven narratives that invoke legal terminology known to us from the Torah's law corpora. In each, however, the law invoked is expressed in differing ways in at least two of the four legal corpora: the Covenant Code, the Priestly laws, the Holiness Code, and the Deuteronomic Code. The seven examples I examine demonstrate that the legal blend was employed toward three rhetorical ends: to enhance sermonic preaching; to mark compliance with normative practice; and to serve as a literary template for a narrative's plot structure. I will conclude that the broad array of books in which the legal blend is found forces us to question whether indeed the legal blend is strictly a literary

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4. Fishbane, *Biblical Interpretation in Ancient Israel*, 264–65. Cf. ibid., 153; Cf. Clines, "Nehemiah 10," 111–17.

5. Fishbane, *Biblical Interpretation in Ancient Israel*, 282–317.

6. Ibid., 305.

7. Ibid., 300.

8. Ibid., 283.

phenomenon of the post-exilic period. Moreover, the phenomenon obliges us to question the long-standing assumption that diverging iterations of the same law in two (or more) of the Torah's law corpora are inherently mutually exclusive.

The Legal Blend as a Tool of Sermonic Preaching

As Fishbane showed, the prophets of Israel utilized legal material to underscore their theological messages. I illustrate here that the authors of Nehemiah and Jeremiah, respectively, report that their protagonists chastised the people by employing legal blends within their hortatory.

Blended Debt-Legislation Laws in the Sermon of Neh 5:1–12

As several scholars note, the account of the debt-servitude crisis in Nehemiah 5 invokes several phrases from the Jubilee legislation of Leviticus 25. They observe in particular Nehemiah's reproach to the elites in verses 7–8: "Are you pressing claims on loans made to your brothers (איש-באחיו)? Then I raised a large crowd against them (8) and said to them, 'We have done our best to buy back our Jewish brothers who were sold (הנמכרים) to the nations; will you now sell (תמכרו) your brothers so that they must be sold [back] (ונמכרו) to us?'" Nehemiah's charge that the nobles are pressing claims on "loans made to your brothers" (איש-באחיו) seems to invoke the language of Lev 25:46: "You shall not rule ruthlessly, one over his brother" (איש באחיו). The references to Judeans being bought and sold back into servitude in Neh 5:8 invoke Lev 25:42: "For they are My servants, whom I freed from the land of Egypt, they may not be sold in a slave-sale" (ממכרת עבד).[9]

While scholars have identified lexical similarities between the narrative of Nehemiah and debt-relief terminology in the Jubilee laws of Leviticus, other phrases in Nehemiah 5 resonate with distinct terms of debt-relief legislation from the Covenant Code and from the Deuteronomic code.

Exodus 22:24–26 reads:

אִם-כֶּסֶף תַּלְוֶה אֶת-עַמִּי אֶת-הֶעָנִי עִמָּךְ לֹא-תִהְיֶה לוֹ כְּנֹשֶׁה לֹא-תְשִׂימוּן עָלָיו נֶשֶׁךְ. אִם-חָבֹל תַּחְבֹּל שַׂלְמַת רֵעֶךָ עַד-בֹּא הַשֶּׁמֶשׁ תְּשִׁיבֶנּוּ לוֹ. כִּי הוֹא כְסוּתֹה לְבַדָּהּ הוֹא שִׂמְלָתוֹ לְעֹרוֹ בַּמֶּה יִשְׁכָּב וְהָיָה כִּי-יִצְעַק אֵלַי וְשָׁמַעְתִּי כִּי-חַנּוּן אָנִי.

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9. H. G. M. Williamson, *Ezra, Nehemiah* (WBC 16; Waco, TX: Word Books, 1985), 238–40; Joseph Blenkinsopp, *Ezra-Nehemiah: A Commentary* (OTL; London: SCM Press, 1988), 258–59.

If you lend money to My people, to the poor who is in your power, do not act toward him as a creditor; exact no interest from him. (25) if you take your neighbor's garment in pledge, you must return it to him before the sun sets; (26) it is his only clothing , the sole covering for his skin. In what else shall he sleep? Therefore, if he cries out to Me, I will pay heed, for I am compassionate.

The author of Nehemiah 5 creatively employs this passage in his narrative. Under the strain of debt, the people "cry out" (v.1—ותהי צעקת העם), and Nehemiah, looking to act in accordance with the Lord's teachings, "pays heed" when he hears their plea (v. 6—שמעתי). Their plea, it turns out, borrows from the opening phrase of Exod 22:24, אם כסף תלוה את עמי: "We have borrowed money (לוינו כסף) to pay our taxes to the king." In v. 11 Nehemiah instructs the nobles to return (השיבו נא) the fields they had taken as pledges, drawing from the language of Exod 22:25, תשיבנו לו. In each text there are the semantic fields of: 1) "borrowing money"; 2) "crying out" under duress; 3) "returning" the pledge; and 4) "heeding" the cry. The resonances may be summarized in tabular form:

Neh 5:1–11	Exod 22:24–26
(1) ותהי צעקת העם. . .	(24) אם כסף תלוה את עמי. . .
(4) ויש אמרים לוינו כסף. . .	(25) שלמת רעך. . . תשיבנו לו. . .
(6) ויחר לי מאד כאשר שמעתי. . .	(26) והיה כי תצעק אלי
(11) השיבו נא להם היום שדתיהם. . .	ושמעתי

Additionally, the author of Nehemiah 5 also incorporates language from the debt-relief provisions of Deuteronomy. Deut 24:10 reads: "When you lend your neighbor any kind of loan (כי-תשה ברעך משאת מאומה), you shall not go into his house to get his pledge." Nehemiah scorns the nobles with this verse in mind (Neh 5:7): "Are you pressing claims on loans made to your brothers (משא איש באחיו אתם נשים)?"

Juha Pakkala has argued that the exercise of tracing legal language in Ezra-Nehemiah back to the legal corpora of the Pentateuch is founded in error. He notes that in no single case does the purported quotation correspond exactly to a known pentateuchal text. Rather, he believes it is likely that the author(s) of Ezra-Nehemiah drew from a version of the Pentateuch that was dramatically different than the one known to us from the MT and the various second-Temple-era witnesses.[10] We

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10. Juha Pakkala, "The Quotations and References of the Pentateuchal Laws in Ezra-Nehemiah," in Hanne von Weissenberg, et al., eds., *Changes in Scripture: Rewriting and Interpreting Authoritative Traditions in the Second Temple Period* (Berlin: De Gruyter, 2011), 157.

cannot rule out the possibility that other highly variant traditions were in play at this time; however, I am inclined to agree with H. G. M. Williamson that it is difficult to believe that a document which was purportedly a major formative influence in the development of post-exilic Judaism should have been lost without trace, while the Pentateuch should have risen silently to its position of supreme authority.[11] Indeed, as Pakkala himself notes, many late second-temple texts, such as the Temple Scroll and Jubilees, made similarly substantial changes to source texts which they saw as authoritative when adopting them into the new composition.[12]

One could argue from a second angle that the author of Nehemiah does not allude to any of the verses cited here. The language of Nehemiah resonates with the various passages cited, because they address common subject matter—debts, pledges, and the like—and these are the terms that a biblical author would most naturally employ to discuss economic duress. I would counter however, that Nehemiah makes use of terms that are highly distinct. Nowhere in the Hebrew Bible, for example, do we find the word "money," כסף juxtaposed with the word "lending," outside of Exod 22:24 and Neh 5:4. The language of being sold in and out of bondage via the root מ.כ.ר. is distinct to the Jubilee legislation. Jeremiah 34:8–12 addresses very similar issues, and yet discusses being sold in and out of bondage through different verbs.

The strongest case, though, for an intentional legal blend here stems from the legal exegesis that Nehemiah executed, as mentioned earlier. There is a consensus that the author of Nehemiah blended differing iterations of particular pentateuchal laws to inform the legal practice of his day. When we see, then, that narrative sections of Nehemiah resonate with a variety of pentateuchal legal prescriptions, we should assume that the same act of blending and adaptation is at work—now toward rhetorical and hortatory ends.

Blended Debt-Servitude Laws in the Sermon of Jer 34:12–17

We find a legal blend employed toward similar rhetorical ends in Jer 34:12–17. Here, as in Nehemiah 5:1–12, we read that economic instability lead to widespread debt servitude. Jeremiah chastises the nobles, imploring them to release the debtors from bondage. The prophet's words here draw from an array of debt-servitude passages. In verse 14, the prophet reminds King Zedekiah of the biblical injunction, "Every seventh year each of you must set free any Hebrew brother

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11. Williamson, "History," 26.

12. Pakkala, "The Quotations and References," 214 n. 48.

who has been sold to you and has served you for six years; you must set him free from you" (תשלחו איש את אחיו העברי אשר ימכר לך ועבדך שש שנים ושלחתו חפשי מעמך). The call closely echoes the language of Deut 15:12: "When your Hebrew brother is sold to you, and serves you for six years, in the seventh year you shall set him free from you" (כי ימכר לך אחיך העברי או העבריה ועבדך שש שנים ובשנה השביעית תשלחנו חפשי מעמך). In verse 15, however, the prophet invokes the Jubilee section of Leviticus 25, and its call (Lev 25:10), "and you shall proclaim liberty" (וקראתם דרור). He claims that the elites had behaved correctly "by granting release to one another" (לקרא דרור איש לרעהו), and later castigates them for reversing their policy (verse 17): "You have not obeyed me by granting a release to your friends" (לקרא דרור איש לאחיו ואיש לרעהו).[13] In both the sermons of Nehemiah 5 and Jeremiah 34, the protagonist marshals a range of pentateuchal legal resources on a given aspect of debt-relief to buttress the call for social justice.

The Legal Blend as a Marker of Compliance with Normative Practice

As noted, scholars first identified the legal blend as distinct to passages that describe the execution of legal practice in Ezra-Nehemiah and Chronicles, such as the paschal sacrifice in 2 Chr 35:13, and the observance of the sabbatical year in Neh 10:32 [ET 31]. Similar employment of the legal blend, however, is attested in several books of the so-called Deuteronomic history.

Blended City of Refuge Legislation in Josh 20:1–9

Consider the case of Josh 20:1–9, in which Joshua establishes six cities of refuge. Scholars have long recognized this passage as a textual weave of terms found in city-of- refuge legislation from Deut 19:1–13 and from Num 35:9–28. Scholars

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13. The resonance of two law codes in this passage has drawn a wide spectrum of interpretation. For a survey see Mark Leuchter, "The Manumission Laws in Leviticus and Deuteronomy: The Jeremiah Connection," *JBL* 127:4 (2008): 635–53. Many scholars accept the account as one that chronicles an authentic event from the life of the prophet, and accept the wording of these verses as inherent in the original text of Jeremiah. See Michael LeFebvre, *Collections, Codes, and Torah: The Re-characterization of Israel's Written Law* (LHBOTS 451; New York: T&T Clark, 2006), 86–87; John Bergsma, *The Jubilee from Leviticus to Qumran: A History of Interpretation* (Leiden: Brill, 2007), 164–70; John Bright, *Jeremiah* (AB 21; Garden City, Doubleday, 1965), 223–24; William L. Holladay, *Jeremiah: A Commentary on the Book of the Prophet Jeremiah* (Philadelphia: Fortress, 1986), 238–41; Artur Weiser, *Das Buch Jeremia* (ATD 20/21; Gottingen: Vanderhoef & Ruprecht 1969), 313. Older source critics saw the style in these verses as reflective of heavy prose, typical of the Deuteronomic style. See discussion in Jack R. Lundbom, *Jeremiah* (AB 21; New York: Doubleday, 1999), 558.

have also noted that significant parts of MT Josh 20:1–6 emerge as a plus when compared to the LXX, particularly verses 4–6 of the MT. These materials themselves represent a weave of terms from Deuteronomy 19 and Numbers 35. The overall tone of the plus resonates with the passage in Deuteronomy. At the same time, we see in these additions usage of the term ערי מקלט ("cities of refuge"—Josh 20:2) and the stipulation that the offender may move with impunity following the death of the High Priest (Josh 20:6), both elements distinct to Numbers 35. The disparity between the MT and the LXX has led many scholars to suspect that the weave of texts exhibited in the MT is a late development.[14]

Blended Amalek Prescriptions in 1 Samuel 15:2

Pentateuchal literature addresses the future struggle against Amalek in two passages: Exod 17:14–16 and Deut 25:17–19. Most expositors see the passage in Deuteronomy as dependent on the passage in Exodus. In Exodus, God declares that He will engage in a struggle against Amalek, stating (17:14), "I will utterly erase the memory of Amalek from under the heavens" (מחה אמחה את זכר עמלק מתחת השמים). By contrast, these expositors claim, Deuteronomy transforms God's own battle into a mandate for action by Israel (25:19): "*You* shall erase the memory of Amalek from under the heaven" (תמחה את זכר עמלק מתחת השמים).[15]

The author of 1 Samuel 15 invokes both passages in his introduction to Saul's campaign against Amalek (15:2): "I am exacting the penalty for what Amalek did to Israel, for the assault he made upon them on the journey, on their way up from

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14. See Alexander Rofé, "Joshua 20: Historico-Literary Criticism Illustrated," in Jeffrey Tigay, ed., *Empirical Models for Biblical Criticism* (Philadelphia: University of Pennsylvania Press, 1985), 131–47; Richard D. Nelson, *Joshua: A Commentary* (OTL 6; Louisville, Westminster John Knox, 1997), 228–30.

15. Gerhard von Rad, *Deuteronomy: A Commentary*, trans. Dorothea Barton (OTL 5; London; SCM Press, 1966), 155; Tigay, *Deuteronomy*, 237; David Toshio Tsumura, *The First Book of Samuel* (NICOT; Grand Rapids, MI: Eerdmans, 2007), 388–89. By contrast, Ed Noort sees Deuteronomic influence in the Exodus passage. See Ed Noort, "Josua und Amalek: Exodus 17:8–16," in Bert Jan Lietaert Peerbolte, et al., eds., *The Interpretation of Exodus: Studies in Honour of Cornelis Houtman* (Leuven: Peeters, 2006), 155–70. Some scholars have argued for a pre-exilic date of the tale. See Philip D. Stern, "1 Samuel 15: Towards an Ancient View of the War-Herem," *UF* 21 (1989): 413–20; and Meindert Dijkstra, "The Geography of the Story of Balaam: Synchronic Reading as Help to Date a Biblical Text," in Johannes C. de Moor, ed., *Synchronic or Diachronic? A Debate on Method in Old Testament Exegesis* (Leiden: Brill, 1995), 72–97. Other scholars have proposed a post-exilic date. See Fabrizio Foresti, *The Rejection of Saul in the Perspective of the Deuteronomistic School: A Study of 1 Sm 15 and Related Texts* (Roma: Edizioni Del Teresianum, 1984).

Egypt." The verse invokes the language of Deuteronomy 25:17–18: "Remember what Amalek did to you on the journey, upon your exodus from Egypt, how he surprised you on the journey." The language of the Hebrew is close:

1 Sam 15:2	Deut 25:17–18
פקדתי	זכור
את אשר עשה עמלק לישראל	את אשר עשה לך עמלק בדרך
אשר שם לו בדרך בעלתו ממצרים	בצאתכם ממצרים אשר קרך בדרך

Yet at the same time that the author of the verse invokes the language of Deuteronomy, he also incorporates a central element of the passage from Exodus: the divine initiative. In Deuteronomy, the campaign against Amalek is left to Israel to wage. In Exodus, Israel is nowhere charged with the campaign against Amalek. Rather, it is God who will wage the battle. To be sure, in 1 Samuel 15 it is Israel that wages the battle. But the initiative is divine. As Moshe Garsiel notes, the divine command in 1 Sam 15:2 is introduced in a way that underscores that God is enjoining the battle himself: "Thus said *the Lord of Hosts* (כה אמר יהוה צבאות): 'I am exacting the penalty,' " etc.[16]

The author of this verse may have seen no contradiction between the passage in Exodus 17 and the passage in Deuteronomy 25; he may have creatively interpreted the call to war in Deuteronomy as an expression of God's eternal battle against Amalek. What is important to note is that the Samuel narrative conflates two iterations of a given issue that are often seen as stemming from different sources with mutually exclusive viewpoints.

Blended Prescriptions for Cultic Desecration in Judg 6:25–31

Three passages of biblical law call for the obliteration of Canaanite cultic sites, invoking variations on a common formula, exhibited here in Table 8.1.

Scholars have considered the diachronic development between these passages. Nelson sees the passage in Deuteronomy 7 as an amplification of the earlier passage in Exodus 34. Deuteronomy 7:5, he says, adds the distinctive call to burn

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16. Moshe Garsiel, *1 Samuel* (Olam Ha-Tanakh; Tel Aviv; Davidzon Itai, 1985), 140 (Hebrew). Shimon Bar-Efrat likewise sees the blending here of Exodus and Deuteronomic passages concerning Amalek. See Shimon Bar Efrat, *1 Samuel* (Miqra Le-Yisrael; Tel Aviv; Am Oved, 1996), 197 (Hebrew). He also notices that the text of 1 Sam 14:47 וילחם סביב בכל איביו, which immediately precedes the call for battle against Amalek, satisfies the condition of Deuteronomy 25:19 that war is to be engaged against Amalek בהניח יהוה אלהיך לך מכל איביך מסביב.

Table 8.1 Iterations of the Call for the Obliteration of Cultic Sites

Exod 34:13	כִּי אֶת-מִזְבְּחֹתָם תִּתֹּצוּן וְאֶת-מַצֵּבֹתָם תְּשַׁבֵּרוּן וְאֶת-אֲשֵׁרָיו תִּכְרֹתוּן	For their altars you shall tear down, and their pillars you shall break, and their Asherim you shall cut down.
Deut 7:5	מִזְבְּחֹתֵיהֶם תִּתֹּצוּ וּמַצֵּבֹתָם תְּשַׁבֵּרוּ וַאֲשֵׁירֵהֶם תְּגַדֵּעוּן וּפְסִילֵיהֶם תִּשְׂרְפוּן בָּאֵשׁ	Their altars you shall tear down, and their pillars you shall break, and their Asherim you shall chop down, and their images you shall burn in fire.
Deut 12:3	וְנִתַּצְתֶּם אֶת-מִזְבְּחֹתָם וְשִׁבַּרְתֶּם אֶת-מַצֵּבֹתָם וַאֲשֵׁרֵיהֶם תִּשְׂרְפוּן בָּאֵשׁ וּפְסִילֵי אֱלֹהֵיהֶם תְּגַדֵּעוּן	You shall tear down their altars, and you shall break their pillars, and their Asherim you shall burn in fire and the images of their gods you shall chop down.

images, and with regard to the asherah, replaces the root כ.ר.ת., "cut down" found in Exodus, with the more intensive root, ג.ד.ע., "to chop down."[17] Weinfeld likewise sees the passages in Deuteronomy as chronologically later. For Weinfeld, the passage in Exodus reflects an early stage of the law, as it omits reference to images. This, he says, is because cultic practices at the time consisted mainly of an altar, a pillar, and a sacred tree. Deuteronomy took the law a step further, and included idols in each of the two passages.[18] Conversely, Childs, following Noth, sees the list in Exodus as reflecting Deuteronomic influence.[19]

I would add that at least some of the differences in formulation stem from the rhetorical needs of each writer, given the wider hortatory context of his respective passage. In all likelihood, the author of Deuteronomy 7 wished to reserve the phrase תשרפון באש, "you shall burn with fire," for idols, to conform with his call in verse 25: "the idols of their gods you shall burn with fire (תשרפון באש); you shall not covet the silver and gold upon them, lest you become ensnared by them, for it is an abomination to the Lord." To merely "chop down" (גדע) the idols, as per Deut 12:3, would still leave the silver and gold intact and for the taking, and thus the need to reserve the phrase "you shall burn with fire" (תשרפון באש) for the graven images. The author of Exod 34:13, as Weinfeld noted, omits mention of

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17. Nelson, *Deuteronomy*, 100.

18. Moshe Weinfeld, *Deuteronomy: A New Translation with Introduction and Commentary* (AB 5; New York: Doubleday, 1991), 366.

19. Brevard S. Childs, *Exodus: A Commentary* (OTL 2; London: SCM Press, 1974), 613.

pagan images altogether. This, too, may have stemmed from rhetorical needs. The root כ.ר.ת. in that passage is a *leitwort*. The Lord "cuts" (כרת) a covenant with Israel (34:10). Israel, therefore, must not "cut" (כרת) a covenant with the indigenous nations (34:12). "Cutting" a covenant with them (פן תכרת ברית) will result in cultural corruption (34:15–16). As opposed to cutting a covenant with the nations, Israel is commanded in 34:13 to "cut" down their Asherim (ואשריהם תכרתון). By omitting reference to treatment of pagan idols—which, no doubt, this author surely abhorred—the sentence of 34:13 rises to a climax that creates the apposition between proscribed "cutting" with the indigenous nations—cutting of a covenant—and mandated "cutting"— of their Asherim.

    I would suggest that the author of Judges 6 was familiar with these three traditions and, in spite of their differences, saw each of them as a source of inspiration for his composition of the episode in 6:25–32, where Gideon is called upon to desecrate his father's cultic site. In this section, I highlight the many and various ways through which the author of Judges 6 achieves this.[20] No one resonance in and of itself is sufficient to make the case for intentional allusion to these formulae; rather, it is the aggregate of all the allusions that creates this connection.

    A reference to the desecration formulae may be detected in the words of the townsfolk, whose verbal response to the desecration closely paraphrases the language of the formulae (6:28): "The townsfolk arose the next morning, and behold the altar to Baal had been demolished and the asherah upon it had been cut down"—והנה נתץ מזבח הבעל והאשרה אשר עליו כרתה. They repeat the formula in their accusation against Gideon in verse 30: "The townsfolk said to Joash, 'hand over your son that he may die, for he has demolished the altar of the Baal, and has cut down the asherah upon it'"—כי נתץ את מזבח הבעל וכי כרת האשרה אשר עליו. One could counter that there is no deliberate invocation of the formula, and that this is the only way for a biblical writer to express these actions. Yet we should take careful note of the author's use of language in this passage. When the Lord instructs Gideon to destroy the altar, he does not use the verb נ.ת.ץ., but rather ה.ר.ס. (6:25). The tight juxtaposition created in the exclamations of the townsfolk between tearing down the altar and the cutting down of the asherah strengthens the case that the author has invoked the pentateuchal call for cultic desecration. Through the adroit hand of the author of Judges 6, Gideon obeys not only the word of the Lord as spoken in verse 25, but also the law as recorded in the legal prescriptions concerning the asherah.

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20. Some scholars maintain that the stories of the saviors in Judges had already been formed into an edited cycle before coming to the hands of the Deuteronomic historian. Others prefer to see these stories as part of a late revision of a basic Deuteronomic history. See the thorough overview of the history of this scholarship in Barry G. Webb, *Book of Judges* (NICOT; Grand Rapids, MI: Eerdmans, 2012), 20–32.

Indeed, the account as a whole seems to have been scripted with Deuteronomy 12:1–6 in mind. There, Israel is called upon to desecrate the cultic centers of the local inhabitants (verses 2–3) and to replace them with a sanctioned center from which Israel will sacrifice offerings (verses 5–6). The narrative of Judges 6:25–31 reports a highly similar tale. At the Lord's behest, Gideon destroys his father's pagan cultic center. The townsfolk are made to mimic the formula that calls for this desecration. After desecrating the cultic sites according to the prescription of Deut 12:2–3, Gideon erects an alternative and sanctioned cultic site to YHWH, from which he offers burnt offerings, just as Israel are commanded to do in Deut 12:6.

The instruction to cut down the asherah is consistently expressed in this narrative through the verb כ.ר.ת. (6:25, 26[2x], 28, 30), the language found exclusively in Exod 34:13. In verse 26, though, the Lord further instructs Gideon to use the asherah as firewood to offer the sacrifice on the rebuilt altar. The implication seems to be more than a mere suggestion to Gideon as to how he may procure fuel wood to offer the burnt offering. Rather, it seems that the Lord instructs Gideon to incinerate the asherah in order to magnify the audacity of the act and the totality of the desecration. Not only will the asherah be rendered nonfunctional by cutting it down; it will be obliterated by incineration. Not only will it be incinerated, it will serve in the establishment and consecration of a renewed cultic site, now dedicated to YHWH, as the firewood used in the first sacrifice to Him. By having Gideon not only cut down the asherah but burn it in fire, the author has Gideon fulfill the textual tradition preserved in Deut 12:3.[21]

We have seen, therefore, how the account of Judges 6 hews to the cultic desecration formulae of Exodus 34:13 (through the language of כ.ר.ת. with regard to the asherah) and of Deut 12:1–6 generally (in the overall plot of the story) and of 12:3 in particular (through the incineration of the asherah), and through the townsfolk's mimicking of the general form of the formula with regard to altars and asherim. Our author, however, has also woven a reference to the cultic desecration formula of Deut 7:5 through the name of the protagonist himself, Gideon. Several commentators have noted that the name Gideon stems from the root ג.ד.ע., "to chop down." Moreover, the orthography of Gideon's name itself hews closely to the language of Deut 7:5 ואשריהם תגדעון.[22] To be sure, other explanations can be offered to account for the etymology of the name Gideon, such as the cutting down of the horn of an enemy (Jer 48:25, Psalm 75:11), or the cutting down of a staff (Zech 11:7–14). Such etymologies however, could befit virtually any biblical

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21. As noted in Judith M. Hadley, *The Cult of Asherah in Ancient Israel and Judah: Evidence for a Hebrew Goddess* (Cambridge: Cambridge University Press, 2000), 54.

22. Moshe Garsiel, "Homiletic Name-Derivations as a Literary Device in the Gideon Narrative: Judges 6–8," *VT* 43:3 (1993): 302–17; F. Zimmermann, *Folk Etymology of Biblical Names* (VTSup 15; Leiden: Brill, 1966), 315–16; Yair Zakovitch, "The Synonymous Word and the Synonymous Name in Name Midrashim," *Shnaton* 2 (1977): 105–6 (Hebrew).

hero, yet no other such figure in the Hebrew Bible bears a name with this etymology. It seems more likely that the author of Judges 6 has named his hero Gideon to mark this seminal act in his career as a warrior for the Lord of Israel.

Finally, I invoke one more piece of lexical data from the account of Judges 6 to buttress my claim that its author is making deliberate use of the various legal passages concerning the asherah. In verse 26, YHWH instructs Gideon to erect "an altar to the Lord your God" (מזבח ליהוה אלהיך). Outside of this reference in Judges 6, the phrase מזבח יהוה אלהיך is found only four times, all in Deuteronomy. Two of those references (12:9 and 27:5) speak of erecting "an altar for the Lord your God" in order to offer burnt offerings, as Gideon is instructed here in Judg 6:26. A third reference addresses the altar and the asherah (Deut 16:21): "You shall not plant an asherah near the altar of the Lord your God" (מזבח יהוה אלהיך). It would seem that the author of Judges 6 has deliberately reached to employ the Deuteronomic phrase to invoke tropes of proper cultic worship as Gideon destroys his father's cultic site. In accordance with Deuteronomic prescription, Gideon will erect an altar "to the Lord your God" where he will offer burnt offerings. Moreover, in accordance with the spirit of Deut 16:21, there will be no asherah present at this new site; the asherah that had been there will be immediately consumed upon the new altar that is a מזבח ליהוה אלהיך. It is worth underscoring again that no single resonance by itself is sufficient to make the case for intentional allusion to these formulae. Rather, it is the aggregate of all the allusions within the space of five verses that creates this connection. It is more reasonable to assume that the author of Judges 6 drew from legal traditions known to him, rather than to assume that three different legal draftsmen each drew from a different element of this narrative in the formulation of their respective laws of cultic desecration.

The Legal Blend as a Literary Template for Plot Structure in Biblical Narrative

In the previous example, we saw that the account of Gideon's assault on his father's cultic center closely follows the sequence of commands to Israel found in Deuteronomy 12:1–6. Gideon seemed to be following what Israel had been called upon to do: that is, to desecrate cultic centers in the land and to replace them with a sanctioned center from which to sacrifice burnt offerings. In this section I note two examples of narrative in which the characters seem to follow a plot whose lines closely follow two separate iterations of a pentateuchal law.

Blended Necromancy Laws in 1 Sam 28:3–25

Biblical law proscribes divination via the *ʾōb* in four passages: Lev 19:31; 20:6, 27, and Deut 18:11. Bill T. Arnold notes that the account of King Saul's visit to the

woman of Ein Dor in 1 Samuel 28 intentionally invokes the language of penta-
teuchal law, drawing out the intertextual implications that produce a critical read-
ing of Saul's activities.[23] Arnold focuses on the references the Saul story makes to
Deuteronomy 18. The language of inquiring of the dead, דרש אל המתים (Deut
18:11) is echoed in Saul's call to his servants to find a woman of *'ōb*, "that I may
enquire of her"—ואדרשה בה (1 Sam 28:7). I would add that in 1 Sam 28:8 Saul
entreats her again using the language of Deuteronomy, "divine for me (קסמי נא)
through the *'ōb*," invoking the language of divination in Deut 18:10, קסם קסמים.

However, the narrative of 1 Samuel 28 also borrows divinatory language from
Leviticus. The defective plural form *'ōbôt* employed in 1 Sam 28:3 and 9 is found
only in Leviticus (19:31). When Saul charges his servants with "seeking" a woman
necromancer (בקשו לי אשת אוב) in 1 Sam 28:7, the request invokes the language of
prohibition in Lev 19:31 concerning the *'ōbôt* and the *yiddĕ'ōnîm*, "do not seek out
(תבקשו) to be defiled through them." Simply, then, on the level of language, we see
how the Saul narrative resonates with more than one iteration of *'ōb* provisions.

Moreover, however, the narrative of 1 Samuel 28 invokes the divination laws
of Leviticus and Deuteronomy in a far more profound way. The structure of the
respective legal passages from Leviticus and Deuteronomy each contributes to
the plot structure of the Ein-dor narrative. To appreciate how this works we need
to understand the respective *'ōb* passages in their legal, pentateuchal contexts,
and then examine how they are employed in the narrative of 1 Samuel 28.

As many scholars have pointed out, the divination passage of Deut 18:9–22
paints a contrastive picture: rather than turning to various forms of divination—
here proscribed in verses 9–14—Israel is to turn to the prophets of YHWH, as
outlined in verses 15–22.[24] The contrast set up in this text is twofold. The first
contrast is established concerning the appropriate resources through which to
divine the future. To learn the future one must turn not to heathen divinatory
practices, but instead to a prophet of YHWH. Indeed, the hallmark of a true
prophet, according to this passage, is his proven capacity to accurately predict
future events (18:21–22). Jeffrey Tigay emphasizes, however, that the more

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23. Bill T. Arnold, "Necromancy and Cleromancy in 1 and 2 Samuel," *CBQ* 66 (2004): 207.
Christophe Nihan likewise emphasizes the role of Deuteronomic language in this story, but
suggests a post-Deuteronomistic origin for the story. See Christophe Nihan, "1 Samuel 28
and the Condemnation of Necromancy in Persian Yehud," in Todd E. Klutz, ed., *Magic in the
Biblical World: From the Rod of Aaron to the Ring of Solomon* (JSOTSS 245 London: T&T
Clark, 2003), 39–54. On the basis of ancient Near Eastern parallels, others suggest an early
date. See Mordecai Cogan, "The Road to En-dor," in David P. Wright, et al., eds., *Pomegranates
and Golden Bells: Studies in Biblical, Jewish, and Near Eastern Ritual, Law, and Literature in
Honor of Jacob Milgrom* (Winona Lake, IN: Eisenbrauns, 1995), 319–26.

24. Jeffrey H. Tigay, *Deuteronomy* (Philadelphia: Jewish Publication Society of America,
1989), 172; Nelson, *Deuteronomy*, 232.

dominant contrast at stake in this passage concerns the question of *authority*. To whom shall the Israelite turn for instruction? Deut 18:14 states that the heathens "listen to" or "obey" (ישמעו) the proscribed instruments of divination. By contrast, YHWH will raise up a true prophet and "to *him* you shall listen" (תשמעון) (18:15).[25] The root ד.ב.ר. as "word" and "speech" serves as a *leitwort* in this section. In the space of only five verses, verses 18–22, the root appears fourteen times. The word of the prophet is the word that he has received from the Lord, and it is that word that must be obeyed (verses 18–19). To summarize, the section rejects the appeal to oracular sources such as the *'ōb* for either instruction or for insight as to the direction of future events. Instead, Israel is to turn to the prophets.

The author of 1 Samuel 28 has employed both the language and the structure of this passage in his construction of the encounter between Saul and Samuel in verses 15–19. Upon turning to the *'ōb*, Saul receives the rebuke of the prophet. The rebuke he receives is a paraphrase of the lessons of Deut 18:9–22. Saul admits that he turned to the *'ōb* to receive *instruction* (28:15): "So I called upon you that you should tell me what to do!" The author of the passage has Samuel carefully invoke the language of Deuteronomy 18:

Deut 18:19	**1 Sam 28:17–18**
והיה האיש אשר <u>לא ישמע</u> אל דברי	ויעש יהוה לו
<u>אשר ידבר</u> בשמי	<u>כאשר דבר</u> בידי
אנכי אדרש מעמו	ויקרע יהוה את הממלכה מידך
	ויתנה לרעך לדוד
	<u>כאשר לא שמעת</u> בקול יהוה
	ולא עשית חרון אפו בעמלק
	על-כן הדבר הזה עשה לך יהוה
	היום הזה
And the man who shall not heed My words	**The Lord has done**
Which [the prophet] shall speak	**As He has spoken though Me**
in My name	And he has torn the kingdom from your hands
I shall call him to account	And given it to your fellow, to David
	Because you did not heed the voice of the Lord,
	And did not visit His great anger upon Amalek.
	Therefore, this thing has God done to you this day.

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25. Tigay, *Deuteronomy*, 175.

The author of 1 Samuel 28 continues to hew to the contours of Deuteronomy 18 as the plot continues. Samuel never does provide Saul with what he sought, namely instruction, a course of action. Instead, Samuel proceeds to give Saul a highly detailed oracle of what awaits him; he predicts the future (28:19): "The Lord will also deliver Israel together with you into the hands of the Philistines and tomorrow you and your sons will be with me." Put differently, the author of 1 Samuel 28 continues to script Samuel's rebuke straight out of the play book of Deuteronomy 18. The ultimate test of a true prophet, according to that chapter, is his capacity to accurately predict future events. Samuel's prediction, of course, is fully realized in 1 Samuel 31. The contrast that Deuteronomy 18 wishes to draw between the *'ōb* and the prophet of YHWH is fully replicated here. Saul sought the *'ōb* in search of instruction, but he receives no instruction whatever. Instead, he receives rebuke for having failed to heed the instruction of the prophet earlier in his career at the battle with Amalek.[26] He is likewise given a demonstration of the clairvoyance of a true prophet of YHWH, who now, with great precision, presages his demise. These findings are summarized in Table 8.2.

While the encounter between Saul and Samuel in 1 Samuel 28 follows the contours of *'ōb* legislation in Deuteronomy, the encounter between Saul and the woman of Ein Dor in verses 8–14 follows the contours of the *'ōb* legislation in Leviticus 19. Here, too, we must examine that passage in its own context as a

Table 8.2 **The Structure of 1 Sam 28:7–19 in Light of Deut 18:8–22**

Motif	Deut 18:8–22	1 Samuel 28:7–19
Turning to the ob for instruction	Prohibition of turning to oracles for instruction (8–14)	Saul turns to the *'ōb* for instruction (7–14)
Heeding the Prophet of YHWH	Rules guiding heeding the prophet (15–20)	Saul is rebuked for not heeding the prophet (15–18)
Clairvoyance of the Prophet	True prophet predicts events (21–22)	Samuel foretells outcome of the battle (19)

26. My reading emphasizes Saul's failure to heed Samuel's voice in that episode as central to the contrast the author wishes to draw between reliance on the *'ōb*, as opposed to reliance on the prophets of YHWH. This stands in stark contrast to the view of McCarter, for whom the reference to the battle with Amalek here is "entirely superfluous and out of place here." See P. Kyle McCarter, *1 Samuel: A New Translation with Introduction, Notes & Commentary* (AB 8; Garden City, NY: Doubleday, 1980), 423.

prelude to exploring how the author of 1 Samuel 28 uses it in his present narrative.
Lev 19:31–32 reads,

אל-תפנו אל-האבת ואל-הידענים אל-תבקשו לטמאה בהם אני יהוה אלהיכם. מפני שיבה
תקום והדרת פני זקן, ויראת מאלהיך אני יהוה.

(31) Do not turn to the *'ōbôt* and the *yiddĕ'ōnîm*; do not seek out to become
defiled by them; I am the Lord your God. (32) Before the aged you shall rise
and show deference to the old, and you shall fear your God, I am the Lord.

The passage establishes an apposition around the lexeme "face" (פן). One should
not turn toward, or literally, face (תפנו), the *'ōbôt* and the *yiddĕ'ōnîm*. To "turn
toward" or to "face" is to show deference and esteem. Rather, one should reserve
esteem for its proper recipients. Verse 32 twice instructs the reader to show esteem
when "faced" with the aged. Verse 32a instructs, "Before the aged," or, literally, "In
the face of the aged rise," מפני שיבה תקום. Verse 32b continues likewise, "you shall
honor the face of the elderly," והדרת פני זקן. Verse 19:14 had safeguarded proper treat-
ment of the weak—the deaf and the blind—with the injunction "and you shall fear
your God, I am the Lord," and that same injunction is invoked here again, this time
with regard to the proper treatment of another weak segment of society, the aged.[27]
The structure of the passage forms an inclusio with verses 3–4, which address hon-
oring parents and refraining from "turning toward" (אל תפנו) idolatrous practices.[28]

Moving now to the narrative of 1 Samuel 28, we may see how the author has
crafted the meeting between Saul and the sorceress with this passage in mind.
I earlier noted that Saul orders his servants (28:7), "seek for me a woman of *'ōb*"
(בקשו לי אשת בעלת אוב), directly contradicting, in lexical terms, the call "do not
seek (אל תבקשו) to be defiled by them" in Lev 19:31. One might counter that Saul's
call "seek for me a woman of *'ōb*" is simply best expressed through the root ב.ק.ש,
and no connection to Lev 19:31 should be adduced. I also noted, however, that
the defective plural form, *'ōbôt*, found in verses 3 and 9, is also distinct to the lan-
guage of Leviticus 19–20. We may buttress the reference to "seeking" in the Saul
narrative as a deliberate reference to Lev 19:31, by identifying other lexical cues in
the Saul narrative. The woman reports that she saw אלהים rising from the ground
(28:13). Although most commonly the word for "god," אלהים may also connote
here a godlike being or a "celestial spirit."[29] Alternatively, the dead could be

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27. Jacob Milgrom, *Leviticus: A New Translation with Introduction and Commentary* (AB 3;
New York: Doubleday, 1991), 1703.

28. Milgrom, *Leviticus*, 1701–02.

29. See discussion in Arnold, "Necromancy and Cleromancy," 202.

termed אלהים, as attested by appellations for the dead in Ugaritic and elsewhere.[30] Faced with אלהים—whatever the sorceress meant by that—she experienced dread (28:12–13). The semantic field of אלהים in Lev 19:32 mandates fear: ויראת מאלהיך. Yet here we see that Saul acts counter to that; he calls upon her *not* to be afraid of the אלהים she sees (28:13): "And the king said to her, 'do not fear—what have you seen!'" Saul himself demonstrates that he has no fear of God here, as he swears in vain, vowing to the woman in God's name that she will be guilty of no sin by summoning the dead (28:10). The woman describes the apparition she has seen as "an old man" (איש זקן). Saul, desiring to show deference, again gets it wrong; he prostrates himself on the ground. He surely meant to show deference; but in the skillful hand of the author of 1 Samuel 28, Saul does exactly the opposite of what is called for: "Before the aged you shall *rise*" (Lev 19:32). Finally, and most significantly, the narrative of 1 Samuel 28 proves that Saul has flagrantly violated the command of Lev 19:32. Israelites there are called to show "deference" to the old: והדרת פני זקן. Samuel—described here as איש זקן—reproaches Saul (28:15) for having "disturbed" him (הרגזתני), quite the opposite of showing deference. We can see therefore, that not only has the author borrowed language of necromancy from both Leviticus and Deuteronomy, but, indeed, has crafted his story to form a homiletic tale. The exchange between Saul and the woman necromancer follows the structure of the *'ōb* passage of Lev 19:31–32. It incorporates the terms *'ōbôt*, "seeking" (בקש), *'elōhîm*, "fear" (יראה), and "aged" (זקן).[31] Here, too, it is highly unlikely that the author of Leviticus 19 happened to pick up on the first half of the story and the author of Deuteronomy 18 the second half, as each formulated his proscription concerning the *'ōb*. It is more likely that the author of 1 Samuel 28 conflated traditions that were available to him.

Blended Debt-Legislation Laws in 2 Kgs 4:1–7

2 Kgs 4:1–7 tells of the plight of a widow faced with the threat of default on her debt to a creditor poised to possess her two children.[32] The narrative resonates with the same legal texts employed in the legal blend of Nehemiah 5: both the collateral

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30. Ibid., 203; Milgrom, *Leviticus*, 1773–74.

31. Elsewhere I demonstrate how the structure of the book of Ruth hews to the order of laws registered in Deut 24:16–25:10 ("Ancient Hermeneutics and the Legal Structure of the Book of Ruth," *ZAW* 119, no. 1 [2007]: 22–38). See also my "Law Code as Plot Template in Biblical Narrative (1 Kings 9.26–11.13; Joshua 2.9–13)," *JSOT* 40, no. 3 (2016): 337–49.

32. On the basis of syntactic analysis, Frank Polak dates this story to the eighth century. See Frank H. Polak, "Development and Periodization of Biblical Prose Narrative (Second Part),"

law of the Covenant Code in Exod 22:22–26 and the revised version of the law in Deut 24:10–11.

The woman cries out (צעקה) to Elisha to save her children from the creditor, here referred to as the נשה (4:1). As Yael Shemesh notes, the woman's circumstances represent a conflate of cases described in two consecutive Covenant Code laws, one concerning a widow and the next concerning a debtor. Exod 22:21–22 warns that, "You shall not mistreat any widow or any orphan. If you do mistreat them, I will heed their outcry (כי אם צעק צעק אלי) as soon as they cry out to Me." The next law (22:24) states, "If you lend money to My people, to the poor who is in your power, do not act toward him as a creditor (כנשה) . . . (26) if he cries out to Me (והיה כי יצעק אלי), I will pay heed, for I am compassionate." The poor woman of 2 Kgs 4:1–7 is a widow and her children are orphans, as is the case of Exod 22:21–22. Yet she is also a debtor who owes money to a נשה, a creditor (cf. vv. 1, 7), which is the case found in Exod 22:24–26.[33] In this homiletic tale, the author of 2 Kings 4 has her cry out to the "man of God" (cf. v.7) as the Lord's representative, calling upon him to fulfill the promise of the two laws in the Covenant Code: namely, that her cry will be heard. Note that the opening verse of the passage (v. 1) does not employ the form ותצעק, which would be followed by the subject, namely the widowed woman. Rather, the syntax is varied so that the subject is the first word of the verse. The result is that the verb, צעקה, is now followed by the participle אל, followed by the object, the Lord's representative, Elisha. The verb צעק followed by the participle אל matches the syntax of the legislation of Exod 22:22, 26, צעק אלי.

The passage also resonates with the Deuteronomic revision of the collateral law, found in Deut 24:10–11. That law extends the protection to the debtor stipulating that the creditor (נשה) may not enter the debtor's home (ביתו) to take the pledge. Instead, the creditor must wait outside the domicile for the debtor to bring it to him. The structure of verse 24:11 stresses the ex territorial nature of the debtor's home by bracketing the verse with the word "outside": "Outside (בחוץ) you shall stand, and the man to whom you made the loan shall bring the pledge out to you (החוצה)." As Richard D. Nelson aptly puts it, "the domestic threshold," in this law, "is a boundary not to be transgressed."[34]

Beit Mikra 153 (1998): 143–60 (Hebrew). Thomas Römer argues for a Persian-period origin. See Thomas Römer, "La fin de l'historiographie deutéronomiste et le retour de l'Hexateuque?," *TZ* 57 (2001): 269–80.

33. Yael Shemesh, "Elisha and the Miraculous Jug of Oil (2 Kgs 4:1–7)," *JHS* 8 (2008). http://www.jhsonline.org/cocoon/JHS/a081.html.

34. Richard D. Nelson, *Deuteronomy* (OTL 5; Louisville, KY: Westminster John Knox, 2002), 290.

The destitute widow cries out to Elisha (4:1), "The creditor (הנשה) has come to take my two children for himself as servants." The situation is urgent, as the creditor is poised to enter her home to take her children as pledge. As Cogan and Tadmor note, Elisha's query (4:2), "What can I do for you?" is nearly rhetorical in nature. It expresses the prophet's acknowledgement of the legal right of the creditor to receive his pledge. Concern for the widow and the orphan is commonplace in the wisdom literature and the prologues and epilogues of ancient Near Eastern legal literature.[35] Yet nowhere in that literature, not even in the Pentateuch, is there legislation that saves someone from debt servitude when they have defaulted on their debt (cf. Isa. 50:1; Amos 2:6 and 8:6).[36] Following the spirit of the law, though not its letter, Elisha seeks to prevent the creditor from violating her domain. The law of Deut 24:11 is extracted from its original focus and emerges within a new configuration of meaning. He instructs her to establish a clear boundary setting off the abode (בית) (2 times in verse 3), where she is to shut the door behind her (verses 4 and 5) after she has gone to bring vessels from "the outside" (החוץ). Her domicile is transformed into a secure zone in which her children assist her to produce the necessary oil with which she may go out and pay her creditor (verse 7). Following Yehuda Keel, we note that the bifurcation between בית, "home" and חוץ, "outside"—where the נשה must remain—invokes images of the revised law of collateral, as expressed in Deut 24:10–11.[37] When the woman exits from the house and proceeds to the man of God (verse 7), he explains how she may now extirpate herself from the threat of debt, demonstrating, indeed, in the language of the laws of the Covenant Code, that the Lord hears the cries of the widow, the orphan and the debtor. The core of the plot—the ex territorial status of the woman's house in the face of the creditor's threat—revolves around the imagery invoked from that law. The account emerges as a homiletic tale that draws from a conflation of the *sensus plenior* of the collateral laws of Exod 22:22–26 and Deut 24:10–11.

Were this narrative to resonate with only a single iteration of the law of collateral, we could rightly question which text had chronological priority. Since the passage resonates with two versions of the law, it seems more reasonable to assume that they are both prior to the text in 2 Kings 4, rather than assuming

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35. F. Charles Fensham, "Widow, Orphan, and the Poor in Ancient Near Eastern Legal and Wisdom Literature," *JNES* 21, no. 2 (1962): 129–39.

36. Mordechai Cogan and Hayim Tadmor, *II Kings* (AB 11; New York: Doubleday, 1988), 56.

37. Yehuda Keel, *Kings* (2 vols.; Da'at Miqra; Jerusalem: Mossad Harav Kook, 1988), 2:490 (Hebrew).

that the author of the Covenant Code picked up on part of the story in crafting his law, while the author of the Deuteronomic code coincidentally picked up on other parts in crafting his version.[38]

Conclusions

The legal blend is more widely employed in the Hebrew Bible than has been understood until now. At times it is employed to conflate civil laws concerning issues of social justice (in the examples from Joshua 20, 2 Kings 4, Jeremiah 34, and Nehemiah 5), and at others to blend theological or cultic laws (in the examples from Judges 6, 1 Samuel 15, and 1 Samuel 28). Laws from all four of the Pentateuch's law corpora contributed to the examples adduced here. The textual weaves present in Josh 20:1–9 and Jer 34:1–17 have been noted in the scholarship for some time. Here I identified five more examples on the basis of what I took to be strong motivic and lexical connections between the respective narratives, and the various laws with which they resonate. I am unaware of any other instances of the legal blend outside of Ezra-Nehemiah and Chronicles. Sensitive readers, it is hoped, will identify further examples of this phenomenon in the future.

The legal blend as a rhetorical device may be distinguished from the legal blend as a mere report of practice, as in the report of the paschal sacrifice in 2 Chr 35:12–13. The legal blend as rhetorical device incorporates motifs and images alongside lexical markers. By contrast, mere reports of legal practice in Ezra-Nehemiah and Chronicles achieve blending almost exclusively by melding together the language of disparate passages of legal provisions to the same issue. The legal blends identified here, which invoke biblical law for hortatory and rhetorical purposes, employ a wider range of blending techniques. All will invoke language. Yet alongside that, some, like 1 Sam 28, will adopt the order of a series of laws to structure the plot of the narrative. Others, still, will narrate an episode that touches on the law without explicitly reporting that the legal prescription is being followed. In fact, the opposite is true. The invocation of the laws is usually done with reference to a case that lies outside the purview of the strict letter of the

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38. Calum Carmichael has proposed, in a number of his works, that the laws of the Pentateuch represent the crystallization of lessons drafted on the basis of the tales told in biblical narrative. For Carmichael's contention to stand, however, we would need to posit that, time and again, authors of the various law corpora conveniently divvied up the narratives studied here, with each taking a separate phrase to formulate his respective legislation. For a critique of Carmichael's approach see Bernard M. Levinson, *"The Right Chorale": Studies in Biblical Law and Interpretation* (Tübingen: Mohr Siebeck, 2008), 224–55.

Torah law, which prescribed actions to be taken against cultic sites of the heathen nations. The author of Judges 6, however, applies those laws to an Israelite heterodox site. Deut 24:11–12 states that the creditor must wait outside of the debtor's home, and that the debtor must bring him the pledge. The author of 2 Kgs 4:1–7, however, never has the debtor—the impoverished widow—bring out the pledge. Instead, she "brings out" oil, which she sells to pay off her debt. Neh 5:1–12 invoked laws concerning pledges (Ex 22:24–26; Deut 24:10), yet Nehemiah does not enforce compliance with the literal letter of those laws, which seem not to be at issue there. Rather, he marshals the spirit of those laws to call for a general release from debt.

My findings here allow us to speculate anew concerning the origins of the literary practice of combining Israel's disparate laws. Scholars had long identified this phenomenon with the books of Ezra-Nehemiah and Chronicles, which strongly suggested that the phenomenon was post-exilic in origin. As we saw at the outset, scholars theorized that the legal blend was part of a new exegetical agenda that allowed disparate laws to be contained within a single authoritative text, in response to the exigencies of exile and return to the land.

Here, however, we have seen the legal blend attested in the prophetic book of Jeremiah, and in each of the books of the so-called Deuteronomic history, where the events narrated are pre-exilic. With the dearth of epigraphic finds at our disposal, the dating and growth of these—indeed, most—biblical texts remain a vexing issue. Nor can we be certain that the versions of these legal traditions that were available to these authors were identical to what we find in the *textus receptus* today. The origins of the legal blend, therefore, can no longer automatically be assumed to be a post-exilic phenomenon, though, no doubt, many of the texts that employ it do stem from that period. The range of biblical texts employing this convention raises the possibility that ancient Israelites were adducing exegetical tools to combine their disparate legal traditions already at an earlier stage as well.

What, however, would have occasioned the blending of these disparate traditions, if not the exigencies of displacement and the need for unity? The question, I submit, stems from an erroneous premise: namely that the various law corpora of the Torah are mutually exclusive, and that the reformulation of a law in one is a rejection and concealment of the earlier iteration of that law in another. Such a view wrongly interprets biblical law as statutory law. By this view, as we saw, the precise formulation of the written law is autonomous and exhaustive. This approach to norms and legal texts, however, is foreign to the ancient Near East, where what we implicitly think of as statutory "laws" were actually records of judgments or examples of judicial wisdom. When later generations rewrote and

interpreted these examples, the earlier texts still were held in high regard, and were kept on record as a datum from which to reason. It is in this spirit, I would claim, that ancient Israelites sought to blend their legal writings. This view sees the legal blend as an inherent part of the legal tradition of the biblical writings from their inception, and not as the byproduct of calamity and putative attempts at unity between formerly competing normative communities.

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Legal Revision in the Torah Law Collections: Supersessionist or Complementary?

SCHOLARS STUDYING THE evolution of biblical law are today divided into two camps. The fundamental question dividing them concerns our understanding of the development and revision exhibited within the Torah's law collections: namely, the Covenant Code, the Priestly laws, the Holiness Code, and the laws of Deuteronomy. One camp views these collections in fundamental opposition to one other, especially the Covenant Code, the Holiness Code, and the laws of Deuteronomy. For these scholars, the authors of these respective corpora revised earlier law collections with the aim of superseding them. This supersessionist approach has long been dominant; indeed, well into the twentieth century it was virtually the only approach. However, in the last three decades a growing countermovement has challenged the classical paradigm. These scholars maintain that as biblical authors revised an earlier code they did not reject the authority and standing of the earlier collection. Rather, they viewed their own literary works as complements to the earlier ones. Scholars routinely adopt one position or the other and demonstrate how that position produces constructive readings of the passages at hand. However, one is hard put to find studies that systematically set the methodological claims of each camp in conversation with one another, in order to measure and mediate the validity of these respective approaches.[1] The arguments I have made in the previous four chapters allow us to take up this issue and to redress this absence.

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1. The one notable exception is the valuable sustained meditation of Jeffrey Stackert, writing from a supersessionist perspective in his *Rewriting the Torah: Literary Revision in Deuteronomy and the Holiness Legislation* (Tübingen: Mohr-Siebeck, 2007), 209–25. Bernard M. Levinson

A comprehensive assessment of the two models of legal revision mandates that we examine how each responds to six interconnected questions within the discipline of biblical law:

1) *The prevalence of lemmatic citation*: For all expositors, the challenge of explaining the relationship among the law corpora is akin to the challenge of untying a Gordian knot. On the one hand, the collections reveal highly divergent rulings of law and in many instances no harmonization is possible. The laws seemingly beg to be read as exclusive of one another. Yet on the other hand, the formulations of the laws reveal a ubiquitous and highly intricate system of lemmatic citation and expansion. The laws seem to invoke one another even as they differ from, and even contradict, one another. Expositors therefore are challenged to articulate a hermeneutic of revision between the law collections that accounts for both the continuity and discontinuity displayed between them. How do supersessionists and complementarians navigate this tension?

2) *Accounting for the redaction of the disparate corpora into a unified Pentateuch*: In the redaction of the canonical form of the Torah, the corpora were deliberately brought together within a single narrative framework. However, scholarship has long maintained that the collections existed as independent entities prior to their inclusion in the canonized form of the Torah. Writers revised the corpora in a process that historically preceded their inclusion in the final redacted form we have today. Should our understanding of the motives and mechanism of final redaction of the Torah have any bearing on the theories we propose to explain the earlier relationship between the various collections? Or, alternatively, should we view the stage of final redaction as entirely distinct, a process that has no capacity to inform the nature of legal revision between the collections in the pre-canonical/pre-redactional stage?

3) *The blending of legal references throughout the Hebrew Bible*: In the previous chapter, I drew attention to the phenomenon of blending divergent iterations of the same law in several biblical narratives. Yet, nearly all the books of the Hebrew Bible employ language and invoke laws known to us from the law collections in the Pentateuch. Moreover, nearly all the books of the Bible contain references to more than one of these legal traditions, freely citing and blending the language of Leviticus and the language of Deuteronomy, for

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takes up individual claims against the complementarian approach at various junctions throughout his many writings on the subject. See below.

example. What light can these many instances of textual blending shed on the relationship between the four law corpora?

4) *What legal models are employed to assess the data?*: As a matter of course, biblicists employ the discourse of modern jurisprudence to assess the legal texts of the Pentateuch. De rigueur in the literature are terms such as "legislation," "statutes," "codes," and, of course, the term "law" itself. How do these terms and concepts shape the debate between supersessionists and complementarians? Are there anachronisms inherent in these terms that skew our view of legal texts in the Bible?

5) *Explicit cross- referencing within the law collections*: Within the book of Deuteronomy, we find several instances in which Moses calls upon the Children of Israel to act "in accordance with that with which I have commanded you" כאשר צויתיך \ צוך (12:21; 18:2; 24:8; cf. also 5:12, 16). Put differently, Deuteronomy refers to legal provisions outside of itself. What are the implications of these invocations for the supersessionist and complementarian positions?

6) *The proscriptions "You shall not add" and "You shall not take away"*: At two junctures, Deuteronomy warns, "you shall not add to the word that I command you, and do not detract from it" (Deut 4:2; cf. 13:1 [ET 12:32]). What are the implications of this injunction for understanding the processes of legal revision between the various law corpora?

In what follows, I present the arguments made by each of the two schools with an eye toward laying bare how each contends with these six critical issues. With these underpinnings revealed, I move to an assessment of the strengths and weaknesses of each position, concluding that the complementarian position is the more cogent of the two.

The Supersessionist Approach

With the dawn of the comparative study of the law corpora in the latter half of the nineteenth century, the manifest differences between iterations of the same law gave rise to the supersessionist approach. To cite one example of many, the so-called Priestly laws determine that the first-born animal shall be granted to the priest, and only priests may consume it (Num 18:15–18). The blood of the animal is to be sprinkled upon the altar (18:17). By contrast, Deuteronomy (15:19–23) mandates that the owner must bring the animal to the central shrine, where he is to consume it with no requirement to sprinkle the blood upon the altar. Supersessionist scholars point out that there is no way to construe the law in Deuteronomy as a "supplement" of the law in Numbers. Rather, the law in

Deuteronomy, in addressing the same issue as the law in Numbers (that is, the sanctity of the first-born animal) seeks to supersede the earlier iteration of the law.[2] Within a significant portion of supersessionist writing, the drafters of these law collections are viewed as legislators, who portray their laws as divinely voiced legislation.[3] The laws of the Pentateuch are akin to "formal statutes."[4] These are immutable forms on account of their divinity.[5] Levinson cites support for the statutory nature of the divine command from the exhortation twice-found in Deuteronomy not to add or detract from the word being spoken (4:2, 13:1 [Eng 12:32]). He takes the phrase to imply the sufficiency of the law in Deuteronomy.[6] In one formulation of the supersessionist position, the compositional activity of revision—often invoking the language of the source text—is subversive in nature.[7] For supersessionists, the revising author denies the legitimacy of the earlier text as a record of divine revelation and divine law, and views the earlier text as wholly expendable and even discardable.[8] These legislators compose their collections as stand-alone creations and did not anticipate that their work would be subsumed within the rubric of the post-redactional and canonical Torah.[9] Although Deuteronomy revises only about one third of the laws found in the Covenant Code, supersessionists do not believe that the author of Deuteronomy agreed with the remaining laws with which he did not tamper. Omission, for supersessionists, is not a sign of acquiescence. These scholars believe that the author "is

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2. I use the term "supersede" to describe this approach to legal revision, following Stackert, *Rewriting the Torah*, 225.

3. Ibid., 219, 222, 223. See similarly throughout Baruch J. Schwartz, *The Holiness Legislation: Studies in the Priestly Code* (Jerusalem: Magnes Press, 1999) (Hebrew); Israel Knohl, *The Divine Symphony: The Bible's Many Voices* (Philadelphia: Jewish Publication Society, 2003); David P. Wright, *Inventing God's Law: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* (New York: Oxford University Press, 2009); and in Michael Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford: Clarendon Press, 1985), 95.

4. Bernard M. Levinson, "You Must Not Add Anything to What I Command You: Paradoxes of Canon and Authorship in Ancient Israel," *Numen* 50 (2003): 23.

5. Levinson disavows viewing biblical law as legal codes (cf. *"The Right Chorale": Studies in Biblical Law and Interpretation* [Tübingen: Mohr-Siebeck, 2008], 31). Yet Levinson ascribes to the authors of these legal texts a theology whereby the clauses of the law collections are immutable forms due to their divinity ("You Must Not Add Anything," 7, 15); cf. Stackert, *Rewriting the Torah*, 222.

6. Levinson, "You Must Not Add Anything," 6–7.

7. Ibid., 12.

8. Stackert, *Rewriting the Torah*, 211.

9. Ibid., 223.

free to treat only those topics that he chooses, leaving aside others that might otherwise be meaningful to his audience."[10]

As noted, Deuteronomy calls on Israel to perform various commandments "as I have commanded you," and in each case a reference may be found in an earlier source of law, though sometimes not fully in sync with the formulation of the law in Deuteronomy. For Jeffrey Stackert, however, "in all cases of 'citation' in Deuteronomy, the author does not intend for his readers to check his sources."[11] If readers actually did so, he explains, they would discover the differences between source and revision, which could potentially undermine the effort to wean readers of their allegiance to the older, previously authoritative composition.[12]

Supersessionists maintain that the activities and motivations of the redactors of the Torah are irrelevant for our understanding of the pre-exilic development of Israelite law from collection to collection. In fact, the received canonical Pentateuch creates impediments that hamper our understanding of the process of pre-redactional legal revision in two fashions. First, the canonical Torah imparts an air of comprehensiveness to its constituent parts, when in fact, for these scholars, the parts were originally composed as discrete and independent compositions.[13] Second, it creates artifice in that the Covenant Code is now embedded within a narrative frame that awards it canonical status, as God's dictated word to Moses. These scholars maintain that such notions of canonicity did not exist during the pre-exilic period, when the author of Deuteronomy was revising—and replacing—the Covenant Code with his own work.[14]

This brings us to the question of the pervasive and deeply creative use of lemmatic expansion found throughout these collections. New codes, designed to supersede old ones, would not be expected to sustain such a high degree of linguistic continuity with earlier, now rejected texts. Here, supersessonist scholars offer two explanations. For Bernard Levinson, legal revision in the Bible represents a covert exegetical activity. Through exegesis, he claims, prior authoritative texts are subverted in order to make legal innovation possible. Biblical writers employed a wide range of rhetorical tools, allowing them to conceal the conflict between the new laws they created and the authoritative texts they were subverting, even

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10. Ibid., 221.

11. Ibid., 219 n. 18.

12. Ibid.

13. Ibid., 217; Levinson, *"The Right Chorale,"* 30; Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (New York: Oxford University Press, 2008), 153.

14. Stackert, *Rewriting the Torah*, 218; Levinson, *Legal Revision and Religious Renewal in Ancient Israel* (Cambridge: Cambridge University Press), 146–47.

as those new laws invoke the language of the original texts.[15] It is important for later composers to employ the lexemes of the earlier, now rejected, text, for, in Levinson's words, "even when recontextualized [they] retain their operative force." The entire endeavor of garbing subversive innovation in the mantle of the texts that they abrogate is accomplished, says Levinson, only with "extraordinary ambivalence."[16]

Jeffrey Stackert offers an alternative account for the presence of such pervasive lemmatic borrowing. Although the author of Deuteronomy rejects the legitimacy of the Covenant Code as the revelation of God at Sinai, he seeks to benefit from the prestige of the earlier source. For Stackert, "they are the very words of the deity and thus infused with power."[17] These words, even individually and taken out of their original context, have innate divine authority. The author of Deuteronomy employs these lexemes in order to create a composition that will convince audiences who are familiar with the Covenant Code as well as those who are not.[18] Stackert cites the work of David P. Wright as probative of his case. For Wright, the Covenant Code revises the Code of Hammurabi, borrowing, in translation, many of the source text's language and grammatical constructions.[19] The author of the Covenant Code, for Wright, does this without any desire to lend credence to the source text. So, too, says Stackert, the author of Deuteronomy employs the lexemes of the Covenant Collection, without any intent of preserving, let alone legitimizing, the Covenant Collection.[20]

The Complementarian Approach

Complementarians often defend a reading of a given legal passage by demonstrating how the passage makes more sense when read in this fashion.[21] However,

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15. Levinson, "You Must Not Add Anything," 17, 24; Levinson, *Legal Revision and Religious Renewal in Ancient Israel*, 48–49, 92.

16. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation*, 46.

17. Stackert, *Rewriting the Torah*, 213 n. 7.

18. Ibid., 222.

19. Wright, *Inventing God's Law*.

20. Stackert, *Rewriting the Torah*, 222.

21. Scholars adopting a complementarian approach include Eckart Otto, "Ersetzen oder Ergänzen von Gesetzen in der Rechtshermeneutik des Pentateuch: zu einem Buch von Jeffrey Stackert," in Otto, *Die Tora—Studien zum Pentateuch: Gesammelte Schriften* (Wiesbaden: Harrasowitz, 2009), 248–56; Christophe Nihan, *From Priestly Torah to Pentateuch* (Tübingen: Mohr-Siebeck, 2007), 545–59; Hindy Najman, *Seconding Sinai: The*

nowhere in the scholarship do we find a thorough articulation of the evidence that legitimates this approach through a comprehensive examination of the questions with which I opened this study.

The fundamental basis of the complementarian approach goes to the root of my fourth introductory question, concerning the preconceptions about law and legal texts that scholars bring to their work. As I noted in chapter 5, Bernard Jackson cautions that all modern scholars necessarily deploy that conception of law which they have internalized from their modern social and cultural experience. It is worth making this modern, Western conception explicit, he claims, in order to assess properly its applicability to the study of ancient law.[22] The modern—and anachronistic—conception of law that undergirds the supersessionist approach is the understanding of "law" as distinctly statutory law. Within statutory jurisprudence, the law itself is contained in a codified text.[23] Codification means that the law is a finite, complete system; only what is written in the code is the law. The law code supersedes all other sources of law that preceded the formulation of the code, and no other sources of authority have validity other than the code itself.

By contrast, within common-law systems, the law is not found in a written code which serves as the judges' point of reference and which delimits what they may decide. Law gradually develops through the distillation and continual restatement of legal doctrine through the decisions of courts. When a judge decides a particular case, he or she is empowered to reconstruct the general thrust of the law in consultation with previous judicial formulations. Critically, the judicial decision itself does not create binding law. No particular formulation of the law is final. As a system of legal thought, the common law is consciously and inherently incomplete, fluid, and vague. Judges address new needs and circumstances by reworking old law, old decisions, and old ideas. Texts formed a system of reasoning.

Common-law sensibilities about law and legal texts illuminate several aspects of the debate between supersessionists and complementarians. Collections of apodictic and casuistic clauses in the Pentateuch appear to supersessionists as codified law. As scholars have noted, though, the Bible nowhere instructs judges to consult written sources.[24] Narratives of adjudication, such as the trial of Solomon (1 Kgs 3), likewise lack references to written sources of law. No one collection

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Development of Mosaic Discourse in Second Temple Judaism (Leiden: Brill, 2003), 22–26; William Morrow, "Mesopotamian Scribal Techniques and Deuteronomic Composition," *ZABR* 6 (2000): 311–13.

22. Bernard S. Jackson, *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1–22:16* (Oxford: Oxford University Press, 2006), 23.

23. See discussion above, pp. XX.

24. Cf. Exod 18:13–26; Deut 1:16–17; 16:19–20; 2 Chr 19:4–7.

of laws, nor even all of the corpora taken together display a striving to provide a comprehensive set of rules to be applied in judicial cases. Biblical laws often bear motive clauses that do not address judges but address the Israelite nation as a moral agent. The law collections of the Pentateuch, like the law collections of the ancient Near East, were prototypical compendia of legal and ethical norms, rather than statutory codes.[25] Their inclusion in the Pentateuch served to publicize digests of the divine requirements for "justice and righteousness."[26] One could not point to *the* law; rather, the totality of these texts—"narrative" as well as "legal"—were the resources from which future norms could be worked out. This unwritten law was woven into the fabric of society, and enunciated in the course of judicial deliberation.

Supersessionists read the law corpora as legislation, as statutory law. With regard to many laws, each collection contains a specific formulation that is read to the exclusion of the formulations found in the other corpora. Each corpus is taken to supersede the others as the sole legitimate written statement of the law. For complementarians, however, this is the imposition of an anachronistic view of law upon the ancient texts.

Statutory jurisprudence mandates that judges adhere to the exact words of the code because the code is, by definition, autonomous and exhaustive. Strict construction is a cornerstone of the supersessionist approach to legal revision in ancient Israel. Negative arguments from silence in this scholarship are commonplace. A rule present in one code but absent from a second is proof positive that it was absent from that second legal system, or even condemned by it.[27] However, as we saw in chapter 6, strict construction has no place in the jurisprudence of the ancient near Eastern law collections, and leads to a misreading of legal passages in the Torah, such as the laws of manumission in Leviticus 25:39–46 and the laws of homicide in Exod 21:12–14.[28]

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25. See on a related note Bernard Jackson, "Models in Legal History: The Case of Biblical Law," *Journal of Law and Religion* 18, no. 1 (2003): 5. Cf. Jackson, "Modelling Biblical Law: The Covenant Code," *Chicago Kent Law Review* 70, no. 4 (1995): 1761. David Wright proposes that the casuistic and apodictic clauses of the Covenant Code were composed together with some of the narrative material found in the Exodus continuum: see Wright, *Inventing God's Law*, 322–45.

26. See Fishbane, *Biblical Interpretation in Ancient Israel*, 95; Jackson, *Wisdom-laws*, 49; Patrick, *Old Testament Law*, 189, 203.

27. Raymond Westbrook, *Studies in Biblical and Cuneiform Law* (CahRB 26; Paris: J. Gabalda, 1988), 5.

28. See above pp. 123–28.

The implications for a hermeneutics of biblical legal revision are enormous. Many laws do change from collection to collection and are exclusive of one another, such as the differing prescriptions for the paschal sacrifice in Exodus 12 and Deuteronomy16. Complementarians reject, however, the reflexive impulse to interpret restated laws as mutually exclusive at every point where there is no congruence between them. The author of Leviticus 25 addressed the institution of the Jubilee, to take one example, and hence speaks of release during the Jubilee year.

The reliance of the supersessionist approach upon anachronistic notions of statutory jurisprudence creates the conceptual space in which to consider anew legal revision in ancient Israel along complementarian lines. The laws of the great kings of the ancient world were never considered immutable statutory law, and the same was true of God's law. The prescriptions in the various corpora are data from which to reason. Indeed, as authors revised the collections, they certainly intended to invalidate former normative practices—but that did not entail a rejection of the authority of that text. This was the dynamic that we witnessed earlier in the employ of LH by the author of the Neo-Babylonian "King of Justice."[29] Rather, the earlier prescription was seen to be fulfilled through its new reapplication to meet a new challenge, as I suggested in my analysis of the allusions to Deut 24:16–25:10 in the book of Ruth.[30] This, for complementarians, is the reason that lemmatic citation and expansion is so ubiquitous throughout this legal literature. A revised legal text is a new formulation and new application of an old, revered norm.

The Blending of Legal References throughout Scripture: A Complementarian Approach

Perhaps the strongest argument, however, in favor of the complementarian approach to legal revision emerges when we consider the ubiquitous blending of legal references found in the other books of Scripture. Typically, when scholars take up the question of the relationship between the various law corpora, the texts of the Pentateuch are analyzed in isolation. That is, extensive attention is devoted to, say, passages in the so-called Holiness code, as well as parallel passages in the Book of Deuteronomy. Very little attention is paid in these discussions to how these legal traditions present themselves in the books of the Bible outside of the Pentateuch, and what this blending can tell us about the

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29. See above, pp. 139–41.

30. See above, pp. 141–43.

relationship between the law corpora. This, I submit, constitutes a great lacuna in the discussion, and that some of the most significant evidence against the supersessionist approach is marshaled precisely from the books of the Hebrew Bible outside the Pentateuch.

For supersessionists, the Torah's three legal traditions were independent of each other, and sought to displace one another. Some scholars resort to incendiary imagery to describe the process of combining such disparate elements in the redaction of the Torah. For one prominent scholar, "these diverse and contradictory teachings were smelted" in a "volatile furnace."[31] For another, the combination of these elements represents nothing less than the combination of "fire and ice."[32] Echoes and resonances of these legal traditions, however, are found throughout the Hebrew Bible. What is striking is the degree to which these supposedly inimical traditions exist side by side elsewhere in the Hebrew Bible. There is not a single book of the Bible that may be termed a pure "Deuteronomic school" book, or "Holiness school" book. Ezekiel certainly does draw extensively from so-called priestly literature; yet alongside these passages one finds that he also draws extensively from Deuteronomy. Conversely, Jeremiah seems to bear the influence of Deuteronomy to a greater degree, yet here, too, that prophet is certainly comfortable invoking from and paraphrasing a great many passages from the so-called priestly literature. Scholars have not succeeded in "unraveling" these strands and separating them out into constituent parts that break down along the lines of the supposedly inimical law corpora found in the Pentateuch.[33] The easy flow and weaving of these supposedly inimical traditions is witnessed in all of the historical books of the former prophets as well. Surely if so-called deuteronomistic editors, or Holiness code editors, were responsible for producing the texts before us, we would expect them to shape the texts in a way that gives place of pride to their own respective traditions.

However, the weaving of legal traditions elsewhere in the Hebrew Bible is not only on the level of phraseology borrowed and woven from the

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31. Fishbane, *Biblical Interpretation in Ancient Israel*, 264.

32. Konrad Schmid, "The Persian Imperial Authorization as a Historical Problem and as a Biblical Construct: A Plea for Distinctions in the Current Debate," in Gary N. Knoppers and Bernard M. Levinson, eds., *The Pentateuch as Torah: New Models for Understanding Its Promulgation and Acceptance* (Winona Lake, IN: Eisenbrauns, 2007), 34.

33. On the combining of legal traditions within Ezekiel see Risa Levitt Kohn, "A Prophet Like Moses?: Rethinking Ezekiel's Relationship to the Torah," *ZAW* 114 (2002): 216–54; within Jeremiah see Dalia Rom-Shiloni, "Actualization of Pentateuchal Legal Traditions in Jeremiah: More on the Riddle of Authorship," *ZABR* 15 (2009): 254–81.

various law corpora. As I demonstrated in the previous chapter, many biblical authors deliberately blended supposedly contradictory iterations of the very same law found in the various pentateuchal law corpora.[34] Perhaps the most significant observation we can make about the presentation of the various laws elsewhere in the Bible is this: nowhere in the Hebrew Bible do we find a prophet, priest, king, or even a biblical narrator who argues in explicit fashion for the legitimacy of one version of a law over another. From a supersessionist perspective we would have expected that editors representing the putatively warring schools would conduct ideological warfare through the voice of the biblical narrator and through the agency of the characters in the text. Alas, any explicit trace of this supposed fight for supremacy between the schools is utterly absent from the extensive record of extra-Pentateuchal biblical books.

Supersessionists counter that the presence of interwoven references to the legal passages within the other books of the Bible represents layered editing. Consider the invocation of the laws of manumission in Jeremiah's censure of King Zedekiah (Jer 34:12–17), which we assessed earlier.[35] In verse 14, the prophet reminds the king of the biblical injunction, "Every seventh year each of you must set free any Hebrew brother who has been sold to you and has served you for six years; you must set him free from you (תשלחו איש את אחיו העברי אשר ימכר לך ועבדך שש שנים ושלחתו חפשי מעמך)." The call closely echoes the language of Deut 15:12: "When your Hebrew brother is sold to you, and serves you for six years, in the seventh year you shall set him free from you" (כי ימכר לך אחיך העברי או העבריה ועבדך שש שנים ובשנה השביעית תשלחנו חפשי מעמך). In verse 15, however, the prophet invokes the Jubilee section of Leviticus 25, and its call (Lev 25:10) "and you shall proclaim liberty" (וקראתם דרור). He claims that the elites had behaved correctly "by granting release to one another" (לקרא דרור איש לרעהו), and later castigates them for reversing their policy (verse 17): "You have not obeyed me by granting a release to your friends" (לקרא דרור איש לאחיו ואיש לרעהו).

The resonance of two law codes in this passage has drawn a wide spectrum of interpretation.[36] Some interpret the references to different laws of release as reflecting several stages of scribal activity. According to this view, verse 15 is the late addition of a scribe who wished to portray Zedekiah's proclamation in line with manumission according to the Holiness code, over and against the

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34. See above, chapter 8.

35. See above, pp. 153–54.

36. For a survey see Mark Leuchter, "The Manumission Laws in Leviticus and Deuteronomy: The Jeremiah Connection," *JBL* 127, no. 4 (2008): 635–53.

institution of manumission reflected in verse 14, based on Deuteronomy 15.[37] By this approach, the ideological battle is indeed witnessed in these texts—that is, through the layers of accretions from different legal traditions. The *sine qua non* of this view is the belief that editors were free only to add new material but not to suppress ideologically objectionable material already present in the text. This is based on the assumption that revered texts in the ancient world had a canonical status such that deleting passages already present was not an option.[38]

However, this construction of the compositional conventions of ancient Israelite texts is flawed on three levels. In the first place, it is a view of the editorial process that is self-contradictory. If a text is so revered that nothing may be erased, then why may new materials be interjected into it? Supplementation distorts the meaning of a text as much as deletion does. A culture may consider its texts open for edition and redaction, in which case deletion should be an option, as much as is supplementation. Conversely, a culture may consider a particular text sacrosanct, and hence closed to any major editorial activity.

Second, and more significantly, the view that editors were free to add new material to a text, but not to suppress existing passages, is complicated in light of the recent comprehensive study of editorial practices in the ancient Near East by David Carr.[39] He analyzes all known examples of major textual revision where we possess earlier and later versions of a work (the Gilgamesh epic, the Atrahasis flood account, the Etana epic, and the Temple Scroll) and his results are telling.[40] In each of these cases, later versions reflect a change in ideology. Significantly, these versions attest to the *suppression* of passages found in the earlier versions incongruous with the new ideology, alongside the addition of new material.[41] Carr's lead has now been followed by a full-length treatment of the propensity for omission and suppression in the editing of revered texts in ancient Israel by Juha

37. Simeon Chavel, "'Let My People Go!' Emancipation, Revelation, and Scribal Activity in Jeremiah 34:8–14," *JSOT* 76 (1997): 88, 92.

38. See, for example, Jean Louis Ska, *Introduction to Reading the Pentateuch* (Winona Lake, IN: Eisenbrauns, 2006), 169, who refers to this as the "law of conservation: nothing is eliminated." See in a similar vein, Christoph Levin, *The Old Testament: A Brief Introduction*, trans. Margaret Kohl (Princeton, NJ: Princeton University Press, 2005), 26–27.

39. David M. Carr, *The Formation of the Hebrew Bible: A New Reconstruction* (New York: Oxford University Press, 2011).

40. In the case of the Temple Scroll, Carr compares the citations of Deuteronomy in that document to the parallels in the MT version.

41. Carr, *The Formation of the Hebrew Bible*, 42–47, 50–56, 67, 71. See also Karel van der Toorn, *Scribal Culture and the Making of the Hebrew Bible* (Cambridge, MA: Harvard University Press, 2007), 127.

Pakkala.[42] The epigraphic record knows of no instance where later generations felt free to add new materials to a sacred text thereby introducing a new and competing ideology, but were unwilling to suppress existing materials incongruous with that new ideology.

The implications of this insight for our understanding of the presence of blended references to the various legal traditions in the scriptural books outside of the Pentateuch are enormous. The insight suggests that, in wholesale fashion, biblical authors felt free to draw from the various legal traditions in the composition of a text. They did not view the various corpora as inimical to one another, but rather as complementary. Scholars who maintain that the blending of legal references emerges from a diachronic process alone must counter the findings of Carr and Pakkula, which demonstrate that revising editors could indeed suppress material at odds with their agenda.

Finally, the examples of legal blending in biblical narrative adduced in the previous chapter do not support the notion that the presence of different legal traditions in a passage emerges from a diachronic process of accretion. Consider the accounts we saw of blended asherah laws in the Gideon story of Judges 6; the blending of *ōb* provisions in 1 Samuel 28; and the blending of collateral laws in the account of the widow in 2 Kings 4. In all of these, the laws are woven into the warp and woof of those narratives. It is inconceivable that a priestly editor, for example, composed his version of the Gideon account, incorporating the so-called priestly version of the asherah law, and then a deuteronomistic editor included words that suited his two versions of the law, resulting in such a smooth account that no one previously had thought to break down along priestly and deuteronomistic lines.

The Implications of the Debate for Theory of Pentateuchal Redaction

The debate between supersessionists and complementarians has enormous ramifications for my introductory question concerning the relationship between legal revision among the law corpora and the process of legal revision that unites them in the Pentateuch. Supersessionists insist that the dynamics of legal revision in the pre-exilic period must be studied on their own. The redaction of the various corpora into the Torah constitutes a later development. The reasons and causes

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42. Juha Pakkala, *God's Word Omitted: Omissions in the Transmission of the Hebrew Bible* (Göttingen: Vandenhoeck & Ruprecht, 2013).

that brought the texts together at that stage make no claims on the earlier stages of legal development in ancient Israel.

However, the question of the dynamics of legal revision in the pre-exilic period, and the question of how these collections came to be combined, are inextricably intertwined, even if chronologically serial. When scholars adopt a position about the relationship between the putatively earlier law corpora, they perforce shape and limit the types of approaches available to explain their redaction in the Pentateuch. When a scholar maintains that the law corpora developed in supersessionist fashion, he or she must then account for an abrupt about-face in the legal culture of ancient Israel; these scholars must explain why texts which were originally mutually exclusive could suddenly be fused. Put differently, the justification for the supersessionist position is only as strong as the explanations for the putatively later stage of Pentateuch redaction. If the theories adduced to explain the redaction of the Pentateuch cannot adequately explain the hypothesized about-face concerning the relationship between the law collections, then the very basis of the supersessionist approach may be called into question.

Scholars who study the growth of Israel's law through the supersessionist prism suggest two broad theories to explain how the purportedly mutually exclusive law collections became combined. One leading theory to account for the compilation of the Pentateuch views it as a "compromise document": external pressure compelled competing factions within Israel to come together around its varying and competing traditions to produce a single document for the whole community.[43] However, this notion entails several weaknesses that stem from a misunderstanding of the nature of biblical law. If the law corpora are indeed as mutually exclusive as supersessionists claim, how does their retention create a "compromise" document? A document reflects compromise between competing agendas when each side gives ground on its original positions, thus arriving at a middle ground. Alternatively, one side will get its way on a given issue, and the other side its way on another. Where draftsmen truly find no common ground, they may employ creative ambiguity, or skirt the issue altogether. The *sine qua non* of a compromise document, however, is that it will iron out conflict and contradiction, so that the community can proceed following one, authoritative

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43. Scholars debate whether this was an exilic or post-exilic process. See Erhard Blum, *Studien zur Komposition des Pentateuch* (BZAW 189; Berlin: De Gruyter, 1990); and the essays contained in Gary N. Knoppers and Bernard M. Levinson, eds., *The Pentateuch as Torah: New Models for Understanding Its Promulgation and Acceptance* (Winona Lake, IN: Eisenbrauns, 2007). This position is adopted in Levinson, *"The Right Chorale,"* 33.

voice.[44] There can be no room, for example, in a compromise document for three conflicting sets of manumission laws to be inscribed. Moreover, the theory of a compromise document has no control to validate it. In the annals of ancient Near Eastern history, Israel hardly stood alone in experiencing dislocation and disaster. Yet nowhere else in this vast region do we see that a culture faced with catastrophe suddenly merged its competing, rival strands of thought and law into such a so-called "compromise document."

An alternative theory sees the redacted Pentateuch as a kind of literary repository, or anthology.[45] This theory stems from two flaws. The first is rooted in the theory's sociological presuppositions. For supersessionists, the corpora are evidence of competition between schools and communities within Israel. Famously, scholars have been unable to reach anything nearing a consensus on the age or place of any of these supposed schools, let alone associate them concretely with any one person or persons. It is strange indeed, then, to assume that at least three different traditions survived this ideological battle, and that at the time of the redaction of the Pentateuch, all of these competing traditions were concurrently thought to possess legitimacy. To illustrate just how unlikely this is, we may consider a chapter from an adjunct field to biblical studies, late-second-Temple-era Judaism. Sects proliferated at this time, and with the sacking of Jerusalem, most of these groups vanished. The early rabbinic works preserve only the viewpoint of their own cohorts, with just an occasionally disparaging remark concerning the sects with which they had rivaled. No empirical model has even been adduced for the type of anthology that supersessionists propose as an explanation for the redaction of the Pentateuch.

The theory of Pentateuch redaction as an exercise in anthology is also complicated from a literary perspective. Were the law collections presented as serial lists, perhaps like omen lists from Mesopotamia, we could consider the presence of several law corpora to be anthological in nature. However, these corpora are worked into an overall narrative of Israel's founding and early history. Some scholars see close literary ties between the laws and the surrounding narratives.[46]

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44. See Harold D. Lassrell, "Compromise," *Encyclopedia of Social Science*, 3:147–49; Henry Richardson, "Deep Compromise," in Richardson, *Democratic Autonomy: Public Reasoning About the Ends of Policy* (New York: Oxford University Press, 2002), 144–61; Mary Parker Follett, "Constructive Conflict," in Henry L. Metcalf and L. Urwick, eds., *Early Sociology of Management and Organizations: Dynamic Administration: The Collected Papers of Mary Parker Follett* (London: Routledge, 2003), 1–20.

45. Stackert, *Rewriting the Torah*, 224; Jeffrey H. Tigay, "Anthology in the Torah and the Question of Deuteronomy," in David Stern, ed., *The Anthology in Jewish Literature* (New York: Oxford University Press, 2004), 2–31.

46. E.g., Wright, *Inventing God's Law*, 322–45.

Bruce Wells is correct when he writes of the supersessionists, "At some point, given the irresolvable contradictions that they see in the Pentateuch, they are forced to argue that the compilation/redaction process was simplistic and unsophisticated: the Pentateuch is simply an anthology of narrative and legal texts, and, while the individual texts themselves might be creative and remarkable, the act of putting them together was not."[47]

By contrast, consider the question of the redaction of the various corpora in the writings of one of the leading complementarians, Eckart Otto. Otto does not expressly refer to the difference between statutory and common-law jurisprudence, yet his views of the mechanism of legal revision in ancient Israel and the mechanism of the redaction of the Torah are well-understood in light of this distinction. For Otto, legal revision represents a reapplication of the instruction of an earlier text, now applied to changed circumstance. It is in this spirit, he claims, that the laws of Deuteronomy were drafted in the pre-exilic period as a reapplication of the Covenant Code.[48]

For Otto, this historical process is then reflected in the final redaction of the Torah, where the pre-exilic historical process of legal revision is transposed back in time to the period of Israel's trek in the wilderness.[49] The laws spoken by God to Moses, principally the Decalogue and the Covenant Code, achieve a place of pride as the top of a hierarchy of laws. As such, they become the focus of reapplication. This process begins with the laws of Exod 34.[50] Deuteronomy continues this process as Moses's own interpretation and reapplication of the earlier laws, now reconfigured for the challenges of life in a land with centralized worship, and the dangers of assimilation and complacency born of a bountiful life in the land.[51]

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47. Bruce Wells, "Review of Eckart Otto, *Die Tora: Studien zum Pentateuch—Gesammelte Aufsätze*," *JHS* 10 (2009): review 26, available at http://www.jhsonline.org/reviews/reviews_new/review452.htm.

48. See Otto, "Ersetzen oder Ergänzen," 248–57; Otto, "The Pre-exilic Deuteronomy as a Revision for the Covenant Code," in Otto, *Kontinuum und Proprium; Studien zur Sozial- und Rechtsgeschichte des Alten Orients und des Alten Testaments* (Wiesbaden: Harrassowitz, 1996), 116.

49. Otto, "Rechtshermeneutik im Pentateuch," in Otto, *Die Tora*, 490–514.

50. Ibid., 512.

51. Ibid., 490–514; on Deuteronomy as restatement see LeFebvre, *Collections, Codes and Torah*, 68–71; Dominik Markl, *Der Dekalog als Verfassung des Gottesvolkes: Die Brennpunkte einer Rechtshermeneutik des Pentateuch in Exodus 19-24 und Deuteronomium 5* (Frieburg: Herder, 2007). Some scholars see Deuteornomy as a restatement, interpreting Deut 1:5 באר to mean an explication of the previous books of the Torah (e.g., Otto, "Rechtshermeneutik im Pentateuch," 503). However, even if באר means "to propogate" and refers to the current "torah"—that is,

Conclusions: Measuring Supersessionism vs. Complementarianism

I conclude by returning to the initial questions I posed as critical for understanding the debate between supersessionists and complementarians, and asses the total picture that emerges when the issues are considered together.

What legal model is presumed in the analysis of the texts? Supersessionists assess ancient, biblical texts through that conception of law which they have internalized from their modern social and cultural experience, namely as statutory law and as legislation. However, there is evidence for neither concept in the annals of ancient jurisprudence. Indeed, this conceptual frame of reference influences the supersessionist approach to all of the other five critical questions, as we shall see below. There is merit to Bernard Jackson's claim that "perhaps, indeed, the field ought to be conceived more in terms of 'social justice' rather than 'law,' certainly if the latter brings with it much of its modern, postvisitic baggage."[52] Precisely because the word "law" brings this baggage with it, complementarians often refer to the passages we call "biblical law" with a range of other terms— including "instruction," "wisdom," "didactic," and "examples of justice."[53] This leaves a degree of fuzziness in terminology, as complementarians look for suitable terms to characterize what has classically been referred to by scholars as "law." But this lack of linguistic alignment is to be embraced as recognition of the distance between our legal culture and that of the ancient Near East.

Legal revision and the redaction of the Pentateuch. For supersessionists, the process of redacting the four law collections into a single work—the Torah— represented an about-face in the legal hermeneutics of ancient Israel. In pre-exilic times, the authors of each collection were inimical to each other and sought to supersede one another, rejecting the standing of earlier works. To explain that about-face, however, scholars have had to hypothesize problematic theories of composition for the Pentateuch. For some, the manifold contradictions added up to a "compromise." For others, the Pentateuch represents

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Deuteronomy—the effect is the same: by virtue of its revision of earlier laws, Deuteronomy stands as a reapplication of those laws.

52. Bernard Jackson, "Revolution in Biblical Law: Some Reflections on the Role of Theory in Methodology," *JSS* 50, no. 1 (2005): 33.

53. For the "laws" as didactic tools, see Jackson, *Wisdom-laws*, 71; Joseph Blenkinsopp, *Wisdom and Law in the Old Testament: The Ordering of Life in Israel and Early Judaism* (New York: Oxford, 1995), 97; Patrick, *Old Testament Law*, 198; as "wisdom," see Jackson, "Modelling Biblical Law," 1761.

an anthology of competing visions, all of which managed to survive and were considered of equal validity.

By contrast, for complementarians, the mechanism of legal revision remains an essential constant. Prior to redaction and beginning in the pre-exilic period, law collections interpreted and reapplied one another. Even as the normative practice was revised, the standing of the earlier text remained. The texts remain on the record as a reference work from which future generations can reason. The redaction of the Torah takes this process and inserts it within the fabula of Israel's early history: God's earliest words are interpreted and reapplied in response to the changing circumstances of Israel's history.

The blending of the law corpora elsewhere in the Hebrew Bible. For supersessionists, the weaving of references from the various law corpora exhibited elsewhere in the Bible is understood as the result of layered editing over time. Yet, many of these works and passages—such as the narratives of blended laws we saw in the previous chapter—seem to be integral and well-structured wholes that do not separate out into editorial threads that align easily with the four corpora. Moreover, supersessionists are hard-pressed to explain why later editors did not suppress references to putatively competing law collections. The works of David Carr and Juha Pakkala reveal that writers in ancient Israel were free to suppress as well as supplement materials. By contrast, complementarians easily explain the phenomenon: even as ancient Israelites revised their normative practices, the earlier texts retained their standing as compositions of wisdom and instruction. It was only natural for other writers to borrow and weave freely from these different corpora.

Lemmatic invocation. Supersessionists strive to explain why a revising author would incorporate wholesale the language of a rejected text. For Bernard Levinson, legal revision in the Bible represents a covert exegetical activity, or what he calls the "rhetoric of concealment."[54] As we noted earlier, though, this understanding of lemmatic invocation falters when we imagine the audiences such a theory implies. Consider the revision of the Covenant Code by the author of Deuteronomy. If Levinson assumes an ignorant audience for the book of Deuteronomy, the author would have had no need to employ exegetical tools that retain the language of the Covenant Code, even as he revised it. Conversely, if Levinson assumes that the audience of Deuteronomy was, in fact, familiar with the Covenant Code, it is difficult to see how this audience could have failed to see

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54. Bernard M. Levinson, "The Human Voice in Divine Revelation: The Problem of Authority in Biblical Law," in Michael A. Williams, et al., eds., *Innovations in Religious Traditions* (Religion and Society 31; Berlin: de Gruyter, 1992), 45.

through alleged exercises in concealment.[55] Levinson maintains that, for revising authors, the endeavor of garbing subversive innovation in the mantle of abrogated texts is accomplished only with "extraordinary ambivalence."[56] However, he provides no evidence for this contention and it is unclear how he is privy to their inner thoughts.

Apparently aware of the critiques of Levinson's approach, Jeffrey Stackert offers an alternative supersessionist accounting of the widespread employ of lemmatic citation. For Stackert, the author of Deuteronomy employs these lexemes in order to create a composition that will convince audiences who are familiar with the Covenant Code, as well as those who are not.[57] I take Stackert to mean that, for example, when the author of Deuteronomy invokes the language of the Covenant Code, the new composition will sound compelling because the new law is cloaked in language that sounds, proverbially, like "the real McCoy," that is, the Covenant Code. The exercise, for Stackert, is hardly covert, as per Levinson, but rather, explicitly overt. It is unclear, however, why audiences would find this rhetorical flourish a compelling reason to discard the earlier text. Stackert also argues that the later author would invoke the language of the formulations of an earlier source because "they are the very words of the deity and thus infused with power."[58] Stackert does not explain, however, what he means by "infused with power." Does he mean that the earlier formulations bear theurgic or magical power? Or, perhaps, that they convey rhetorical "oomph"?

Stackert sees Deuteronomy's use of the language of the Covenant Code as akin to the Covenant Code's use of the language of the Laws of Hammurabi, as hypothesized by David P. Wright.[59] Just as the author of the Covenant Code, for Wright, sought to offer no credence to LH by imitating its style, the author of Deuteronomy sought to offer no standing to the Covenant Code by invoking its language. However, even if Wright is correct in his assertion of the dependence

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55. As noted already in LeFebvre, *Collections, Codes and Torah*, 71 n. 54; Joe Sprinkle, "Review of Bernard Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation*," *JETS* 42 (1999): 720–21; Najman, *Seconding Sinai*, 22–23.

56. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation*, 46.

57. Stackert, *Rewriting the Torah*, 222.

58. Ibid., 213 n. 7.

59. Wright's thesis has been met with mixed reviews. For a sympathetic assessment of Wright's work, see the review of Joel Baden in *RBL*, http://www.bookreviews.org/pdf/7232_7874.pdf. Critical evaluations are found in the review of Frank Polak in *RBL* (http://www.bookreviews. org/pdf/7232_7873.pdf) and of Meir Malul, *Strata* 29 (2009): 155–59. Cf. also the critical review of William Morrow, "Legal Interactions: The *Mišpāṭim* and the Laws of Hammurabi," *BO* 70, no. 3 (2013): 310–31.

of the Covenant Code upon LH, that literary process cannot be invoked to sustain a supersessionist account of lemmatic invocation within the Torah's law corpora. Wright himself admits that typical readers of the Covenant Code would have had no inkling that its author had LH as a model. Only the author is aware of the literary provenance of his work, not his audience, and hence no standing accrues to LH for this audience as they read the text of the Covenant Code. That same dynamic does not exist for the audience of Deuteronomy. Stackert himself assumes that many readers of Deuteronomy would be familiar with the Covenant Code. Perforce, when Deuteronomy invokes the earlier text, it can only serve to grant that text standing and authority.[60]

By contrast, complementarians celebrate the ubiquitous presence of lemmatic citation. For these scholars, the authors of the various corpora saw themselves as the inheritors of a rich legal tradition, and in creating new compositions saw it as their duty to give a nod to recognized works of standing within the community.

What are the implications of statements "as I have commanded you"? Supersessionists are challenged to explain why Deuteronomy repeatedly (12:21; 18:2; 24:8; cf. also 5:12; 5:16). makes reference to law outside of itself, and in most instances seemingly to passages in the law corpora that it has putatively rejected. Jeffrey Stackert avers that "in all cases of 'citation' in Deuteronomy, the author does not intend for his readers to check his sources."[61] Stackert does not explain how we know this to be true. Committed to a supersessionist standpoint as he is, he can only defend that standpoint by referring back to it in circular fashion. For Stackert, we know that Deuteronomy does not intend for readers to check the cited sources for "such an act would highlight the differences between source and revision and potentially undermine the new composition in the eyes of those whose allegiance is to the old."[62]

For complementarians, however, the citation clauses of Deuteronomy present no issue. Law organically changes over time in response to need and circumstance, and thus even if a norm is expressed differently in one age than in a previous one, this is not seen as inconsistent or contradictory. The original instruction in the earlier code may be accessed, for it was there that YHWH instituted the general concept, and its first form of expression.

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60. William Morrow points out that "planned obsolescence" of the Covenant Code would actually negate scribal conventions familiar to us from the ancient Near East. Scribes did not abandon older texts, but rather, they typically made use of citations and lemmatic quotation, thereby preserving and continuing to use them. See Morrow, "Mesopotamian Scribal Techniques," 312–13.

61. Stackert, *Rewriting the Torah*, 219 n. 18.

62. Ibid.

What are the implications of the proscriptions "You shall not add" and "you shall not detract" in Deut 4:2 and 13:1 [ET 12:32]? For supersessionists, these mandates are proof positive that biblical law is statutory, and that divergent iterations of the same law across two or more law collections are mutually exclusive, and reject one another. However, this reading of these verses demonstrates the necessity of appreciating ancient literary convention in the study of biblical texts, and the pitfalls that await when we don't. The phrases "you shall not add" and "you shall not detract" are frequently found in ancient Near Eastern literature; however, their import is never to demonstrate the immutability of the law. Across the ancient Near East, we find similar formulations with regard to the issue of textual tampering. The phrases are invoked because the words of the text are immutable. Consider the praise extended to the scribe to whom the Erra epic was revealed (11.43b–44): "He did not leave out a single line, nor did he add one to it (*ajamma ul iḫti ēda šumma ul uraddi ana muḫḫi*)."[63] Consider, as well, the thirteenth-century Hittite King Mursili's so-called Fifth Prayer to the Assembly of Gods. Concerning a tablet that describes a treaty with Egypt, the Hittite king says, "To this tablet *I did not add any word, nor did I remove [any]*. O gods, my lords, take notice! I do not know whether any of those who were kings before me *added [any word] to it, or removed any*."[64]

To conclude my argument in rejection of the supersessionist view of legal revision, I return to my opening observation in chapter 5 that the early critics of the Pentateuch seemed to have taken no notice of what later scholars would identify as incompatible inconsistencies within biblical law. These scholars lived and wrote before there was a common conception of statutory law. Germany of the eighteenth and early nineteenth century was a common-law culture, where Savigny's historical jurisprudence reigned supreme. It is only with the rise of statutory jurisprudence that biblical scholarship, through the work of Graf and Wellhausen, adopts a supersessionist approach to biblical jurisprudence. By recovering the common-law tradition of jurisprudence as a lens into the world of biblical law, we are able to marshal a wide body of evidence that favors viewing the Torah's law corpora as complementary compositions.

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63. W. G. Lambert, "The Fifth Tablet of the Era Epic," *Iraq* 24 (1962): 123.

64. Mursili's "Fifth" Plague Prayer to the Assembly of Gods (CTH 379 § 8 [ii 7'–17']) translated in Itamar Singer and Harry A. Hoffner, *Hittite Prayers* (Leiden: Brill, 2002), 67.

Redacting the Torah's Conflicting Laws: New Empirical Models

IN THE PREVIOUS chapter, I argued that the positions that view the redacted Torah as a compromise document or as an anthology of laws were both problematic, and based on supersessionist presuppositions about the relationship between the Torah's four law collections. Complementarians, however, must also posit a redaction strategy that accounts for the redaction of the Torah. By all accounts, the various law collections are revisions of one another. By the time of redaction, some iterations of the laws that conflict were clearly no longer in practice. So, why are they all retained in final redaction? In this chapter I identify empirical models of legal texts that do what the Torah does: retain outdated law within an authoritative legal text.

I will invoke two jurisprudential models where we find that even as normative law is updated, the older, outdated iteration of the law is retained as part of the legal record. The examples that I highlight below are taken from American constitutional jurisprudence and from rabbinic jurisprudence in the Mishnah. These, of course, are unrelated to each other, and unrelated, in any direct fashion, to biblical Israel. I invoke these models phenomenologically, as a heuristic aid to understand legal revision and legal drafting in biblical Israel. For all of these cultures, a central question arises: what is the purpose of a legal text? Is it simply to serve as a reference guide for normative practice? We shall see that, in the two models I invoke, that question is answered in the negative. Beyond providing instruction concerning normative practice, the legal text performs other functions as well—functions that justify, and perhaps even mandate, the retention of outdated law within the written record. We will see that the motivations that led other cultures to retain outdated iterations of the law within the *corpus juris* sheds light on the dynamics of the retention of outdated law within the Torah as well, and that the explanations afforded for the legal redaction of the Torah

by complementarians such as Eckart Otto and Dominik Markl are well-founded when seen in this comparative light.[1]

The Retention of Outdated Law within the Text of the Constitution of the United States

An outstanding example of a legal culture that retains outdated law within the *corpus juris* is witnessed in the dynamics of legal revision that govern the Constitution of the United States. Most modern European constitutions, as well as most state constitutions in the United States, allow for amendment by weaving the needed correction into the existing text. The original text is altered according to the new, endorsed amendment. This means that at any one time, the text of the constitution reflects its current normative mandate. However, at the First Federal Congress in 1789, the framers of the federal Constitution of the United States chose an alternative mechanism to govern the mechanics of constitutional amendment. The original text of the Constitution would remain unchanged; revisions would take the form of successive amendments that would be appended in chronological order.[2] The results of this mechanism are striking because some of the amendments explicitly contravene each other. For example, the Eighteenth Amendment of 1919 enacted the nationwide prohibition of the sale of alcohol, but the Twentieth Amendment of 1933 repealed that ban of alcohol sales. Why did the framers of the Constitution of the United States choose revision through supplementary amendment over simple redrafting of the original text, as practiced widely elsewhere?

At the First Federal Congress, the issue was hotly debated. James Madison, hailed by many as "the father of the Constitution," favored revision through alteration to the original text. The supplementary approach which ultimately won out was championed by Connecticut Congressman Robert Sherman. These proponents of supplementary amendments argued that although Congress surely needed to have the power to amend the Constitution, it should not have the authority to alter the original document itself. This, they argued, was on account of the unique process through which the original document had been ratified in

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1. Eckart Otto, "Ersetzen oder Ergänzen von Gesetzen in der Rechtshermeneutik des Pentateuch: zu einem Buch von Jeffrey Stackert," in Otto, *Die Tora—Studien zum Pentateuch: Gesammelte Schriften* (Wiesbaden: Harrassowitz, 2009), 248–56; Dominik Markl, *Der Dekalog als Verfassung des Gottesvolkes: Die Brennpunkte einer Rechtshermeneutik des Pentateuch in Exodus 19-24 und Deuteronomium 5* (Frieburg: Herder, 2007).

2. See Mehrdad Payandeh, "Constitutional Aesthetics: Appending Amendments to the United States Constitution," *Brigham Young University Journal of Public Law* 25 (2011): 87–130.

the first place. Each state had held a statewide constitutional congress which had ratified the proposed draft of the Constitution. Future amendments, by contrast, would not derive their authority from the people, but rather from congressmen appointed by state legislatures.[3] Put differently, Sherman and his cohorts believed that the authority that ratified the original document was of a higher order than the authority that would ratify subsequent amendments. This meant that the integrity of the original document should be preserved, even as it was normatively revised via the supplementary amendments.

This approach to the revision of a foundational legal text aligns remarkably well with Eckart Otto's accounting of the redaction of the Torah. For Otto, revision of the Covenant Code does not occur within the text of that law collection itself. Deuteronomy is a second-order composition. The Covenant Code contained God's words to Moses; Deuteronomy represents Moses's own reapplication of those laws. The Covenant Code as the text of God's own words, therefore, must be preserved *in toto*. This is not because its prescriptions are immutable and its laws unchanging, but because of its claimed provenance as the word of God.

Sherman and his cohorts at the First Constitutional Congress offered a second rationale for supplementary amendments, and this, too, may shed light on the retention of outdated laws within the redaction of the Pentateuch. They maintained that the original text of the Constitution contained "perfection" and was an integral whole. It was a document meant to be read as a structured literary unit. To tamper with the original text itself would damage its literary character, and thus it was important to distinguish between the core, original text and the subsequent amendments.[4]

This rationale explains the redaction of the Torah, where older iterations of the law (such as the Covenant Code), together with newer iterations of law (such as the laws of Deuteronomy), are both retained. A work like Deuteronomy could revise law found in the Covenant Code, but it could not tamper with the very text of that Code. A reason for this may have been regard for the literary integrity of the original text. Bernard Jackson has cogently argued that the law corpora in the Pentateuch are not merely lists of norms; rather, they display literary features. They exhibit links to the surrounding narratives and sophisticated patterns of arrangement, particularly chiasmus and thematic reiteration.[5] Put differently, the text of the Covenant Code had not only normative force, but didactic force

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3. Ibid., 95.

4. Ibid.

5. Bernard Jackson, "Modelling Biblical Law: The Covenant Code," *Chicago Kent Law Review* 70, no. 4 (1995): 1761. On chiasmus within the Covenant Code see David P. Wright, "Chiasmus in the Covenant Code Reconsidered: The Final Apodictic Laws," in Reinhard Achenbach and Martin Arneth, eds., *"Gerechtigkeit und Recht zu üben" (Gen 18,19): Studien*

as well.[6] Revision could well have been carried out wholesale within the text of the Covenant Code itself—but that would have sufficed only to convey the new, revised norms. The Covenant Code, however, constituted a literary whole, the didactic force of which would be disrupted were its text altered. Revision of the Covenant Code, therefore, took place in a separate composition. Redaction of the Pentateuch would incorporate the now outdated Covenant Code, in part due to its authority, as suggested by Otto—but we may add that, no less, it would be retained as an integral whole so that its didactic lessons could continue to be imparted.

Retuning to revision of the United States Constitution, constitutional scholar Akhil Reed Amar offers a third rationale for revision by appended amendment:

> America's ultimate decision to array amendments in chronological order has happily encouraged the Constitution's readers to attend to the document's history and trend lines. Each discrete amendment bears a precise date that locates its message within the broader saga of American history Readers can tell at a glance which changes were made and when and can easily trace the direction of documentary change both issue by issue and more comprehensively.... An alternative word-processing regime whereby later generations rewrote the Philadelphia Constitution directly, interweaving old and new language, would have obscured the link between particular words and specific historic events. America's mode of add-on amendments draws special attention to those provisions—such as the 3/5 clause and the fugitive slave clause—that we have later abandoned yet nonetheless kept in view as a lesson to careful readers.[7]

For Amar, the Constitution and its amendments represent more than just a statutory code. The document's evolution tells a story; it situates amendments in historical context. It suggests what types of decisions were made in response to changing historical circumstances. It even points out how earlier laws were later emphatically rejected. Article 1, section 2, paragraph 3 of the original

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zur altorientalischen und biblischen Rechtsgeschichte, zur Religionsgeschichte Israels und zur Religionssoziologie: Festschrift für Eckart Otto zum 65. Geburtstag (Wiesbaden: Harrassowitz, 2010), 171–81.

6. B. Jackson, *Wisdom Laws: A Study of the Mishpatim of Exodus 21:1–22:16* (Oxford: Oxford University Press, 2006), 71; J. Blenkinsopp, *Wisdom and Law in the Old Testament: The Ordering of Life in Israel and Early Judaism* (New York: Oxford University Press, 1995), 97.

7. Akhil Reed Amar, *America's Constitution: A Biography* (New York: Random House, 2006), 459–60.

Philadelphia document declared that for purposes of taxation and representation, blacks would count as three-fifths of a person. Following Reconstruction, the Fourteenth Amendment abolished that, and yet it was important to keep the original wording on the books, as a reminder of an earlier decision that now stood rejected. The earlier text is revered and maintained, even as some of its prescriptions are emphatically rejected.

The dynamic that Amar identifies in the mechanism of revision of the United States Constitution accords with the mechanism Otto identifies in legal revision across the Pentateuch. Legal revision is often born out of changed historical circumstances. Amar points out that the framers of the Constitution insisted on listing the dates of each amendment so as to underscore its historical situatedness; so that the amendment would be seen not as a statement of an eternal or immutable truth, but rather as a revision that responded to the changing demands of the time. In like fashion, Otto stresses that the revised laws within the Pentateuch are never recorded as freestanding lists, but rather are embedded within a narrative, are dated, and are given a historical context. In standard fashion, the Torah states who issued the law when, and where.[8] As such, the historically situated nature of the laws would allow later generations of readers and jurists to ponder the proper application of the laws in the circumstances of their own time.

The Retention of Rejected Law within the Text of the Mishnah

I turn now to a slightly different legal literary phenomenon which is prevalent in the jurisprudence of the Mishnah. Most *mishnayot* summarize the disputes around a given issue, by simply stating the case, and the rulings of two or three rabbinic authorities on the matter. In many cases, the Mishnah also will conclude by stating which opinion is the accepted normative practice—the *halakhah*. What this means is that many *mishnayot* record not only the normative halakhah, but also retain the opinions that have been rejected. In a moment of self-reflection, the Mishnah asks, "Why is the opinion of an individual against [that of] the majority recorded, seeing that the legal ruling is in accordance with the opinion of the majority?"[9] The Mishnah provides two answers to account for the retention of rejected viewpoints. The first is that while the normative ruling must follow the majority, the opinion of the minority is important to keep on the

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8. Otto, "Rechtshermeneutik im Pentateuch," 494.

9. *m. Eduyot* 1:5–6.

record, because future courts may wish to adopt that position in light of changed circumstance at a later time. In that same Mishnah, though, Rabbi Judah offers an alternative explanation for the retention of rejected viewpoints: minority opinions are maintained in the record, so that should anyone in the future desire to adopt that position, it will be on record that the opinion had been raised for consideration and rejected.[10]

This latter rationale seems to be at work within the second-millennium Hittite laws. Within ancient Near Eastern legal writing, there is very little evidence of *explicit* legal revision—that is, places in the text where an author voices an awareness that he is changing a pre-existing norm. The sole example is found in the Hittite laws, where a later recension of the laws adjusts the fines levied for various damages. An example is HL 7:

> If anyone blinds a free person or knocks his teeth out, they used to pay (karū) 40 shekels of silver, but now (kinum) he shall pay 20 shekels of silver. He shall look to his house for it.[11]

Some 12 percent of the Hittite laws exhibit this readjustment of fines, with mention of both the obsolete and the new, current penalty. The rationale offered by R. Judah for retaining rejected rulings in the Mishnah holds here as well. For R. Judah, the rejected law is retained within the literary record as just that—a ruling that is rejected, so as to forestall its future practice. The rejected fines mentioned in the Hittite laws had apparently been in practice for centuries, and may have been widely known. When latter-day jurists decided to adjust the fines, they were essentially running up against accepted tradition. One can well imagine that when first instituted, they may have drawn initial resistance from the injured parties, who would now be receiving substantially less compensation for their damage. By recording the old penalty as just such—an *old* norm—the text of the Hittite laws hoped to silence initial objection, by stressing that that which had long been popularly known, was now superseded.

This same rationale may be applied to at least some of the laws revised within the Torah. Consider the issue of the site of cultic worship. The Covenant Code had said that sacrifices could be offered anywhere (Exod 20:21). Deuteronomy

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10. See discussion in Moshe Halbertal, *People of the Book: Canon Meaning and Authority* (Cambridge, MA: Harvard University Press, 1997), 51; David Weiss Halivni, *Peshat and Derash: Plain and Applied Meaning in Rabbinic Exegesis* (New York: Oxford University Press, 1991), 163–67.

11. That is, his house will serve as security for the payment. Translation in Matha Roth, *Law Collections from Mesopotamia and Asia Minor* (Atlanta: SBL Press, 1997), 218.

revised that law and determined that sacrifices could be offered only in the central shrine (12:4–12). The retention of the outdated Covenant Code ruling within the redacted Torah may be understood in light of R. Judah's explanation of the retention of rejected rulings in the Mishnah. By recording and retaining the original prescription of the Covenant Code, the redacted Torah is able to make a strong statement about cultic worship: namely, that there is no longer any place for private cultic worship. Israel had once practiced private cultic worship, but that has now been rejected. Precisely by demonstrating how Deuteronomy had revised the Covenant Code, the Torah hopes to forestall a return to such practice in the future. It is necessary to preserve that provision as part of the Covenant Code so that it can be demonstrated that the old has been now rejected; the rejection of the old norm is all the more complete if the rejected provision is included for reference.

The Mishnah, as we saw, offered two opposing rationales for retaining rejected law: one opinion wished to preserve the old law for future reference, and perhaps even future renewal as normative practice. The second opinion saw retention of the rejected law within the literary record as a vehicle to ensure its continued rejection for the future. It is difficult to know whether the Torah intended one or the other, as there are no explicit guidelines within the Torah for how legal revision is to be carried out in subsequent generations.

What should be clear, however, is that there are good empirical models available to substantiate the claim of complementarians that even once early formulations of a law were no longer normative, there could have been multiple reasons why they would be retained within the legal literary record.

Renewing Pentateuchal Criticism

A Critical Intellectual History
of the Historical-Critical Paradigm
in Biblical Studies

SINCE THE BEGINNING of the twenty-first century, we have witnessed a
notable development in the practice of the historical-critical paradigm in bibli-
cal studies. For the better part of two hundred years, the textual growth of the
Hebrew scriptures was predicated on the examination of internal clues, such as
discontinuities and irregularities within the texts themselves. Scholars saw these
literary phenomena as signs of diachronic growth, and adduced hypotheses to
explain how the text came to the final state in which it is received today. But
more recently, scholars have begun looking toward empirical models of textual
growth to reconstruct the development of the Hebrew scriptures.[1] Rather than
focusing exclusively on irregularities within the received text, these scholars
have sought out empirical examples of documented textual growth from the
epigraphic record of the ancient Near East. They have done so to probe how

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1. Karel van der Toorn, *Scribal Culture and the Making of the Hebrew Bible* (Cambridge,
MA: Harvard University Press, 2007); David M. Carr, *The Formation of the Hebrew
Bible: A New Reconstruction* (New York: Oxford University Press, 2011); Juha Pakkala,
God's Word Omitted: Omissions in the Transmission of the Hebrew Bible (FRLANT
251: Göttingen: Vandenhoeck & Ruprecht, 2014); Molly Zahn, "Reexamining
Empirical Models: The Case of Exodus 13," in Eckart Otto and Reinhart Achenbach,
eds., *Das Deuteronomium zwischen Pentateuch und deuteronomistischem Geschichtswerk*
(Göttingen: Vandenhoeck & Ruprecht, 2004), 33–56; Reinhard Müller, Juha Pakkala, and
Bas ter Haar Romeny, *Evidence of Editing: Growth and Change of Texts in the Hebrew Bible*
(Atlanta: SBL Press, 2014); B. Ziemer, "Die aktuelle Diskussion zur Redaktionsgeschichte des
Pentateuch und die empirische Evidenz nach Qumran," *ZAW* 125 (2013): 383–99. See now
also, Raymond F. Pearson and Robert Rezetko, eds., *Empirical Models Challenging Biblical
Criticism* (Atlanta: SBL Press, 2016); Reinhard Kratz, "The Analysis of the Pentateuch: An
Attempt to Overcome Barriers of Thinking," *ZAW* 128, no. 4 (2016): 529–61.

scribes amended and edited texts in the creation of new versions, as well as in the creation of entirely new works. In light of the methodological impasse gripping the field, its extreme fragmentation and seemingly unbridgeable diversity, the pivot toward empirical models for textual development would seem to be a welcome and important development. We have no copies of biblical texts on hand that date from the biblical period itself, and thus can only adduce our compositional theories by working backwards from the received text. In looking beyond the Hebrew scriptures to the epigraphic corpus of the ancient Near East, we multiply the data from which to adduce theories of textual development. When biblicists hypothesize theories of textual development, they do so while situated in a distinctly modern textual culture, and thus are prone to project anachronistic attitudes and practices upon cultures at a great distance from them in time and place. Empirical models offer us methodological control as we observe how ancient scribes more closely contemporaneous with the scribes of Israel edited and expanded cherished texts across the centuries. Canvassing the textual culture of the ancient Near East affords us an awareness of the limitations of our own situatedness: we become aware of authorial and editorial practices that, standing as they do at a great remove from our own, sometimes seem to us counterintuitive.

The pivot to empirical models would seem to be not only important, but overdue. The texts whose growth has been documented—the Gilgamesh epic, the Temple Scroll, the Atrahasis story, and the Etana Epic—are texts that have been the subject of scholarly attention for more than half a century.[2] Comparative method has fruitfully mined these texts' concepts, institutions, styles, and language for the light they shed on biblical literature. Curiously, it is only recently that scholars have turned to the compositional history of these texts with an eye toward elucidating the textual growth of the Hebrew scriptures.[3]

As I noted in my introduction, in May of 2013, the Israel Institute for Advanced Study in Jerusalem sponsored a conference rightly billed as the

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2. On the Gilgamesh epic, see Andrew George, *The Babylonian Gilgamesh Epic: Introduction, Critical Edition and Cuneiform Texts* (2 vols.; Oxford, Oxford University Press, 2003); on the Temple Scroll see Michael Owen Wise, *A Critical Study of the Temple Scroll from Qumran Cave 11* (Studies in Ancient Oriental Civilization 49; Chicago: Oriental Institute of the University of Chicago, 1990); on Atrahasis see W. G. Lambert, A. R. Millard, and Miguel Civil, eds., *Atrahasis: The Babylonian Story of the Flood* (Winona Lake, IN: Eisenbrauns, 1999); on the Etana Epic, see James V. K. Wilson, *Studia Etanaica: New Texts and Discussions* (Münster: Ugarit Verlag, 2007).

3. The notable exception to this lacuna is Jeffrey H. Tigay, *Empirical Models for Biblical Criticism* (Philadelphia: University of Pennsylvania Press, 1985).

largest meeting ever assembled to explore the mechanics of the textual growth of the Pentateuch.[4] Some of the speakers invoked empirical models based upon the textual growth witnessed in the neighboring cultures of the ancient Near East.[5] In the discussion that ensued, opinion was split concerning the place that such approaches should take in developing theories for the growth of biblical texts. While some viewed these approaches as a welcome and even necessary corrective, other scholars—particularly those who work with more customary methods—were more circumspect.[6] It may well be that in any field of inquiry, new methods will be viewed as a threat by those who have long practiced and published according to the older and accepted canons of convention. I maintain that the lateness of this pivot toward empirical models, and its lukewarm reception in some quarters even as I write, are not accidental. Rather, deeply rooted intellectual commitments within the history of the diachronic study of the Bible explain why this development is such a late one, and why it poses a challenge for many who study and write about the growth of biblical texts.

In this chapter, I conduct a critical intellectual history of the historical-critical paradigm in biblical studies, with particular regard to theories of development of the biblical text. My interest is to understand the origins of the intellectual commitments that shape the discipline today, and the discipline's disposition toward empirical models of textual growth. I shall examine how theorists over three centuries have entertained the most fundamental questions: what is the goal of the historical-critical study of the Hebrew Bible? What is the probative value of evidence internal within the text itself, relative to evidence from external sources? What is the role of intuition in the scholar's work? What is the role of

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4. "Convergence and Divergence in Pentateuchal Theory: Bridging the Academic Cultures of Israel, North America, and Europe." International Conference convened at the Israel Institute for Advanced Studies, Jerusalem, May 12–13, 2013. Organizers: Bernard M. Levinson, Konrad Schmid, and Baruch J. Schwartz. The conference volume has now appeared as Jan C. Gertz, Bernard M. Levinson, Dalit Rom-Shiloni, and Konrad Schmid, eds., *The Formation of the Pentateuch: Bridging the Academic Cultures of Europe, Israel, and North America* (Tübingen: Mohr Siebeck, 2016).

5. See Gertz et al., *Formation of the Pentateuch*, especially the papers included in Section 1, "Empirical Perspectives on the Composition of the Pentateuch."

6. Of course, some ancient Near Eastern compositional techniques, such as resumptive repetition, or *Wiederaufnahme*, have long been recognized within the source-critical literature. See Michael Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford: Clarendon Press, 1985), 86; Jeffrey Tigay, "The Evolution of the Pentateuchal Narratives in Light of the Evolution of the Gilgamesh Epic," in Tigay, *Empirical Models for Biblical Criticism*, 21–52. For a critique of *Wiederaufnahme* as a discernible editorial trace, see Raymond F. Person Jr., "A Reassessment of Wiederaufnahme from the Perspective of Conversation Analysis," *BZ* 43 (1999): 241–48.

methodological control? As we shall see, scholars in different ages offered very different answers to these questions—answers colored by the prevailing intellectual milieu of their respective times.

I proceed by surveying the intellectual currents during the formative period of the discipline: the two centuries between Spinoza and Wellhausen. Surveys of the historical-critical method often view nineteenth-century scholars as the heirs of Spinoza.[7] Yet, we shall see that the axioms that governed nineteenth-century German scholarship were at a great divide from those that governed earlier historical-critical scholarship. We shall see further, that these axioms were based in intellectual currents that were particular to the nineteenth century, especially in Germany. From there, I offer a brief summary of the claims of contemporary scholars who are looking toward empirical models to reconstruct the textual development of Hebrew scriptures. I conclude by demonstrating how this vein of scholarship undermines an array of nineteenth-century intellectual assumptions, but would have been quite at home in the earlier periods of the discipline's history. My hope is that this survey will stimulate a new self-awareness among scholars investigating these issues today.

Methodological Skepticism and the Beginnings of the Historical-Critical Paradigm in Biblical Studies

Spinoza's comments in the seventh chapter of his *Theological-Political Treatise* are rightly cited as a seminal point in the development of historical criticism of the Hebrew Bible. Spinoza was the first to articulate a program of inquiry for the historical criticism of the Bible:

> Our historical inquiry must explain the circumstances of all the books of the prophets whose memory has come down to us: the life, character and particular interests of the author of each individual book, who exactly he was, on what occasion he wrote, for whom and in what language. Then the fate of each book: namely how it was first received and whose hands it came into, how many variant readings there have been of its text, by whose decision it was received among the sacred books . . . all this I contend, has to be dealt with in a history of the Bible. It is important to know the life, character and concerns of each writer . . . it is also crucial to know on what occasion, at what time and for what people or age the

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7. E.g., Edgar Krentz, *The Historical-Critical Method* (Philadelphia: Fortress Press, 1982), 14; Bill T. Arnold, *Introduction to the Old Testament* (Cambridge: Cambridge University Press, 2014), 59.

various texts were written . . . It is essential finally to know all the other things mentioned above, so that apart from the question of authorship, we may also discover, for each book, whether it may have been contaminated with spurious passages or not; whether mistakes have crept in, and whether the mistakes have been corrected by unskilled or untrustworthy hands . . . We must acknowledge exclusively what is certain and unquestionable.[8]

More than three hundred years later, most diachronic scholars today could happily sign on to Spinoza's research agenda. The questions he raises are those that scholars of the historical-critical school have grappled with ever since. However, in another, longer section of that chapter, Spinoza sounds a note not often heard today among biblicists engaged in diachronic research:

> I must now therefore point out the limitations and difficulties in this method's capacity to guide us towards a full and certain knowledge of the sacred books . . . A further problem with this method is this requires a history of the vicissitudes of all the biblical books, and most of this is unknown to us. For either we have no knowledge whatever of the authors or (if you prefer) the compilers, of many of the books-or else we are uncertain about them, as I will demonstrate fully in the next chapters. Also, we do not know under what circumstances these books whose compilers are unknown were composed or when. Nor do we know into whose hands all these books subsequently came, or in whose copies so many variant readings occur . . . if we do not know its author or when and under what circumstances he wrote it, our efforts to get at its true sense will be fruitless. For if all this is unknown, we cannot ascertain what the author intended or might have intended.
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> All these, then, are the difficulties of this method of interpreting Scripture on the basis of its own history which I undertook to describe. I think these difficulties are so great that I do not hesitate to affirm that in numerous passages either we do not know the true sense of Scripture or can only guess at it without any assurance.[9]

While many diachronic scholars today would agree with Spinoza's research program referenced above, few would share in the pessimism he expresses concerning

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8. Translation taken from Jonathan Israel, *Spinoza: Theological Political Treatise* (Cambridge: Cambridge University Press, 2007), 101–02.

9. Israel, *Spinoza*, 106–10.

our capacity to answer those very same questions. Note also that Spinoza iden-
tifies here "the limitations and difficulties in this method's capacity to guide us
towards a *full and certain knowledge*" (emphasis mine). This very high bar of
evidence matches his earlier instruction (at the end of the earlier cited passage)
that, "we must acknowledge exclusively what is certain and unquestionable."
Hypotheses proliferate today concerning the dates and compositional histories
of the various biblical texts. While many scholars would say that their respec-
tive theories are well-founded, few would insist that their proposals are "certain
and unquestionable." Put differently, scholarship today implicitly operates with
two foundational assumptions that distance it from Spinoza. Scholars today have
more confidence than did Spinoza that we can indeed trace the compositional
history of the biblical texts. Second, scholars today are prepared to assign proba-
tive value to suggestive evidence, and do not insist upon admitting proposals that
are "certain and unquestionable."

The skepticism that animates Spinoza's writings concerning the potential for
historical-critical analysis of the Hebrew Bible is seen again a decade later, in the
work of the Frenchman Father Richard Simon, the most learned biblicist of his
day. Like Spinoza, Simon points to fissures and discontinuities within the biblical
text, and like Spinoza, Simon understands that human hands, historically situ-
ated, stand behind the creation of the sacred texts. And yet, commenting on the
history of the received texts, he cautions:

> What we have at present is but an abridgement of the ancient records,
> which were much larger, and that those who made the abridgements had
> particular reasons which we cannot understand. It is better therefore to
> be silent in this subject and to keep to the general reasons we have related
> than to search farther into this matter, and condemn by a rash criticism
> what we do not understand. . . .. I believe it is unnecessary to inquire with
> too much niceness the particular authors of each Book, because we can
> make but very uncertain conjectures.[10]

Spinoza and Simon established the basic questions that historical criticism asks of
the texts today. Yet, at the same time, Spinoza and Simon are at great remove from
later proponents and supposed heirs of their method. Neither of them attempts
to separate any existing text into its original component parts, be they sources
or fragments. Neither attempts to explain the motives that might have contrib-
uted to any of these supposed components. Neither proposes a chronology of

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10. Richard Simon, *A Critical History of the Old Testament* (London: Walter Davis, 1682),
27, 29.

these components. We must recognize that they offered no solutions to these critical questions not because they thought them unimportant—indeed, they both claim that these questions are of the utmost importance to arrive at a true understanding of Scripture. They offered no solutions to these questions because they were convinced that we do not have the data to answer them—if, as Spinoza writes, the criterion for admissible solutions is "exclusively what is certain and unquestionable."

Eighteenth-Century Confidence and the Work of Jean Astruc

Scholars of the eighteenth century, like their predecessors in the seventeenth, arrived at their conclusions concerning the composition of the Hebrew scriptures solely on the basis of their reading of the Hebrew Bible, without recourse to external texts. The evidence available to scholars across this time does not change—but the culture does. The scholars that continue the historical-critical paradigm after Spinoza and Simon do so not by building upon and expanding the findings of their predecessors, but by bringing the sensitivities and intellectual commitments of their age into their reading of the self-same texts that earlier scholars had access to as well.

Just five years after Richard Simon penned his *Critical History of the Old Testament*, Sir Isaac Newton published his 1687 *Philosophiæ Naturalis Principia Mathematica*, which formulated the laws of motion and universal gravitation. Newton's work had a profound impact on eighteenth-century thought. Previously, nature was largely considered unpredictable and impenetrable. Newton's work proffered an understanding of nature as a well-ordered realm subject to laws that could be expressed elegantly and succinctly through mathematical formulae. Most importantly, nature was now considered open to human observation as never before. This paradigm shift would influence all realms of inquiry. Eighteenth-century thinkers sought to match this science of nature with a science of human nature. Just as in the natural world, the world of the affairs of men, it was thought, must also be orderly, and subject to laws—and these areas of inquiry, no less than the natural world, were open to human observation and comprehension.[11] An attitude of confidence regarding the competence of human understanding emerged. What dominated the age was the *libido scienti*, the lust for knowledge. Theological dogmatism of a previous age had branded such enquiry as intellectual pride, as the cosmos contained secrets which only the

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11. See Christopher Fox, Roy Porter, and Robert Wokler, eds., *Inventing Human Science: Eighteenth Century Domains* (Berkeley: University of California Press, 1995).

Almighty could know, but in this new age this turn toward inquiry was considered a necessary quality of the soul. In the words of Ernst Cassirer: "The defense, reinforcement, and consolidation of this way of thinking is the cardinal aim of eighteenth century culture."[12]

One tenet of Enlightenment thought, in the eighteenth century and beyond, was the notion that science consists of analysis, of the dissection of a phenomenon into its constituent parts.[13] Landmark advances had been made in the natural sciences due to belief in this notion. Organisms that seemed whole to the naked eye were discovered to be composed of cells. The first cells had been witnessed under a microscope in 1665, ultimately leading to the development of cell theory in the 1830s. John Dalton published the first periodic table of the elements in 1803. For the Enlightenment mind, writes Ernst Cassirer, reason mandates that events and phenomena be analyzed and reduced to their constituent parts.[14]

This provides the backdrop for the contribution to historical criticism of the Bible by the Frenchman Jean Astruc, in his 1753 work, *Conjectures sur les Mémoires Originaux*. Astruc is rightly known as the father of the documentary hypothesis of the composition of the Pentateuch. He believed that Genesis had been weaved from two main and ten minor sources, which he parsed out into four columns on the basis of divine names and narrative unity.[15] To appreciate his work, one must understand Astruc's biography as a product of the scientific revolution of his age. During the late seventeenth and early eighteenth centuries, both science and the Bible were regarded with the greatest of respect, and they were viewed as standing in complete accord. The knowledge of science could aid in the interpretation of scripture, and knowledge of scripture could assist in the understanding of science.[16] Astruc was a gynecologist by profession and wrote

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12. Ernst Cassirer, *The Philosophy of the Enlightenment* (Princeton, NJ: Princeton University Press, 1951), 14.

13. Frederick C. Beiser, *The German Historicist Tradition* (Oxford: Oxford University Press, 2011), 12; John Herman Randall, Jr., *The Making of the Modern Mind* (New York: Columbia University Press, 1976), 467.

14. Cassirer, *The Philosophy of the Enlightenment*, 10, 13; Beiser, *The German Historicist Tradition*, 12.

15. John W. Rogerson, "Early Old Testament Critics in the Roman Catholic Church—Focusing on the Pentateuch," in Magne Saebø, ed., *Hebrew Bible/Old Testament: The History of Interpretation* (2 vols.; Göttingen: Vandenhoeck & Ruprecht, 1996–2008), 2:837–50, here 846; and Rudolph Smend, "Jean Astruc: A Physician as a Bible Scholar," in John Jarick, ed., *Sacred Conjectures: The Context and Legacy of Robert Lowth and Jean Astruc* (New York: T & T Clark, 2007), 157–73, here 166.

16. See Peter Harrison, *The Bible, Protestantism, and the Rise of Natural Science* (Cambridge: Cambridge University Press, 1998), 121–60.

actively within his field.[17] Astruc describes his methodology in programmatic and scientific fashion:

> It was only natural to make an attempt to take the First Book of Moses apart (*decomposer*), to separate all the various mixed up pieces, to put back together those that were of the same kind and in all probability belonged to the same account and thus to bring those original accounts, which I believe Moses had at his disposal, back into their original order. This task was not as difficult as one might have thought; it was just a question of putting together all the pieces in which God is always called Elohim. I set them in a column that I called A, and I considered them to be bits and pieces, or if you will, fragments of a first original account that I designate with the letter A.[18]

Astruc goes on to claim that Genesis was composed of four sources, all redacted together at a later stage. Prior to Astruc, scholars had offered observations on individual quirks within the text. Astruc was the first to offer a systematic accounting for these fissures and inconsistencies. Laws had been deduced to explain the phenomena of nature, and now Astruc had provided laws of composition to explain the phenomena of fissures within the biblical text. We see here, if in limited scope, the first systematic attempt to determine the compositional precursors of the biblical text.[19] Rudolph Smend aptly characterizes Astruc's adoption of the scientific orientation of his age: "Astruc is a surgeon who also treats the Bible with his medical instruments."[20]

I would stress, however, that Astruc's lasting contribution to the field was not his documentary hypothesis itself. The details of Astruc's decomposition of the text of Genesis have not withstood the test of time, and no scholar today holds to even a small part of his accounting. Astruc's real legacy is in the spirit that pervades *Conjectures*—that spirit of confidence that adducing a set of laws can solve the mysteries of human texts, just as they do the mysteries of nature. Astruc,

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17. On Astruc and his work, see Rogerson, "Early Old Testament Critics," 846–48; Smend, "Jean Astruc," 157–73; Aulikki Nahkola, "The Memoires of Moses and the Genesis of Method in Biblical Criticism: Astruc's Contribution," in Jarick, *Sacred Conjectures*, 204–19.

18. Jean Astruc, *Conjectures sur les Mémoires Originaux :Dont Il Paroit que Moyse s'est Servi pour Composer le Livre de la Génése : avec des Remarques, qui Appuient ou qui Éclaircissent ces Conjectures* (Brussels: Fricx, 1753), 17–18, translated in Smend, "Jean Astruc," 166.

19. Nahkola, "The Memoires of Moses," 204, 214.

20. Smend, "Jean Astruc," 158.

like Spinoza and Simon before him, had only the biblical text as his data from which to work. The earlier two seventeenth-century scholars expressed doubt that analysis of the text alone could yield its compositional history. Astruc, living and working in the confident age of the Enlightenment, believed that it could; all the text needed was a deductive set of laws to explain its inconsistencies.

If Astruc stands at a remove from his seventeenth-century predecessors, he stands at an equal remove from the biblicists that would follow him in the nineteenth century. Although Astruc identifies four sources for the book of Genesis, he makes no attempt to characterize their ideology, socially or religiously; no attempt to order these sources chronologically; no attempt to explain how the various sources may have interacted historically. In fact, Astruc maintained that Moses himself was the redactor of these documents. In short, Astruc's work is a *literary* exercise, but one uninterested in not only the history of the text, but also the individuals and communities that might have produced them. These were concerns that would arise only with the advent of historicist consciousness at the end of the eighteenth century. Indeed, it is only in the late eighteenth century, in the wake of the scientific revolution, that the idea takes hold that the truth behind the past could be discovered through a scientific method.[21] It is no coincidence that it was only toward the end of the century that Johann Gottfried Eichhorn, in his *Einleitung in das Alte Testament* (1780–83), would be the first to take the putative documents and begin debate about the relative age of each.

The Nineteenth-Century German Historicist Tradition

The field of critical-biblical studies largely takes shape in nineteenth-century Germany. To be sure, there are many important developments that transpire thereafter as well, but the main terms of reference that continue to dominate compositional theory of the Hebrew Bible today—author, source, fragment, redactor, supplement and editorial layer—are developed in this age. To appreciate the ways in which the field developed at this time, it is crucial to examine it against the backdrop of nineteenth-century German historicism.

As I noted in chapter 1, in earlier centuries, events of the past were retold for the purpose of illustrating morals and teachings, but the past had not been

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21. Iain Provan, "Knowing and Believing: Faith in the Past," in Craig Bartholomew et al., eds., *"Behind" the Text: History and Biblical Interpretation* (Grand Rapids, MI: Zondervan, 2003), 229–66, here 231–2.

the subject of critical study in its own right. The end of the eighteenth and beginning of the nineteenth century witness a profound awareness of the need to critically assess the received traditions about past events. Frederick Beiser, a leading scholar of nineteenth-century German historicism, sums up the agenda of the historicist movement:

> The agenda of historicism was simple but ambitious: to legitimate history as a science. Its aim was to show what makes history a science. All the thinkers in the historicist tradition . . . wanted to justify the scientific status of history. They used "science" in a broad sense of that term corresponding to the German word "Wissenschaft," that is, some methodical means of acquiring knowledge.[22]

If history could become a science in its own right, then it would enjoy all the status and prestige of the natural sciences such as biology, chemistry, and physics.[23] Historicism would prove phenomenally successful in its ambition: between the 1850s and 1880s, the movement would mark its golden years, when its prestige was deemed no less than that of the natural sciences. If the eighteenth century had been the age of reason, the nineteenth had become that of history.[24] If, in the former period, educated people turned to philosophy to unlock the mysteries of human life, during the late 1880s it was the scientific analysis of the past that would provide insight and inspiration in politics, law, economics, morals, and religion.[25] In this section I selectively survey three elements of this movement which shape the historical-critical study of the Bible to this day. As we shall see, these elements are axioms and attitudes that are challenged by the recent recourse to empirical models for textual development.

Individuation

Perhaps the most influential historicist text of the early nineteenth century was an 1821 essay by Wilhelm von Humboldt, the founder of the Berlin University,

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22. Beiser, *The German Historicist Tradition*, 6.

23. Ibid., 7.

24. Ibid., 23.

25. John H. Zammito, "Historicism," in Michael N. Forster and Kristin Gjesdal, eds., *The Oxford Handbook of German Philosophy in the Nineteenth Century* (Oxford: Oxford University Press, 2015), 779–805, here 792; Provan, "Knowing and Believing," 234.

titled "On the Historian's Task."[26] In the essay, Humboldt places great stock in identifying the *principium individuationis*, that is, the defining characteristic of a great person, an event, or a culture:

> Every human individuality is an idea rooted in actuality, and this idea shines forth so brilliantly from some individuals that it seems to have assumed the form of an individual merely to use it as a vehicle for expressing itself. . . .. The spiritual principle of individuality therefore remains active in the midst of the history of nations guided by needs, passions, and apparent accidents, and it is more powerful than those elements.[27]

The idea behind a person, nation, or epic was nothing less than its individuating principle, that is, what makes it this unique or distinctive person, nation, or epoch.[28] The expression in this passage assigns such individualization almost metaphysical status. This emphasis on the discrete, individuated nation, event, and person is a hallmark of nineteenth-century German historicism.[29] In the analysis of historical phenomena, that which individuates is given place of pride over identifying that which is universal and common. This is a view of history infused with nineteenth-century Romanticism, and its celebration of the greatness of the individual soul. A literary work is appreciated as a window into the soul of its creator, and hence the significance of the author comes to the forefront at this time.[30]

Narratives of Causation

For these historians, it was insufficient to simply lay bare "the facts." Rather, the task of the historian was to connect these events through a historical narrative of cause and effect.[31] This aim paralleled the aims of scientists engaged in the natural sciences. Observed facts are transformed into a conjecture. Individual data

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26. Wilhelm von Humboldt, "On the Historian's Task," *History and Theory* 6, no. 1 (1967): 57–71. Appeared originally as "Über die Aufgabe des Geschichtschreibers," in *Abhandlungen der historisch-philologischen Klasse der Königlichen Preussischen Akademie der Wissenschaftenaus den Jahren 1820–21* (Berlin, 1822).

27. Humboldt, "On the Historian's Task," 69.

28. Beiser, *The German Historicist Tradition*, 168.

29. Ibid., 5.

30. Manfred Oeming, *Contemporary Biblical Hermeneutics: An Introduction* (Surrey, UK: Ashgate, 2006) 15.

31. Georg G. Iggers, "Historicism: The History and Meaning of the Term," *Journal of the History of Ideas* 56, no. 1 (1995): 129–52, here 131.

must, upon closer inspection, reveal an interdependence.[32] Nineteenth-century German scholarship in all fields of inquiry sought out explanations that were all-encompassing. This was the age that spawned Freud's theories of the human psyche and Einstein's theories of relativity. Humboldt's essay cited earlier also stresses the importance for the historian to establish the interdependence of events and their causation:

> The historian cannot be satisfied merely with the loose external relationships of the individual events . . . he has to proceed to the center of things from which their true nexus can be understood. . ... An understanding of them is the combined product of their constitution and the sensibility supplied by the beholder . . . The historian must render strict account of their inner nexus, must establish for himself a picture of the active forces, must recognize their trends at a given moment, must inquire into the relationship of both forces and trends to the existing state of affairs and to the changes that have preceded it.[33]

The task of creating this narrative of coherence rested with the historian and his senses of empathetic intuition and interpretation. Inherent in this hermeneutic was the confidence that the observing historian could indeed recapture the causative relationship between events and the motivations of the actors responsible for them.[34]

Primary Sources

One of the hallmarks of nineteenth-century historicism was introduced by Barthold Georg Niebuhr and Leopold von Ranke, who asserted that history would earn its status as a science by basing its findings on original, authentic *sources*.[35] This, they believed, would provide the facts of what had really happened—the raw data, so to speak. Tradition had passed down tales about the past, but only by returning to primary sources contemporaneous with the events under study could the historian attain a clear view of events past. Primary sources were viewed as bearing greater objectivity than secondary sources of the same

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32. See Cassirer, *The Philosophy of the Enlightenment*, 20, 32.

33. Humboldt, "On the Historian's Task," 64.

34. Beiser, *The German Historicist Tradition*, 168, 213; Provan, "Knowing and Believing," 233.

35. Beiser, *The German Historicist Tradition*, 16.

account.[36] Niebuhr had pioneered this approach to the study of Roman history, and Ranke developed it as a methodology sending his students to archives in search of documents contemporary with the age under study.

Presuppositions of the Historical-Critical Study of the Bible in Nineteenth-Century Germany

The premises outlined above permeated the critical study of the Bible in nineteenth-century Germany and remain central to the practice of historical critical method in many circles of the discipline today. To illustrate the centrality of these premises in nineteenth-century scholarship, I take as an example the most celebrated study of the nineteenth century, Julius Wellhausen's *Prolegomena zur Geschichte Israels*. Note, first, the genre of this classic work. It is not a commentary on a book or set of books from the Bible. What are primarily composed at this time are histories—histories of Israel and of its religion.[37] In theory the goal of the critical study of the Bible could have been to understand the text as the primary end, using all historical data available to elucidate it. However, in the nineteenth-century the priorities are inversed: the Bible is studied in primary fashion to produce a religious history of the people and the culture that created it.

To arrive at a proper history of Israel, however, requires, as in all historical inquiry during this period, a return to the original sources. Of course, manuscripts of the biblical texts contemporaneous with the events they describe, or even from the biblical period, were, and still are, unavailable. But imbued with the confidence of the scientific revolution, biblicists of the time believed that access to original sources was available through the careful literary mining of the textus receptus. By identifying irregularities of all sorts within the text, its earlier precursors could be reproduced. Nineteenth-century biblicists were not of one opinion concerning source criticism, and already by that time some preferred a theory of assembled fragments, or supplements to a base text.[38] But in the end, the Graf-Wellhausen documentary hypothesis carried the day, because its four sources offered a glimpse into the stages of Israelite religious development that preceded the redacted Pentateuch. Today, source criticism is thought of as

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36. Ibid., 276.

37. Jean-Louis Ska, *Introduction to Reading the Pentateuch*, trans. Pascale Dominique (Winona Lake, IN: Eisenbrauns, 2006), 109.

38. Thomas Albert Howard, *Religion and the Rise of Historicism: W. M. L. de Wette, Jacob Burckhardt, and the Theological Origins of Nineteenth-Century Historical Consciousness* (Cambridge: Cambridge University Press, 2006), 39–40.

one approach, or as a subfield within the broader field of biblical studies. In its original nineteenth-century German setting, however, just the reverse was true. Source criticism of the Bible was but a subset, or a mere iteration, of the general approach of source analysis (*Quellenkritik* or *Quellenforschung*), the standard scholarly tool for the investigation of all fields of human history and culture.[39]

As noted, nineteenth-century German historians believed that the master texts of a culture revealed their authors' particular distinctiveness and special genius. For biblicists, this meant that the texts of the Hebrew scriptures needed to be viewed first and foremost in Israelite context, and only thereafter in a broader, ancient Near Eastern context. Biblicists therefore placed a premium on so-called internal evidence—that is, seeming irregularities within the text—to parse the texts, before considering comparison with other, extra-biblical materials.[40] Israelite and post-exilic Jewish history had to move from within to without—that is, to begin by establishing the inner dynamic of development of Israelite culture as revealed by analysis of internal textual evidence—before expanding to see these texts in external cultural contexts, which are only supplemental. To primarily locate a biblical text in its broader context would run the risk of flattening out the distinctiveness of Israelite culture in the search for universal phenomena.[41] The *Prolegomena* employs this hermeneutic as virtually no external texts are invoked, and its argument rests on the internal evidence of the Hebrew texts themselves.

Wellhausen's hypothesis also shows us how a work structured by a historical-ideological narrative could capture the imagination of his age. More fully than anyone before him, Wellhausen had managed to correlate the discrete sources he identified with distinct, successive periods of the Israelite religious development: JE harkened back to the period of the divided monarchy. D was composed in the period of Josianic reform in the seventh century, and P represented a more cultic emphasis of the post-exilic period.[42] Wellhausen's hypothesis was greeted with immediate acclaim—but not because it was based on foolproof evidence. Indeed, many aspects of his work have been since discarded by scholars working in the historical-critical paradigm. Rather, his work won immediate acclaim

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39. Peter Machinist, "The Road Not Taken: Wellhausen and Assyriology," in Gershon Galil, Mark Geller, and Alan Millard, eds., *Homeland and Exile; Biblical and Ancient Near Eastern Studies in Honour of Bustenay Oded* (Leiden: Brill, 2009), 469–532, here 498.

40. Ibid., 501.

41. Ibid., 519.

42. John Rogerson, *Old Testament Criticism in the Nineteenth Century: England and Germany* (Philadelphia: Fortress Press, 1985), 266.

because it produced more fully than any earlier work a comprehensive *narrative*. His narrative offered the clearest picture yet of how the identification and chronology of the putative sources reflected the romanticist notion of development.[43] In Wellhausen's work, the historical-critical paradigm achieved what Edgar Krentz defines as the ultimate purpose of historical-critical inquiry of biblical literature: "[historical criticism of the Bible] produces history in the modern sense, for it consciously and critically investigates biblical documents to write a narrative of the history they reveal."[44]

Today, of course, not all biblicists see the Pentateuch as dissolvable into constituent "sources," cobbled together by a redactor. Nonetheless, nineteenth-century German historicism bequeathed an agenda to diachronic biblical studies that is still at the core of the discipline today. Common to all contemporary theories of textual growth is the mandate to engage in four pursuits: 1) to identify fissures in the text as markers of diachronic development, on the basis of internal evidence; 2) if possible, to characterize the ideology that animates each of these component parts; 3) to adduce a theory of composition—sources, fragments, supplements, layers, etc.—that accounts for the shape of the final text; and 4) to date the component parts and propose a chronology of textual growth.

Empirical Models and the Presuppositions of Contemporary Theories of Textual Growth

I turn now to canvas the claims of scholars who have invoked empirical models to reconstruct textual growth in ancient Israel. My aim is to explore the implications of these claims in light of the premises that have guided, for so long, much of the work on the textual growth of the Hebrew Bible.

The recent studies on empirical models of textual growth sound a consistent chord: the epigraphic evidence from the neighboring cultures of the ancient Near East suggests that many of the forms of editing routinely hypothesized concerning textual growth in ancient Israel are not attested in these comparative corpora. Contemporary theorists often assume that textual emendation in the ancient Near

43. David J. A. Clines, "Response to Rolf Rendtorff's 'What Happened to the Yahwist? Reflections after Thirty Years,'" *SBL Forum*, http://www.sbl-site.org/publications/article.aspx?ArticleId=551. It is worth noting that Wellhausen had been promised no honorarium for his work. The book enjoyed such great sales, however, that the publisher shared its profits with him. See Suzanne Marchand, *German Orientalism in the Age of Empire: Religion, Race, and Scholarship* (Cambridge: Cambridge University Press, 2009), 183.

44. Krentz, *The Historical-Critical Method*, 35.

East can only be a process of supplementation, but not of deletion.[45] Empirical models, however, demonstrate that revisions expanded, but also suppressed, earlier material.[46] Contemporary theorists often will assume that the entirety of an earlier source can be recovered through diachronic analysis.[47] Empirical models, however, reveal that scribes rarely appropriate earlier compositions in their entirety.[48] Contemporary theorists, especially in Pentateuchal studies, hypothesize the conflation of parallel sources. Empirical models, however, suggest that scribes did not preserve source documents unaltered and without gaps, and this is especially true in cases of conflation of parallel sources.[49] Some theorists envision multiple stages of revision and emendation.[50] Empirical models reveal that even the most complex documented cases rarely feature more than two or three stages of major revision of a given text.[51] David Carr summarizes his findings:

> The documented variety of readable sources that can be produced out of Pentateuchal and other texts militates against the probability that such reconstructed sources ever existed in an earlier time. Instead, given what we know about partial preservation and modification of prior traditions by ancient scribes, it is more likely that most (semi-)readable texts produced by contemporary transmission historians are nothing but the inventions of their creators.[52]

These findings undermine several of the premises that have long guided much work on the textual growth of Hebrew scriptures and beg a reassessment of their validity.

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45. Cf. Ska, *Introduction*, 169–70; Christoph Levin, *The Old Testament: A Brief Introduction* (Princeton, NJ: Princeton University Press, 2005), 27; Uwe Becker, *Exegese des Alten Testaments* (UTB 2664; Tübingen: Mohr Siebeck, 2005), 84; See discussion of these positions in Pakkala, *God's Word Omitted*, 16–25.

46. For discussion of the Gilgamesh epic, see Van der Toorn, *Scribal Culture*, 127; for discussion of a range of Israelite and Judean texts in full-length treatment, see Pakkala, *God's Word Omitted*.

47. See sources above, n. 45.

48. Carr, *The Formation of the Hebrew Bible*, 99–100.

49. Ibid., 112.

50. See broadly, the essays contained in by Thomas B. Dozeman, Konrad Schmid, and Baruch J. Schwartz, eds., *The Pentateuch: International Perspectives on Current Research* (FAT 78; Tübingen: Mohr Siebeck, 2011).

51. Carr, *The Formation of the Hebrew Bible*, 145.

52. Ibid., 114.

Internal vs. External Evidence: Which Is Primary?

German biblicists of the nineteenth century placed a premium on internal sources over and against the elucidation to be garnered from external sources. No doubt, this stemmed in part from the paucity of comparative materials available during that period. Nineteenth-century analysis of the Bible, its religion, and its institutions predate the recovery of much of the data that we have today from the ancient Near East.[53] Instruction in Assyriology was hardly available at German institutions of this era. While French and British excavators began uncovering the riches of Mesopotamia in the 1840s and 1850s, it was only in 1872 that George Smith offered his astonishing lecture which revealed an Akkadian precursor to the biblical flood story.[54] Significant efforts to analyze these epigraphic materials did not commence until the 1880s and 1890s—more than a decade after the publication of Wellhausen's *Prolegomena*.[55]

This is not to say that these scholars ignored cognate cultures altogether. Wellhausen, notably, utilized Arabic as a philological tool to better understand biblical Hebrew. Nonetheless, it could have been expected that, with the discovery of other ancient texts, the study of the compositional history of the biblical texts would have undergone a paradigm change. It would have been hoped that scholars would have sought empirical evidence for how texts evolved and grew, based upon the epigraphic finds of the neighboring cultures. Indeed, some scholars took Wellhausen to task for failing to do just this. The eminent classicist Ulrich von Wilamowitz-Moellendorff wrote of Wellhausen, in his 1928 autobiography: "He remained just a theologian; this explains the entire orientation of his [Prolegomena]. He resisted, as he should not have done, working his way into Assyrian and Babylonian."[56] No less a figure than Hermann Gunkel wrote of the practice of source criticism in 1931,

> [Wellhausen's] overall vision was sketched without reference to the history of the other areas of the Orient of the time and cannot in all parts be made to concur with the ancient oriental discoveries which have multiplied in such an unforeseen manner. The school . . . has buried itself in . . . increasingly fruitless literary criticism and has shown no serious

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53. Machinist, "The Road Not Taken," 469.

54. Ibid., 488.

55. Ibid., 505.

56. Ulrich von Wilamowitz-Moellendorff, *Erinnerungen 1848–1914* (Leipzig: K. F. Koehler, 1928), 189–90, translated and cited in Machinist, "The Road Not Taken," 483 n.33.

comprehension of the literary history that has become more prominent in the last few years.[57]

The fact that the field generally failed to engage this line of inquiry until quite recently suggests that habits and ways of thought predisposed it from doing so. The romanticist proclivity of nineteenth-century German scholarship led scholars of that age to believe that the genius of individual cultures had to be first determined from within the inner dynamics of these master texts called the "sources." Today, most scholars would aver that Israel, like every culture of the ancient Near East, indeed displayed cultural, and perhaps even literary, practices that were *sui generis*. Yet, in large part—maybe even in major part—Israel's literary output is best seen as part of a scribal milieu of the ancient Near East. The insistence in some quarters of the field today that internal evidence trumps external evidence is a holdover from a bygone era. It is a claim that today requires legitimation, and cannot be assumed.

Moreover, empirical models threaten the very notion of so-called "internal evidence." Internal evidence is deduced by noting irregularities within the text and breaking down the text into constituent parts. Meanwhile, scholars pointing to empirical models are concluding that the task of accurately separating the received texts into constituent parts is considerably more difficult than we may have thought. Time and again, we compare the earlier stage of an ancient text's development with a later stage, and see that there is no way that the later text could have yielded to analysis to produce the older, earlier text. Empirical models demonstrate that writers often borrowed a range of elements in their compositions, from individual words, to syntactic patterns to whole formulas. Later works are a bricolage of earlier works.[58] The Romantic idea of the author as one who composes *ex nihilo* does not fit the empirical data of ancient Near Eastern epigraphic finds. There is no author in biblical Israel without the great train of mimetic transmissions that come before. This undermines the very attempt to ground theories of textual development on the basis of internal evidence alone.

For nineteenth-century scholars, and for many contemporary scholars as well, the purpose of deconstructing the text has been to recover windows into Israel's origins: to describe the major themes of those sources, their language, and above

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57. Hermann Gunkel, "Wellhausen," in H. Gunkel and L. Zscharnack, eds., Die *Religion in Geschichte und Gegenwart* (Tübingen, 1931), 1821, translated in Marchand, *German Orientalism in the Age of Empire*, 262.

58. The phenomenon is illustrated in full-length fashion in Victor Hurowitz, *Inu Anum Sirum: Literary Structures in the Non-juridical Sections of Codex Hammurabi* (Philadelphia: University Museum, 1994).

all, their historical settings, and then to reconstruct the process by which they were compiled to create the received text. As Roland Barthes has written, the modernist notion of the author and literary criticism understood as historical criticism are notions that go hand in hand.[59] However, if empirical models are given pride of place in uncovering the literary practices of ancient Israel, then we must accept that we may not have clear access to these putative sources. Put differently, this means that we may not have trustworthy "windows" onto the world of earliest Israel, which is to say we may not be able to chart history itself in reliable fashion through recourse to so-called internal evidence.

The Problem of Experimental Method in Nineteenth-Century German Historicist Thought

To consider the place of empirical models in the reconstruction of the growth of the biblical text, we need to consider the role of intuition versus the role of evidence and methodological control in scientific inquiry, and particularly how this issue evolved in nineteenth-century Germany.

At the dawn of the historicist era in the early nineteenth century, the natural sciences were viewed as an ally of the critical study of history. Humboldt was adamant in his affirmation of the close connection between natural science and the new science of history.[60] The physical world provided the analogies upon which the world of human activity could be comprehended and explained. For Humboldt, "it is always a safeguarding device to trace the analogies in the physical world when investigating that of the spiritual."[61] Living nature presents the historian, the linguist, and the anthropologist with the analogies necessary for the establishment of these disciplines as sciences.[62] Inspired by the natural sciences, the scientific pursuit of history would be executed with a premium placed on induction, objectivity, and impartiality.

However, as the natural sciences progressed by leaps and bounds, the alliance of *Geisteswissenschaft* with *Naturwissenschaft* became a liability. The natural sciences were developing precise tools of measurement and experimentation.

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59. Roland Barthes, "The Death of the Author," Ubu Web Papers, www.tbook.constantvzw.org/wp-content/death_authorbarthes.pdf.

60. See Peter Hanns Reill, "Science and the Construction of the Cultural Sciences in Late Enlightenment Germany: The Case of Wilhelm von Humboldt," *History and Theory* 33, no. 3 (1994): 345–66.

61. Humboldt, "On the Historian's Task," 69.

62. Reill, "Science and the Construction of the Cultural Sciences," 356.

Statistical analysis of results ensured the solid base of the results. Practitioners of the human sciences had no hope of keeping up with the refined results achieved by natural "scientists"—a term that first appears in English in 1831. By comparison, the results of the human sciences seemed "soft" and unscientific. Champions of the human sciences were caught, proverbially speaking, between a rock and a hard place. Since Newton, science had been considered the benchmark of rigorous method for critical inquiry. Yet it was this same "science"—the science of the natural world, which was demonstrating just how unscientific the *Geisteswissenschaften* really were. The solution was to cut loose and declare autonomy.[63] The human sciences, and with them history, were true sciences, their proponents claimed, but they operated under a different methodology. Only by recognizing the autonomy and legitimacy of the human sciences, could advances be made. Especially active in this effort was the man considered by many to be one of the fathers of the social sciences, Wilhelm Dilthey (1833–1911). For Dilthey, the positivist epistemology of the natural sciences, with its emphasis on statistics and experimentation, was claiming an undue hegemony over the human sciences.[64] The two realms, he claimed, pursued fundamentally different goals. The goal of natural science was *Erklären* (explaining), while the goal of the human sciences was *Verstehen* (understanding). For several decades, theorists would debate and clarify the differences between the two methods and the best ways to achieve each.[65] Critically, historians considered the methodology of their discipline *sui generis* and independent. This method of inquiry championed an epistemology that placed a high premium on the intuition and imagination of the investigating historian.[66]

German historians debated the issue: can the goals of the historian—namely, to depict a coherent narrative of cause-and-effect of the past—be attained? What methodological control was necessary to ensure the accuracy of the conclusions? One of the pre-eminent thinkers of the age, Johann Gustav Droysen (1808–1884), wrote that the critical school of Niebuhr and Ranke was fraught with naïve optimism in its uncritical confidence in what historical criticism can

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63. See Irmline Veit-Brause, "Science and the Cultural Politics of Academic Disciplines in Late 19th Century Germany: Emil Du Bois-Reymond and the Controversy Over the Role of the Cultural Sciences," *History of the Human Sciences* 14, no. 4 (2001): 31–56; Reill, "Science and the Construction of the Cultural Sciences," 346.

64. Zammito, "Historicism," 801.

65. See the essays contained in Uljana Feest Heidelberg, ed., *Historical Perspectives on Erklären and Verstehen* (Berlin: Springer Publishers, 2010).

66. Veit-Brause, "Science and the Cultural Politics of Academic Disciplines," 37; Reill, "Science and the Construction of the Cultural Sciences," 361.

accomplish. Critical method is at its best with regard to the relatively recent past, where many original sources are available. The method is on far shakier ground with regard to ancient history, where there are often too few sources to work with.[67] Droysen writes that the naïve confidence of the critical school stems from the illusion that the process of sifting and sorting available evidence would allow the historian to distinguish the truth and discover, in von Ranke's words "how things actually were." Droysen's voice found little resonance within the field of biblical studies, and here, too, scholars were convinced that by carefully assessing the seeming irregularities in the text, the prized sources would become accessible. The results would be ensured by the investigator's intuition. Intuition within this hermeneutic works on two levels. The biblicist's intuition allows him or her to correctly identify fissures within the text and identify them as markers of diachronic development. Second, intuition allows the biblicist to posit a theory of composition—sources, fragments, supplements, etc.[68] The purpose of this sifting was to identify constituent sources that displayed the cherished trait of *consistency*. The core of *Gymnasium* (classical secondary school) training at this time in Germany were the subjects of Greek and Roman grammar and mathematics, admired because they offered training in abstract, consistent forms of knowledge.[69]

The irony of this hermeneutic is that it counters the very historicist ethos it seeks to embody. For all historicists of this period, literature is a product of a specific culture situated in a particular and individuated time and place. Conventions of coherence, of communication, and of literary production are all profoundly human constructs, and are themselves historically bound. We might have expected theorists—then and now—to sound a note of caution in adducing theories of textual composition. We might have expected investigators to be take cognizance of their own situatedness, and to be wary that their own cannons of coherence and of literary production could easily be anachronistically superimposed upon the cultures of yore. And yet we see virtually no awareness of these pitfalls in the scholarship of compositional theory of Hebrew scriptures up until quite recently. This, I would suggest, is evidence of the German historicist legacy

67. Johann Gustav Droysen, *Historik: Historisch-kritische Ausgabe*, Peter Leyh and Horst Walter Blanke, eds. (Stuttgart-Bad Cannstatt : Frommann-Holzboog, 1977), 113; and discussion in Beiser, *The German Historicist Tradition*, 309.

68. Provan, "Knowing and Believing," 233, 239.

69. Denise Phillips, "Epistemological Distinctions and Cultural Politics: Educational Reform and the *Naturwissenschaft/Geisteswissenschaft* Distinction in Nineteenth-Century Germany," in Feest, ed., *Historical Perspectives on Erklären and Verstehen*, 15–35, here 19; cf. Marchand, *German Orientalism in the Age of Empire*, 79.

of the nineteenth century. In declaring the autonomy of the *Geisteswissenschaften*, and within those, the historical critical study of the Hebrew Bible, intuition, and imagination assumed pride of place in the governing epistemology. External control to check intuitive theories was an element that was largely sacrificed—at least for biblical studies—in the great divorce between *Geisteswissenschaft* and *Naturwissenschaft*. The *Erklären/Verstehen* debates, pitting knowledge about human beings and texts against knowledge about the natural world, represented an epistemological distinction peculiar to German-speaking Europe.[70] In his study of nineteenth-century biblical hermeneutics, John Rogerson notes that there was much greater creativity in Germany than in England. He attributes this to a difference of philosophical disposition. English philosophy is grounded in an empiricist tradition of evidence and experimentation. He concludes, "if I may generalize from my own attitudes, English scholarship would prefer to say that it does not know, rather than build elaborate theories upon slender premises."[71]

Here, then, we cut to the chase of the debate over the place of empirical models for biblical composition: for the better part of two centuries, scholars have not sought out external methodological control for their work, instead relying upon intuition and the canons of coherence of their times to fit the data of the biblical text into a Procrustean bed of compositional theory. Those that invoke empirical models are doing much more than introducing new evidence to the field. Methodologically speaking they are insisting on a mode of research which the field has resisted for two centuries.

I'd like to dramatize just how absent this way of thinking has been from the field with reference to an experiment that could have been carried out even by the earliest critics who originated the field of compositional theory of the biblical text. An empirical experiment to test our capacity to develop accurate theories of textual decomposition could have been conducted using the book of Chronicles and the corresponding passages in the *Vorlage* of Samuel–Kings. Imagine the following: a scholar takes the First Book of Chronicles and carefully notes all of the changes witnessed relative to the corresponding passages in Samuel–Kings. On the basis of the evidence, the scholar then adduces a literary algorithm that explains what the author of Chronicles does to the *Vorlage* of Samuel–Kings to produce what we see in the later text. This literary algorithm will tell us how the later text systematically adopts or adapts, supplements or deletes material relative to the source texts—all on the basis of the collected evidence. The scholar now moves to the Second Book of Chronicles, and tries to work back from that text,

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70. Phillips, "Epistemological Distinctions and Cultural Politics," 15.

71. Rogerson, *Old Testament Criticism*, 292.

on the basis of the algorithm adduced from the work on First Chronicles and its *Vorlage*. To what degree would the scholar be able to accurately recreate the *Vorlage* of Second Chronicles?

Such an experiment would give an indication of our capacity (or lack thereof) to recreate earlier texts on the basis of existing ones, in their final form—in fact, such an experiment would show us what the very best results are that we could hope for. This is because the work to recreate the *Vorlage* of Second Chronicles would have been based on a wealth of evidence observed in the first half of the book and its sources. There is little theory or hypothesizing here. The beauty of this experiment is that it is totally empirical. It is remarkable that none of the early critics working in compositional theory of the Hebrew Bible thought to execute such an experiment. It is even more remarkable that to this very day, this experiment has not been attempted. This oversight speaks volumes regarding the hallowed place of deduction and intuition in the discipline as opposed to the place of experimentation, control and empirical models. In an oft-cited article, Steven A. Kaufman says that he began to try to do such an experiment with the Temple Scroll and its *Vorlage*, the Pentateuch, until he saw that it was "a consummately fruitless endeavor."[72]

Unwarranted Confidence

Finally, the invocation of empirical models undermines the presumed confidence with which scholars have produced theories of textual development since Astruc. Here, too, the threat of empirical models is not to biblical studies per se, but to a particular intellectual attitude that undergirds much of the discipline. David Carr's call for "methodological modesty"[73] flies in the face of what has guided the discipline for so long: namely, foundationalist thinking. Foundationalists are motivated by a desire for certainty in their work, believing that by erecting an elaborate system of analysis, such a secure foundation will be found. This motivation is what the philosopher Richard L. Bernstein refers to as Cartesian anxiety.[74] Descartes had insisted that we accept only knowledge that can be known with certainty. Researchers in all fields of study could do no less than to claim to have achieved this certainty, and scholars of the Bible were

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72. Stephen Kaufman, "The Temple Scroll and Higher Criticism," *HUCA* 53 (1982): 29–43, here 29.

73. Carr, *Formation of the Hebrew Bible*, 4.

74. See Richard L. Bernstein, *Beyond Objectivism and Relativism: Science, Hermeneutics, and Praxis* (Philadelphia: University of Pennsylvania Press, 1983).

no exception. Witness the supreme confidence expressed in the writing of the nineteenth-century biblicist Charles Augustus Briggs, co author of the Brown-Driver-Briggs lexicon:

> The valleys of biblical truth have been filled up with the debris of human dogmas, ecclesiastical institutions, liturgical formulas, priestly ceremonies, and casuistic practices. Historical criticism is searching for the rock-bed of divine truth and the massive foundations of the Divine Word, in order to recover the real Bible. Historical criticism is sifting all this rubbish. It will gather our every precious stone. Nothing will escape its keen eye . . . As surely as the temple of Herod and the city of the [H]asmoneans arose from the ruins of the of the former temples and cities, just so surely will the old Bible rise in the reconstructions of biblical criticism into a splendour and a glory greater than ever before.[75]

By contrast, we saw that the fathers of the historical-critical paradigm, Spinoza and Richard Simon, were actually sanguine about our capacity to answer the historical-critical questions we ask of the biblical text. Scholars who are currently doing compositional work on the basis of empirical models are really reconnecting to the paradigm's earliest tradition of measured skepticism. Compositional theories that draw from nineteenth-century premises perpetuate the belief that as historians of the ancient world, we have the same types and quantity of social and economic data as do scholars working in later historical periods where the documentation is more extensive. By drawing our attention to empirical models, these scholars provide a much needed check and control for our work. But this control, perforce, must rob the discipline of the self-confidence that has been its hallmark since Astruc. Juha Pakkala has recently argued precisely this point. He notes the difficulty diachronic scholars will have with the empirical evidence that later versions of a text frequently demonstrate suppression of earlier material: "The assumption that parts of the [earlier] text were omitted would leave the scholar with less tangible evidence about the past and with questions that the texts could not answer. The theories would become much less certain."[76] Although Spinoza and Simon represented only the dawn of the

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75. C. A. Briggs, *General Introduction to the Study of Holy Scripture* (New York, Scribner, 1899), 531–32.

76. Pakkala, *God's Word Omitted*, 14.

historical criticism of the Bible, their measured skepticism should not be discarded out of hand. We would do well to consider Rudolph Smend's characterization of the field of biblical studies as a "discipline in which the material essentially does not change and which has been contemplated for centuries by people who were not more ignorant than we are."[77]

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77. Rudolph Smend, *Deutsche Alttestamentler in drei Jahrhunderten* (Göttingen: V& R, 1989), 9, translated in Jan Christian Gertz, "Jean Astruc and Source Criticism in the Book of Genesis," in Jarick, *Sacred Conjectures*, 190–203, here 190.

The Abuses of Negation, Bisection, and Suppression in the Dating of Biblical Texts: The Rescue of Moses (Exodus 2:1–10)

FOR MOST SCHOLARS studying the literary works of the ancient Near East, meaning in a text cannot be accessed simply by reading it. Meaning is a function of historical context. Only by pinning down a date and place of composition—by establishing the historical context in which a text was composed—are we properly positioned to critically assess its meaning. However, scholars studying the Hebrew Bible face a distinct challenge as they strive to establish the historical context, because these works were not found in situ, but have been passed down to us through transmission. To overcome this hurdle, biblicists often search for parallels in a credible outside source text as an Archimedean point from which to date the biblical target text at hand.

This method is sound, and is one of the primary tools employed by the historicists of ancient Israel as they endeavor to make critical sense of the biblical and post-biblical texts. However, even when a parallel cognate text can be identified, caution is in order. Consider the warning of David Carr:

> We biblical scholars sometimes act almost as if the existing corpus of preserved non-biblical images and texts was a proto-canon, complete in itself as a source for potential analogies to biblical texts, rather than treating it as the highly gapped set of records that happened to be found at isolated places and times from various cultures surrounding Israel . . . We know better, or we should know that the existing corpora whether from Assyria or anywhere else, are but a random selection of the sorts of oral

and oral-written texts that circulated in and around ancient Judah and Israel. But we often do not apply this knowledge. Instead, we draw parallels between texts and decide dates based on what is functionally a proto-canonical idea of the self-sufficiency of the given materials at our disposal.[1]

Here, I consider how biblicists routinely handle the special—yet, all too common—circumstance where a biblical target text resonates with two (or more) extra-biblical source texts, each from a distinctly different locale and era. This circumstance is worthy of our methodological consideration both because it is a common scholarly challenge, and because, as I will show, the historicist impulse at the heart of historical-critical scholarship all too easily leads us to methodological error as we interpret the evidence.

For the historicist who studies the Hebrew Bible, the existence of extra-biblical source texts from two or more locales and eras provides an overabundance of riches. One source text could, in theory, provide the *sine qua non* of historicist critical inquiry—that is, a secure date for the target biblical text, and thus an historical context through which to plumb that text's meaning. But two source texts from different regions and periods serve only to complicate the question of the target text's date of composition, and thus the task of the historical-critical scholar as well. He or she can no longer begin to determine the meaning of the target text, because each of the extra-biblical source texts makes claims for a different historical context for the target text at hand. Faced with this challenge, historicists seek to secure a date for the target biblical text by interpreting the conflicting evidence through one of three strategies: *negation, bisection*, and *suppression*.

To illustrate the dynamics of each of these three historicist strategies, I consider the complexity surrounding the dating and historical context of the account of the rescue of Moses in Exod 2:1–10. As is well known, this story bears remarkable similarities to the Legend of Sargon of Akkad.[2] However, this is not the only ancient source text that resonates with the Exodus narrative: there are ancient Near Eastern attestations of the motif of the hero abandoned in infancy concerning Horus, in Egyptian literature,[3] and in Hittite literature as well.[4] The Moses account also bears striking resonance with laws found in the *ana ittishu* texts,

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1. David Carr, "The Many Uses of Intertextuality in Biblical Studies: Actual and Potential," in Martti Nissinen, ed., *Congress Volume Helsinki 2010* (VTSup 148; Leiden: Brill, 2012), 505–35, 529.

2. See Brian Lewis, *The Sargon Legend: A Study of the Akkadian Text and the Tale of the Hero Who Was Exposed at Birth* (Cambridge, MA: ASOR, 1980), 211–15.

3. See William H. C. Propp, *Exodus 1–18* (AB 2; New York: Doubleday, 1998), 155–56.

4. William W. Hallo, *The Book of the People* (BJS 225; Atlanta: Scholars Press, 1991), 130–32.

which are bilingual Sumerian and Akkadian texts from the Old Babylonian period in which a child is found, recognized as a foundling, delivered to a wet nurse for a set wage, weaned, returned to his owner, and finally adopted. These texts suggest that following the adoption, a new son would be given a name.[5] Meanwhile, an eleventh-century BCE Egyptian record tells of a woman who adopted the child of a female slave and emancipated him to make him her heir.[6] Further, the Exodus narrative features a number of Egyptian loan words. The words תבה (Exod 2:3, 5) and גמא (2:3) are Egyptian loan words, and the name Moses is also of Egyptian derivative.[7] The biblical historicist, therefore, is faced with an overabundance of rich comparative materials. How shall historical-critical scholars arrive, then, at a determination of the date of the passage—the key to unlocking its meaning? Here we may envision scholars employing one of the three above-mentioned interpretive strategies so that they may assess their target text in light of a single corpus of data, all pointing to a common date.

Adopting a strategy of *negation*, some scholars will seek to discredit or invalidate all but one of the comparative materials. When executed responsibly, the scholar successfully demonstrates that one of the proposed source-texts on offer is irrelevant because the comparison was based on a faulty reading or improper translation of a given line. Note well: it is insufficient for the historicist to demonstrate that one comparative source text is marginally stronger or more relevant than the other. The historicist seeks to establish with full clarity a date and setting of composition for his or her target text. If a scholar can only posit that one of the comparative source texts seems stronger than another, but that both legitimately resonate with the target text, he or she will not be able to make a declarative dating concerning the text at hand. The data might be suggestive, but they will not be conclusive. This is why the historicist must engage in a strategy of *negation*. Only by discrediting and invalidating all but one comparative source will the scholar be able to establish a clear date for the text at hand. Historicists resorting to a strategy of negation must be brutally honest with themselves: do I seek to negate one of the source texts because it truly has no relevance to the target text at hand? Or, do I seek to invalidate relevant comparative source texts because of a prior

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5. George W. Coats, *Exodus 1–18* (Grand Rapids, MI: Eerdmans, 1999), 27. In the collection of *ana ittišu* documents, one Assyrian text (III, Column III, lines 38–44) describes the adoption of an abandoned child found on a river during the first half of the eleventh century BCE. See discussion in Shemaryahu Talmon, ed., *Shemot* (Tel-Aviv: Davidzon Itai, 1993), 29 (Hebrew).

6. See Moshe Greenberg, *Understanding Exodus* (New York: Jewish Theological Seminary of America, 1969), 200; A. H. Gardiner, "Adoption Extraordinary," *Journal of Egyptian Archaeology* (1940): 23–28.

7. Propp, *Exodus 1–18*, 149.

commitment to an historicist perspective, which compels me to establish a single clear date and setting for composition? Considering the extra-biblical source texts that resonate with the narrative of Exodus 2, this writer is aware of no study that seeks to employ this strategy. This is with good reason: the source texts that illumine this story all do seem legitimate, and it would be folly for a scholar to try to prove that only one of the source texts was relevant.

Other historicists seeking to establish a date for a target biblical text, when faced with source texts from disparate periods and regions, could choose to employ a strategy of *bisection*. Here, the historicist squarely acknowledges that negation is not an option. The scholar may recognize that one source text more closely resembles the target text at hand than does the second source text. Honesty, though, compels this scholar to realize that other comparative source texts that illuminate the target text at hand cannot be invalidated. Staying true to his or her historicist perspective, therefore, the scholar resolves the problem of one target biblical text illuminated by two competing comparative source texts by dividing the target text into two, and proposing two levels of composition within the received text. The historicist will hypothesize that one level of composition reflects the influence of comparative material from one place and time, and that the second level reflects the influence of the comparative material from a second place and time.

Here, too, historicists need to be brutally honest: does the target text, in fact, neatly split into two passages that just so happen to correspond to the two source texts served up to us by the epigraphic record? Or, has the scholar resorted to contrivance, so as to keep up his or her constructed historicist commitments, to wit, that a text—or a part of one—must be assigned a single, clear date in order to plumb its meaning? The interplay between the narrative of Exodus 2:1–10 and its extra-biblical source texts amply illustrates the difficulty here. Precisely because of the wealth of comparative material available, it is no simple task to parse the target text to match that material. The Exodus narrative resonates with particular source texts from the Old Babylonian period, from Iron Age I Egypt, and from the Neo-Assyrian period. It is an exemplar of a long tradition of tales of the hero abandoned at birth. We can well understand, then, the fact that no scholar has suggested incorporating all of these influences from within a historicist perspective. No scholar has suggested compositional growth that corresponds neatly to the various periods witnessed by each of the source texts provided us by the epigraphic record.

Finally, historicist scholars routinely seek to resolve the impasse generated by multiple source texts with resort to a strategy of *suppression*. Here, the historicist will assess which of the source texts resonates most closely with the target biblical text, and simply disregard all of the other competing source texts. The strategy of

suppression differs from the strategy of negation in one important respect. The strategy of negation recognizes that the other source texts make claims and complicate the effort to date the text at hand. Those texts, therefore, must be engaged and actively invalidated. For the scholar employing a strategy of suppression, however, no such effort is made. The other source texts are rarely even recognized, let alone engaged before being invalidated. They are simply ignored. The source text that resonates most closely with the target biblical text is endorsed and confirmed as the only one worthy of consideration, paving the way for a date and an historical context to be established for the target biblical text. Now, readers may object and claim that the strategy of suppression is no strategy at all; that competing and complicating evidence cannot simply be shrugged off. Readers may aver that while the strategies of negation and bisection can be abused, they may also be applied responsibly and in good faith. Not so, however, the strategy of suppression; ignoring evidence entirely is never an acceptable interpretive strategy. I wholeheartedly concur with such estimations.

I list the so-called strategy of suppression for one striking reason: it is widely practiced. The scholarship to the dating of Exodus 2:1–10 amply demonstrates this. Routinely, one finds that scholars date this pericope to the seventh century BCE. They cite its affinities with the Legend of Sargon, found in the library of Ashurbanipal and offer the standard explanation that Judean scribes penned the Moses narrative as a defiant appropriation of the Neo-Assyrian iteration of the tale of the abandoned hero, replacing Sargon with Moses. All this is claimed with nary a nod to the other comparative material, let alone a sustained attempt to grapple with the chronological implications of those other source texts.[8] Within these scholarly expositions, these competing source texts are, simply, suppressed.

Scholars, however, do have choices. Historicism can develop a reductive tendency to flatten out complexity in its drive to locate a text and the locus of its meaning to a single date and place. This stems from the foundationalsit mentality and search for certainty that I critiqued in the previous chapter. To be sure, there are times when we can successfully date the texts we study. Yet, especially when a target text resonates with source texts from more than one time and place, scholars should adopt an alternative hermeneutical stance. In such a

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8. E.g., Bernard M. Levinson, "The Bible's Break with Ancient Political Thought to Promote Equality—'It Ain't Necessarily So,'" *JTS* 61, no. 2 (2010): 685–94, 688–89; Thomas Römer, "Les Histoires des Patriarches et la Legende de Moïse : Une Double Origine?" in Jean-Michel Poffet, ed., *Comment la Bible Saisit-elle L'histoire: XXIe congrès de l'Association catholique française pour l'étude de la Bible, Issy-les-Moulineaux, 2005* (Paris: Cerf, 2007), 182; Eckart Otto, *Mose: Geschichte und Legende* (München: C. H. Beck, 2006), 37–39; David P. Wright, *Inventing God's Law: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* (New York: Oxford University Press, 2009), 343.

case, they may adopt a stance that is advocated by the historiographic approach of New Historicism. In contrast with mid-twentieth century practitioners of New Criticism, who analyzed texts without reference to historical context at all, New Historians affirm the importance of historical context for the analysis of texts. Yet unlike historicists, New Historians are suspicious of grand interpretive schemes.[9] They reject the notion that a particular age gives rise to a single, easily identified agenda.[10] New Historians celebrate complexity and contradiction in one's sources, and display a readiness to put off closure.[11] Historicists, by contrast, prefer a single interpretation of data and look to develop dominant historical patterns.[12] They are wary of double and triple meanings, as a document can only mean one thing if it is to serve as one element of a larger pattern. As one practitioner of New Historicism puts it, "New Historians set their texts a-wobbling while historicists nail theirs to the ground."[13] These comments remind us that when we try to identify the historical context of ancient texts, "doing the best we can," may sometimes mean reserving full judgment in light of the complexity of the evidence.

An appreciation of the complexity of the evidence allows us to assess anew the narrative of Exodus 2:1–10 and the range of source texts with which it resonates. Given the richness and chronological spread of these materials, we should reject the effort to cram the data into a Procrustean bed of a specific date and place. To be sure, when the evidence is clear-cut, we should do so. But when it isn't, as in the present case, historical criticism should eschew strategies of negation, bisection, and suppression. Instead, it should respect the complexity before us and entertain a broad range of possible interpretations, emphasizing contingency in our work, over a false sense of closure.[14]

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9. Sarah Maza, "Stephen Greenblatt, New Historicism, and Cultural History, OR, What We Talk About When We Talk About Interdisciplinarity," *Modern Intellectual History* 1, no. 2 (2004): 249–65, 258.

10. Maza, "Stephen Greenblatt, New Historicism and Cultural History," 252. See further with particular regard to biblical studies, Benjamin D. Sommer, "Dating Pentateuchal Texts and the Perils of Pseudo-Historicism," in Thomas B. Dozeman et al., eds., *The Pentateuch: International Perspectives on Current Research* (FAT 78; Tübingen: Mohr Siebeck, 2011), 85–108.

11. Martin J. Wiener, "Treating 'Historical' Sources as Literary Texts: Literary Historicism and Modern British History," *The Journal of Modern History* 70, no. 3 (1998): 619–38, 620.

12. Brooke Thomas, *The New Historicism and Other Old-Fashioned Topics* (Princeton, NJ: Princeton University Press, 1993), 35–39.

13. Maza, "Stephen Greenblatt, New Historicism and Cultural History," 265.

14. New Historicism encompasses a number of approaches. For studies that integrate these varied approaches with biblical studies, see Gina Hens-Piazza, *The New Historicism*

I offer, instead, what I take to be a more responsible assessment of the evidence for the dating of the account of the rescue of Moses. To engage in this examination, I am going to employ a degree of artifice. We know, from high-school math, that probabilities are compounded. That is, if the likelihood of an event depends on, say, five factors, then we must compute the likelihood of each factor, and multiply them, for a final determination of probability. Warning: biblicists untrained in statistics (such as the present writer!) should stay away from numbers, and computing the likelihood of anything in biblical studies with quantitative accuracy is surely an impossible task. Nonetheless, I ask the reader's indulgence. Even if I am wildly mistaken in my figures, the exercise, I hope will prove an important point nonetheless.

For the sake of argument, at the outset, I am assigning a 100 percent certainty to the claim that the Exodus account is borrowed from the Mesopotamian Sargon account, and was composed in the late eighth century BCE. From here, I move to consider the mitigating factors.

I begin by scrutinizing the security with which we may assign the Sargon account to the late eighth century. Sargon of Akkad (c. 2300 BCE) was the first great conqueror of Mesopotamia and established a vast empire. The stories of his escapades continued to be told for two thousand years after his demise, not only in Mesopotamia, but in Anatolia and in Egypt as well. His name is mentioned in inscriptions, omens, and historical texts, in Sumerian, Akkadian, Hittite, and perhaps also in Hurrian.[15] With the possible exception of Gilgamesh, his position is unrivaled within the literary tradition of Mesopotamian historiography.[16] This legend may have existed, therefore, in some form within the Mesopotamian literary tradition long before Sargon II. It may well be that the version we have from Nineveh represents an iteration of that legend expressed in orthography and idiomatic expression that befits the Neo-Assyrian period. But let us say that we consider this highly unlikely. In fact, let us say for argument's sake, that while we can't rule out that possibility, we consider it nine times more likely that the Sargon legend was sui generis in the late eighth century. This now gives our initial premise of an eighth-century BCE date for the Exodus account a probability of 90 percent.

(Minneapolis: Fortress Press, 2002); Robert P. Carroll, "Poststructuralist Approaches: New Historicism and Postmodernism," in John Barton, ed., *The Cambridge Companion to Biblical Interpretation* (Cambridge: Cambridge University Press, 1998), 50–66.

15. Lewis, *The Sargon Legend*, 125.

16. Ibid., 109.

But perhaps a later date for the Sargon text should be adduced. We have in our possession three fragments of the text from Ashurbanipal's library. A fourth fragment, however, dates from the Neo-Babylonian period.[17] To suggest eighth- or early seventh-century influence, would require us to posit that the relatively small number of scribes of Judah were familiar with the literary corpus of Ashuranipal's library. Are we certain that such access was even possible? By contrast, during the Neo-Babylonian period, with most of Judah in exile, many paths of influence could have developed. But let us say that this scenario, too, is unlikely. Let us say that we consider it four times as likely that Judah's exposure to the Sargon legend was in the eighth century. This means that we assign it an 80 percent probability. Compounded, our original hypothesis now bears a 72 percent probability.

Now let us bring the Exodus narrative into the picture. The account reveals several distinctly Egyptian aspects, such as loan words, and the similarity to an eleventh-century adoption record that I mentioned earlier. Perhaps a late-second-millennium Egyptian influence should be adduced for our text. But let us say that this scenario, too, is unlikely, and that we again consider it four times as likely (and hence an 80 percent probability) that the Moses account was composed under Judah's exposure to the Sargon legend in the eighth century, and not in Egypt four centuries earlier. Compounded, our original hypothesis now bears a 57 percent probability.

But the Moses account also shows striking resonance with laws found in the *ana ittishu* texts. Moreover, three other ancient Near Eastern legends of special children being saved from waters in infancy have been identified in addition to the Sargon legend, including two from the Late Bronze Hittite Empire, all of which might suggest a second-millennium provenance for our story. But let us say that the influence of any of these, too, upon the Moses narrative is unlikely, and that we consider it nine times as likely (and hence a 90 percent probability) that the Moses account was composed under Judah's exposure to the Sargon legend in the eighth century. Compounded, our original hypothesis now bears a 51 percent probability.

Scholars routinely assume that there is literary dependence between the Moses and Sargon narratives, and that it is Israel that is on the receiving end of this. As mentioned earlier, that would assume that the scribes of Judah were highly familiar with the literary corpus of the Neo-Assyrian empire, even though it is difficult to imagine the mechanism that could have created that degree of mastery. Perhaps, however, the equation needs to be reversed, and it is the Neo-Assyrians who adopted the genre from the Israelites. After Bakhtin, we know for sure that

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17. Ibid., 5.

when the conquered and their conquerors engage, cultural exchange is a two-way street.[18] Could it not be that when thousands—maybe tens of thousands—of Israelites were exiled east with the fall of Samaria, that they took with them their legends as well? But let us say that it was four times as likely (and hence an 80 percent probability) that Judean scribes had mastery of Ashurbanipal's library, and that the Moses account was composed under Judah's exposure to the Sargon legend in the eighth century. Compounded, our original hypothesis now bears a 41 percent probability. Finally, let us also consider the possibility that our text was not written in one fell swoop, but underwent extensive editing, with accretions added on at various stages in the Iron Age—and who dares put a probability percentage on that?

I repeat that we must beware of biblicists cooking the numbers, and that the exercise that I have executed here is one of artifice. But even if my numbers are all wrong, it is surely the case that there are compounding factors here that make it extremely difficult for us to marshal the evidence and to date, with any confidence, the account of the rescue of Moses. It is indeed critical that we locate our texts within a historical and social setting. The degree of resolution that we can achieve, however, is often only a function of what is highly conflicting and ambiguous evidence. Indeed, it is by taking into account all of the conflicting evidence that we get the fullest picture.

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18. See M. M. Bakhtin, *The Dialogic Imagination: Four Essays*, trans. Caryl Emerson and Michael Holquist (Austin: University of Texas Press, 1982).

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Source Criticism and Its Biases: The Flood Narrative of Genesis 6–9

IN THE PREVIOUS chapter, I drew attention to the unwarranted negation and suppression of evidence that permeates the dating of pentateuchal texts. Here, I claim that these abuses are also present in the historical-critical scholarship that seeks to trace the compositional growth of biblical texts. To bring these missteps to full light, I turn to the historical-critical scholarship on the flood account of Genesis 6–9. The source-critical approach to the flood narrative of Gen 6–9 famously splits the section into two strands, once referred to as P and J, but more recently as the P and non-P versions of the story. This division is one of the most celebrated achievements of modern biblical criticism. Hermann Gunkel called it "a masterpiece of modern criticism."[1] John Skinner similarly wrote, "The resolution of the compound narrative into its constituent elements in [the Flood narrative] is justly reckoned amongst the most brilliant achievements of purely literary criticism, and affords a particularly instructive lesson in the art of documentary analysis."[2] The esteem accorded to this accomplishment remains undiminished in contemporary scholarship as well. David Carr writes that scholars wishing to question the validity of the source-critical approach should do so by testing their theories on a text "which has been and remains foundational for past and present source criticism of the Pentateuch"—that is, the flood narrative of Genesis 6–9.[3]

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1. Hermann Gunkel, *Genesis: Übersezt und Erklärt* (3d ed.; HKAT; Göttingen: Vandenhoeck & Ruprecht, 1917), 137.

2. John Skinner, *A Critical and Exegetical Commentary on Genesis* (ICC; Edinburgh: T & T Clark, 1910), 147–48.

3. David Carr, "Unified until Proven Disunified? Assumptions and Standards in Assessing the Literary Complexity of Ancient Biblical Texts," *JBL* 133, no. 3 (2014): 681.

To critique the methodology that has produced the hypothesized P and non-P accounts, is to critique the basic premises of source criticism itself.

Some of the evidence that I marshal here has been brought forth by others to argue for the unity of the passage. However, arguing for the unity of the flood narrative is not my aim. Rather, my goal is to take a critical look at the source-critical paradigm and to examine its hermeneutics. We will see here what we saw in the previous chapter: namely, that the historical-critical scholarship consistently suppresses evidence that threatens its validity by simply ignoring it, or otherwise negating the validity of that evidence through unwarranted means.

Making the Case for the Source-Critical Approach to the Flood Account of Gen 6–9

For the better part of two centuries, biblicists have been convinced of the validity of the source-critical approach to the flood narrative, and with good reason. A linear, synchronic reading of this passage reveals many contradictions, as the flood account seems riddled with doublets and inconsistencies. To recount the most significant of these, it alternates between two divine names, YHWH and Elohim. Some passages speak of a downpour lasting forty days and forty nights (7:4, 12, 17a), while others describe a cosmic deluge whose waters crest for 150 days (7:11, 24). One passage instructs Noah to gather a pair of every living creature (6:19–20), while another differentiates between clean animals—of which seven pairs are to be taken, and unclean animals, where a single pair of each will suffice (7:2–3). The conventional solution to these and other similar inconsistencies and redundancies has been to identify within the pericope the interweaving of two versions of the story, P and non-P. The strength of this approach is in its cumulative power, because the presence of so many details that coalesce so neatly along these lines suggests that what we see here is more than just a coincidence.[4]

The Foundationalist Underpinnings of the Source-Critical Approach

I open my critique of the source-critical approach by noting an epistemological fallacy that has long dominated compositional theory of the Pentateuch

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4. See the synoptic table of these parallels in David M Carr, *Reading the Fractures of Genesis: Historical and Literary Approaches* (Louisville, KY: Westminster John Knox, 1996), 52–55.

in general, and the scholarship on this narrative in particular. Consider the following comment by J. A. Emerton, in a widely cited study, defending the source-critical approach to the flood narrative and the difficulties it raises: "If a scholar thinks he can advance a better, or even an equally satisfactory, explanation, then he may offer it as an improvement on, or substitute for, the hypothesis of a redactor (and if he cannot, he had better refrain from finding fault with it)."[5] I'd like to focus attention on Emerton's parenthetical statement. For Emerton, the source-critical approach provides us with a reasonable solution for many of the problems raised by a synchronic reading of the text. Scholars may challenge this approach, however, only if they believe they have "a better, or even an equally satisfactory explanation." For Emerton, we *must* adopt a hypothesis to account for the growth of the text. Note well, however, that the source-critical approach is measured only against other alternative hypotheses. For Emerton, if source criticism offers a fuller explanation of the data than any other theory, we are not allowed to subject it to further scrutiny on its own terms. There is no possibility of delegitimizing the source-critical approach unless and until we find an alternative hypothesis to account for the data that is more compelling. This, I would maintain, is a profound methodological flaw. Epistemologically, Emerton (and with him, most of those who do compositional history of the text) assumes that scholars have the keys to unlock the difficulties of the text. All that we must do is to choose between the competing hypotheses offered to explain the difficulties within the text. For source critics like Emerton, there does not seem to be an option of maintaining that even the source-critical approach is wanting, and that the compositional history of the text might be beyond our reach.

Emerton is not an outlier in this regard. Consider the following comment by Shawna Dolansky in a recent JBL Forum dedicated to source-critical method:

> It is true that historically source critics have tended to be overconfident, methodologically inconsistent, and often at odds with each other. The lack of a clear and consistent source-critical method applied universally has led, on the one hand, to a proliferation of unwieldy and ultimately untenable arguments for overly complicating and fragmenting the Documentary Hypothesis. On the other hand, the lack of method has led to the facile dismissal of the hypothesis as "dead" by those who deny the validity or purpose of source criticism and yet are unable or unwilling

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5. John Emerton, "An Examination of Some Attempts to Defend the Unity of the Flood Narrative in Genesis: Part I," *VT* 37 (1987): 402.

either to propose a better solution to the problems of the text than the Documentary Hypothesis or to engage in the exegetical work required by the Documentary Hypothesis—"deductive" methodical source criticism across the entire Pentateuch—in order to refine our understanding of the means by which the received text was composed, compiled, and canonized.[6]

For Dolansky, as for Emerton, those who critique the source-critical method cannot have a place at the table unless they are able and willing to propose "a better solution to the problems of the text." For Dolansky, it is a given that "deductive methodological source criticism" will "refine our understanding of the means by which the received text was composed, compiled, and canonized." For Dolansky, as for Emerton, there is no legitimate position whereby the source-critical paradigm may be found wanting, simply by the weakness of the evidence in its favor. The possibility that our understanding of the prehistory of the text may be partial, at best, is not entertained.

Note how closely this critique of compositional theory matches my critique in the previous chapter of the process by which pentateuchal texts are dated. We see here the same epistemological flaw that we saw with regard to the attempts to date the birth narrative of Moses in Exodus 2:1–10. For scholars who date that text, the starting assumption is that they must indeed propose a date for it. Various dates are considered and the most likely of those is adopted. There is no suggestion that even the most likely hypothesized date is fraught with difficulties that render it, too, suspect. The eighth-century Legend of Sargon provides the closest cognate parallel to that story, and thus the date for the biblical text is determined from that datum. The fact that a host of other data complicates that dating is suppressed. Returning now to compositional theory, we see again the epistemological confidence of the Enlightenment and foundationalist thinking, of which I spoke earlier. For source critics like Emerton and Dolansky it is a given that we have the capacity to know the compositional history of the text. Scholars need only determine which of the competing hypotheses makes the most sense. Methodological rigor, however, demands that a hypothesis must withstand scrutiny and stand on its own, regardless of whether competing hypotheses fare worse. Source critics who reject this stance engage in a strategy of suppression that ensures that the source-critical approach will be validated, so long as it provides more and better answers than any competing theory.

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6. Shawna Dolansky, "The Death of Moses, Not of Source Criticism," *JBL* 133, no. 3 (2104): 676.

Putting the Ox Before the Cart: When Theory Creates the Text, Instead of the Text Creating the Theory

The impetus to separate the Genesis flood account into two strands has always stemmed from the difficulties the received text presents to us. At its best, the theory of two versions stems from the text and the difficulties found within it. It is indisputable that the source-critical approach to the flood story accounts for several of these difficulties, such as the seemingly conflicting numbers of animals to be rescued on the ark (cf. 6:19–20; 7:2–3), and the repeated narrations of Noah's entry into the ark (cf. 7:7; 7:13). In a scientific inquiry the data should drive the theory, and when scholars point to difficulties in the text and adduce a theory of sources to explain those difficulties, they are remaining loyal to this axiom.

However, the source-critical approach to the Genesis flood narrative violates this principle at several junctures, when it takes the theory as a given, and uses it (perhaps *abuses* it would be better) to recreate the text, when the received text itself is entirely unproblematic. Consider the source-critical approaches to verse 6:7: "The Lord said, 'I will blot out from the earth, man whom I created, from man to the beasts, to the creeping things, to the birds of the sky, for I regret that I made them.'" The verse itself is coherent and clear. It functions well as a whole: man is the pinnacle and raison d'être of the universe. If man is to be destroyed, there is no point in sustaining the world created for his benefit.[7] Indeed, the fate of all of creation is linked to that of man elsewhere in the flood account as well (8:1, 21; 9:15). There would appear to be no reason to aggressively bisect this verse, assigning parts of it to one source and parts of it to another— and yet this is what critics have increasingly proposed.[8] For these scholars, the words "from man to the beasts to the creeping things to the birds of the sky" (מאדם עד-בהמה עד-רמש ועד עוף השמים) are a later interpolation of P language into the non-P original of the verse.

The motivation for scholars to do so stems from a desire to achieve ideological divide between the two hypothesized sources, P and non-P. Lining up seeming doublets and contradictions in parallel columns is insufficient; there must also be

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7. Cf. Ps 8:5–6.

8. See Carr, *Reading the Fractures*, 57; Jean-Louis Ska, "The Story of the Flood: A Priestly Writer and Some Later Editorial Fragments," in Ska, *The Exegesis of the Pentateuch: Exegetical Studies and Basic Questions* (Tübingen: Mohr-Siebeck, 2009), 1–22; Bernard M. Levinson, "A Post-Priestly Harmonization in the Flood Narrative," in Federico Giuntoli and Konrad Schmid, eds., *The Post-Priestly Pentateuch: New Perspectives on its Redactional Development and Theological Profiles* (Tübingen: Mohr Siebeck, 2015), 115.

a fundamental ideological difference between the two accounts that justifies their original composition and preservation as distinct traditions. It is inconceivable that two communities would preserve two separate accounts of the flood if the differences between them were purely of a lexical nature. One of the greatest ideological dividing lines that scholars try to wedge between the two hypothesized versions concerns the scope of God's wrath. For source critics, the P version maintains that God wished to destroy all that he had created, while non-P maintained that God wished to annihilate man alone. Moreover, the P version should, ideally, resonate with and echo the language of the account of creation in Genesis, long considered a P text. The received version of verse 6:7 does not square with the ideological wedge that source-critics hypothesize. Verse 6:7 is found in the midst of the hypothesized non-P version's introduction to the flood story; and yet, the verse calls for the destruction of all of creation—supposedly P's ideology—and even invokes the language of the fifth and sixth days ("from man to the beasts to the creeping things to the birds of the sky") from the account of creation in chapter 1, which is theorized to be a priestly chapter.[9] If the entire verse is retained as emanating from hypothesized non-P, a major ideological divide between the two versions is itself "blotted out," as it were. This would represent a challenge to the source-critical theory, for it would eviscerate the ideological distinction between the two versions, calling into question why two separate versions had been maintained in the first place. It would also challenge the accepted view that the account of creation in Genesis 1 is the exclusive purview of the priestly source. Excising the catalog of animals from verse 6:7 offers the source critic the ideological wedge that he needs to legitimate the presence and ideological distinction of the two sources. Note well: here there is no difficulty in the text that gives rise to the theory; rather, a difficulty in the theory is then read back into the received text, whose words must now be reassigned in a manner that will conform to the source-critical theory. Critics could have read verse 6:7 and concluded that there is no great ideological divide between the two sources, though that would have undercut the very argument for their existence. Critics could have argued that there are indeed doublets and contradictions within the Genesis account that seem to suggest compositional growth, yet without committing themselves to the larger enterprise of identifying two parallel and complete versions of the flood. By positing the catalog of animals in 6:7 as a late interpolation of P language into a non-P text, critics choose the one path that will preserve the paradigm of the source-critical approach: namely, that there are two separate sources interwoven in the text. The damning evidence of so-called P terminology square in

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9. See the recent discussion in Levinson, "A Post-Priestly Harmonization," 113–23.

the middle of a so-called non-P passage is not allowed to undercut the hypothesis. Rather, it is "quarantined" under the guise of editorial interpolation, and disallowed rhetorical and hortatory contact with the rest of the passage, lest it contaminate that source's hypothesized ideological purity and distinction from the P source. And thus a perfectly coherent verse is aggressively torn asunder. The needs of the theory create the text.

The division of the received text into two sources abuses its coherence in other ways that are no less jarring. Consider a question of chronology: how much time elapses in the series of events narrated in verse 8:1–4:

> (1) God remembered Noah and all the beasts and all the cattle that were with him in the ark, and God caused a wind to blow across the earth, and the waters subsided. (2) The fountains of the deep and the flood gates of the sky were stopped up, and the rain from the sky was held back. (3) The waters then receded steadily from the earth. At the end of one hundred and fifty days the water diminished, (4) so that in the seventh month, on the seventeenth day of the month, the ark came to rest on the mountains of Ararat.

Source critics maintain that these events transpire in a single day. They maintain this because, according to verse 7:24 (P), the waters prevailed above the earth for 150 days. Only after those 150 days does God remember Noah and the animals in the ark (8:1). At the same time, the ark comes to rest on the seventeenth day of the seventh month—five months (or, approximately 150 days) after the flood had begun on the seventeenth day of the second month (7:11). Since the events of verses 8:1–4 occur *after* 150 days have passed, these events must all occur on the same day. By calculating the chronology in this fashion, source critics claim to be able to ascribe to the P version a chronology that is internally consistent, and which elegantly casts the flood as an event that transpires over the duration of precisely one year. The consistency of the chronology is one of the arguments source-critics adduce to legitimate the parsing of the account into two strands.

Yet, to achieve this supposed chronological consistency, critics must read verses 8:1– 4 in a way that defies narrative logic. Seven stages are recorded in these verses.[10] Moreover, verse 3 is explicit that the waters receded "steadily" (הלוך ושוב). Had all this indeed happened within the space of a day, one would have expected the narrative to underscore the nearly instantaneous draining of the water in so short a time span. Moreover, the language of verse 5 confirms that

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10. Gordon Wenham, "Method in Pentateuchal Source Criticism," *VT* 41 (1991): 90–91.

the events of verses 1–4 transpired over a period of time: "The waters went on diminishing (הלוך וחסור) until the tenth month." We know from verses 4–5 that הלוך וחסור expresses a process of receding waters that is nearly three months in duration. It is implausible, therefore, to maintain that receding waters in verse 3 הלוך ושוב are waters that nearly evaporate in a day. The insistence that the P version is chronologically consistent fails to account for this complication.[11] Again, the theory is forced upon the text, rather than allowing the data within the text to legitimate—or delegitimate—the theory.

Further, when the two-source theory is foisted upon the text, it creates dichotomies that are of its own creation and not inherent in the text. Indeed, it is difficult to reconcile the numbers of animals to be rescued as per 6:20 (pairs of all animals) and 7:2–3 (seven of each of the species listed). The divide between the two figures is real and begs explanation. Samuel Loewenstamm has correctly observed, however, that the source-critical approach to the Genesis flood story too easily blurs the line between "real and imaginary difficulties in the story's structure."[12] One such "imaginary" difficulty concerns the source of the deluge. For source critics, the P source claims that God allowed the waters of the depths and the heavens to flood the earth (7:11; 8:2), whereas the non-P source maintains that the deluge was the result of rain (7:4, 12; 8:2).[13] The difference and distinction between the two origins of the deluge are presented as if they are of a kind with the differences between the number of animals taken—that is, mutually exclusive.

Logically, of course, there is no reason why the deluge could not have emanated from both rain clouds and heavenly and earthly wellsprings; there is no contradiction between the two. Moreover, the notion of divine deluge stemming from two founts is a common trope. Consider the sources of the deluge in Tablet XI of the Gilgamesh epic, both rain and opened dikes (XI:98–103):

> I gazed upon the appearance of the storm,
> The storm was frightful to behold! . . .
> A black cloud rose up from the horizon,

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11. On the flood chronology in Genesis see Gerhard Larsson, "Remarks Concerning the Noah Flood Complex," *ZAW* 112, no. 1 (2000): 75–77; Skinner, *A Critical and Exegetical Commentary on Genesis*, 167–69; Samuel Loewenstamm, "The Flood," in Loewenstamm, *Comparative Studies in Biblical and Ancient Oriental Literatures* (AOAT 204; Kevelaer: Butzon & Bercker; Neukirchen-Vluyn: Neukirchener Verlag, 1980), 93–121, especially 110–114; Niels Peter Lemche, "The Chronology in the Story of the Flood," *JSOT* 18 (1980): 52–62.

12. Loewenstamm, "The Flood," 116.

13. See, e.g., Carr, *Reading the Fractures of Genesis*, 52–55.

Inside [the cloud] Adad was thundering . . .
Erregal tore out the dike posts,
Ninurta came and brought with him the dikes.[14]

Divine deluges that stem from both rainclouds and the wellsprings of the earth are a familiar trope in biblical literature (Ps 77:17–18; Prov 3:20). Moreover, the Genesis flood account mentions these two founts together at two junctions (7:11–12; 8:2). However, if we adopt a reading whereby the Genesis flood derived both from rain and from other wellsprings together, it would no longer be possible to bisect the text into two accounts. Source critics *must* ignore the attested trope of divine deluge from rain and from other wellsprings in Tablet XI of the Gilgamesh epic and the other biblical sources, and create an "imaginary" distinction, in Loewenstamm's words, so that each of the putative sources will have a flood unto itself. When critics separate the founts of the deluge, they do so not because the theory solves a problem in the text; rather a problem in the theory gives rise to an unnecessary and forced distinction in the text.

A similar false distinction exists for some source critics concerning the release of Noah's reconnaissance birds. Noah releases a raven in 8:7, and thereafter a dove in 8:8–12. The sending of the raven is assigned to the P source, while the sending of the dove is assigned to the non-P source.[15] But here as well, the dichotomy is a false one; there is no contradiction between Noah's sending of the raven in verse 7 and his sending of the dove in verses 8–12. Because the raven failed to return, it only makes sense that Noah would turn to a different species for his next reconnaissance effort. More significantly, though, the splitting of the reconnaissance

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14. Translated by Benjamin Foster, in William Hallo, ed., *Context of Scripture* (3 vols.; Leiden: Brill, 2003), 1:459. Andrew George renders an alternative translation, but one that also demonstrates that the flood in this account stemmed both from rain storms and from dikes:

There came up from the horizon a black cloud,
Within it Adad did bellow continually,
Šullat and Ḫaniš were going at the fore,
"Throne bearers" travelling over mountain and land.
Errakal was ripping out the mooring poles;
Ninurta, going (by), made the weirs overflow.

See A. R. George, *The Babylonian Gilgamesh Epic: Introduction, Critical Edition and Cuneiform Texts* (2 vols.; Oxford: Oxford University Press, 2003), 1:709.

15. E.g., Julius Wellhausen, *Die Composition des Hexateuchs und der historischen Bücher des alten Testaments* (1899; repr., Berlin, de Gruyter, 1963), 13; Gerhard von Rad, *Genesis: A Commentary*, trans. John H. Marks (OTL; Philadelphia, Westminster, 1972), 126; Baruch J. Schwartz, "The Flood-Narratives in the Torah and the Question of Where History Begins," in Moshe Bar-Asher et al., eds., *Shai le-Sara Japhet: Studies in the Bible, Its Exegesis and Its Language* (Jerusalem: Bialik, 2007), 139–54 (in Hebrew).

missions in the Genesis text ignores ancient literary context. Lines 145–154 of Tablet XI of the Gilgamesh epic chronicle how Utnapishtim sent out three birds: a dove, a swallow, and a raven. The fact that the Mesopotamian version includes multiple species of birds should serve as a control. It stretches credulity to believe that the putative authors of P and non-P "split" the Mesopotamian trope, with P adopting the raven, and non-P the dove. Rather, the Mesopotamian tale should underscore the need to view all of the reconnaissance flights in Genesis as deriving from a single source. Moreover, that tale should also serve as a warning to scholars that ancient literary convention or tropes can often fly in the face of what seems to us an unwarranted doublet.

In addition to creating unnecessary and unwarranted distinctions, the source-critical reading also produces non sequiturs in the putative sources that it recovers. Consider the MT version of verses 7:15–16: "[The animals] came unto Noah, unto the ark, two by two, from all of the living creatures. They were male and female of all creatures, as God had commanded him. And the Lord closed him in." The final phrase of verse 16, "And the Lord closed him in," follows directly from the previous elements in verses 13–16. Noah and his family enter the ark, the animals enter the ark, and to conclude, the Lord "shuts the hatch," as it were, and closes Noah in. However, in the putative non-P source, the following text is hypothesized: "(7:10) And after seven days, the waters of the deluge were on the earth. (7:12) The rain was on the earth forty days and forty nights (7:16c) and the Lord shut him in." Source critics splice the text in this fashion, because verse 16c refers to God as YHWH, and thus must be assigned to the non-P source. This reading is deficient on two grounds. In the first place, it creates a non sequitur, as it implies that the Lord enclosed the ark only after it had been raining already for forty days and forty nights! Secondly, it removes verse 16c (the notice of the Lord shutting in Noah) from the simple context of the verses in which it is organically found in the Genesis text, following the embarking of Noah, his family, and the animals.

Repetitions, Gaps, and the Reductive Nature of the Source-Critical Approach to the Genesis Flood Narrative

I turn now to examine how source criticism suppresses evidence that would call its own validity into question. The great appeal of the source-critical approach was that it supposedly produced two texts that would read cleanly, without the repetitions and doublets that seem to plague a synchronic reading of the Genesis text. However, neither the proposed P text nor the proposed non-P text achieves

this. My aim here is not merely to draw attention to the difficult words and passages inherent in the text, which are well known. Rather, I aim to critique the solutions source critics have employed to address these shortcomings, in order to highlight the reductive nature of this approach.

Consider this example of unseemly repetition: within the non-P account we find the following reconstruction (7:12): "And the rain was upon the earth forty days and forty nights. (7:16b) And God sealed him therein. (7:17) And the deluge was forty days upon the earth, and the waters increased and lifted the ark so that it rose above the earth." The note in verse 17 that the deluge was forty days is glaringly superfluous following the exact same claim in the previous verse of the non-P version. A similar doublet remains in the hypothesized P version of the story:

6:11   The earth became corrupt before God; the earth was filled with injustice.

6:12a   God saw the earth, and behold it was corrupt,

6:12b   *for all flesh had corrupted its ways on earth*.

6:13   God said to Noah, "I have decided to put an end to all flesh."

To prelude God's speech to Noah, commencing in 6:13, either 6:11 alone or 6:12 alone would have sufficed to provide the needed context. Most egregious here is verse 6:12b, which comes to explain the corruption that God sees in the world in 6:12a. Yet, there is no need for explanation, for this has already been explained in verse 11. The fact that source critics are willing to overlook this doublet calls into question the criterion of doubling that is the basis for the hypothesis of two strands. The criterion does not seem to be applied rigorously and consistently. Rather, it seems that that source critics see doublets when these will fit into the Procrustean bed of two separate sources, but overlook them when they remain within the hypothesized versions.

These instances are relatively minor compared to what is the most egregious repetition, in the P source, where we find an event narrated twice, in consecutive passages. Noah and the animals enter the ark for a first time in the P version between verses 6:21 and 7:9:

(6:21) For your part, take of everything that is eaten and store it away, to serve as food for you and for them. (6:22) Noah did so; just as God commanded him, so he did. (7:6) Noah was six hundred years old when the Flood came, waters upon the earth. (7:8) Of the clean animals, of the animals that are not clean, of the birds, and of everything that creeps on the ground (7:9) two of each, male and female, came to Noah into the ark, as God had commanded Noah.

Having narrated the entry of the animals onto the ark, the hypothesized P version goes on to immediately narrate the event a second time:

> (7:11) In the six hundredth year of Noah's life, in the second month, on the seventeenth day of the month, on that day, all the fountains of the great deep burst apart. (7:13) That same day Noah and Noah's sons, Shem, Ham, and Japheth, went into the ark, with Noah's wife and the three wives of his sons— (7:14) they and all the beasts of every kind, all cattle of every kind, all creatures of every kind that creep on the earth, and all birds of every kind, every bird, every winged thing. (7:15) They came to Noah into the ark, two each of all flesh in which there was breath of life. (7:16) Thus they that entered comprised male and female of all flesh as God had commanded him.

By the end of verse 7:9, the animals are already inside the ark, and the waters have already begun to rise. Nonetheless, this entire episode is narrated again, immediately, in verses 7:11–16. The passage, we should note, also contains a needless repetition. The putative author of P tells us in verse 7:11 that the deluge came in the six-hundredth year of Noah's life. The dating of the deluge in 7:11 to Noah's six-hundredth year renders superfluous the earlier report of Noah's age in verse 7:6. Thus we have here, again, a repeated detail within a hypothesized recreated text whose supposed virtue was that it was free of just such repetitions.

Source critics, of course, have been aware of these problems of repetition. Difficulties such as the unnecessary and juxtaposed repetition of the duration of the rain in non-P, and the wholesale repetition of the boarding of the ark in hypothesized P, might have been the types of literary phenomena that could have called into question the very suggestion that we have here two conflated sources. The bisection of the text clearly does *not* provide us with two accounts, each free of repetition and incongruities. In fact, neither of the proposed reconstructed texts possesses that quality. Moreover, the repeated boarding of the ark in P is egregious, and cannot be attributed to a slip of the scribal hand. And yet, rather than walking back from the hypothesis, source critics have sought to buttress it by resort to a series of redactors, who are the agents responsible for the disruptive passages.[16]

A priori, there are good reasons why a scholar should assign troublesome passages to the hand of a redactor: 1) the passage demonstrably contains datable

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16. For an opinion in this vein concerning the duration of the flood, see S. R. Driver, *The Book of Genesis, with Introduction and Notes* (Westminster Commentaries; London: Methuen & Co.), 91; for opinions that 7:8–9 are also the intrusion of a redactor, see discussion in Levinson, "A Post Priestly Harmonization," 121; on the repeated figure of six hundred years as redactional, see Sean E. McEvenue, *The Narrative Style of the Priestly Writer* (Rome: Pontifical Institute, 1971), 52.

language or syntax that clearly mark it as a later addition; 2) the passage enunciates a theology that is clearly datable to a later period; 3) the claim of addenda in the MT has the support of textual witnesses. However, with regard to the passages that complicate the two-source theory of the Genesis flood narrative, none of these solid arguments can be made. Rather, the recourse to redactors and addenda is made solely on the argument that by doing so, we will be able to preserve the integrity of the two sources, purportedly identified in the remaining verses of the narrative. [17] But, the strategy is reductive. For the source critic, data that complicates the split into two sources is not considered probative in order to disprove the theory. Instead, "bad" data—that is, data that are incongruous with the two-source theory—are isolated from the "good" data, and are assigned to redactors. The theory is thus always sustained. The hermeneutics of the source-critical approach take as axiomatic that the scholar has the full capacity to determine the text's compositional history. The strategy of textual quarantine of inconvenient passages empowers scholars to propose a clean history of the text's composition. However, it would be methodologically more prudent to arrive at the sober conclusion that such "bad data" complicates our capacity to account for the present shape of the text.

Do Redactors Faithfully Preserve Their Sources?

The source-critical approach rests on the foundational assumption that the biblical redactors faithfully preserved their sources and that these sources, therefore, are recoverable by properly analyzing the received, redacted version we have today. However, this assumption is challenged both by contradictions within the source critical approach itself, and by the evidence we now have which illuminates the editorial practices of scribes in ancient Israel and in the ancient Near East.

The source-critical approach rests on an internal contradiction in its claims. Source criticism does not produce two complete stand-alone accounts of the flood when the fourteen snippets of hypothesized P and the thirteen snippets of non-P are separated and reconstructed. The P account may be considered a full account, but not so the non-P account, where two omissions are notable. First, it lacks a command to build an ark. In verse 7:1 God commands to board an ark that has not yet been mentioned. Moreover, the non-P account does not report the exit from the ark by Noah and the animals; rather, Noah proceeds directly

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17. Similar "quarantining" of bad data by assigning it to a redactor is exhibited in verses 7:8–9. Verse 7:2 speaks of a distinction between clean and unclean animals, a distinction which source critics believe is exclusive to the non-P source. However, the narrative of 7:8–9 speaks of pairs of animals boarding the ark, in accordance with the verses assigned to the P source (cf. 6:20). It is unclear, therefore, how clean and unclean animals (as per the non-P source) and pairs of animals (as per the P source) can be combined in these verses. For a recent discussion of source-critical resolutions, see Levinson, "A Post-Priestly Harmonization," 121.

from sending the dove from the ark in 8:12, to offering sacrifices on dry ground, with no mention of disembarkment. Source critics are forced to concede that the final redactor does not retain full fidelity to the putative original version of this account, but instead has borrowed from it selectively. Source critics aver that material from an original source may be missing, but what is preserved is the *ipsissima verba* of the original source, and this can be recovered. Yet, if the redactor could violate the integral nature of the original version by omitting sections of it, by what right may we assume that he has not supplemented and otherwise altered those putative versions?

Source criticism of the flood account suffers from a second contradiction internal to its logic, and this concerns the logic of redaction that it employs. In Genesis 1–2, we have two accounts of creation, where one follows the other. Each account is by itself complete and the theory of redaction here assumes minimal invasive action by the redactor, who merely places the two versions side by side. It is reasonable to hypothesize that a redactor has juxtaposed two original sources unchanged, to preserve each. But this cannot be the redactional logic that guides the conflation of the putative sources in the Genesis account of the flood. The redactor, by the source-critical account, makes no attempt to allow the reader to easily recreate his original sources. Rather, by this theory he dissected the non-P account into thirteen parts and the P account into fourteen parts. The redactor clearly did not intend for his audience to "unravel" the interwoven text, and thus demonstrates that he feels no need to impart the original source to his readers in intelligible fashion. If this redactor omitted significant sections of a source (as we saw before), and can splice a source into phrase-length chunks, what confidence can there be that he otherwise remains truly faithful to the language of his original sources? The radical nature of the splicing and conflation ascribed to the redactor by source critics themselves calls into the question the premise that the words before us in the MT are, in fact, the *ipsissima verba* of the putative original sources.

Source critics retort that the redactional logic of such conflation lies in the desire to conflate the sources as fully as possible, so as to create a relatively seamless whole. But the very fissures highlighted by source criticism undermine that claim. For their theory to account for the unevenness of the flood narrative, source critics must make three claims: 1) that the redactor worked tirelessly to disassemble the original sources and then conflate them, combining a total of twenty-seven snippets, some no longer than a phrase; 2) that the redactor freely omitted material from the non-P source, and yet with no clear theory of why he would or could do so; 3) that in the end the redactor(s) had free reign to tamper with the text, and yet performed his (their) task in sloppy fashion, or that later accretions are responsible for the unevenness seen in passages such as 7:8–9, discussed above. Had both versions been fully preserved, perhaps one could aver that the redactor's need to

preserve the wording of both texts in their entirety leads in the end to unevenness in the text. But source critics freely admit that material from non-P is missing in the final version, or that non-P was never a full expansion.[18]

The stakes here are enormous. The very enterprise of tracing the history of composition of Hebrew scriptures rests on the assumption that the earlier sources are recoverable solely on the basis of the internal literary evidence within the received text, and without supporting textual witnesses or epigraphic evidence—but those putative sources are available only if we assume that redactors and editors never altered or augmented their sources. Were diachronic scholars to concede the possibility that earlier sources had undergone alteration or augmentation, their concession would effectively shut down the quest for the compositional history of the text.[19] Scholars committed to tracing the development of the text, therefore, have a vested interest in upholding the axiom that original sources were neither altered nor augmented during redaction.

Source-critics, however, also must demonstrate that the original sources have been preserved in light of what we now know about compositional practices in the ancient Near East. As we noted earlier, David Carr and Juha Pakkala have amply demonstrated that when ancient writers edited and redacted hallowed texts, they did not display fidelity to the original texts as they incorporated them into new creations. There is not a single documented case of this either within biblical literature—say, Deuteronomy's use of the Covenant Code, or the Chronicler's use of Samuel-Kings—or outside of it. This dramatically weakens the claim of source critics for such activity in the compositional history of the Genesis flood account. Granted, it is true that a certain literary activity can be sui generis to that culture. Were source critics able to demonstrate that their approach indeed produces two complete strands free of the doublets and inconsistencies identified earlier, we could perhaps allow that aggressive conflation was a form of scribal activity found in Israel alone. However, the simple bisection of the received text into two strands still produces hypothesized sources suffering from the same redundancies and inconsistencies that plagued the received text. This, combined with the absence of external control to legitimate the mode of compositional activity it proposes, raises serious

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18. See discussions in Ska, "The Flood," 1–22; Jan Christian Gertz, "Source Criticism in the Primeval History of Genesis: An Outdated Paradigm for the Study of the Pentateuch?," in Thomas B. Dozeman, Konrad Schmid, and Baruch J. Schwartz, eds., *The Pentateuch* (FAT 78; Tübingen: Mohr Siebeck, 2011), 169–80.

19. See discussion of this point in Molly Zahn, "Reexamining Empirical Models: The Case of Exodus 13," in Eckart Otto and Reinhart Achenbach, eds., *Das Deuteronomium zwischen Pentateuch und deuteronomistischem Geschichtswerk* (Göttingen: Vandenhoeck & Ruprecht, 2004), 38; Juha Pakkala, *God's Word Omitted: Omissions in the Transmission of the Hebrew Bible* (FRLANT 251: Göttingen: Vandenhoeck & Ruprecht, 2014), 14.

questions about the methodological validity of the source-critical approach to the Genesis flood account.

The Challenge of Mesopotamian Parallels

The source-critical approach to the flood narrative is also challenged by evidence from the cognate literature of the ancient Near East, which suggests that the Genesis version of the flood story hews closely to the plot line of its Mesopotamian parallel. In 1978, Gordon Wenham highlighted the common plot structure found in Genesis 6–9 and in the Mesopotamian flood account of Tablet XI of the Gilgamesh epic. He identified seventeen plot elements common to both, which appear in precisely the same order in both traditions.[20] I present Wenham's findings in Table 13.1:

Table 13.1 The Parallel Structure of the Flood Story in Genesis 6–9 and Tablet XI of the Gilgamesh Epic

	Motif	Genesis Flood Account	Gilgamesh Tablet XI
1	Divine decision to destroy mankind.	6:6	ll. 14–19
2	Warning to the flood hero.	6:13	ll. 20–23
3	Divine command to build ark with dimensions.	6:14–21	ll. 24–31
4	Hero complies with command.	6:22	ll. 3–85
5	Command to board the ark.	7:1–4	ll. 86–88
6	Hero boards the ark with family and animals.	7:5–16	ll. 89–93
7	Closing the door of the ark.	7:16	l. 93
8	Description of the flood.	7:17–24	ll. 96–128
9	Destruction of life.	7:21–23	l. 133
10	End of rain, etc.	8:2–3	ll. 129–131
11	Ark grounding on mountain.	8:4	ll. 140–144
12	Hero opens window.	8:6	l. 135
13	Reconnaissance of the dove and raven.	8:6–12	ll. 145–154
14	Hero exits ark.	8:15–19	l. 155
15	Hero offers sacrifices.	8:20	ll. 155–158
16	Divinity smells sacrifices.	8:21–22	ll. 159–161
17	Divinity blesses flood hero.	9:1 ff	ll. 189–96

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20. Gordon J. Wenham, "The Coherence of the Flood Narrative," *VT* 28 (1978): 346–47; Cf. Gary A. Rendsburg, "The Biblical Flood Story in Light of the Gilgamesh Flood Account," in Joseph Azize and Noel Weeks, eds., *Gilgamesh and the World of Assyria* (Leuven: Peeters, 2007), 115–27.

To be sure, there are many distinctions between the two accounts: the demeanor of the divinity, the reason for the flood, the names of gods, the duration of the flood, and the dimensions of the ark. Yet the broad similarity in plot is unmistakable. Neither of the two hypothesized sources, P nor non-P, comes close to containing all of the plot elements that are shared in sequence by MT Genesis 6–9 and Tablet XI of the Gilgamesh epic. The hypothesized non-P account lacks the warning to Noah about the impending deluge (element 2) and the command to build the ark (element 3). It does not tell of the grounding of the ark upon a mountain (element 11), nor does it narrate the disembarkment of Noah and the animals from the ark (element 14), nor the blessing of the flood hero at the end (element 17). In like fashion, the hypothesized P version lacks a command to the hero to board the ark (element 5) as well as a detail of the closing of the ark (element 7). It lacks all of the elements of the reconnaissance performed by the dove and the raven (elements 12 and 13). It narrates no account of the hero's sacrifices and the attendant divine approval (elements 15 and 16).[21]

If the two-source theory is correct then, following Gary Rendsburg, "we are supposed to believe that two separate authors wrote two separate accounts of Noah and the flood, and that neither of them included all the elements found in the Gilgamesh epic, but that when the two were interwoven by the redactor, voila, the story paralleled the Gilgamesh flood story point by point."[22]

Remarkably, only a single scholar has seen fit to respond to Wenham's findings: John Emerton, in a 1988 study.[23] Although Emerton is the only scholar to address these parallels at length, his study is widely cited with approval by source critics.[24] Emerton admits that the biblical tale bears the influence of the Mesopotamian epic. Emerton also admits that each of the various parallels that Wenham identifies

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21. Seth Sanders attempts to show that the plot structure of the flood story in Tablet XI of the Gilgamesh epic supports the source-critical bifurcation of the text. He shows that P, non-P, and the Mesopotamian account all share six points in common. By selectively highlighting only those plot elements that are common to all three, he overlooks the five points shared only by P and the Mesopotamian account, and the six points shared only by non-P and that account. Although he provides a richly annotated work, Sanders seems unaware of Wenham's study. See Seth L. Sanders, "Can Empirical Models Explain What is Different about the Pentateuch?," in Brian B. Schmidt, ed., *Contextualizing Israel's Sacred Writing: Ancient Literacy, Orality, and Literary Production* (Atlanta: SBL Press, 2015), 281–304.

22. Rendsburg, "The Biblical Flood Story," 116.

23. J. A. Emerton, "An Examination of Some Attempts to Defend the Unity of the Flood Narrative in Genesis: Part II," *VT* 38(1988): 1–21.

24. Levinson, "A Post-Priestly Harmonization," 119 n. 12; Carr, *Reading the Fractures of Genesis*, 56, nn. 16–17; Gertz, "Source Criticism in the Primeval History of Genesis," 172, n. 10; Philip Y. Yo, "The Place of Deuteronomy 34 and Source Criticism: A Response to Serge Frolov," *JBL* 133, no. 3 (2014): 667 n. 18; Ed Noort, "The Stories of the Great Flood: Notes on Gen 6:5–9:17 in Its Context of the Ancient Near East," in Florentino Garcia Martinez and Gerald P. Luttikhuizen, eds., *Interpretations of the Flood* (Leiden: Brill, 1999), 2; Christoph Dohmen, "Untergang oder Rettung

is indeed valid. He further admits that there are many more parallels between the Gilgamesh epic and the received Genesis flood account than there are between that epic and either of the hypothesized sources, P and non-P. Emerton also admits that the parallels between the flood stories in Genesis and in the Gligamesh epic follow the same sequential order. Nonetheless, Emerton rejects Wenham's conclusion that these findings challenge the claim that the Genesis account is a redaction of the two sources. For Emerton we should view the hypothesized P version as a parallel to the Gilgamesh epic that is as close a parallel as is the Genesis version. He maintains this even though the hypothesized P version and the Gilgamesh epic share only eleven plot items and with large gaps between the elements, whereas Genesis and the Gilgamesh epic share seventeen plot items, and with small or no gaps between the elements. For Emerton, where Genesis reveals a parallel that is missing from the hypothesized P version, this is because the author of P felt a theological need to deviate from the Mesopotamian template. Thus when both the Gilgamesh epic and Genesis report that the portico of the ark was sealed shut (7:16b, attributed by source critics to non-P), but the hypothesized P version does not, Emerton explains that the author of P would have found this to be "unnecessary or even too anthropomorphic."[25] While Genesis 8:10b–12, (ascribed to non-P) and the Mesopotamian epic have the hero open the portico and send out a dove on a reconnaissance mission, an element missing from P, Emerton offers the apologetic that the author of P considered it inappropriate for Noah to do so, as God is in full control of Noah's destiny and commands him as needs be.[26] Note the line of argumentation of this source critic. Faced with the significant challenge of Wenham's findings, Emerton can muster no evidence that his data is flawed. At best he can attempt a rearguard action of apology for the "missing" elements in the hypothesized version. One is inclined to agree with Wenham's assessment of Emerton's apologetics as "special pleading" designed to preserve, at all costs, the legitimacy of the source-critical approach to the Genesis flood account.[27]

For the sake of argument, though, let us assume, with Emerton, that the author of hypothesized P was driven by theological considerations in his selective use of motifs from the Mesopotamian epic. How is it, then, that there are

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der Quellenscheidung? Die Sintfluterzählung als Prüfstein der Pentateuchexegese," in André Wénin, ed., *Studies in the Book of Genesis* (Leuven: Peeters, 2001), 82 n. 4; John Day, *From creation to Babel: Studies in Genesis 1–11* (LHBOTS; London: Bloomsbury, 2014), 103, nn. 20–22; Jean-Louis Ska, *Introduction to Reading the Pentateuch* (Winona Lake: Eisenbruans, 2006), 65, n. 27.

25. Emerton, "An Examination of Some Attempts to Defend the Unity of the Flood Narrative in Genesis: Part II," 15. Note that in the Mesopotamian epic, it is the hero that seals the portico; certainly if P were following the Mesopotamian version—as Emerton claims he does—that putative author could have ascribed the closing of the ark to Noah, a human agent, precisely as is found in the Mesopotamian version. There would have been nothing "anthropomorphic" about having Noah seal the window of the ark shut.

26. Ibid.

27. Wenham, "Method in Pentateuchal Source Criticism," 106.

six elements in the epic absent from hypothesized P, and which just happen to be present in hypothesized non-P? Emerton fails to address this enormous coincidence.[28] The conclusion from this should be clear: rather than claiming that the Genesis flood account represents the redaction of two pre-existing sources, we should maintain that the Genesis account represents a significant reworking of a well-known Mesopotamian template.

As noted, although Wenham's study appeared in a prominent journal forty years ago, Emerton is the only source-critical scholar to respond to his thesis and its arguments. It is de rigueur for historical-critical scholars to assess the Genesis flood account in light of the Mesopotamian parallels.[29] It is curious, therefore, that only one has thought to even entertain the challenge raised by Wenham's work. Bernard Levinson has lamented the tendency of scholars in pentateuchal theory to "not read one another's work sufficiently," and his remarks are amply illustrated by the failure of pentateuchal scholars to engage Wenham's study.[30]

How may we interpret this silence? While rarely discussed, Wenham's study is actually widely cited by source critics, only to be dismissed with a reference to Emerton's work.[31] Claus Westermann's Genesis commentary is one of the most comprehensive expositions of source-critical scholarship on the flood story, one rich with references to the Mesopotamian parallels.[32] His comments about the role of cognate literature in historical-critical scholarship to the Genesis flood

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28. See, likewise, the claim of David Carr, *Reading the Fractures of Genesis*, 60 n. 24. Carr admits that the received Genesis account more fully corresponds to the Gilgamesh version than does either P or non-P alone. For Carr, however, this is of no consequence, because certain materials from each strand were excised in the process of conflation. Presumably, Carr means to say that if we had the full versions of each strand, we would see that they, too, fully correspond to the Gilgamesh version, just as the received text of Genesis 6–9 does. But this is surely based on speculation that has no evidence to support it. Moreover, by Carr's own admission, each of the putative sources in final redaction is missing six of the seventeen plot elements that Wenham identified. Source critics routinely maintain that the P version that we have constitutes a complete account of the flood story, and that the non-P version is nearly complete. If, as per Carr, however, each of the redacted versions originally included another six elements from the Mesopotamian tale, then the claim of source critics that the redactor maintains fidelity to the *ipsissima verba* of his sources is further challenged; the amount of material excised in redaction, perforce, is substantial. Finally, Wenham's claim is not merely that the received text more closely resembles the Mesopotamian version than do either of the hypothesized sources; the strength of Wenham's claim lies in the fact that *all* of the major steps of the Gilgamesh account are paralleled in the Genesis account.

29. See Claus Westermann, *Genesis 1–11* (Minneapolis: Augsburg, 1984), 384–458; and Sanders, "Can Empirical Models Explain," 281–304.

30. See Levinson's introductory comments to "Convergence and Divergence in Pentateuchal Theory: Bridging the Academic Cultures of Israel, North America, and Europe," available at https://www.youtube.com/watch?v=PHYKPSE6iZc at 0:20:45.

31. See above, bibliography in n. 24.

32. Westermann, *Genesis 1–11*, 384–458.

account are telling: "The first step in the inquiry into the tradition of the flood narrative must be a comparison of the two accounts contained in Gen 6–9 and an explanation of the way in which they are put together; the comparison must then be extended to the extra-biblical parallels."[33] Note well the hierarchy in Westermann's programmatic statement. Parallels from cognate literature play an important role in historical-critical analysis of biblical literature. But it is a secondary role, one that can only be entertained after the source-critical exercise is first executed on the basis of internal evidence alone. Westermann offers no explanation for this hierarchy; it is assumed as self-justifying. Although later scholars who engage the Mesopotamian parallels do not openly reflect on their hermeneutics in the way that Westermann does in this passage, it would appear that the standard practice has been to follow his lead: source-critical conclusions are to be determined exclusively from the data within the text itself. No outside materials can make a claim to inform that discussion.

The Re-creation of the World in Gen 8–9

In the final two sections of this study, I offer new research on patterns within the received text of the Genesis flood account that represent a challenge to the source-critical approach, and strengthen the evidence against it adduced thus far.

The first pattern arises from a notion that has had but occasional mention in the scholarly literature: the correspondence between the drying of the earth and disembarkment from the ark as narrated in Genesis 8, and the account of creation in Genesis 1. The full development of this idea shows that a clear pattern emerges in Genesis 8–9, but only when the two putative sources are read together. Many scholars have described Genesis 8 in general terms as a story of re-creation.[34] However, H. A. J. Kruger has taken this notion a step further, showing how the gradual process of the re-creation of the earth in Genesis 8–9 actually invokes a number of phrases and tropes from the account of creation in Genesis 1.[35] Divine wind pushes back the water (ויעבר אלהים רוח), initiating the

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33. Ibid., 396.

34. E.g., D. J. A. Clines, *The Theme of the Pentateuch* (JSOTSS 10; Sheffield, 1997), 80–81; J. Blenkinsopp, *creation, Un-creation, Re-creation: A Discursive Commentary on Genesis 1–11* (London: Bloomsbury, 2011), 140–41. The notion is already found in the commentary of the thirteenth century rabbinic exegete Nachmanides to 8:1: "[The Almighty's] desire in the original creation of the world arose now before Him, and He desired to perpetuate the world with the species He had created."

35. H. A. J. Kruger, "Subscripts to creation: A Few Exegetical Comments on the Literary Device of Reception in Gen 1–11," in A. Wénin, ed., *Studies in the Book of Genesis: Literature, Redaction and History* (Bibliotheca Ephemeridum Theologicarum Lovaniensium 155; Leuven: Peeters, 2001), 436.

process of renewal in verse 8:1, just as the divine wind hovered over the water on the first day of creation (1:2).[36] Waters then recede in both Genesis 1 and Genesis 8. Birds and living creatures inhabit the earth (1:20–21; 8:16–17), and finally, man is given the command to be fruitful and multiply (1:22–28; 8:17 + 9:1). As others have noted, this blessing is accompanied in both accounts by the divine supply of sustenance and the phrase לכם יהיה לאכלה (1:29 and 9:3).[37] With only slight modification, we may rephrase Kruger's findings in Table 13.2:

Table 13.2 Comparison of the Account of creation in Genesis 1 and in Genesis 8–9

Account of creation: Gen 1			Account of Re-creation: Gen 8–9	
Creation Day	Verse	Element	Verse	Element
1	1:2	ורוח אלהים מרחפת	8:1	ויעבר אלהים רוח
2	1:6–8	Separation of waters of the higher and lower firmaments.	8:2	Blocking of the fountains of the deep and the flood-gates of the sky.
3		–		–
4		–		–
5	1:20–22	Creation of birds.	8:12	Dove leaves the ark and takes its place in the new order.
6a	1:24–27	Creation of animals and man.	8:15–19	Noah and animals disembark the ark.
6b	1:28–29	Command to be fruitful and multiply + sustenance, לכם יהיה לאכלה.	9:1–3	Command to be fruitful and multiply + sustenance, לכם יהיה לאכלה.

The correspondence is incomplete: only four out of the six days of creation find parallel in Genesis 8, which may explain why Kruger's observations have not been more widely cited in the subsequent scholarship to the flood narrative. Had Genesis 8 been composed with the aim of drawing a parallel to Genesis 1, one would have expected parallels to the third and fourth days of creation as well.

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36. Cf., Umberto Cassuto, *A Commentary on the Book of Genesis, Part Two: From Noah to Abraham* (Jerusalem: Magnes, 1964), 101; Michael A. Fishbane, *Text and Texture: Close Readings of Select Biblical Texts* (New York: Schocken Books, 1979), 34: Sanders, "Can Empirical Models Explain," 298.

37. Cassuto, *A Commentary on the Book of Genesis*, 126; McEvenue, *The Narrative Style of the Priestly Writer*, 67; Susan Niditch, *Chaos to Cosmos: Studies in Biblical Patterns of creation* (Chico: Scholars Press, 1985), 23.

However, Kruger's findings may be supplemented with further parallels. The tabular presentation above highlights the absence of references in chapter 8 to days three and four of creation. As Umberto Cassuto has noted, the third day of creation in Genesis 1 begins with the waters receding and the appearance of dry land, expressed in the passive—ותראה היבשה (1:9–10). So, too, we find in Genesis 8 that the waters recede, and dry land is seen—נראו ראשי ההרים (8:5).[38] Further references to the third day of creation are found in verse 8:11, "And the dove returned to him at evening time, and behold— an olive branch had been plucked, in its beak." The mention of the olive branch is the first reference to vegetation in the re-created order, an event that parallels the third day of creation (1:9–13) in which vegetation is created. These allusions to the creation of vegetative life on the third day of creation appear at precisely the right juncture in the account of re-creation in Genesis 8, following the appearance of mountains in verse 8:5, which parallels the appearance of dry land at the beginning of the third day of creation (1:9–10).

Lexical evidence supports the contention that the successful reconnaissance mission of the dove parallels the creation of vegetation on the third day of creation. Note the usage in the flood narrative of Genesis 6–9 of two related phrases: The first is על הארץ ("on the earth"); the second is על פני כל הארץ ("on the entire face of the earth"). Uniformly throughout the flood narrative we find that the waters, described either as מים or המבול or גשם, are found על הארץ "on the earth" (6:17; 7:6, 10, 12, 17, 18, 19, 24; 8:3, 7). However, when the dove returns the first time, we find a different term employed: "[the dove] returned to him, to the ark, for water was "on the entire face of the earth"—על פני כל הארץ (8:9). This distinct phrase על פני כל הארץ echoes the language of creation, in its depiction of vegetative life (1:29–30): "Behold, I have given you every plant bearing seed which is on the entire face of the earth (על פני כל הארץ) and every tree which has seed in its fruit; for you it shall be to be eaten. And for the beasts of the land and for the birds of the skies, and for the creeping creatures on the land which are alive I have given every green plant for food." When Gen 8:9 reports that the dove returned, for "water was on the entire face of the earth" (על פני כל הארץ), invoking the language of 1:29, it is essentially saying that where the dove was meant to find vegetation, it still found only water. The very purpose of sending out the birds was for them to retrieve demonstration of vegetative life. When the dove returns from the first reconnaissance with no sign of land or vegetation, the text invokes the language of 1:29—על פני כל הארץ—to dramatize that the dove could find no vegetative matter. Thus, Genesis 8 here alludes to the third day of creation not only through the appearance of the olive leaf, the first vegetation mentioned in the new order; it also hints at the vegetation of the original creation by invoking the language that describes that vegetation in chapter 1 as well.

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38. Cassuto, *A Commentary on the Book of Genesis*, 106.

Notice, moreover, that the account of the dove's second return records the time of day at which this occurred—in the evening (לעת ערב). Evening is the hour when day begins to turn into night. The flood account later tells us that during the duration of the flood, day and night had been suspended (8:22). The return of the dove, then, "at evening" is the first mention of daytime moving into nighttime in the re-created order. This corresponds to the fourth day of creation (1:14–19), when the sun and moon were created to distinguish between the day and the night (1:14). The dove's return "at evening time," paralleling the fourth day of creation, occurs at the proper junction—after the taking of the olive branch, the parallel to day three of creation. It is puzzling that alone among all events in the flood narrative, Scripture records the time of day only with regard to the second return of the dove, in 8:11. However, if we understand that the note of the timing of the dove's return is part of a larger scheme designed to hew to the stages and days of the creation account of Genesis 1, the anomaly is well explained as an allusion to the fourth day of creation.

As many scholars have noted, the account of the sending of the raven and the dove in the Genesis story reflects the influence of the Mesopotamian flood tradition as witnessed in Tablet XI of the Gilgamesh account, lines 145–154.[39] A close comparison of these two accounts, however, reveals not only how the author of Genesis adopted the trope of the reconnaissance birds, but also adapted it toward his own theological needs. The differences between the two accounts supports the contention the three releases of the dove in Gen 8:8–13 are composed in a fashion that furthers the parallels between the six days of creation in chapter 1 and the stages of repopulating the earth in Gen 8–9. Tablet XI, ll. 154–155 of the Gilgamesh account read as follows: "I brought out a raven, setting it free: off went the raven, and it saw the waters receding. It was eating, bobbing up and down, it did not come back to me."[40] Ravens are omnivorous, and the text suggests only that Utnapishtim could see the raven's activity from a distance. The biblical author, however, adapts this scene to highlight Noah's discovery of vegetation: "The dove came at evening time, and behold—in her mouth was a plucked off olive branch." The note of the discovered vegetation and the note of the time of day of the dove's return are innovations of the biblical author. Thus, although the author of the Genesis account borrows from the Mesopotamian flood tradition, he adapts it to align with his own theological needs of dramatizing that the rescue of Noah and the animals follows the template of the six days of creation.

Following the account of the sending of the raven in the Mesopotamian account, the hero proceeds to offer a sacrifice (l. 157), and no more birds are sent

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39. See, e.g., S. W. Holloway, "What Ship Goes There: The Flood Narratives in the Gilgamesh Epic and Genesis Considered in Light of Ancient Near Eastern Temple Ideology," *ZAW* 103 (1991): 328–55; W. L. Moran, "Atrahasis: The Babylonian Story of the Flood," *Bib* 52 (1971): 51–61.

40. George, *The Babylonian Gilgamesh Epic*, 1:713.

out. Put differently, the release of the dove for the third time, in Gen 8:12, is without parallel in the Mesopotamian flood tradition. It can be well explained, however, as a reflection of Noah's desire to see whether the dove would now take up habitat in the drying earth. When it fails to return, Noah interprets this as a positive development: the dove can now sustain itself in the new order. This occurs at precisely the right junction to parallel day five of creation, in which birds are introduced into the natural order of creation (1:20–22).[41]

We may reconfigure the table presented earlier, and see how it is now complemented by the additional observations collated in Table 13.3:

Table 13.3 Full Comparison of the Accounts of creation in Genesis 1 and Genesis 8–9

	Account of creation: Gen 1		Account of Re-creation: Gen 8–9	
Creation Day	Verse	Element	Verse	Element
1	1:2	ורוח אלהים מרחפת	8:1	ויעבר אלהים רוח
2	1:6–8	Separation of waters of the higher and lower firmaments	8:2	Blocking of the fountains of the deep and the flood-gates of the sky
3a	1:9–10	Appearance of dry land ותראה היבשה	8:5	Appearance of mountain peaks נראו ראשי ההרים
3b	1:11–13	Creation of Vegetation	8:11	Dove returns with olive branch
4	1:14–19	Creation of sun and moon to distinguish day and night	8:11	Dove returns at "evening time"
5	1:20–22	Creation of birds	8:12	Dove leaves Ark and takes place in the natural order
6a	1:24–27	Creation of animals and man	8:15–19	Command to Noah and animals to disembark the Ark
6b	1:22–27	Command to be fruitful and multiply + sustenance, לכם יהיה לאלכה	8:17 + 9:1	Command to be fruitful and multiply + sustenance, לכם יהיה לאכלה

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41. I have followed here the translation of l. 157 as rendered by George, *The Babylonian Gilgamesh Epic*, 1:713. M. G. Kovacs, however, translates line 155 differently: "Then I sent out everything in all directions and sacrificed (a sheep)" (M. G. Kovacs, *The Epic of Gilgamesh* [Stanford, CA: Stanford University Press, 1989], 102). Put differently, at this stage in the

This complete set of parallels between creation in Genesis 1 and re-creation in Genesis 8 presents a major challenge to the classical source-critical approach to the flood narrative. This is because the release of the dove and its return (corresponding to days 3b, 4, and 5 of creation) is assigned by that theory to the hypothesized non-P source, whereas all of the other elements identified in this scheme are assigned to the P version. Put differently, Genesis 8, in its received form, follows Genesis 1 in schematic fashion. Neither the hypothesized P version nor the hypothesized non-P version reflects this scheme independently. Here, too, it requires special pleading to maintain that there were originally two independent versions of the flood story, and that only when they were interwoven, did the close convergence to the days of creation in chapter 1 suddenly appear. The principle of Ockham's razor dictates that we should instead maintain that Genesis 8 is deliberately composed to follow the scheme of Genesis 1.

The Mirror Structure of the Genesis Flood Account

It is widely accepted that many biblical passages are composed according to principles of chiasmus, of the simple form ABC-C`B`A`, as found in Gen 9:6: שפך דם האדם באדם דמו ישפך. When the proposed structure encompasses two or three pairs of congruent lexical elements within a limited space of two verses, the claims of the presence of chiasmus are generally accepted. However, many scholars routinely claim the existence of more elaborate chiastic structures or palistrophes. Sometimes these combine lexical and thematic components, and feature a dozen or more pairs of congruent elements, spread across several chapters, and sometimes across entire books. Although claims for these more elaborate structures abound, they have classically been met with greater skepticism within critical scholarship.[42] In his 1978 study that I cited earlier, Gordon Wenham makes just such a claim concerning the structure of the Genesis flood account, identifying a palistrophe of fifteen paired elements. But John Emerton, in his study cited earlier, rightly noted that Wenham had used highly common terms such as "Noah"

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account, the hero releases *all* beings to take their place in the new order. If we accept this translation, here, too, we may see how the author of the Genesis account has adapted it to accord with the agenda of hewing to the creation account. In contrast to Utnapishtim, Noah does not release all of the animals; instead, he releases only the dove. The author of Genesis adapts the Mesopotamian topos to allow for greater convergence with the creation account of chapter 1, in which birds appear on earth prior to the rest of the animals.

42. For discussions of the criteria necessary for the establishment of chiasmus, see John W. Welch, "Criteria for Identifying and Evaluating the Presence of Chiasmus," *Journal of Book of Mormon Studies* 4, no. 2 (1995): 1–14; Craig Blomberg, "The Structure of 2 Corinthians," *Criswell Theological Review* 4 (1989): 3–20; Mark J. Boda, "Chiasmus in Ubiquity: Symmetrical Mirages in Nehemiah 9," *JSOT* 21, no. 71 (1996): 55–70; Mike Butterworth, *Structure and the Book of Zechariah* (JSOTSS 130; Sheffield, UK: 1992), 18–61. See also Berman, "Criteria for Establishing Chiastic Structure: Lamentations 1 and 2 as Test Cases," *Ma'aravv* 21, nos. 1–2 (2014): 1–13.

and "ark" as elements of his palistrophe, and seemed to use these terms when they fit his structure, but ignored them elsewhere in the text when they did not.[43]

Here I revisit and rework Wenham's claim, and present a modified version of his findings. Next to each element I note its assignment according to source-critical hypotheses. Where two matching elements in the structure come from different sources, I list next to each an "x":

A - Elohim pledges to Noah to destroy all flesh (6:13) P x
   B - Flood to destroy all flesh (6:17) P x
      C - Covenant to sustain Noah and his animals (6:18-20) P x
         D - Command to gather food while world is destroyed (6:21) P
            E - Command to enter the ark + fulfillment (7:1-5) NP x
               F - Year 600 – beginning of the flood (7:6) P
                  G - Birds enter the ark (7:8) P x
                     H - 7 days waiting for flood (7:10) NP
                       I - Rain on the earth (7:12) NP
                         J - Birds enter the ark (7:14) P
                           K - YHWH shuts Noah in (7:16) NP
                           L - 40 days flood (7:17a) NP
                             M - Waters increase (7:17b-18) NP-P
                               N - Mountains covered (7:19-20) P
                                 O - 150 days waters prevail (7:24) P
                                 God remembers Noah (8:1) P
                               O' - 150 days waters abate (8:3) P
                             N' - Mountain tops visible (8:4-5) P
                         M' - Waters abate (8:5) P
                       L' - 40 days of receding waters (8:6a) NP
                   K' - Noah opens window of ark (8:6b) NP
                 J' - Raven and dove leave ark (8:7-8) NP + P
               I' - Water on the earth (8:9) NP
             H' - 7 days waiting for water to subside (8:10) NP
          G' - Dove leaves the ark (8:10b-12) NP x
       F' - Year 601 – the earth dries (8:13) P
     E' - Command to leave the ark + fulfillment (8:15-19) P x
   D' - Commands regarding food in the new order (9:1-5) P
 C' - Covenant to sustain all flesh (9:8-10) NP x
B' - No flood will destroy flesh (9:15) NP x
A' - Elohim pledges to Noah to preserve all flesh (9:17) NP x

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43. Emerton, "An Examination of Some Attempts to Defend the Unity of the Flood Narrative in Genesis: Part II," 8.

It is important to recognize how this structure is much more than a palistrophe where lexical markers are aligned across a text. Here, the structure outlining Gen 6–9 is not lexical, and in fact, the elements are not equivalent at all. The structure identified here is one of matching antipodal stages in the plot, stretching from God's first words to Noah in 6:13, to his last words to Noah in 9:17; the plot elements in the second half of the structure are all *opposites* of their corresponding elements in the first half. Put differently, the elements of the second half, which narrate re-creation, all undo what was done in the first half, which narrates annihilation. If the hypothesized P text is considered alone, only six of these elements correspond (D, F, J, M, N, O), and only with large gaps between them. When hypothesized non-P is isolated, only four of the elements correspond (H, I, K, L), with even greater gaps between them. When the text is read from beginning to end, however, fifteen matched stages emerge, with virtually no gaps between them. Moreover, five of these matched stages of plot are achieved only by combining the two hypothesized versions (A, B, C, E, G). The data here bring to mind what we saw in the data comparing the Genesis account to the flood story of the Gilgamesh epic. If the source critics are correct, then we must believe that this pattern emerges at random, when fourteen spliced pieces of the hypothesized P version and the thirteen pieces of the spliced non-P version are interwoven. For source critics to accept this observation, however, would require parting with the parade example of the source-critical method—that is, the two-source origins of the Genesis flood account—for the structure emerges only when the two hypothesized sources are read in the form of the received text.

Numerology has a bad reputation within the discipline, and for good reason: it is difficult to know when recurring numerical patterns are indeed deliberate artistry, and when they are mere random occurrence. With that important caveat, I conclude by invoking and augmenting a numerological claim initially raised by Cassuto concerning the preponderance of the number seven in the Genesis flood story. There is, of course, repeated mention of periods of seven days (7:4, 10; 8:10, 12), and seven pairs of clean animals (7:2–3). Emerton rightly argues that, "there is nothing surprising in the fact that the number seven is mentioned of certain matters, and the fact scarcely testifies to literary artistry in the story as a whole.[44] Yet such artistry is exhibited in Cassuto's observations that God speaks to Noah seven times, flesh (בשר) is mentioned fourteen times, "water," twenty-one times, and "Noah" thirty-five times.[45] Emerton dismisses these, merely commenting, "it may be doubted whether the[se] examples are deliberate or suffice when taken

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44. Emerton, "An Examination of Some Attempts to Defend the Unity of the Flood Narrative in Genesis: Part I," 407.

45. Cassuto, *A Commentary on the Book of Genesis*, 32.

together, to establish his case," but does explain how we know that these are purely random phenomena. To this we may also add the observation that the pericope as a whole, 6:9–9:17, is comprised of seventy-seven verses, and that the midpoint of this section, the thirty-ninth verse, is the precise midpoint of the story conceptually, at 8:1: "And the Lord remembered Noah and all that was with him in the ark."[46] What is clear here, however, is that if these data are indeed beyond random occurrences, then it is untenable to maintain that they are the accidental product of the interweaving of two independent strands, P and non-P.

Conclusions

The arguments presented here lead to the conclusion that the Genesis flood account is a reworking of the Mesopotamian flood tradition as evidenced in Tablet XI of the Gilgamesh epic. The logic of appropriation and adaptation of a well-known canonical tale is well-understood and requires no special pleading. Genesis chapter 8, the account of re-creation is structured along the lines of the account of the six days of creation in Genesis 1, and the re-creation of the world introduced at verse 8:1 initiates a series of stages that stand in antipodal relation to parallel stages in the annihilation account of chapters 6–7. The invocation and reversal of the creation account is well-accounted throughout the scholarship to the Genesis flood account, and this observation complements those earlier insights.[47] This interpretation of the text does not mean that the text has no compositional history; nor does it deny that this account contains seemingly irreconcilable contradictions and a wide array of doublets. But, the source-critical approach, of two nearly complete versions with various accretions, is not the only avenue available to the historical-critical scholar. Samuel Loewenstamm, for one, rejected the source-critical approach, and yet nonetheless identified two traditions concerning the chronology of the story, and two traditions concerning the number of animals Noah was charged to take.[48] The interpretation proposed here does not aim to explain away all of the doublets found in this account. Some may hold that these are due to literary conventions lost to us.[49] Others may admit

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46. My thanks to Ronald Benun for sharing this observation with me.

47. See Blenkinsopp, *Creation, Un-creation, Re-creation: A Discursive Commentary on Genesis 1-11*; Susan Niditch, *Chaos to Cosmos: Studies in Biblical Patterns of creation*; Levinson, "A Post-Priestly Harmonization in the Flood Narrative," 113–24.

48. Loewenstamm, "The Flood," 93–121.

49. Cassuto, *A Commentary on the Book of Genesis*, 37–39; Gary A. Rendsburg, *The Redaction of Genesis* (Winona Lake, IN: Eisenbrauns, 1986), 7–26.

that there is a compositional history here, but that it is buried in the prehistory of the text. At this point in time, we can see the fissures, but we do not have the capacity to unscramble the egg, as it were. Within this interpretation, the act of interpreting is carried out conservatively—no evidence is avoided, and only that which is clear is maintained as such. If aspects of the text defy our capacity to understand them, so be it.

By contrast, the source-critical approach to the Genesis flood account cannot allow that the Genesis text hews closely to the plot of the flood tale in Tablet XI of the Gilgamesh epic. It cannot allow that Genesis 8 bears sequential references to the six days of creation. It cannot allow that the stages of recreation stand in antipodal relation to the stages of annihilation. For if any one of these is allowed—let alone all three—then the source-critical approach is delegitimated, because these patterns require one to read the final form of the account, and not its putative sources. In its propagation of the two-source approach, source-criticism must unduly negate these patterns.

In summary, the source-critical approach to the Genesis flood account reveals the practice of eight methodological missteps:

1) *Foundationalist epistemology:* Source critics possess a strong belief in our capacity to trace the compositional history of the text. As we saw in the writings of J. A. Emerton and Shawna Dolansky, the scholar *must* adduce a theory of composition, and therefore he or she must choose among those that offer the most compelling account for compositional growth. Neither entertains the possibility of an historical-critical approach where a recreation of such a history is only partial, or considered beyond our reach at all. These two scholars are explicit in their formulations on the subject. Yet a review of the source-critical literature on the Genesis flood account reveals a telling trend, which suggests that this mindset is ubiquitous among practitioners of the source-critical approach. Scholars differ on whether to assign certain troubling verses, or even phrases, to the P or non-P strand; they differ on whether the non-P strand should be considered part of a larger J source; they differ as to the chronological priority of one strand over the other; they differ as to whether the two versions have been redacted together, or whether one is derived from the other. Remarkably, though, source-critics are nearly unanimous in their belief that scholars possess the tools to offer a complete accounting of the history of the text. Nearly all source-critical analyses of the Genesis flood narrative account for all of the verses found in Genesis 6–9. The analyses are total in nature. We might have expected that more source-critical scholars would express alarm that several chunks of the text do not fit

squarely into either of the hypothesized sources. The fact that source critics differ with one another on a variety of issues, but claim nearly unanimously that the entire textual puzzle may be solved, speaks volumes to the foundationalist epistemology that undergirds the source-critical approach.

2) *Over-empowering theory to complicate the text:* Even as the source-critical theory strives to solve problems in the text, it produces others. Coherent verses such as verse 6:7 are spliced unnecessarily, and only to serve the needs of the source-critical theory. A text like 8:1–4, which suggests a gradual process of receding waters, is read out of its simple context, so that an elegant chronology of the P source may be adduced. The divine closure of the ark, remarkably, appears only following forty days of rain in the non-P account.

3) *Disregard for ancient Near Eastern rhetorical convention:* Gunkel had claimed that the strongest evidence that two sources were witnessed here are the varying use of the divine names.[50] Yet today even neo-documentarians recognize that use of alternating divine names can no longer be viewed as a sign of multiple-authorship, as the phenomenon is attested in the cognate literature. One inconsistency that early scholars found irksome concerned the return of the dove. Verse 8:9 reports that the dove returned because it found no place to rest. Verse 8:5, however, says that peaks of the mountains had already become visible. How, then, could it be that the dove could not find rest? For source critics, this was reason to assign 8:5 to the hypothesized P source, and 8:12 to the non-P source. However, as Cassuto presciently observed, precisely the same "contradiction" appears in the Mesopotamian flood account. Line 139 of that epic says that mountains were seen on all sides. Yet in lines 146–49, the protagonist states that he sent the dove forth, but that it returned because there was no resting place.[51] Scholars, however, have been slow to engage the cognate material more fully as they identify seeming doublets and inconsistencies. For some source-critics, ravens and doves cannot coexist in a single text, and for all source critics, one text cannot claim that flood waters emanate from both clouds and reservoirs. Source criticism overlooks the fact that the Mesopotamian version of the flood story features both ravens and doves, and that the flood emanates from both rain and burst dams. The failure of the source-critical approach to consult ancient Near Eastern literature broadly, and cognate flood accounts in particular, leads source-critical theorists to

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50. Hermann Gunkel, *Genesis* (Macon, GA: Mercer University Press, 1997), 139.

51. Cassuto, *A Commentary on the Book of Genesis*, 40.

impose anachronistic distinctions upon the biblical text. This raises the cardinal question: how do we know what constitutes an incongruity? Can we be certain that our notions of narrative consistency are equivalent to those of ancient biblical writers? As we saw in Westermann's programmatic statement, consultation with cognate literature is a second-order priority for the source critic, and an engagement that occurs only once so-called internal evidence has had its say.

4) *Reductive handling of inconvenient passages:* The source-critical approach to the flood story was premised on intolerance for undue repetition in a single text. Yet, the source-critical hypothesis does not apply the criterion of doubling and repetition in rigorous, consistent fashion. When repetitions or doubling are found in the received text of the MT, the doubling is considered inadmissible for a single text. However, when repetition and incongruity are found nonetheless in each of the hypothesized accounts, the validity of the theory is not reconsidered, and the integrity of that putative "source" is not questioned.[52] Rather, the troubling passages are literarily "quarantined" and assigned to other writers, so that the integrity of each of the sought-after sources may be preserved.

5) *A theory of redaction that contradicts its own assumptions*: The *sine qua non* of source criticism is that the received text contains the *ipsissima verba* of the original sources, an axiom that rests on the conviction that the redactor was invested in preserving the language of his source texts. Yet, two factors mitigate against the validity of this belief: 1) according to all source critics, the redactor felt at liberty to omit material from his original sources; and 2) by all accounts he labored aggressively to produce a final text which would be virtually impossible to unravel without sustained, detailed analysis. These shared assumptions suggest that, in fact, the redactor(s) were uninterested in preserving the *ipsissima verba* of the sources they inherited. This realization is underscored by the fact that evidence that might show that two versions exist emerges only when a series of editors and redactors is adduced to explain away the data that complicates this bisection.

6) *A theory of redaction lacking in empirical basis*: Empirical models of scribal activity in Israel, and in the ancient Near East more generally, reveal not a single example whereby scribes maintained textual fidelity to the sources used when producing new works. Source critics disallow these observations

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52. See the comments of Konrad Schmid in this regard in his introductory remarks to "Convergence and Divergence in Pentateuchal Theory: Bridging the Academic Cultures of Israel, North America, and Europe," https://www.youtube.com/watch?v=PHYKPSE6iZc, at 51:15.

to make claims against the legitimacy of the source-critical hypothesis. It is instead asserted that the redactional process that they ascribe as at work here was *sui generis* to ancient Israel.

7) *A theory of redaction lacking a clear rationale*: When source critics suggest that Genesis 1–2 contains two redacted versions of the creation account, the logic of redaction is clear: the redactor aims to retain two complete accounts in the final record. However, the redaction of the Genesis flood narrative lacks a clear rationale. By all accounts it omits key parts of at least one of the versions. By all accounts it aggressively seeks to conceal access to the original sources. It is unclear what motive a redactor would have to conflate sources in this fashion, and in such a sloppy incoherent way. This alarming absence of a motive should be a cause for source scholars to reconsider the theory. Instead, the two hypothesized versions are taken as assured results, as so strong that they are to be upheld even if their creation cannot be ascribed a clear motive.

8) *Failure to engage historical-critical scholarship that operates on different assumptions*: Throughout this study I have engaged Gordon Wenham's study of 1978 and John Emerton's rebuttal of that work from 1987. Scholars who work from diachronic presumptions about the text routinely cite Wenham's study as the standard-bearer of attempts to challenge the source-critical approach. Yet, while it is widely cited, it is rarely discussed. The standard treatment of Wenham's work is to cite his study in a footnote and to immediately follow with the rejoinder that his claims have been dispelled by John Emerton in an article published in 1987.[53] No subsequent source-critical scholar has addressed Wenham's findings concerning chiastic structure, or, more glaringly, concerning the flood account of Tablet XI of the Gilgamesh epic. No subsequent scholar has even sought to buttress Emerton's arguments. Gary Rendsburg is certainly correct in his assessment that Wenham's study has not had an impact on the field of biblical studies. I would suggest that this is not because the arguments are so poor that they do not warrant discussion. I hope that this analysis has demonstrated, at the very least, that they are worthy of much further consideration. One fears that when scholars cite Wenham and then Emerton, but without expanding on the arguments of either, they are avoiding having to grapple with the implications of Wenham's work. Dutifully they cite his study, and then quickly move on with the claim that Emerton has sufficiently dispelled those claims. Indeed, the title of Emerton's own study suggests such a disposition: "An Examination of Some Attempts to Defend the Unity of the Flood Narrative in Genesis." Emerton's study is not

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53. See the list of studies cited in n. 24.

devoted to an analysis of the flood narrative of Genesis 6–9. Surveying the work of five scholars who challenge the source-critical analysis, it emerges as a self-conscious defense of that approach. It would appear that source critics generally have followed the manifesto made explicit by Westermann, namely, that engagement with cognate literature can only happen once analysis of the putatively internal evidence has had its say.

Conclusion: A New Path Forward

THE METHODOLOGICAL IMPASSE gripping the field, its extreme fragmentation and seemingly unbridgeable diversity, should give us pause and encourage us to explore some of the fundamental assumptions that have girded diachronic study for two centuries. To renew the field of pentateuchal criticism—and indeed, the historical-critical paradigm in biblical studies more broadly—I believe that historical-critical scholars will need to adopt three new priorities in their work. The first is an epistemological shift toward modesty in our goals and toward accepting contingency in our results. The second is a far greater understanding of the rhetorical and compositional practices of the ancient Near East as we adduce notions of what constitutes a fissure in a text and how the biblical texts grew over time. Finally, scholars will need to ground their compositional theories in a new level of linguistic and stylistic analysis now available through the recently launched *Tiberias Project: A Web Application for the Stylistic Analysis and Categorization of Hebrew Scriptures*.

An Epistemology of Modesty and of Contingency

As I demonstrated in chapter 11, historical criticism is caught in a vicious loop. The holy grail of historical criticism of the Hebrew Bible is the attainment of answers to four fundamental questions: who wrote this text? When was it written? What are the historical circumstances that occasioned its composition? What were the stages of the text's development? Because these questions are fundamental to the discipline's self-identity, scholars take it as axiomatic that they possess the capacity to provide reliable answers to these questions. The possibility that we may not have this capacity is not widely entertained, for if that really were the case, the very enterprise of understanding the biblical texts in historical context is threatened. This in turn leads to scholarship biased toward producing results that

answer these questions. In chapter 12, I showed how scholarship on the question of the dating of the account of the rescue of Moses in Exodus 2:1–10 handles complex evidence in a reductive fashion so that the passage may be firmly dated. And in chapter 13 I highlighted the many ways in which source-critical scholars display a proclivity and predisposition to parse evidence in an unfounded way, but one that serves the goal of discovering within the Genesis flood narrative two original sources.

We are committed to two methodological callings. As biblicists, we are called to examine the texts we work with in their historical and social settings. But no less, as scientific investigators, we are called to put forth arguments only to the degree that they are supported by the evidence. It must be starkly admitted that these two callings stand in fundamental tension, especially when we are dealing with the texts of the Pentateuch, where the events recorded have scant attestation outside of the Hebrew Bible. Out of a healthy commitment to examining texts within a specific historical setting we too often compromise on the second calling: to offer a specific historical setting for a text only when the evidence for it is strong and unambiguous. Responsible scholarship mandates a proper ordering of first questions. The classical questions that address historical context are vital ones. But the *sine qua non* of any critical quest must begin with the frank and sober question: what are the limits of what we may know? What will be the controls in place that check our conclusions? The warning of the eminent historian Arnaldo Momigliano is in order: "The most dangerous type of researcher in any historical field is the man who, because he is intelligent enough to ask a good question, believes that he is good enough to give a satisfactory answer."[1]

This will require biblicists to think differently about their work. To animate just how difficult—and yet necessary—this is, I draw attention to a similar change of mindset now underway in a distant branch of the academy. No field of academic study today is in as much turmoil as the field of economics. The financial collapse of 2008 was predicted by only a handful of doomsday prophets, who were largely ignored. The Nobel laureate in economics, Paul Krugman, asks how it is that the entire guild of economists—himself included—got it so wrong.[2] Krugman concludes: "As I see it the economics profession went astray because economists, as a group, mistook beauty, for truth. The central cause of

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1. See Arnaldo Momigliano, "Biblical Studies and Classical Studies," in Momigliano, *On Pagans, Jews, and Christians* (Middletown, Conn.: Wesleyan University Press, 1987), 5.

2. Paul Krugman, "How Did Economists Get It So Wrong?," *New York Times Magazine*, September 6, 2009, http://www.nytimes.com/2009/09/06/magazine/06Economic-t.html?_r=0.

the profession's failure," he goes on, "was the desire for an all-encompassing, intellectually elegant approach that also gave economists a chance to show off their mathematical prowess." Krugman details how the neoclassical belief in markets had an allure because it allowed scholars to do macroeconomics with clarity, completeness, and beauty. The approach seemed to explain so many things.

Krugman's analysis of what happened to an entire guild of economists should give us pause for reflection as biblicists. Could it be that we, too, fall victim to the allure of mistaking beauty for truth? By positing the date of a text and the stages of its composition, we create an elegant narrative of the text's history and of the evolution of religious ideas in ancient Israel. But could we, too, be mistaking beauty for truth—the truth that dating biblical texts and recovering their stages of growth is harder than we would like to admit? Or the truth that we actually have limited access to the minds and hearts of the scribes of ancient Israel, and cannot know the full range of motivations that drove them to compose the texts they did? Krugman writes, "if the economics profession is to redeem itself, it will have to reconcile itself to a less alluring vision," and that, "what's almost certain is that economists will have to learn to live with messiness." That constituted an incredibly bitter pill for economists to swallow. Possessed with elegant models that claimed to predict economic performance in the future, economists became indispensible figures, necessary to the financial prosperity of those who would hire their services. To admit that the economic world is "messy" is, essentially, to concede defeat. If, at best, economists can describe only the past, then the field of economics loses its lofty status, and is reduced to merely a subsection of the history department.

Perhaps we, too, "will have to learn to live with messiness" and avoid the pitfall of mistaking beauty for truth. Perhaps we, too, may have to settle for the realization that we cannot work back from a received text and reconstruct its compositional history with clarity. This possibility looms all the larger in light of the recent work of David Carr and of Juha Pakkala, who have amply demonstrated that when ancient writers edited and redacted hallowed texts, they did not display fidelity to their original texts as they incorporated them into new creations.[3] Two recent volumes of collected essays demonstrate that when we examine a wide range of editorial practices in the ancient Near East, it is difficult to locate any hard and fast rules of editing.[4] Even within a single textual tradition

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3. David M. Carr, *The Formation of the Hebrew Bible: A New Reconstruction* (New York: Oxford University Press, 2011); Juha Pakkala, *God's Word Omitted: Omissions in the Transmission of the Hebrew Bible* (FRLANT 251: Göttingen: Vandenhoeck & Ruprecht, 2014).

4. Raymond F. Person Jr. and Robert Rezetko, "Introduction: The Importance of Empirical Models to Assess the Efficacy of Source and Redaction Criticism," in Person and Rezetko,

we can find examples of modular addition alongside modular subtraction, and of textual expansion alongside contraction.[5] This means that modesty of goals and a sense of contingency about our results will be in order here, as well. Raymond F. Person and Robert Rozetko well-describe this imperative:

> The most that source and redaction criticism may be able to do *even with empirical evidence* is help us understand in general ways the composite nature of the text with only sketchy notions of what sources and redactional layers may have contributed to the literary character of the text. Once we devote much time to analyzing these reconstructed sources and redactional layers themselves as literary objects worthy of close literary and theological study, we probably have crossed a line of plausibility that becomes much too speculative, at least in most cases. . . Thus, in our opinion, future studies in source and redaction criticism must accept much more limited goals and objectives, primarily focused on the extant texts in their textual plurality and how that plurality may enlighten us on the prehistory of the chosen literary text, even if only faintly.[6]

Some scholars will no doubt find this agenda unsatisfying. Yet Samuel Loewenstamm offers words that are equal part rebuke, and equal part consolation. Writing in favor of such an approach to the diachronic history of the flood narrative, he writes, "He who strives for the impossible will not even achieve the attainable, and his elaborate hypothesis will turn into a procrustean bed and do violence to the facts."[7]

Biblicists would do well to observe how our colleagues address similar compositional questions in cognate fields. In biblical studies we analyze texts that are clearly of great antiquity. Our oldest copies, however, are from the Dead Sea Scrolls, which were written centuries later than the original periods of composition. No earlier epigraphic fragments exist for any of these texts. To trace the

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eds., *Empirical Models Challenging Biblical Criticism* (Atlanta: SBL Press, 2016), 1–36; see also the essays contained in Reinhard Müller, Juha Pakkala, and Bas ter Haar Romeny, *Evidence of Editing: Growth and Change of Texts in the Hebrew Bible*, (RBS 75; Atlanta: Society of Biblical Literature, 2014).

5. See Müller, Pakkala, and Ter Haar Romeny, *Evidence of Editing*, 222; Person and Rezetko, "Introduction," 24.

6. Person and Rezetko, "Introduction," 35.

7. Samuel Loewenstamm, "The Flood," in Loewenstamm, *Comparative Studies in Biblical and Ancient Oriental Literatures* (AOAT 204; Neukirchen-Vluyn, Germany: Neukirchener Verlag, 1980), 94.

compositional history of the texts, scholars work almost exclusively with the so-called internal fissures within the received text. This generic problem exists for scrutiny of ancient texts in many academic disciplines. It is at the core of the Homeric Question in classical studies, for example: who wrote the Iliad and the Odyssey? Are these each unitary works of art, or the collective product of more complex processes? Here, it is telling to trace the history of the scholarship to these questions. The source-critical or "analytical" approach to these two works flourished in the nineteenth century, but interest in these questions has waned in more recent times.[8] Consider, similarly, the great long-duration works of Assyria, such as Enuma Elish, or the Egyptian classic, Sinouhe. Scholars who study these works do not invest nearly the energy that biblicists do in trying to recover the earlier stages of composition on the basis of the received text alone. One wonders why the interest in compositional history is a sustained staple of focus for biblicists, but much less so for classicists, Egyptologists, and Assyriologists.

The new emphasis on modesty of aims and acceptance of contingency in results will also need to gain expression in the efforts to date the biblical texts. When we seek to date a text, we must give full voice to all of the evidence that may bear on the dating of said text. When the evidence is unclear, or even contradictory, that must be forthrightly acknowledged. This "messiness" means that we may not be able to achieve the high degree of resolution we seek. Instead of dating a text to the seventh century, or the eighth century BCE, we might have to make do with a "pre-exilic" date for the text. Contingency means that when the data is "messy," we will no longer say "I date this text to the seventh century," but rather, "some of this data suggests a seventh-century date, though the data does not allow us to state so conclusively."

Finally, this epistemological shift will need to necessitate a rethinking of the habits of biblicists with regard to the relationship between the processes of dating a text and uncovering its meaning.[9] There exists a pervasive but mistaken assumption that if an idea is particularly relevant to one historical era, it must have originated in that era. The covenant curses of Leviticus 26 and Deuteronomy 28 warn of exile; but this does not ensure that these texts were composed following the

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8. Martin West, "The Homeric Question Today," *Proceedings Of The American Philosophical Society* 155, no. 4 (2011): 383–93; Frank M. Turner, "The Homeric Question," in Ian Morris and Barry B. Powell, eds., *A New Companion to Homer* (Leiden: Brill, 1997), 123–45.

9. The following discussion draws heavily from Benjamin D. Sommer, "Dating Pentateuchal Texts and the Perils of Pseudo-Historicism," in Thomas B. Dozeman, Konrad Schmid, and Baruch J. Schwartz, eds., *The Pentateuch: International Perspectives on Current Research* (FAT 78; Tübingen: Mohr-Siebeck, 2011), 85–108.

exile of 586 BCE.[10] After all, the Bible claims that Israel's origins are outside the land of Canaan, and that the land is a divine gift, denied to the Amorites because of their wickedness (Gen 15:16; Deut 9:5). Genesis tells us that Adam himself had been exiled from the Garden of Eden (Gen 3:23–24). The notion of exile is integral to the warp and woof of many Pentateuchal texts. Another example: the boundaries of the promised land in Gen 15:18–21 correspond to those of the empire of David and Solomon, as portrayed in 1 Kgs 4:21. For some, this suggests that the border list of Gen 15:18–21 originates from this period.[11] But, in theory, writers from either earlier or later periods could also have yearned for stronger borders and greater hegemony than was available in their own day. Moreover, the impulse to date a text based on an idea it presents overlooks the fact that these texts were copied and handed down across many generations and many historical circumstances. These texts endured precisely because they were seen as transcending the original setting of their composition and offering insights into the human condition and the condition of the people Israel. The inheritors of these texts deemed them relevant long after the original historical and social conditions of their composition were forgotten. Phenomenologists of religion such as Moshe Idel and Mircea Eliade have taught us that we need to be open to the possibility that the intuitions of a religious text can be understood as timeless.[12]

The Hebrew Bible: A Composition of the Ancient Near East

In this study I have tried to show just how much our own innate sense of a fissure in a text can mislead us when we examine texts from the ancient Near East. We are surprised to see that Ramesses II could compose and display three mutually exclusive versions of his great battle with the Hittites. We are surprised to see Hittite kings recounting the history of vassalage in ways that contradict one another, and were plain for the vassal to see. We would never have imagined that in the Kadesh Poem, narration could switch mid-sentence from third person to

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10. See, e.g., Baruch Levine, *Leviticus* (Philadelphia: Jewish Publication Society, 1989), 275, 281.

11. See, e.g., Harold Henry Rowley, *The Growth of the Old Testament* (London: Hutchinson's University Library, 1950), 32; Benjamin Mazar, "The Historical Background of the Book of Genesis," in S. Ahituv and B. A. Levine, eds., *The Early Biblical Period: Historical Studies* (Jerusalem: Israel Exploration Society, 1986), 51.

12. See Mircea Eliade, *The Myth of the Eternal Return or, Cosmos and History*, trans. Willard R. Trask (Bollingen Series; Princeton, NJ: Princeton University Press, 1971). See the programmatic statement of Moshe Idel, *Kabbalah: New Perspectives* (New Haven, CT: Yale University Press, 1988), xii.

first person, with nary a transitional indicator. We are surprised to see a text like *King of Justice* pay homage to LH and diverge from its dictates at the same time. Perhaps most surprising of all is the discovery that the greatest critical minds of Pentateuch study paid little attention to the area of biblical law until the middle of the nineteenth century, and that a scholar of the stature of De Wette would see accord between laws that later critics would unanimously brand as incompatible. There is no intuitive way to determine what constitutes a fissure in a text from another period and another locale. These sensitivities must be learned, and acquired by careful study. When claims for revision rely on a perceived inconsistency or tension in the text and there is no external evidence to corroborate this perception, we may well be imposing modern canons of consistency on these ancient texts, effectively inventing the problem to which revision is the solution.[13]

A survey of six primers for source-critical methodology reveals a telling lacuna: all offer detailed examples of how to identify inconsistencies, tensions, and contradictions within the texts of the Torah as telltale signs of revision.[14] But all assume that the modern exegete will be able to correctly flag these, on the basis of his or her own notion of consistency and literary unity. Not one of these primers suggests that competency in the writings of the ancient world is necessary in order to avoid anachronism. Not one cites even a single example of a seeming inconsistency, but one we know to overlook because of evidence from other ancient texts. I hope that this volume has demonstrated the necessity of such controls on our work. Source critics will need to become aware of the situatedness of their own aesthetic senses of literary unity. They would do well to learn from the example of one medieval rabbinic exegete who possessed this awareness. The fourteenth-century commentator R. Levi b. Gershom, also known as Gersonides (France, 1288–1344), offers a telling observation in his commentary on the end of the book of Exodus. Gersonides wonders why chs. 35–40 of that

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13. See discussion in Person and Rezetko, "Introduction," 29–30.

14. Claus Westermann, *Genesis 1–11* (London: SPCK, 1984), 575–84; Odil Steck, *Old Testament Exegesis: A Guide to Methodology*, trans. J. D. Nogalski (2d ed.; Atlanta: Scholars Press, 1998), 54–58; Suzanne Boorer, "Source and Redaction Criticism," in Thomas B. Dozeman, ed., *Methods for Exodus* (Cambridge: Cambridge University Press, 2010), 95–129; Alexander Rofé, *Introduction to the Literature of the Hebrew Bible* (Jerusalem: Simor, 2009), 166–213; Richard Elliot Friedman, *Who Wrote the Bible?* (New York: Harper, 1987), 52–60. See also Norman Habel, *Literary Criticism of the Old Testament* (Philadelphia: Fortress Press, 1971). Habel pays lip service to this imperative (p. 7): "The literary critic should also try to relate his literary findings to their historical context. To do this he will need to use all the pertinent information at his disposal about the language, culture, history, thought forms and religions of the ancient world." However, at no point in his long primer does Habel adduce an example where such context corrects for the modern interpreter's anachronistic instincts of literary unity.

book repeat, in seemingly tedious detail, all of the commands given to Moses and Bezalel concerning the construction of the Tabernacle and its vassals, as recorded in chs. 25–31. He writes that the issue is highly troubling, because according to the aesthetic of his own time, needless repetition is a sign of deficiency in a piece of high literature, and that surely there is no need for all of the detail repeated in chs. 35–40. He further rues that such duplications are oft-found in the Torah. Gersonides concludes: "Perhaps we may say that it was the convention at the time of the giving of the Torah to fashion literature in this way and that the prophet expresses himself through the conventions of his times."[15]

There should be no delusion, however, that this critical reservoir of comparative data from the cognate literature will become fully available any time soon. The problem is particularly acute with regard to the genre of narrative. We have fine studies that survey the poetics of narrative in biblical literature.[16] To date, however, no comparable work has been written for any of the cognate narrative corpuses of the ancient Near East. There has been no survey of Egyptian narrative techniques, nor of the poetics of Mesopotamian narrative that would allow us test the bounds of literary unity in narrative for these ancient writers. Suffice it to say, there has also been no monograph produced that sets out to compare biblical narrative technique with that of the surrounding cultures. The work ahead of us is great. Lacking a thorough knowledge of the ancient notions of literary unity, modern scholars, perforce, perform their diachronic work in the dark, arriving at conclusions derived exclusively from their own notions of textual cohesion.

To dramatize the degree to which such resources could reshape thinking about the compositional growth of the texts of the Torah, consider the question of chiastic structure. All agree today that chiasm is a feature of ancient Near Eastern literature and of the Hebrew Bible.[17] All biblicists are prepared to recognize chiasm across a verse or two verses, as we saw in chapter 13, with regard to Gen 9:6.[18] However, when it is suggested that chiasm structures the relationship of several consecutive chapters or passages, we discover a curious divide. Only scholars who analyze the final form of the text recognize such structures. By contrast, one is hard pressed to find a diachronically inclined Pentateuch scholar willing to entertain

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15. Gersonides to Exodus 40:34–38. Original text in Baruch Braner and Carmiel Cohen, eds., *Rabbinic Pentateuch on the Torah by R. Levi ben Gershom* (Gersonides 1288–1344), Exodus (2 vols.; Jerusalem: Maaliyot, 2001), 1: 467 (Hebrew).

16. See, e.g., Robert Alter, *The Art of Biblical Narrative* (New York: Basic Books, 1981); Meir Sternberg, *The Poetics of Biblical Narrative: Ideological Literature and the Drama of Reading* (Bloomington: Indiana University Press, 1985).

17. See John W. Welch, ed., *Chaismus in Antiquity: Structures, Analyses, Exegesis* (Hildesheim, Germany: Gerstenberg, 1981).

18. See above p. 260.

the notion of chiasm across several chapters. Take for example, the stories of the Abraham cycle (Gen 11:27–22:24). Scholars of the final form of the text have produced a robust literature identifying a chiastic structure across the breadth of this unit.[19] But these findings are all but ignored by diachronic scholars of the same texts. It is certainly true that some claims of this sort of extended chiasm are exaggerated, and that the lack of clear criteria for basing chiastic structures leaves the impression that chiasm is subjective, and, like beauty, is in the eye of the beholder. A thoroughgoing survey of chiasmus in the cognate literature of the ancient Near East could offer us stronger comparative controls through which we could better determine the employ of chiasmus within biblical narrative.

The Tiberias Project: A Web Application for the Stylistic Analysis and Categorization of Hebrew Scriptures

The habits of two centuries of source-critical thinking do not die easily. My suggestions thus far may sound defeatist to some, as they essentially declare that we cannot achieve what we have always sought, and must retreat if we are to stay true to our calling to produce rigorous, controlled scholarship.

My final imperative, though, will aid even scholars unwilling to adopt the earlier two priorities that I have outlined thus far. Scholars should avail themselves of a new research tool that I have developed in conjunction with my Bar-Ilan University colleague, the computational linguist Moshe Koppel. Together we have recently launched the *Tiberias Project: A Web Application for the Stylistic Analysis and Categorization of Hebrew Scriptures.*[20]

In the past several decades, scholars of the Hebrew Bible have attempted to delineate the style of a given biblical book or hypothesized biblical author based on impressionistic methods. Yet by and large, the attempts to delineate a thoroughgoing analysis of a text's distinct style have been rejected out of concern for statistical and methodological flaws and the lack of sufficient control. Martin Noth sums up the view that remains prevalent today:

> Not even an examination of the language and style is of any decisive assistance in the analysis of the old Pentateuch tradition. For, owing to the

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19. Robert Crotty, "The Literary Structure of the Binding of Isaac In Genesis 22," *Australian Biblical Review* 53 (2005): 36; Jonathan Magonet, *Bible Lives* (London: SCM Press, 1992), 29; Gordon J. Wenham, *Genesis 16–50* (WBC 16; Waco, TX: Word Books, 1994), 263; George W. Coats, *Genesis: With an Introduction to Narrative Literature.* (Grand Rapids, MI: Eerdmans, 1983), 97–98; Jonathan Grossman, *Abram to Abraham: A Literary Analysis of the Abraham Narrative* (Bern: Peter Lang, 2016), 37–38.

20. At the publication of this volume, access to the first iteration of the program is available at dicta.org.il.

scantiness of material at our disposal, and the lack of truly characteristic terms and idioms in the predominantly simple and vernacular manner of speech, a division of the total material according to linguistic and stylistic considerations alone is not feasible.[21]

Some have attempted to assess style with the aid of computerization, but these efforts have not been met with much enthusiasm for the same reasons.[22] The quest, therefore, for any quantifiable, controllable definition of "style" has remained elusive. As a result, most of the proposed authorial and editorial divisions of the biblical texts are made on the basis of content. One source critic has recently gone so far as to delegitimate the very notion that a source could have a distinct linguistic profile or style: "There is a fundamental underlying principle in play here: all of the documents are written in good ancient Hebrew and their authors all had access, one must assume, to the entirety of the Hebrew language."[23] Two major conferences have been held in recent years devoted to the topic of Pentateuch formation. Not a single paper presented at either conference utilized linguistics in any significant way to delineate the prehistory of the received text.[24] Although many Continental scholars date much of the Torah to the post-exilic period, their studies routinely ignore the findings of historical linguists, that the language of the Torah is unmistakably pre-exilic.[25]

Meanwhile, over the last decade, a handful of computational linguists have achieved unprecedented results working in the subfield of text-categorization, also known as authorship attribution. Results published by a team of scholars led by Moshe Koppel demonstrate that it is possible to apply these algorithms to

21. Martin Noth, *A History of Pentateuchal Traditions* (London: Prentice Hall, 1972), 21.

22. See Richard A. O'Keefe, "Critical Remarks on Houk's 'Statistical Analysis of Genesis Sources,'" *JSOT* 29, no. 4 (2005): 409–37. Yehuda Radday's work of nearly forty years ago is most frequently mentioned in this regard. See Y. Radday, "Isaiah and the Computer: A Preliminary Report," *Computers and the Humanities* 5, no. 2 (1970): 65–73.

23. Joel S. Baden, *Composition of the Pentateuch: Renewing the Documentary Hypothesis* (New Haven, CT: Yale University Press, 2012), 29.

24. See the papers in Thomas B. Dozeman et al., eds., *The Pentateuch: International Perspectives on Current Research* (FAT 78; Tübingen: Mohr Siebeck, 2011); Jan C. Gertz, Bernard M. Levinson, Dalit Rom-Shiloni, and Konrad Schmid, eds., *The Formation of the Pentateuch: Bridging the Academic Cultures of Europe, Israel, and North America* (Tübingen: Mohr Siebeck, 2016).

25. See Jan Joosten, "Diachronic Linguistics and the Date of the Pentateuch," in Gertz et al., *The Formation of the Pentateuch*, 327–44 and William M. Schniedewind, "Linguistic Dating, Writing Systems and the Pentateuchal Sources," in Gertz et al., *The Formation of the Pentateuch*, 345–56.

the Hebrew Bible and to achieve highly significant, controllable, and verifiable results.[26]

The Tiberias Project mobilizes these advances in a web-based application for the categorization and analysis of Hebrew Scriptures along lexical, morphological, and syntactic lines. It provides scholars with an easily employed tool that marshals the full panoply of measurable textual features and state-of-the-art machine-learning methods to provide reliable statistical evidence confirming (or falsifying) user-provided hypotheses about distinct stylistic threads in the entire corpus of the Hebrew Bible. The field of text-categorization focuses on the trove of more subtle linguistic characteristics that texts contain. For example, given any biblical text (verse, chapter, or book), Tiberias computes the frequency in the text of each of a huge array of textual features, including individual words, phrases, parts of speech, morphological structures, syntactic and text-grammatical values, and many more. Many hundreds of similar such subtle patterns are formally combined to extrapolate a single optimal rule that distinguishes one given set of texts from another. Tiberias employs the ETCBC IV database, allowing it to exploit that project's unparalleled part-of-speech tagging, syntactic parsing, and dependency parsing to decompose sentences into their grammatical constituents. Tiberias goes far beyond anything available to biblical scholars today; at best, those can provide statistical analysis about a single word or phrase, but nothing about the statistical significance of a variety of elements together when found in a given text.

Tiberias can assist scholars with an array of pressing questions. One scholar might want to determine whether a given text reflects the books that contain classical biblical Hebrew or books that reflect late biblical Hebrew. Another scholar will wish to determine whether a given psalm more closely resembles the style of the genre of petition or that of praise, or whether a given passage in Isaiah more closely reflects the style of First Isaiah or of Deutero-Isaiah. Of course, scholarly unanimity is hard to come by on any of these issues. Many scholars are prepared to see a given set of books as reflective of pre-exilic Hebrew, and some as reflective of post-exilic Hebrew. But others demur. Just as there is debate about whether there really is early as opposed to late Hebrew, there is debate as to whether Isaiah should be split into two or three (or more). There is debate as to the definition and parameters of the different genres of the Psalms, among other points of

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26. M. Koppel, N. Akiva, I. Dershowitz, and N. Dershowitz, "Unsupervised Decomposition of a Document Into Authorial Components," *Proceedings of the 49th Annual Meeting of the Association for Computational Linguistics* (2011): 1356–1364; I. Dershowitz, N. Akiva, M. Koppel, and N. Dershowitz, "Computerized Source Criticism of Biblical Texts," *JBL* 134, no. 2 (2015): 253–71.

contention. Neither Professor Koppel nor I have a scholarly stake in any of these debates, and our tool is not predicated on one side of any of these disputes. It is the responsibility of the researcher to defend his or her choice of text sets. It is our hope that Tiberias will provide another tool in the biblicist's toolbox, one that will serve to corroborate or falsify claims of text categorization by bringing to light a trove of data previously unavailable.

It is too early to tell to what degree Tiberias can definitively solve the pressing issues of the field, just as it is too early to tell how Tiberias may be best used in conjunction with more traditional methodologies. The late Cambridge economist Joan Robinson remarked, "In a subject where there is no agreed procedure for knocking out errors, doctrines have a long life."[27] In biblical studies, doctrines have a long life. If there are indeed three strands of narrative in the Pentateuch—J, E, and P—we ought to be able to see a clear stylistic difference between them when we subject the proposed strands to such analysis. We may not be able to definitively conclude how many sources or authors stand behind the received text of the Torah, but we may, finally, be able to agree to a procedure for rejecting and laying to rest at least some errors. This, in itself, will be a huge boon to the discipline.

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27. Joan Robinson, *Economic Philosophy* (Piscataway, NJ: Transaction Publishers, 1962), 79.

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Subject Index

Index of Scriptural Passages