

Jeremy Bentham and the Birth of the Modern Study of Biblical Law

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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 paroît que Moïse 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. 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.¹

I argue today 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. 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"? The situated character of our assumptions comes into view only when we attain a well-developed alternative interpretative framework.

In my talk today, I explore a great debate about the nature of law that swept Western Europe in the nineteenth century. One approach, what I shall term a *statutory* approach to law, ultimately won out. This approach to law has been intuitive for citizens of modern nation states for the past century and a half, under the influence of the writings of Jeremy Bentham. 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 mid-century 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 distort scholarly discussions of biblical law. My talk today is an abridged version of a larger study that will be appearing in the next issue of CBQ.

When most people today think of the word "law," they have in mind what legal theorists call *statutory law*. Law, within this conception, is contained in a *codified* text. Only what is written in the code is the law. No other sources of authority have validity other than the code itself. Therefore, the courts must pay great attention to the wording of the text and cite the text in their decisions. For many of us today this *statutory* approach to law is intuitive and even unremarkable. Yet as recently as the early nineteenth century the vast majority of Germans, Englishmen and Americans thought about law in very different terms. The prevailing view for them was a *common-law* approach to jurisprudence.

For common-law theorists, the law is not found in a written code which serves as the judges' point of reference and which delimits what they may decide. A judge arrives at a judgment based on the mores and spirit of the community and its customs. When a judge decides a particular case he or she is empowered to reconstruct the general thrust of the prevailing norms in consultation with previous judicial formulations. Critically, the judicial decision itself does not create binding precedent. No particular formulation of these norms is final. There is no authoritative text called "the law" or "the law code." As a system of legal thought, the common law is consciously and inherently incomplete, fluid and vague.

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, "a datum from which

to reason," in the words of one theorist. Within this conception judges address new needs and circumstances by reworking old norms, decisions, and ideas. 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 a steady continuity with the past.

By the end of the nineteenth century legal codes were being drafted across the western world, from Germany to America. The statutory approach had won the day. But why? What was it that led sensibilities about jurisprudence to shift so dramatically in the second half of the nineteenth century from a common-law approach to a statutory approach? Why do we today think of law as *statutory law*?

Common-law thinking flourishes in homogeneous communities where common values and cultural touchstones are nourished and maintained by all. 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.² The earliest known instance of codification reflects the same political logic. The first written Greek laws date to the middle of the seventh century B.C.E., and proliferate at just the period when Greek city-states were in a process of state-formation and developing more formal political systems.

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.

The first written Greek laws date to the middle of the seventh century B.C.E., and proliferate at just the period when Greek city-states were in a process of state-formation and developing more formal political systems.³ Law codes in the late Archaic period are 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 proliferates. 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.⁴

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. Over the last half-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 significant areas of day-to-day life from any mention in LH. The omission of stipulations relating to inheritance, for instance, is inexplicable if indeed, LH was the binding law code of a culture. More telling still, 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.

Moreover, not one of these dockets ever refers to or cites LH as a source of law. 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.⁵ These findings raise two enduring and inter-related questions: if law collections such as LH did not contain the law, where could the law be found, and secondly, what, then, was the nature of texts such as LH?

Raymond Westbrook's analysis is now the consensus: the bulk of law in Mesopotamia was customary law.⁶ 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.⁷ 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*.⁸

The law collections, instead, are anthologies of judgments—snapshots of decisions rendered by judges, or perhaps even by the king himself.⁹ The collections were a model of justice meant to inspire; a treatise, with examples on the exercise of judicial power.¹⁰ They were records of *precedent*, but not of *legislation*.¹¹ The domain of these texts was the world of the court-scribe, where they instilled a unified legal vision.¹²

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.¹³ Narratives of adjudication, such as the trial of Solomon (1 Kgs 3), likewise lack references to written sources of law.¹⁴ 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.¹⁵ Biblical laws often bear motive clauses that do not address judges, but address the Israelite nation as a moral agent.¹⁶

The law collections of the Pentateuch were prototypical compendia of legal and ethical norms rather than statutory codes.¹⁷ Their inclusion in the Pentateuch served to publicize digests of the divine requirements for “justice and righteousness.”¹⁸ One could not point to *the* law. Rather, these texts were the resources from which future norms could be worked out.

This understanding of biblical law as common-law as opposed to statutory law allows us to consider anew perhaps the most burning question today in studies of biblical law: the process of legal revision in the Bible. For many scholars, the laws of Deuteronomy, for example, update and revise the laws of the Covenant Code.¹⁹ Scholars debate, however, the intent of this process of revision.

Bernard Levinson is one of the most thoughtful and influential voices today concerning the mechanism of legal revision within the Pentateuchal law collections. For Levinson, the writers of the Deuteronomic code revised the Covenant Code with the aim of *concealing* the earlier code as well as the process of revision, so that Deuteronomy could present itself as the sole authority of divine law. The process of exegesis and innovation carried out by the author of Deuteronomy was one of “radical subversion” of the earlier texts that “served to camouflage the actual literary history of the laws.”²⁰ The range of literary tools the author of Deuteronomy employs to rework the earlier code demonstrates for Levinson “the difficulty of [legal] innovation in ancient Israel.”²¹ Yet, Levinson’s theory of a “rhetoric of concealment” falters

when we consider the audience for Deuteronomy such a theory implies. 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 his audience could be duped by alleged exercises in concealment.²² Levinson disavows viewing biblical law as legal codes.²³ 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, thereby implicitly ascribing to them statutory assumptions about the nature and authority of a legal text.²⁴

An opposing school argues that subsequent codes complement and supplement previous ones, and provide a lens through which to perceive the earlier code.²⁵ I would suggest that Deuteronomy reworks the Covenant Code openly without negating it. For common-law thinking, determination of the law is situational: the law is not found in an immutable text, but adapts with an awareness of the changing historical situation. In the form that they have come down to us today, the Covenant Code and Deuteronomic laws are framed in a historical narrative of Israel's wanderings in the desert. As Michael LeFebvre notes, the laws of Deuteronomy address Israel as she is poised to assume a new condition of a landed people with a central shrine and a more developed government. This focus is far less noticeable in the Covenant Code, which the Pentateuch places at the beginning of the trek in the wilderness.²⁶ His observation reflects a common-law approach to jurisprudence whereby changed historical circumstance leads to the evolution of the law, yet without the need of jettisoning earlier, revered texts.²⁷ In my larger study I show that the Neo-Babylonian composition, *King of Justice*, sought to revise various clauses of LH, yet without in any way negating or concealing that seminal text.

This takes us to a consideration of the place of statutory jurisprudence, or what is today called strict construction in the drafting and interpretation of biblical law. 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 Pentateuch's law collections. Negative arguments from silence are commonplace. If a rule is present in one code, but absent from a second, the omission is evidence that it was absent from that second legal system, or even condemned by it.²⁸

The late Raymond Westbrook was notable in the exception he took to this approach to reading biblical law. He noted 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 selected only the facets that it deemed necessary to its own discussion.²⁹ In important studies of the Laws of Eshnuna, Barry Eichler has reached similar conclusions. He suggests that LE, and indeed, ancient Near Eastern law collections generally, need to be read in their literary context, and that a string of laws form a treatment of a particular subject. Those laws, he claims, were not drafted in order to clarify exhaustive remedy 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.³⁰

The implications for a hermeneutics of biblical law are enormous. To be sure, the law collections of the Pentateuch are witness to processes of legal revision. Many laws do change from collection to collection. We should reject, however, the reflexive impulse to interpret them as mutually exclusive at every point where there is no congruence between them. In a statutory

work, textual silence 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.

Finally, I move to consider a notion long-popular within biblical studies – the notion of the Pentateuch as a “compromise document.” A leading theory to account for the compilation of the Pentateuch claims that 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.³¹ This notion of the Pentateuch as a compromise document composed under national duress entails several weaknesses that stem from a misunderstanding of the nature of biblical law.

If the legal clauses in the Pentateuch are indeed as polar as is claimed how does their fusion result in a “compromise document?” A document reflecting compromise between competing agendas is one where each side gives ground on its original positions, and a middle ground found. Alternatively, one side will get its way on a given issue and the other side its way on another. 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 voice.³² There can be no room, therefore, in a compromise document for example, 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 strands of thought and law into such a so-called “compromise document.”

More recently, some scholars have issued a call to see the redaction of the Pentateuch as a more constructive process; that the disparate parts must somehow form a more cohesive whole than has conventionally been assumed. Eckart Otto, for example, takes exception to scholars who claim that the Deuteronomistic Code was intended to replace the Covenant Code, by overturning and invalidating it. He suggests, therefore that Deuteronomy, for example, be read as a complement and supplement to the Covenant Code.³³ I suggest that the underlying basis of Otto's approach is the conceptual move from a statutory to a common-law approach to biblical law. The laws of the great kings of the ancient world were never textually immutable, and the same was true of God's law. Israel was not free to disregard the law, but it surely needed to be applied anew and restated. The Deuteronomistic code repeatedly identifies itself as such a restatement, generated to apply to the new situation of centralized worship, and increased power and wealth in the land.³⁴ For the first readers of the Pentateuch—whatever century is hypothesized for that readership—the text would only make sense if they shared the common-law assumptions about jurisprudence that I have delineated here. Scholars routinely hypothesize that the Deuteronomistic and priestly traditions stood in fierce opposition, and that redactions of many biblical texts were executed by scribes of each tradition.³⁵ Surely, though, it is telling that nowhere in the Hebrew Bible do we find a prophet, priest, king, or narrator who argues in explicit fashion for the legitimacy of one version of a law over another. This, in itself, speaks volumes to the common-law nature of biblical law. Revision of an earlier law did not entail a rejection of the text bearing that earlier law.

In closing, 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: they lived and wrote before there was a widespread conception of statutory law. The Germany of the eighteenth and early nineteenth century that was home to Eichhorn, deWette and Ewald was a common-law culture. It is only with 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 Jeremy Bentham and the 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 pre-modern ways of thinking.

My thanks to Edward Greenstein, Steven Grosby, Michael LeFebvre, Bernard Jackson, and David Rothstein for commenting on earlier versions of the manuscript. All errors are my own.

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

² 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* (2nd 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. 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.

³ Rosalind Thomas, "Writing, Law and Written Law," in *The Cambridge Companion to Ancient Greek Law* (eds. Michael Gagarin and David Cohen; Cambridge: Cambridge University Press, 2005) 42.

⁴ Raymond Westbrook, "Introduction," in *A History of Ancient Near Eastern Law* (eds. Raymond Westbrook and Gary Beckman; 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.

⁵ 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 *idem, Mesopotamia: Writing, Reasoning, and the Gods* (trans. Z. Bahrani, 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 *La Codification des Lois dans L'antiquité: Actes du Colloque de Strasbourg 27-29 novembre 1997*, Université Marc Bloch de Strasbourg; Travaux du Centre de Recherche sur le Proche-Orient et la Grèce-Antiques 16, (ed. E. Lévy; Paris: De Boccard, 2000) 9-31.

⁶ Westbrook, "Introduction," 21.

⁷ 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.

⁸ 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.

⁹ Westbrook, "Introduction," 21.

¹⁰ Bottéro, "The 'Code' of Hammurabi," 167.

¹¹ Westbrook, "Cuneiform Law Codes," 203.

¹² Roth, "The Law Collection of King Hammurabi," 29-31.

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

¹⁴ Jackson, *Wisdom-laws*, 31; Dale Patrick, *Old Testament Law* (Atlanta: Knox Press, 1985) 191, 193-198.

¹⁵ Patrick, *Old Testament Law*, 198. Even in Ezra, 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 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. These 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 c. B.C.E.) 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.

¹⁶ Patrick, *Old Testament Law*, 198.

¹⁷ See on a related note Bernard Jackson, "Models in Legal History: The Case of Biblical Law," *Journal of Law and Religion* 18:1 (2003): 5. Cf. Bernard Jackson, "Modelling Biblical Law: The Covenant Code," *Chicago Kent Law Review* 70:4 (1995):1761. David Wright has recently proposed 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.

¹⁸ See Fishbane, *Biblical Interpretation in Ancient Israel*, 95; Jackson, *Wisdom-laws*, 49; Patrick, *Old Testament Law*, 189, 203; Malul, *Society, Law and Custom*, 22.

¹⁹ See Bernard M. Levinson, *The Right Chorale: Studies in Biblical Law and Interpretation* (Tübingen: Mohr Siebeck, 2008) 276-330.

²⁰ 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.

²¹ *ibid*, 47.

²² As noted already in LeFebvre, *Collections, Codes and Torah*, 71 n. 54 and in Joe Sprinkle, review of Bernard Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation*, *JETS* 42 (1999): 720-21.

²³ Levinson, *The Right Chorale*, 31.

²⁴ Levinson, "You Must Not Add Anything," 7, 15.

²⁵ See Eckart Otto, "Ersetzen oder Ergänzen von Gesetzen in der Rechtshermeneutik des Pentateuch," in *idem*, *Die Tora: Studien zum Pentateuch* (Wiesbaden: Harrassowitz, 2009) 248-57. See also, *idem*, "Vom Bundesbuch zum Deuteronomium: Die deuteronomische Redaktion in Dtn 12-26," in *Biblische Theologie und Gesellschaftlicher Wandel: Fuer Norbert Lohfink* (eds. Georg Braulik, Walter Gross, and Sean E. McEvenue; Freiburg: Herder, 1993) 260-78; and *idem*, "The Pre-exilic Deuteronomy as a Revision of the Covenant Code," in *idem*, *Kontinuum und Proprium: Studien zur Sozial und Rechtsgeschichte des Alten Orients und des Alten Testaments* (Orientalia Biblica et Christiana 8; Wiesbaden: Harrassowitz, 1996) 112-22.

²⁶ LeFebvre, *Collections, Codes and Torah*, 70.

²⁷ My analysis pertains to the narrated time of the Pentateuch, and suggests how an early reader of the redacted Pentateuch could construe the revisions of the Covenant Code in Deuteronomy across its narrative continuum. Scholars, of course, continue to debate the origins of each code as autonomous texts.

²⁸ Raymond Westbrook, *Studies in Biblical and Cuneiform Law* (CahRB 26; Paris: J. Gabalda, 1988) 5.

²⁹ Westbrook, *Studies in Biblical and Cuneiform Law*, 6.

³⁰ *Ibid*, 369.

³¹ Scholars, debate whether this was an exilic or post-exilic process. See Erhard Blum, *Studien zur Komposition des Pentateuch* (BZAW 189; Berlin and New York, 1990), and the essays contained in *The Pentateuch as Torah: New Models for Understanding Its Promulgation and Acceptance* (eds. Gary N. Knoppers and Bernard M. Levinson; Winona Lake: Eisenbrauns, 2007).

³² See Harold D. Lassrell, "Compromise," *Encyclopedia of Social Science*, 3:147-49.

³³ See Otto, "Ersetzen oder Ergänzen," 248-57. See also Benjamin D. Sommer's suggestive notion of a "fluidity tradition" in his *The Bodies of God and the World of Ancient Israel* (Cambridge: Cambridge University Press, 2009) 124-27.

³⁴ On Deuteronomy as restatement, see LeFebvre, *Collections, Codes and Torah*, 68-71. See again my caveat in note 48 concerning the applicability of my analysis to narrated time.

³⁵ Some scholars resort to incendiary imagery to describe the process of combining such disparate elements. For one prominent scholar, "these diverse and contradictory teachings were smelted" in a "volatile furnace" (Fishbane, *Biblical Interpretation in Ancient Israel*, 264). For another the combination of these elements represents the fusion of nothing less than the combination of "fire and ice." (Konrad Schmid, "The Persian Imperial Authorization as a Historical Problem and as a Biblical Construct: A Plea for Distinctions in the Current Debate," in Knoppers and Levinson, *The Pentateuch as Torah*, 34.