



## Law in Biblical Israel

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There are two main precursors to Jewish law: one historical, and one literary. Historically, the clans, tribes, villages, cities, and eventually monarchies of Israel had law-in-practice for centuries, much of which was unwritten and can only be at best speculatively reconstructed by scholars today. On the literary side, some laws, stories about legal practice, and legal modes of address are preserved in writing in the Hebrew Bible – though the relationship between these writings and actual legal practice is extremely difficult to determine and may in fact be nonexistent.

What can be said, then, about law in biblical Israel that spans both a history of ancient juridical practice of which we have little record and a record of legal discourse that may bear little relation to historical practice? Perhaps only a negative conclusion, albeit a significant one may be reached: that law does not seem to have been a highly developed, autonomous field, or a “system” in any real sense of the word. Rather, law in practice in ancient Israel appears to have been continuous with other social practices, an extension of familial or political duties. Moreover, law in writing, from its inception, appears to have been non-systematic and non-comprehensive; as preserved formally in the Hebrew Bible, rather than being more fully systematized, it was rather more fully embedded among an array of other discourses, such as the human–divine covenantal history, the poetry of the prophets, or the heightened emotional rhetoric of Deuteronomy.

This chapter will first present an overview of legal practice in ancient Israel, showing, through a case study of homicide and blood feud, that far from being an autonomous, circumscribed field, law was rather a rule-bound pursuit of remedy for injury intimately tied to family and clan networks, as well as political or state institutions. Based on the limited evidence we have, we may also be able to hypothesize that legal practice in ancient Israel was open to improvisation, compromise and private negotiation.

We will then turn to legal writing, surveying some best guesses about how and why law may have originally been committed to writing, before finally turning toward its placement within the wider framework of the Torah as well as the Hebrew Bible as a whole. We will look at both how written law is embedded in other discourses, such as narrative, political treatise, and emotional exhortation; and, on the other hand, how legal discourse permeates the prophetic oracle as it is seen to mediate and support both the divine-human relationship and interpersonal relationships in ancient Israel. We may observe, therefore, that law in ancient Israel, rather than a professionalized field of practice, was instead a cultural mode that imbued all facets of life, from the individual quest for wisdom to the communal pursuit of social harmony. Law, then, cannot be studied in isolation; as Steven Fraade has written about early Jewish law and narrative: “it is not just a question of how accompanying laws and narratives frame, justify, and authorize one another, but how their two modes of discourse interpenetrate one another, to the extent that we can speak of the normative force of narrative and the narrativity of law.”<sup>1</sup> To get a full picture of law in ancient Israel, we must look at an entire normative universe.

#### LEGAL PRACTICE IN ANCIENT ISRAEL

The question of whether decentralized, premodern societies had “law” or simply “norms” or “customs” has not yet been fully settled among legal theorists, legal sociologists, or legal anthropologists. For our purposes, we may define law rather broadly, following the lead of legal theorist Lon Fuller: “law is the enterprise of subjecting human conduct to the governance of rules.”<sup>2</sup> Seen through this wide lens, it is probable, then, that ancient Israelite societies had some measure of a “legal enterprise”: that elders, heads of households, priests, officials, and monarchs were tasked to ensure harmony among families and communities by resolving disputes and intervening when traditional rules were violated. Though they were not expected to adhere strictly to a code of law, there was, most likely, a body of tradition that provided the bases for social justice – and just decision making – that persisted throughout the generations within ancient Israel.<sup>3</sup>

<sup>1</sup> Fraade, *Legal Fictions*, p. 12.

<sup>2</sup> Fuller, *Morality*, p. 106. Fuller also discusses here the issue of the definitional feasibility of law being present even when a state-like authority to fully enforce legal rules is not operative. For him, it confuses the ability to fully realize the potential of a legal system with the definition of law itself. See also Hadfield and Weingast, “Law without the State,” which provides multiple examples of societies that possessed what we might call “law” even though there is an absence of state coercion to enforce sanctions and penalties.

<sup>3</sup> Burnside, *God, Justice, and Society*, p. 112.

Rather than providing a comprehensive code of legislation or legal precedent, the oral tradition was likely a broad one, consisting of law, narrative, song, advice, and prophecy; yet it also seems clear that law and legal prescription lay at the heart of this tradition.<sup>4</sup> These teachings formed the groundwork for some Israelites to become broadly well educated and would have allowed them, if called upon, to approach the task of ascertaining the right methods for settling disputes that would lead to justice, while also identifying a wrong path that would lead to discord.

What we find, then, in ancient Israel, is not a separate class of jurists or judges, but rather “lay” leadership in clans and villages who could help smooth over and navigate disputes, as well as a (very limited) number of educated, literate professionals<sup>5</sup> who would also be expected to adjudicate claims, if the need arose. As Jonathan Burnside notes, “[m]onarchs, Levites, priests, and non-priests are all involved in adjudication (Deut 17:8–13). This reflects the fusion of law and religion in biblical Israel. Nor is there any distinction, at least in the early period, between administration and adjudication . . . in early Israel.”<sup>6</sup> The non-priests, or “lay leadership,” involved in adjudication are often understood to be the *paterfamilias* within Israelite clans, or the elders of several families who presided at the town gate.<sup>7</sup> Farther up the (informal) judicial hierarchy, then, we would expect to find the priests, levites, and other officials adjudicating cases. Indeed, the only legal document outside the Bible recovered from ancient Israel, the Yavne Yam Inscription, is a petition to a military officer, underscoring that adjudication was simply another administrative duty expected of local officials.<sup>8</sup> The prototype for this kind of professional, then – and the highest court of appeal (though one not always necessarily available to

<sup>4</sup> Carr, *Writing on the Tablet*. See especially chapter 6, “Textuality and Education in Ancient Israel,” in the sections “Education in Deuteronomy and the Deuteronomistic History” and “Other Biblical Literature as Educational Literature: Torah, Psalms, and Other Texts.”

<sup>5</sup> To greater and lesser degrees. The class of educated, literate people in Israel would have increased as Israel became more developed as a monarchic state, and yet the number of those who were literate would have remained small.

<sup>6</sup> Burnside, *God, Justice, and Society*, p. 110.

<sup>7</sup> See Wilson, “Israel’s Judicial System” and McKenzie, “Judicial Procedure.”

<sup>8</sup> The inscription, dating from the late seventh century BCE, reads:

Let my lord the Governor pay heed to the words of his servant. Several days ago, your servant was harvesting in Hasar-asam. The work went as usual and your servant completed the harvesting and storing of my quota of grain . . . Despite the fact that your servant had completed his assigned work, Hoshaiahu, son of Shobai, kept your servant’s cloak. He has held my cloak for days. All my fellow workers will testify – all those who work in the heat of the day will surely certify – that I am not guilty of any breach of contract. Please order my supervisor to return my cloak either in fulfillment of the law or as an act of mercy. Please do not remain silent and leave your servant without his cloak . . . (Translation taken from Matthews and Benjamin, *Old Testament Parallels*, pp. 355–56)

a petitioner) – would be the king. According to Moshe Weinfeld, we see that the duty of the king was aligned with promoting justice, not only by settling disputes and restoring order but also by proactively liberating the oppressed and moving society in the direction of social equality.<sup>9</sup> The king would be seen not merely as exhibiting his own unique wisdom, but also in fact as imitating or even channeling the justice of God. King Solomon, for example, is shown to receive his wisdom from YHWH: “[All Israel] stood in awe of the king, because they perceived that the wisdom of God was in him” (1 Kings 3:28).<sup>10</sup> It would therefore follow that divine wisdom and justice could inhere in any official acting as judge who, having been chosen, ideally, because they were the *right people*,<sup>11</sup> and educated appropriately, would act wisely and justly in accordance with the spirit of the justice of God.<sup>12</sup> Moreover, as Bernard Jackson points out, much of the Israelite legal tradition was geared toward self-actualization; there is clear guidance for resolving disputes, in many cases, that would allow for private settlement without the need for official or formal intervention.<sup>13</sup> The sense of divine justice could inspire all who might seek it.<sup>14</sup> And, indeed, the possibility of divine intervention via oracle remained open as a mode of decision making for disputes in which evidence was not sufficient.<sup>15</sup>

Oral teachings were at certain opportune times in Israelite history committed to writing; as such, they were understood to stand as a reference copy for teachings that continued to be transmitted orally.<sup>16</sup> It is likely that written text – a rare commodity in the ancient world which could only be produced by trained scribes in elite circles – took on an aura of the sacred. As David Carr points out, the idea of divine writing is in fact itself thematized in the Hebrew Bible.<sup>17</sup> These written tablets were then understood to stand as a

<sup>9</sup> Weinfeld, *Social Justice*. See especially chapter 2, “Justice and Righteousness as the Task of the King.”

<sup>10</sup> Even though this text might very well be late, the idea that the ability to execute justice was inspired by the gods was common in the ancient Near East; see, for example, the epilogue to the Code of Hammurabi.

<sup>11</sup> Burnside, *God, Justice, and Society*, p. 124.

<sup>12</sup> I do not wish to overstate the prevalence of this belief – we have no way of knowing how widespread it may have been, or whether the notion of “divine justice” was more likely a rhetorical device used by the monarchy and those associated with it.

<sup>13</sup> See Jackson, *Wisdom-Laws*.

<sup>14</sup> Even though justice was imagined to be a divine enterprise, it did not mean that there was no room for judicial discretion or even admitting errors in judgment. Jonathan Burnside sums it up well: “The judges do not have to claim perfection, but nor do they have to say their task is futile, either. Their knowledge of God can be sufficient to produce divine justice” (*God, Justice, and Society*, p. 138).

<sup>15</sup> LeFebvre, *Collections*, p. 40.

<sup>16</sup> Carr, *Writing on the Tablet*, chapter 6, section “Transmission.”

<sup>17</sup> *Ibid.*, section “Hebrew and Foreign Forms of Education in (and before) Ancient Israel.”

“witness” (Deut 31:19<sup>18</sup>), lest the teachings be forgotten. The traditional, oral, legal instructions of ancient Israel, then, were seen as reiterations of a sacred, auratic, written copy. The idea of law as “divine” was therefore understood in a minimal, but twofold, sense: the pursuit of justice required the imitation of uniquely divine attributes of justice and was ultimately guaranteed through divine oracular assistance. Furthermore, the teachings themselves, as they were written down, attained a divine aura, which the writing process itself in many ways conferred upon it. These laws would eventually be tied to the prophetic tradition, with Moses as the prophet par excellence,<sup>19</sup> and would make their way, via multiple revisions, into Exodus (the “Covenant Code,” Exod 20:19–23:33) and Deuteronomy (chiefly 12–26).

Again, these laws would have been taught as part of a standard, “popular” education in ancient Israel, rather than as part of specialized legal training.<sup>20</sup> As Deuteronomy’s own introduction to its laws advocates:

Recite them to your children and talk about them when you are at home and when you are away, when you lie down and when you rise. Bind them as a sign on your hand, fix them as an emblem on your forehead, and write them on the doorposts of your house and on your gates. (Deut 6:7–9)

The question that arises, then, is where the original legal tradition came from. Were the laws and instruction devised from the outset as a purely theoretical, didactic enterprise? Or can they be connected in any way to ancient Israelite legal practice? Some scholars have argued that the nature of these laws, both in the Hebrew Bible and the corresponding law collections found elsewhere in the ancient Near East, are entirely theoretical: educational texts that convey ideals of justice, far from pragmatic instruction, and certainly not reflective of social practice. Anne Fitzpatrick-McKinley, for example, advocates understanding biblical law as akin to *dhama*, “a series of moral rules backed up by nothing other than their own moral authority,”<sup>21</sup> designed as a theoretical exercise for educational curriculum rather than emerging from real experience. Bruce Wells, however, compares Israelite law, as preserved in the Hebrew Bible, with records of actual legal practice from the ancient Near East<sup>22</sup> and argues that this position is too extreme.<sup>23</sup> There is too much overlap between the practice of law in the

<sup>18</sup> “Now therefore write this song, and teach it to the Israelites; put it in their mouths, in order that this song may be a witness for me against the Israelites.”

<sup>19</sup> Carr, *Writing on the Tablet*, chapter 6, section “Education and Textuality across Israelite History.”

<sup>20</sup> LeFebvre, *Collections*, p. 32.

<sup>21</sup> Fitzpatrick-McKinley, *The Transformation of Torah*, p. 141.

<sup>22</sup> Unfortunately, there is almost no direct evidence of legal practice for ancient Israel.

<sup>23</sup> Wells, “What Is Biblical Law?”

areas surrounding ancient Israel for it to be merely coincidental. He shows that similarities exist between legal issues that arise, legal reasoning, and legal remedies in some of the biblical laws from ancient Israel and documents of legal practice in the ancient Near East. He concludes:

the evidence tends to favor those views that allow for some level of connection between the provisions in the codes and real-life law: views A ([biblical law functions as] authoritative law), B ([they represent] competing sets of authoritative law), and D ([they are] legally descriptive treatises). It tends to disfavor those views that sever the connection between the codes and legal practice: views C ([biblical law codes are] theoretical treatises) and E ([they are] nonlegal treatises).<sup>24</sup>

There is much room for debate among these options that Wells delineates; he writes that he “prefer[s] view D (legally descriptive treatises) as an explanation for much of the material in the [biblical] codes” because of “the connections with ancient Near Eastern practice . . . and because there is no clear evidence that any of the biblical or cuneiform codes were used by trial courts as the basis for verdicts.”<sup>25</sup> Nevertheless, he readily admits that “a single view is insufficient to explain all the material in the pentateuchal laws”<sup>26</sup> and that while some laws strongly appear to reflect actual practice, others most likely “reflect the idiosyncratic ideals of a particular code’s authors.”<sup>27</sup>

There is, in the end, a vexed relationship between actual Israelite legal practice and the oral, written, and eventually codified legal, instructional tradition of ancient Israel, but there is a relationship nonetheless. We might therefore imagine that little care was taken to expressly separate legal precedent from authoritative legislation, or from wise advice, or from religious exhortation. The practice of law in ancient Israel was ideally to combine all of the above: to channel the wisdom and justice of YHWH, to conform to precedent or tradition as much as possible, and to promote a moral vision that would lead to harmony within Israelite families, clans, and communities.<sup>28</sup>

### *Blood Feud: Ancient Israel’s Tradition and Practice*

An example of legal practice that is corroborated by a variety of sources, Israelite homicide law may be examined as a complex nexus of private

<sup>24</sup> *Ibid.*, p. 242.

<sup>25</sup> *Ibid.*, p. 243.

<sup>26</sup> *Ibid.*, p. 242.

<sup>27</sup> *Ibid.*, p. 243.

<sup>28</sup> For a discussion of the relationship between law writings and law practice in the Second Temple period, see Chapter 2 of the current volume.

negotiation, procedural guidelines, cultic requirements, and official state intervention. According to Pamela Barmash, rather than a “paroxysm of rage,” blood feud ought best be understood as “a legal mechanism that both assures the redress of wrongs and controls the violence to a level tolerable in a community . . . [I]t is local in nature, and . . . rule-bound.”<sup>29</sup> She goes on to describe blood-feud in ancient Israel as follows:

The victim’s family undertook the initiative in punishing a homicide, but there were qualifications. Only the slayer was subject to action, not anyone else, whether having a connection to him or not. Apparently only a specific member of the victim’s family, *go’el hadam* [the “blood avenger”], had the right to kill the slayer with impunity. The cities of refuge acted as a check on the right of [the blood avenger] to kill the slayer with impunity. He could not kill a slayer while the slayer was within the city of refuge (Num. 35:12; Deut. 19:5; Josh. 20:5). Second, once the slayer had entered the city of refuge, he was subject to trial to determine whether it was an intentional or accidental homicide (Num. 35:24; Deut. 19:12). This decision limited the ability of [the blood avenger] to effect vengeance because if the slayer was judged to be an accidental killer, he was permitted to stay in the city of refuge safe from the avenger. Only if the slayer was determined to be an intentional killer was he handed over to the avenger for execution. Indeed, biblical texts manifest anxiety over the possibility that [the blood avenger] might kill an accidental killer because he could kill any slayer with impunity outside the city of refuge (Deut. 19:6).<sup>30</sup>

Within this legal mechanism to remedy homicide, then, are a variety of styles of jurisprudence. We see the “customary law” of Israelite clan life, which relied on immediate but limited vengeance for the victim’s family. Identification of the killer is not presented as an issue; we might presume that in small communities, the identity of the killer was most often known to all and not the vexed issue it is in murder mysteries today.<sup>31</sup> We may also note the presence of “cities of refuge,” which may have been connected to a local shrine or altar<sup>32</sup> and provide a kind of divine protection for the slayer who is believed to have killed without intent. These “cities of refuge” (or the altar

<sup>29</sup> Barmash, “Blood Feud and State Control,” p. 185.

<sup>30</sup> *Ibid.*

<sup>31</sup> In the context of medieval communities, see Whitman, *The Origins of Reasonable Doubt*, p. 61. In the (exceptional) case in which the killer is not known, biblical law specifies a semi-cultic remedy in which the elders break the neck of a heifer and declare their innocence while seeking atonement for the homicide (Deut 21:1–9).

<sup>32</sup> Pamela Barmash and Jeffrey Stackert have debated the exact relationship between altar asylum and cities of refuge. See Barmash, “Blood Feud and State Control,” and Stackert, “Why Does Deuteronomy Legislate Cities of Refuge?”

itself, as described in Exod 21:13–14) reveal how religious or cultic institutions might function legally in some respects. The trial, then, is apparently *only* required for a slayer who has fled to a city of refuge, and therefore more “official” oversight in respect of the sanctions for homicide – identifying the killer’s intent and motivations, the murder weapon used (bare hands or iron tool, for example<sup>33</sup>), the history (or lack thereof) of enmity between the killer and the victim – is reserved for only certain cases, but it is available nonetheless. Barmash clarifies that the trial is conducted normally by local officials or elders; the monarchy and/or the central sanctuary do not intervene other than in truly exceptional circumstances.<sup>34</sup> Thus, the procedure for blood feud appears to be both informal and rule bound; privately negotiated and navigated, but with the possibility that central authorities can be petitioned or invoked if a case warrants it.

As for the sanctions attached to homicide, the biblical law collections specify repeatedly that the penalty must be death. Nevertheless, it is likely that much like their neighbors throughout Mesopotamia,<sup>35</sup> ancient Israelite legal *practice* provided an option of accepting compensation for the homicide instead of putting the killer to death.<sup>36</sup> Israelite teachings, especially those in the priestly sources, do not agree. The explicit exhortation in Numbers not to accept ransom for the life of the killer (Num 35:31) shows the conflict, here, between what may very well be a cultic stipulation and a common practice of accepting compensation to restore harmony in the community. Why, in this case, would religious authorities so strongly attempt to influence a functioning legal practice? According to Barmash, there may have been a concern about ritual purity: Israelite religious culture may have insisted that only the blood of the killer was able to cleanse the pollution caused by spilling the blood of the innocent.<sup>37</sup> Or, from a different perspective, Moshe Greenberg contends that Israelite religion forbade compensation because human life was deemed sacred:

The idea that life may be measured in terms of money or other property, and *a fortiori* the idea that persons may be evaluated as equivalences of

<sup>33</sup> See Num 35:16–25.

<sup>34</sup> Barmash, “Blood Feud and State Control,” p. 190.

<sup>35</sup> Moshe Greenberg writes: “Outside of the Bible, there is no parallel to the absolute ban on composition between the murderer and the next of kin. All Near Eastern law recognizes the right of the slain person’s family to agree to accept a settlement in lieu of the death of the slayer” (“Some Postulates,” p. 24). I am not certain that the matter is entirely clear-cut, but it does appear that compensation was a common remedy for homicide throughout the ancient Near East. See also Barmash, *Homicide*, pp. 159–67.

<sup>36</sup> Westbrook and Wells, *Everyday Law*, p. 78.

<sup>37</sup> Barmash, *Homicide*, p. 115.



other persons, is excluded. Compensation of any kind is ruled out. The guilt of the murderer is infinite because the murdered life is invaluable; the kinsmen of the slain man are not competent to say when he has been paid for. An absolute wrong has been committed, a sin against God which is not subject to human discussion.<sup>38</sup>

To Greenberg, this view dovetails with the Israelite notion that law was divine, and that God was its author. Murder is therefore not a crime against another person, but a transgression against God himself.

Regardless, it is clear that the talionic requirement of the death penalty for murderers in Israelite tradition stands at odds with the practice of neighboring cultures,<sup>39</sup> and perhaps of Israel itself. We see here a cultural/religious ideal that conflicts with legal practice and perhaps exerts pressure on it, but does not necessarily define it. Legal practice was thus continuous with other parts of Israelite culture, such as cultic observances or familial custom, but it was not wholly controlled or defined by either.

#### LAW IN SCRIPT: LEGAL DISCOURSE IN THE HEBREW BIBLE

As many of ancient Israel's disparate writings would make their way into the current version of the Hebrew Bible, they would certainly have undergone much revision, restructuring, and reframing. Laws originating from royal spheres would be combined with a priestly tradition and laws or regulations that were more specifically tied with Israel's cult. In the process of combining these traditions, scribes (most likely tied to the priesthood) also combined them with narratives of early Israel and myths of primeval history, and they also collected and revised prophetic oracles as well.<sup>40</sup> It is highly likely that this combination and revision or re-inscribing of Israel's teachings occurred in order to obtain authorization by the Persian Empire, which may have lent certain symbolic importance to the Torah as "the law of . . . God and the law of the king" (Ezra 7:26). However, since it was unlikely that the book itself was actually used as a code of law,<sup>41</sup> the continuities between the legal collections, narrative traditions, and exhortations of the prophets are all the more pronounced. Together, they comprised the *teachings* of the God

<sup>38</sup> Greenberg, "Some Postulates," p. 26.

<sup>39</sup> See Barmash, *Homicide*, chapter 6, "Lex Talionis," pp. 153–77.

<sup>40</sup> See Carr, *Tablet of the Heart*, chapter 6, section "Education and Textuality across Israelite History."

<sup>41</sup> See Collins, "The Transformation of the Torah," p. 462: "[the Torah's] importance was largely symbolic, and a few issues had metonymic significance for the way of life as a whole."

of Israel. Law is embedded in narrative and wisdom discourses; oracle, exhortation, song, and story are infused with legal language.

*The Biblical Law Collections and Other Literary Discourses*

There are three significant law collections in the Hebrew Bible: The Covenant Code, most likely the earliest, and possibly a revision or adaptation of the Code of Hammurabi.<sup>42</sup> Second, the Deuteronomic Code, which likely dates from the Neo-Assyrian period (seventh-century Judah), most likely grew out of a revision and transformation of the Covenant Code.<sup>43</sup> Finally, the Priestly Code, which includes the later Holiness Code, was likely compiled during the Babylonian exile, even while parts of the priestly teachings certainly pre-dated the exile as a specialized work circulating exclusively in priestly circles in both oral and written forms, as similar literature did in other ancient cultures.<sup>44</sup> What is perhaps surprising about Israel's written tradition is that the final editors did not do away with earlier material that had already been revised or updated, but rather preserved it, thus presenting multiple renderings of any given topic, including Israelite law.<sup>45</sup> Therefore, even as Israelite oral and written traditions are heavily edited so that they comprise one continuous story, their anthological character remains; the teaching of Israel, and its God, hardly speak with one voice.<sup>46</sup>

The combined law collections are placed by the biblical redactors as the climax of a story of liberation, revelation, and the forging of a divine-human relationship. Many scholars have noted the inextricability of biblical law and the structure of covenant, which together appear closely modeled on ancient Near Eastern treaties.<sup>47</sup> The narrative of the covenant is a powerful one: Israel's early ancestral narratives and its history of enslavement in Egypt, along with the miraculous protection that YHWH has given these proto-Israelites, become a type of salvation history; they point, teleologically, to the theophany at Sinai, an event which for Israel gains its significance through lawgiving. Here, we find a mutual (if lopsided, in terms of power and status) agreement depicted between YHWH and the Israelites: if Israel obeys the laws and is loyal to YHWH, YHWH bestows gifts and blessings upon them. If, on the other

<sup>42</sup> See Wright, *Inventing God's Law*.

<sup>43</sup> See Levinson, *Deuteronomy*.

<sup>44</sup> See Carr, *Tablet of the Heart*, chapter 6, section "Other Biblical Literature as Educational Literature: Torah, Psalms, and Other Texts."

<sup>45</sup> Walzer, "The Legal Codes."

<sup>46</sup> For the idea of "pluriform" revelation, see Chapter 3 of the current volume.

<sup>47</sup> See McCarthy, *Treaty and Covenant*.

hand, Israel is disloyal to the treaty and does not obey the laws, YHWH removes his protection and carries out curses upon Israel. The relationship between Israel and God is thus depicted as formalized, mutually, in conditional, covenantal language.<sup>48</sup> The laws, then, do not abruptly interrupt the chronology of Israel's history, but are naturally placed within a narrative of covenant making; the laws attain their authority not only because of the divine voice that utters them, but through the Israelites' consent.<sup>49</sup> The whole record of Israelite history becomes a narrative frame around a formal, legal center. Israel's early history is understood as a covenantal pre-history through YHWH's promises of blessing; YHWH's liberation of Israel from oppression then culminates in the forging of the covenant itself; a golden age of harmony and Israelite ascendancy follows from the covenant, but Israelite contentment and self-satisfaction also lead to breach of the covenant; Israel's decline is seen in terms of estrangement from YHWH; suffering is perceived as sanction, as after which Israel will eventually return to the covenant and its blessings.

At the same time, law within Israel's Torah is not incidental to the covenant, as some might contend.<sup>50</sup> For a long time, biblical scholars who had a distaste for law or legalism invoked the notion of covenant to give the law true theological meaning. As Jon D. Levenson writes, "The . . . appreciation of covenant has redeemed law for biblical theology for covenant gives law a place within a structure of faith . . ."<sup>51</sup> This view persists, though it has become somewhat less ideologically grounded.<sup>52</sup> However, rather than asserting that "covenant subsumes law,"<sup>53</sup> we might recognize that while law is embedded in covenant it is also fully present in elaborate detail at the center of the Pentateuch – a frustrating distraction to a reader primarily invested in the narrative progression of Israel's story. Rather than focus primarily on *either* covenant *or* law, Bernard Levinson suggests that biblical scholars arrive at "a theory of revelation derived *equally* from narrative and law."<sup>54</sup>

One might conclude that the framework of covenant successfully weds a mythic, legendary, and historical narrative to legal prescriptions, suggesting

<sup>48</sup> Levinson, *Chorale*, p. 49.

<sup>49</sup> *Ibid.*, p. 50.

<sup>50</sup> Jon D. Levenson summarizes the scholarship that conflates biblical covenant with law, quoting one biblical commentator who writes: "ultimately covenant and law become synonymous." Levenson, "The Theologies of Commandment," p. 21.

<sup>51</sup> *Ibid.*, pp. 18–19.

<sup>52</sup> For example, see Sprinkle, "Law and Narrative," p. 251: "[The structure of the Sinai narrative reveals] the priority of covenant over law, and plac[es] the concept of fear of Yahweh at the heart of that covenant."

<sup>53</sup> Levenson, "The Theologies of Commandment," p. 19.

<sup>54</sup> Levinson, *Chorale*, p. 9.

that narrative, history, and even creation itself are yoked to a demand for justice and obedience. Moreover, it suggests that Israel's laws are not arbitrary, but are rather the culmination of the divine plan for the universe, and specifically for YHWH's people. However, it is important to note that these inferences are not stated outright in the Pentateuch, nor are the narrative and law in the Hebrew Bible woven together seamlessly; there is no thorough justification of the laws in terms of divine oversight or nature that one finds among later writers and commentators. Legal collections in the Hebrew Bible still appear haphazardly organized and only at certain moments do they tie themselves directly to Israelite narrative history.

Given that Israelite law collections are embedded within a narrative of Israel's history and a story of covenant making, it becomes clear that the division of the Pentateuch into "legal" and "narrative" sections with a broad brush is largely unsustainable.<sup>55</sup> Biblical law for the most part does not read like modern legalese, which is often composed of neutral, impartial, and precise language stripped of any emotional impact, narrative tension, or persuasive rhetoric. Biblical law is primarily casuistic: if-then clauses which are each mini hypothetical narratives, posing a tense protasis and concluding with an appropriate, and often satisfying, resolution.<sup>56</sup> Assnat Bartor describes them in narratological terms:

The outstanding poetic accomplishment that is reflected in the casuistic laws is the production of mimetic texts – imitating reality – within a rigid pattern with fixed linguistic elements. The description of events and characters in the casuistic laws in a realistic, vivid manner – albeit not rich in details – leaves the reader with an intense impression of reality . . . The ability to "hear" the characters' words gives the events dramatic color.<sup>57</sup>

The "vivid" and "dramatic" reality of the casuistic laws can be seen, for example, in the law concerning a poor man's garment. It reads:

If you take your neighbor's cloak in pawn, you shall restore it before the sun goes down; for it may be your neighbor's only clothing to use as cover; in what else shall that person sleep? And if your neighbor cries out to me, I will listen, for I am compassionate. (Exod 22:26–27)

Bartor analyzes this passage in terms of vivid imagery and literary point of view. She reveals the attention to word choice and narrative detail as she

<sup>55</sup> As it is with contemporary legal discourse as well. See Brooks, "Narrative in and of the Law."

<sup>56</sup> See Bartor, *Reading Law as Narrative*; Sternberg, "If-Plots: Narrativity and the Law-Code"; and Halberstam, "The Art of Biblical Law."

<sup>57</sup> Bartor, "The Representation of Speech," p. 248.

observes the use of “personal’ language, which describes so vividly and palpably the poor person’s distress to such an extent that the reader can feel the night chill on his coverless body.”<sup>58</sup> She also shows that the lawgiver’s perspective shifts to the point of view of the poor man himself and his “personal position,” such that “[t]he rhetorical question ‘in what else shall he sleep?’ reflects the scene of a dialogue between the poor person and the lender.”<sup>59</sup> The law, then, far from a simple imperative or regulation, is a dramatic confrontation between two different social viewpoints.

For Bartor, then, this narratologically rich casuistic law intends not simply to command, but “is aimed at persuading, at ‘leading’ the lender to the recognition” of the poor man’s perspective. A rhetoric of persuasion is actually woven into the Pentateuch as a whole.<sup>60</sup> We can perhaps locate it most clearly in biblical law in the appearance of these so-called motive clauses attached to various biblical stipulations, which appear far more frequently in biblical law than in their ancient Near Eastern counterparts.<sup>61</sup> As such, they may point to a particular interest among ancient Israelite scribes in interweaving legal regulations with other discourses that support them.<sup>62</sup> These motive clauses function in several different ways. Some motive clauses, as James Watts observes, “create links between the lists of laws and the stories of the Pentateuch,”<sup>63</sup> grounding the laws directly in Israel’s personal history and experience,<sup>64</sup> or in universal stories such as creation.<sup>65</sup> The motive clauses also function to tie observance of the laws to the emotions of readers (or hearers); several laws, for example, endeavor to activate empathy in order to engender adherence. Bartor sees this precise motivation in the legal stipulation about lending quoted above: “it evokes the effect of solidarity and empathy toward the poor person, promoting an empathetic identification on the part of the reader.”<sup>66</sup> Thomas Kazen, writing about emotions in the Hebrew Bible, sees empathy functioning in many of the motive clauses throughout the legal collections, even those that appear, at first, to be based solely on the threat of

<sup>58</sup> *Ibid.*, p. 236.

<sup>59</sup> *Ibid.*, p. 237.

<sup>60</sup> See Watts, *Reading Law*.

<sup>61</sup> *Ibid.*, p. 65.

<sup>62</sup> Watts (*ibid.*) sees this interest as connected to the emphasis in Israel on teaching and the continuities with the wisdom tradition (see below).

<sup>63</sup> *Ibid.*, p. 66.

<sup>64</sup> For example, as slaves in Egypt. Deut 24:17–18 states: “You shall not deprive a resident alien or an orphan of justice; you shall not take a widow’s garment in pledge. Remember that you were a slave in Egypt and the LORD your God redeemed you from there; therefore I command you to do this.”

<sup>65</sup> Watts, *Reading Law*, p. 67.

<sup>66</sup> Bartor, “The Representation of Speech,” pp. 248–49.

divine punishment. Commenting on the law in Exodus that warns that in response to abusing widows and orphans, YHWH will “kill you with the sword, and your wives will become widows and your children orphans” (Exod 22:24), Kazen writes:

Despite the harshness, the effect is an appeal to the recipients’ experience . . . The threat seeks an *affective response* to the imagined fate of one’s own family and, in extension, to the fate of those who are presently struck by such unfortunate circumstances. This is not an appeal to a cognitive understanding or cool reason alone, but again we might suggest an empathic arousal by *mediated association* . . .<sup>67</sup>

Ultimately, biblical laws are themselves dramatic and emotive; they are linked to the larger myths and narratives in Israel’s memory, and they are scripturally embedded within a written narrative of Israel’s origins as a nation.

The lines between law and narrative break down even further in stories about the aetiologies of particular laws, which proliferate in the Pentateuch – some with more focus on the legal conclusion, and some in which the legal conclusion appears to be an afterthought. Compare, for example, the story of the blasphemer in Leviticus to the quasi-mystical tale of Jacob’s encounter with YHWH in Genesis. In Leviticus, we read:

A man whose mother was an Israelite and whose father was an Egyptian came out among the people of Israel; and the Israelite woman’s son and a certain Israelite began fighting in the camp. The Israelite woman’s son blasphemed the Name in a curse. And they brought him to Moses – now his mother’s name was Shelomith, daughter of Dibri, of the tribe of Dan – and they put him in custody, until the decision of YHWH should be made clear to them. YHWH said to Moses, saying: Take the blasphemer outside the camp; and let all who were within hearing lay their hands on his head, and let the whole *congregation* stone him. And speak to the people of Israel, saying: Anyone who curses God shall bear the sin. One who blasphemes the name of YHWH shall be put to death; the whole congregation shall stone the blasphemer. Aliens as well as citizens, when they blaspheme the Name, shall be put to death. Anyone who kills a human being shall be put to death. Anyone who kills an animal shall make restitution for it, life for life. Anyone who maims another shall suffer the same injury in return: fracture for fracture, eye for eye, tooth for tooth; the injury inflicted is the injury to be suffered. One who kills an animal shall make restitution for it; but one who kills a human being shall be put to death. You shall have one law for the alien and for the citizen: for I am YHWH your God. Moses spoke thus to the people of Israel; and they took the blasphemer outside

<sup>67</sup> Kazen, *Emotions*, p. 101.

the camp, and stoned him to death. The people of Israel did as YHWH had commanded Moses. (Lev 24:10–23)

This passage is undoubtedly a *story*: it is about specific individuals, complete with proper names, and it both begins and ends in a particular setting. Nevertheless, the oracular pronouncement, generalizable, universal, and indeed formulaic (the law of *talion*, phrased as it is, appears in every biblical law collection as well as many extra-biblical law collections), forms the heart of the narrative. The universal, normative force of this particular mini-narrative is overtly signaled in YHWH's speech; instructions are given to Moses as to how to deal with this particular blasphemer, but then it continues: "And speak to the people of Israel, saying: *Anyone* who curses God shall bear the sin." Is this passage narrative or law? Commentators have argued for each,<sup>68</sup> but it might make sense to recognize that law and narrative, as written genres, are far more intertwined than conventional thinking suggests.

If the law of *talion* in Leviticus appears to have little more than a flimsy narrative framework supporting it, the story of Jacob's encounter with YHWH at the river Jabbok is one of the most powerful narratives in the Hebrew Bible. Nevertheless, it ends on a kind of anti-climax, a legal coda that Robert Alter designates a "concluding etiological notice." The story reads:

Jacob was left alone; and a man wrestled with him until daybreak. When the man saw that he did not prevail against Jacob, he struck him on the hip socket; and Jacob's hip was put out of joint as he wrestled with him. Then he said, "Let me go, for the day is breaking." But Jacob said, "I will not let you go, unless you bless me." So he said to him, "What is your name?" And he said, "Jacob." Then the man said, "You shall no longer be called Jacob, but Israel, for you have striven with God and with humans, and have prevailed." Then Jacob asked him, "Please tell me your name." But he said, "Why is it that you ask my name?" And there he blessed him. So Jacob called the place Peniel, saying, "For I have seen God face to face, and yet my life is preserved." The sun rose upon him as he passed Peniel, limping because of his hip. Therefore to this day the Israelites do not eat the thigh muscle that is on the hip socket, because he struck Jacob on the hip socket at the thigh muscle.

Alter refers to this story as having a "folkloric character" and depicting Jacob's "dark night of the soul" in a "haunting episode." Stephen Geller sees the story as a "true myth"<sup>69</sup> that possesses unreconcilable tensions and

<sup>68</sup> See Wenham, *The Book of Leviticus*, p. 311, who sees this passage as a common example of legal precedent; as opposed to Hartley, *Leviticus*, p. 406, who sees this passage as a narrative.

<sup>69</sup> Geller, *Sacred Enigmas*, p. 24.

“pregnant ambiguity.”<sup>70</sup> But could this incident not similarly be read as legal precedent, or a legal origin story, much like the story about the blasphemer? To be sure, the final comment about not eating the thigh muscle appears in the indicative rather than imperative; nevertheless, although the custom of refraining from eating the thigh muscle does not appear elsewhere in the Hebrew Bible,<sup>71</sup> this story concludes with enough universalized normativity to justify the practice in later Jewish law.<sup>72</sup> As much as the biblical legal collections are inflected with narrative, the powerful, mythic, biblical narratives are injected with normative ends.<sup>73</sup>

### *Legal Discourse in the Prophets*

Much as narratives in the Pentateuch can feature legal themes and universalizable imperatives, the prophetic books often rely upon legal language to attain ethical and normative weight. While the prophets never call upon the authority of a legal code or a particular commandment,<sup>74</sup> the imaginative universe they call forth is undoubtedly normative. For the prophets, justice is paramount: it is the cornerstone of the divinely ordered cosmos, and a definitive element in God’s relationship with humanity and the natural world. When human beings fail to act justly, then natural or divine justice takes effect: sanctions are imposed, and transgressors, often collectively, pay for their wrongdoing by retributive suffering, whether through the hands of other humans, such as invading armies, or natural afflictions and disasters. In the end, the scales of justice are always rebalanced. Taken as a whole, then, the prophetic universe operates according to a kind of legal logic: basic rules of just order must be followed, and corrective punishment occurs when they are flouted.

Adding to this overall structure, interspersed throughout the prophetic books, are specific structural models, allusions, vocabulary, and literary tropes that are drawn from the legal world. Prophets draw upon both substantive law, as well as the structure of legal procedure, in order to emphasize the importance of social and interpersonal justice which they see being violated, and, perhaps to a lesser extent, the relationship between Israel and her God. Some of the most prominent of these will be outlined below: the talionic principle,

<sup>70</sup> *Ibid.*, p. 23.

<sup>71</sup> Wenham, *Genesis 16-50*, p. 297.

<sup>72</sup> See Schiffman, “The Patriarchs and Halakhah,” p. 254, which shows that this custom was accepted by both the Dead Sea community and the early rabbis.

<sup>73</sup> On the detachment of law from narrative, and re-embedding in new narrative contexts, see Chapter 3 of the current volume.

<sup>74</sup> LeFebvre, *Collections*, p. 49.



the “*rib*” (lawsuit) pattern, the juridical parable, and, finally reference to specific laws in the Israelite tradition – including the Decalogue as a whole.

### Talion

Patrick Miller, in his book *Sin and Judgment in the Prophets*, outlines the recurrence of a pattern of correspondence between the crimes of which Israel is accused, and the punishments of which the prophets warn. These correspondences, which are both “stylistic and theological,”<sup>75</sup> are related to a prominent element in Israelite (and ancient Near Eastern) penology: *talion*, or equal and similar retaliation – “an eye for an eye.”<sup>76</sup> In his book, Miller differentiates different categories or kinds of sin–judgment correspondence he observes in the prophets: (1) general correspondence, (2) correspondence of instrument/means, and finally (3) talionic correspondence.<sup>77</sup> Within the category of talionic correspondence, which is the category that best suits the majority of prophetic judgment oracles,<sup>78</sup> Miller outlines various subcategories: correspondence in “nominal form,” the “*ka’asher* (‘as’) + verb” formulation, correspondence in verbs describing the punishment and the crime, the “talionic idea” without formulas, and “indirect correspondence.”<sup>79</sup> In other words, the stylistic and conceptual correspondences that the prophets draw between crime and punishment range from close affinity to pentateuchal legal expressions of *talion* (the “nominal” form, or “X *taḥat* [for] X”) to those that merely imply it. Nevertheless, the idea of a talionic logic lurks behind many prophetic judgment oracles, according to Miller, and that logic draws the processes of history, or “acts of God,” into a legal framework. “One of the clear conclusions of this study,” Miller asserts, “is that a notion of retributive [talionic] justice is not incompatible with an understanding of divine judgment wrought out in the process of history.”<sup>80</sup>

As an example of “complete correspondence,” Miller highlights a passage in the book of Joel:

You have sold the people of Judah and Jerusalem to the Greeks, removing them far from their own border. But now I will rouse them to leave the places to which you have sold them, and I will turn your deeds back upon your own heads. I will sell your sons and your daughters into the hand of

<sup>75</sup> Miller, *Sin and Judgment*, p. 1.

<sup>76</sup> See *ibid.*, p. 3, who traces this insight back to N. Lohfink.

<sup>77</sup> *Ibid.*, pp. 105–10.

<sup>78</sup> *Ibid.*, p. 106.

<sup>79</sup> *Ibid.*, pp. 111–13.

<sup>80</sup> *Ibid.*, p. 138.

the people of Judah, and they will sell them to the Sabians, to a nation far away; for YHWH has spoken. (Joel 4:4–8)

This passage has, at its center, a clear expression of the talionic ideal: “I will turn your deeds back upon your own heads.” But the passage does more than that; the punishment is “a complete reversal and the victim of the crime becomes the agent of judgment against the one committing the crime. Those who were sold to a far off nation will in turn sell to a far off nation those who sold them.”<sup>81</sup> And indeed, the same verb (*maḥar*) is used in both the crime and the punishment, to underscore their equivalence.

The connections that Miller draws between prophetic judgment oracles and the legal understanding of talion are, in the end, stylistic and discursive – they are not meant to indicate a lived experience of talionic justice from the heavens. He concludes: “the prophets declared a *poetic justice*, not only seeing in the events of the future the enactment of Yahweh’s decree of judgment, but frequently perceiving an appropriateness of the punishment to the crime.”<sup>82</sup> It was precisely by borrowing language from the sphere of law and applying it to the divine direction of history that the prophets and the editors of their oracles endeavored to reshape the way Israelites – and later readers and hearers of these written prophetic texts – thought about history and their place in the divine cosmos.

### The *Riv* Pattern

There is a vast quantity of scholarship on the phenomenon of the “covenant lawsuit” among Israel’s prophets;<sup>83</sup> for the purposes of this chapter, the *riv* can be understood as a legal metaphor, “a persuasive technique by the prophet, a paranetic strategy to convince the intended audience to amend their ways.”<sup>84</sup> The lawsuit oracle usually includes the Hebrew root *ryb*, which denotes “to contend,” and is frequently used in legal contexts.<sup>85</sup> The structure, which varies quite a bit, usually includes a summons to heaven and earth or other natural phenomena and a description of the scene of judgment; an accusation or charge; and possibly a pronouncement of guilt and sentence.<sup>86</sup> The *riv* imagines, most often, Israel on trial – charged by YHWH

<sup>81</sup> *Ibid.*, p. 132.

<sup>82</sup> *Ibid.*, p. 139, emphasis mine.

<sup>83</sup> This pattern was first noted by Gunkel and Begerich, *Einleitung in die Psalmen*, pp. 364–66.

<sup>84</sup> Kensky, *Trying Man*, p. 31.

<sup>85</sup> Despite the fact that *riv* does not literally mean “to file suit,” I contend, contra Dwight R. Daniels (“Is There a ‘Prophetic Lawsuit’ Genre?”), that it can still be understood as a legal term; it is used frequently enough in legal contexts that it certainly carries a legal overtone.

<sup>86</sup> Huffmon, “The Covenant Lawsuit,” pp. 285–86 (summarizing Gunkel and Begerich).

for a variety of offenses: deserting YHWH, oppression of the vulnerable, and serious crimes like murder. For some scholars, the *riv* oracle specifically relies on widespread knowledge of Israel's covenant, an agreement between YHWH and Israel, and thus, in the *riv*, YHWH prosecutes Israel for breach of covenant.<sup>87</sup> For others, the *riv* may have drawn on a growing sense of a covenantal relationship between YHWH and Israel, but it relies more on a general sense of "justice and righteousness," arising naturally from the divine ordering of the cosmos.<sup>88</sup>

A powerful *riv* oracle can be found in the book of Micah:

- 1 Hear what YHWH says:  
Rise, plead your case [*rib*] before the mountains,  
and let the hills hear your voice.
- 2 Hear, you mountains, the dispute [*rib*] of YHWH,  
and you enduring foundations of the earth;  
for the LORD has a dispute [*rib*] with his people,  
and he will contend with Israel.
- 3 "O my people, what have I done to you?  
In what have I wearied you? Answer me!
- 4 For I brought you up from the land of Egypt,  
and redeemed you from the house of slavery; . . ."
- 6 "With what shall I come before YHWH,  
and bow myself before God on high?  
Shall I come before him with burnt offerings,  
with calves a year old?
- 7 Will YHWH be pleased with thousands of rams,  
with ten thousands of rivers of oil?  
Shall I give my firstborn for my transgression,  
the fruit of my body for the sin of my soul?"
- 8 He has told you, O mortal, what is good;  
and what does YHWH require of you  
but to do justice, and to love kindness,  
and to walk humbly with your God? (Mic 6:1–8)

In this passage, the prophet utilizes a legal model and legal terminology in order to underscore his message of justice. The word *riv* is repeated three times, as the mountains and hills are called forward as judges: there can be no mistaking the courtroom setting and trial language in these first few verses. As with most prophetic poetry, however, there is a twist: rather than hearing

<sup>87</sup> See, for example, Bergren, *The Prophets and the Law*.

<sup>88</sup> LeFebvre, *Collections*, p. 49.

YHWH's accusation, as we do in many other *riv* oracles,<sup>89</sup> we realize that YHWH has convened the court in order to challenge Israel to lay her charge against *him*. And then, instead of prosecuting God, Israel wants to reconcile – a model, perhaps, of restorative justice rather than an adversarial process. But Israel seeks cultic means to solve a juridical problem, and that will not suffice; according to the last verse, it is only just action toward other people, and loyalty to YHWH, that can resolve the dispute.

Passages such as this one are found throughout the prophetic books; in fact, Second Isaiah is often deemed to be composed entirely of trial oracles, with a courtroom setting providing the overarching thematic throughline.<sup>90</sup> Law thus provides a discursive medium for the prophets who sought not only to warn Israel of impending disaster, but to explain Israel's suffering in light of her relationship with YHWH. According to Meira Kensky, the *riv* oracle did just that: "By using the courtroom metaphor explicitly in the *riv* pattern, the authors are not only emphasizing that no decision by God is arbitrary and capricious, but they are also suggesting that God has engaged in a particular process that seeks to channel his understandable anger appropriately."<sup>91</sup> Historical catastrophes, immanent or recently survived, are filtered through the language of law and rationalized as appropriate and predictable sanctions, meted out only after due process and a fair hearing.

### Juridical Parable

Uriel Simon identified the prophetic genre of the "juridical parable" as "a realistic story about a violation of law, related to someone who had committed a similar offense with the purpose of leading the unsuspecting hearer to pass judgment on himself."<sup>92</sup> As with the *riv* oracle, however, scholars have subsequently questioned whether or not the "juridical parable" ought to be classified as a genre, considering the high degree of variability among the relatively few instances of the "juridical parable" in the prophetic corpus. George Coats, for example, suggests that the form, as opposed to the function, of Simon's "juridical parables" is not distinctive enough to constitute a distinct genre.<sup>93</sup> Nevertheless, comparing these stories to ancient Israelite inscriptions, Simon Parker concludes that in fact there is a subset of narratives in the Hebrew Bible that can be understood as "petitionary

<sup>89</sup> See, for example, Jer 2:4–13.

<sup>90</sup> Köhler, *Deuterocesaja*, as cited by Kensky, *Trying Man*, p. 36 n. 67.

<sup>91</sup> Kensky, *Trying Man*, p. 38.

<sup>92</sup> Simon, "The Poor Man's Ewe-Lamb," pp. 220–21.

<sup>93</sup> Coats, "Parable, Fable and Anecdote."

narratives” – stories in which individuals, seeking relief from “adverse circumstances,” appeal to a higher authority, such as a family elder or even the king.<sup>94</sup> This subgenre is almost entirely coterminous with Simon’s “juridical parable.” Thus the juridical parable, or petitionary narrative, blends together the functions of law and narrative: the petitioner elicits identification and empathy from the hearer (and reader), but also demands judgment. As Parker observes, “the petitionary narrative is incomplete: it reaches a climax, which the addressee is expected to resolve by his action in the present.”<sup>95</sup> Indeed, even the vocabulary of the juridical parable/petitionary narrative intermixes legal and narrative terms:

the verb *ts-'q* appears to be used of the action of appealing or petitioning. In such contexts . . . it may have the more narrow sense of “appeal for a hearing,” referring, that is, to the opening statement or cry of the petitioner . . . [Next,] where the story is not quoted, [the petitioner’s] speech is referred to by the verb *spr*, a word more suited to narration than a nonnarrative appeal.

Such stories about petitioners, that demand not just identification but action, not just sympathy but judgment, perfectly exemplify the blurred lines between legal and narrative discourse in Israelite prophetic literature.

One example of a juridical parable that Simon cites, which is perhaps uncharacteristic in its second-person rather than third-person voice, may reveal precisely the intended rhetorical aims of the juridical parable literary pattern:

- 1 Let me sing for my beloved  
my love-song concerning his vineyard:  
My beloved had a vineyard  
on a very fertile hill.
- 2 He dug it and cleared it of stones,  
and planted it with choice vines;  
he built a watchtower in the midst of it,  
and hewed out a wine vat in it;  
he expected it to yield grapes,  
but it yielded wild grapes.
- 3 And now, inhabitants of Jerusalem  
and people of Judah,  
judge between me  
and my vineyard.
- 4 What more was there to do for my vineyard  
that I have not done in it?

<sup>94</sup> Parker, *Stories in Scripture and Inscriptions*, p. 13.

<sup>95</sup> *Ibid.*, p. 14.

When I expected it to yield grapes,  
 why did it yield wild grapes? (Isa 5:1–4)

This “legal petition” disguises itself to the reader as a love song, much as elsewhere, Nathan the Prophet’s parable of the poor man’s lamb disguises itself as a simple, pastoral story. The reader is lulled into the sweet rhythms of idyllic song about human relationships to nature, only to suddenly realize that it is a direct accusation of profound injustice in the relationship between human beings and their god. The reader (or hearer) is told that he or she cannot simply listen, but must *judge*. Reparative action, not just sympathetic feelings, are called for.

### Israelite Laws in the Prophets

In their exhortations to just and right action, the prophets never actually cite specific commandments or stipulations in the Israelite tradition that the nation has transgressed; this is to be expected, however, when we recall that the law collections were literary phenomena in ancient Israel rather than an enforced code of law. Some Israelites may have been more or less familiar with some aspects of the legal teachings (such as perhaps the Decalogue – see below) but would be more familiar with the general ethos of justice as well as loyalty to YHWH. As Michael LeFebvre writes, “the cry of the prophets is for justice and righteousness (e.g., Mic 6:8) not for the ‘rule of written law.’”<sup>96</sup> J. David Pleins puts it simply: the prophets understood that “the demands of YHWH entailed the pursuit of justice, a pursuit in which the nation has failed.”<sup>97</sup>

Nevertheless, there are several examples in the prophetic appeals for justice in which reference is made to laws that are also represented in Israel’s law collections.<sup>98</sup> Scholars have pointed out that the prophets curiously invoke only Israel’s apodictic legal tradition, rather than its tradition of casuistic law.<sup>99</sup> However, the meaningful distinction between apodictic and casuistic law has been seriously questioned,<sup>100</sup> and therefore it is more convincing to approach the prophetic appeals to “law” in their denunciations

<sup>96</sup> LeFebvre, *Collections*, p. 49.

<sup>97</sup> Pleins, *The Social Visions*, p. 80.

<sup>98</sup> I prefer not to refer to these moments as “citations,” since the prophets do not specifically “cite” a law tradition at any point; rather, they call for points of justice that the law collections, still in development, call for as well.

<sup>99</sup> See Bergren, *The Prophets and the Law*, pp. 62–79.

<sup>100</sup> See Phillips, “Prophecy and Law,” p. 219: “While scholars such as Gerstenberger (1965) and Gilmer (1975) have refined Alt’s rigid division between apodictic and casuistic law, others like Wagner (1972) have abandoned it.”

of Israel's crimes in a more general sense, acknowledging that "law writings [specifically] were not appealed to by prophets in their polemics against impure worship and social injustice."<sup>101</sup>

Yet, it is clear that several points of law in the Israelite legal collections are directly echoed in prophetic literature. The connections between prophetic proclamations and specific stipulations found in the law collections often appear to be more than coincidental. For example, Amos 2:7–8 rails against those who mistreat and oppress the poor, and includes one curious detail: "they who trample the heads of the poor into the dust of the earth, . . . they lay themselves down beside every altar on garments taken in pledge . . ." This message clearly parallels the spirit, if not the vocabulary, of the rule in the Covenant Code: "If you take your neighbor's cloak in pawn, you shall restore it before the sun goes down" (Exod 22:26). Both Isaiah 5:22–23 and Amos 5:12 also speak of perversion of justice in similar terms to the Covenant Code:

Isaiah 5:22–23: Ah, you who are heroes in drinking wine, and valiant at mixing drink, who acquit the guilty for a bribe, and deprive the innocent of their rights!

Amos 5:12: "For I know how many are your transgressions, and how great are your sins – you who afflict the righteous, who take a bribe, and push aside the needy in the gate."

Exodus 23:6–8: "You shall not pervert the justice due to your poor in their lawsuits. Keep far from a false charge, and do not kill the innocent and those in the right, for I will not acquit the guilty. You shall take no bribe, for a bribe blinds the officials, and subverts the cause of those who are in the right."

These three texts all highlight similar points: oppressing the innocent, taking bribes, afflicting the needy. They also, in some instances, use parallel vocabulary. According to J. David Pleins, "the connections between the Pentateuch and the prophets Isaiah and Amos on this point are striking."<sup>102</sup>

It is not only in the area of social justice that prophetic oracles parallel the law collections, but also in the realm of cultic law. Micah, for example, excoriates Israel for various cultic misdeeds:

5:12 I will cut off sorceries from your hand,  
and you shall have no more soothsayers;  
13 and I will cut off your images  
and your pillars from among you,  
and you shall bow down no more  
to the work of your hands;

<sup>101</sup> LeFebvre, *Collections*, p. 49 n. 71.

<sup>102</sup> Pleins, *The Social Visions*, p. 79.

14 and I will uproot your sacred poles from among you  
and destroy your towns. (Mic 5:12–14)

All of these cultic prohibitions are found in the pentateuchal legal collections as well:

Deuteronomy 18:10: No one shall be found among you who makes a son or daughter pass through fire, or who practices divination, or is a soothsayer, or an augur, or a sorcerer.

Leviticus 26:1: You shall make for yourselves no idols and erect no carved images or pillars, and you shall not place figured stones in your land, to worship at them.

Deuteronomy 16:21–22: You shall not plant any tree as a sacred pole beside the altar that you make for YHWH your God; nor shall you set up a stone pillar – things that YHWH your God hates.<sup>103</sup>

Again, both in the law collections and in the prophets we see the same constellations of concerns: images, pillars, sacred poles, sorcery. All are violations of Israel's exclusive bond with YHWH; all constitute apostasy and arouse YHWH's wrath.

In addition to these individual points of law, the Decalogue as a whole is conspicuously evoked in two separate prophetic passages:

Hosea 4:2: Swearing, lying, and murder, and stealing and adultery break out; bloodshed follows bloodshed.

Jeremiah 7:9: Will you steal, murder, commit adultery, swear falsely, make offerings to Baal, and go after other gods that you have not known?

According to Anthony Phillips, "There can be no doubt that the five absolute infinitives of [Hosea] 4:2 refer to those crimes covered by the third, ninth, sixth, eighth and seventh commandments . . . Although neither vocabulary nor order correspond with the Decalogue, it is difficult not to recognize an explicit reference to it, particularly as the order of crimes can be accounted for by association."<sup>104</sup> The same is true for the passage in Jeremiah. While Phillips and others<sup>105</sup> argue that the Decalogue is invoked in order to suggest that Israel has specifically breached "the covenant law of Sinai,"<sup>106</sup> it is equally, if not more plausible, that these prophets allude to the Decalogue, a well-known Israelite tradition, in order to appeal to the "moral ideals" it

<sup>103</sup> See Bergren, *The Prophets and the Law*, p. 183. Bergren includes a useful index (pp. 182–83) of prophetic oracles and their parallels in the pentateuchal law collections.

<sup>104</sup> Phillips, "Prophecy and Law," p. 225.

<sup>105</sup> See Bergren, *The Prophets and the Law*, p. 64.

<sup>106</sup> Phillips, "Prophecy and Law," p. 226.



enshrines, rather than “enforceable statute.”<sup>107</sup> The Decalogue imparts the cornerstones of Israel’s venerable *torah*; the prophets hold these ideals against the reality of Israelite behavior and find the people wanting.

The prophetic accusations are written, poetically, in the indicative mood; the pentateuchal rules are written in the second-person imperative. They each belong to different literary genres, but the parallels and convergences are difficult to ignore. The aim or function of both is similar: to urge the people of Israel toward justice and loyalty to YHWH. The themes of justice (in history and society), fidelity to YHWH, and protection of the vulnerable are present throughout each. The conceptual boundaries between “legal writing” and “prophecy” are revealed to be entirely permeable.

#### CONCLUSION: LAW, TEACHING, AND TORAH

This chapter has surveyed several aspects of the notion of law in ancient Israel and the Hebrew Bible. First, it explored legal practice in ancient Israel, noting that legal education and even adjudication were continuous with general education in the *torah* of YHWH, and with other political or cultic offices. Next, it examined legal writing in the Hebrew Bible, observing the ways in which it is difficult, if not impossible, to isolate legal writing from other literary genres, such as narrative or prophetic oracle. Unfortunately, space does not permit a more thorough exploration of the way law features in what are known, collectively, as “the Writings” – in narrative such as the book of Ruth, and in liturgical poetry such as the Psalms.

The affinity of law with the genre of wisdom, however, requires some comment. Scholars have, for a long time, noted the connections between law and wisdom, particularly with regard to the book of Deuteronomy.<sup>108</sup> For Joseph Blenkinsopp, “The law is . . . *the* expression of divine wisdom made available to Israel.”<sup>109</sup> For David Carr, law (as well as other genres in Torah) is continuous with wisdom in their educational and formative aims; in fact, Carr notes the resemblances between Proverbs and Deuteronomy and argues that deuteronomic authors “who were schooled in and had memorized passages such as [those in Proverbs] reappropriated their language to make heightened claims for the Deuteronomic ‘Torah,’ a teaching now claimed to be yet older (Mosaic) and more divine than the ‘teaching’ of the father and mother celebrated in traditional wisdom literature.”<sup>110</sup> Indeed, the boundaries between

<sup>107</sup> LeFebvre, *Collections*, p. 51.

<sup>108</sup> See Weinfeld, *Deuteronomy*; Blenkinsopp, *Wisdom and Law*; and Carr, *Writing on the Tablet*.

<sup>109</sup> Blenkinsopp, *Wisdom and Law*, p. 153.

<sup>110</sup> Carr, *Formation*, p. 419.

“scribal advice,” apodictic law (without sanctions attached), and casuistic law (with sanctions attached) are difficult to maintain.

Even the book of Job, the Hebrew Bible’s most famous work of protest literature, the book of wisdom that rails against the injustices of the universe and condemns YHWH as hostile and capricious, incorporates legal language into its wisdom poetry, seeing law, as opposed to divine mercy, as potentially redemptive. As Carol Newsom observes,

Only in the book of Job is the metaphor for a trial with God developed in such a fashion that it becomes a potential model for organizing a person’s relationship with God as an alternative to the models of psalmic and sapiential piety . . . [I]n Job’s speeches legal language repeatedly flares and fades. But the frequency with which Job returns to it, and its strong presence in his final extended speech in chapter 31, underscores its significance in the book as a whole.<sup>111</sup>

As he suffers at God’s hand, Job longs for the clarity of a divine lawsuit, as the prophets described the *rib* with YHWH. He craves to experience God’s wrath channeled through the formalities of a criminal trial, to take the stand and defend himself rather than being crushed and tormented: “O, that I had someone to give me a hearing; / O, that Shaddai would reply to my writ, / Or my accuser draw up a true bill! / I would carry it on my shoulder; / Tie it around me for a wreath” (Job 31:35–36).

Job, like so much of biblical literature, identifies justice as a personal, social, and divine pursuit, and it is thus woven into the fabric of his *cri de coeur*. The imaginative universe of the ancient Israelites was often a nomic one: law can be located in the highest ideals of Torah and the lowest, most desperate laments. It suffuses the language of the Hebrew Bible and mediates the relationship between individuals and their neighbors, between nations and their gods.

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<sup>111</sup> Newsom, “The Invention of the Divine Courtroom.”

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