One has to be very careful in using the Code of Hammurabi for expressing reality.
—Rivka Harris

As far as Hammurabi is concerned I think he is a very true mirror of the law.
—Raymond Westbrook

Should the so-called laws of the Pentateuch be considered actual law? This is a difficult question to answer. Traditional thinking has typically assumed an affirmative answer and even a direct link between the laws of the Pentateuch and those that governed ancient Israel and Judah. Over the course of the last several decades, however, these assumptions have been placed in serious doubt, and understandably so. Simple answers to the question have proved wholly inadequate. In
the effort to assess the nature of the pentateuchal texts in question, recent studies on biblical law have taken a number of different tacks. Opinions range from modified versions of the traditional view to theories that seek to divorce these texts entirely from the notion of law. No emerging consensus appears to be on the horizon.

In this article, I reexamine the question. My primary interest here is potential connections between sections of the Pentateuch and the practice of law in the ancient Near East. I also touch briefly on the more specific and more difficult question regarding any connection that biblical law might have with the legal systems operative in ancient Israel and Judah. Given the paucity of evidence (i.e., actual documentation from ancient Palestine) for Israelite and Judahite legal practice, however, a direct connection is impossible to establish. I do not, therefore, attempt to provide a decisive answer to this more specific question. Instead, I present a set of data that may help to provide a fresh perspective and that may, in the minds of some readers, establish an indirect connection between biblical law and Israelite/Judahite law. The chief goal of presenting this evidence is to demonstrate the inadequacy of those views that reject the legal nature of most of the relevant pentateuchal texts. The evidence indicates that there are significant connections between substantial portions of the pentateuchal law codes and operative ancient Near Eastern law. This may not mean that these codes functioned as legislative statutes; rather than declaring the law, they may only reflect some of the legal rules that were in force. This may also not mean that the whole of pentateuchal “law” is related to matters of actual societal law, but to dismiss all of it as such is misguided.

I begin by describing several points of view that seem to constitute the primary options in current scholarship for understanding biblical law in this regard. Second, I consider the question from the perspective provided by legal documents of practice from ancient Near Eastern societies other than Israel and Judah. These documents, which consist not of law codes but mainly of contracts, treaties, and trial records, provide important data on the law that was in effect in the ancient Near East—data to which the pentateuchal rules can be compared. Finally, I suggest which points of view this perspective seems to favor.

I. The Nature of Biblical Law

The debate about whether the ostensibly legal provisions of the Pentateuch actually constitute law is closely tied to the debate about the nature of all the so-called law codes from the ancient Near East. It was Assyriologists, during the first

4 The term “code,” of course, may be a misnomer, since these ancient writings lack many of the features of modern codes of law; the term “collection” may be more appropriate (see Pamela Barmash, *Homicide in the Biblical World* [Cambridge: Cambridge University Press, 2005] 6-7). In any case, I use the terms “code” and “collection” interchangeably. Most of these codes or collections
half of the twentieth century, who first engaged in this debate and did so primarily with respect to the Laws of Hammurabi (LH). They pointed out that in the several hundred trial records from the Old Babylonian period, the period from which the LH come, there is no mention of the legal provisions in the LH. Thus, there is no evidence that the courts of the time were using the LH as the basis for their verdicts. Perhaps the members of Old Babylonian society themselves did not view the LH as law. A number of important scholars began to argue that the LH and the other cuneiform law codes should not be conceived of as legislation. The debate has moved into biblical scholarship, and many of the same issues have been raised with respect to the pentateuchal codes. All of this has resulted in a variety of views regarding the nature of ancient Near Eastern law codes and especially those from the Hebrew Bible. In this section, I describe a number of the more important ideas on this topic espoused recently by scholars and concentrate on those that are interested chiefly in the biblical material. Some of these views overlap at points, but each has its own distinctive focus.

At the outset, it must be recognized that, in the final form of the biblical text, the pentateuchal codes seem to have a religious purpose as they relate to issues of

are preserved in cuneiform script. The seven cuneiform codes, in chronological order, are the following: The Laws of Ur-Namma, the Laws of Lipit-Ishtar, the Laws of Eshnunna, the Laws of Hammurabi, the Hittite Laws, the Middle Assyrian Laws, and the Neo-Babylonian Laws. The two biblical codes that are relevant to this discussion are the Covenant Code in Exodus 21–23 and the Deuteronomic Code in Deuteronomy 12–26. Most of the priestly laws are often excluded from this type of discussion because they deal almost exclusively with cultic as opposed to civil matters (see Raymond Westbrook, “Biblical and Cuneiform Law Codes,” RB 92 [1985] 247-64, esp. 248 n. 3).


For a helpful and thorough discussion of a variety of approaches to biblical law, without the more narrow focus of this article, see Bernard S. Jackson, Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1–22:16 (Oxford: Oxford University Press, 2006) 3-23.
covenant, community, and purity. Scholars have articulated this purpose in various ways, but most agree that biblical law, as it is presented in the Pentateuch, functions to promote a religious agenda rather than to establish a full-fledged legal system. In some respects, though, it is important that a discussion of whether the provisions in the Pentateuch constitute law precede an analysis of the religious function of biblical law. It is possible, for instance, that the codes or parts of the codes were self-contained entities at one time, before they were incorporated into the larger sections in which we now find them. Ascertaining the legal capacity or function, if any, of the provisions in the biblical codes—a capacity or function they may have had prior to their incorporation into biblical texts—can help to establish a more complete framework in which to analyze their religious function and how they fit into the broader agenda of the authors who brought them into the Pentateuch. It is this question about legal capacity that proponents of the views below seek to address.

A. Authoritative Law

The long-standing traditional view is that the legal material of the Pentateuch presents the law that was authoritative and in force in ancient Israel and Judah. This material is believed to have contained the rules by which the society and the legal system operated. Some scholars continue to hold this view. For example, Gregory C. Chirichigno argues that the passages on the manumission of slaves in Exodus, Leviticus, and Deuteronomy can be “understood as a single comprehensive system of social welfare legislation.” As “legislation,” these texts would have contained the rules that governed this “system of social welfare” and by which adherence to the law would have been judged. Ze’ev W. Falk, who also seems to have accepted this view, does not claim that the whole of pentateuchal law is legislation per se. He sees case law or “judicial precedents” at work. “This part included the casuistic-styled laws, collected together without the systematic reasoning of the legislator.” Thus, these scholars believe that the stipulations found in the Pentateuch, whether the result of precedent or legislation, formed authoritative law. This view has fallen into disfavor among many scholars, and it may


12 Also tending to follow this view is Moshe Greenberg, “Some Postulates of Biblical Criminal Law,” in Yechezkel Kaufmann Jubilee Volume: Studies in Bible and Jewish Religion (ed.
prove a difficult position to maintain given the trends of recent research outlined in the views below.

**B. Competing Sets of Authoritative Law**

A number of other scholars are willing to acknowledge the generally authoritative nature of pentateuchal legal texts for ancient Israelite and Judahite society, but they differ from the previous view on two important points. First, they do not see the various legal collections in the Pentateuch as forming a coherent system of law. Rather, the codes are at times in competition with each other, and portions of one code can even disagree with or attempt to revise other portions of the very same code. There has been much discussion, for instance, regarding the relationship between the Covenant Code and the Deuteronomic Code. Those who hold this point of view often argue that the latter is an attempt to transform the law in the Covenant Code, though the degree of intended transformation is disputed. Eckart Otto claims that the Deuteronomic Code was an attempt to reform the way in which the laws of the Covenant Code were being used.\(^{13}\) It did this by reinterpreting those laws rather narrowly in light of the Deuteronomic agenda of cultic centralization. Bernard M. Levinson, on the other hand, argues that the authors of the Deuteronomic Code were interested in much more than simply reinterpreting the Covenant Code. “Deuteronomy represents a radical revision of the Covenant Code. The authors of Deuteronomy sought to implement a far-reaching transformation of religion, law, and social structure that was essentially without cultural precedent.”\(^{14}\)

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\(^{13}\) Eckart Otto, “Vom Bundesbuch zum Deuteronomium: Die deuteronomische Redaktion in Dtn 12–26,” in *Biblische Theologie und gesellschaftlicher Wandel: Für Norbert Lohfink* (ed. Georg Braulik, Walter Groß, and Sean E. McEven; 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. Otto’s view must be slightly qualified. He believes that the pentateuchal laws, like their cuneiform counterparts, had their origins in scribal schools rather than in legislative activity per se. He goes on to argue, however, that Judahite priests (particularly those responsible for Deuteronomic law) utilized, modified, and supplemented these laws in order to create binding law that carried divine approval and would reform important social, political, and legal aspects of Judahite society (“Kodifizierung und Kanonisierung von Rechtssätzen in keilschriftlichen und biblischen Rechtssammlungen,” in *La Codification des lois dans l’antiquité* [ed. Lévy], 77-124, esp. 120 and 123-24).

\(^{14}\) Bernard M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (Oxford:
The second point on which there is disagreement with the first view has to do with the notion of authority. Advocates of this second view are, at times, equivocal about whether the biblical codes functioned as Israel and Judah’s authoritative law. The authors of the codes most likely intended their compilations to achieve legal authority, but whether the Deuteronomic Code, for instance, became the law of the land in ancient Judah is uncertain. In sum, although legal provisions in the Pentateuch may be in tension with one another, the authors of these provisions conceived of them as law and believed that they should acquire status as such.

C. Theoretical Treatises

A view that has gained some currency among Assyriologists with respect to the cuneiform law codes is the view that the codes are the result of the work of scribes in their attempt to construct what can be called scientific or academic treatises. According to this view, the codes are just one of the many treatments of, or treatises on, various areas of intellectual inquiry that ancient Near Eastern scribal schools produced. These treatises typically took the form of lists, such as the Mesopotamian astronomical, mathematical, omen, and medical lists. The codes were just one more type of list—law lists. In some instances, these scribal law lists were used for other purposes, such as political propaganda (in the case of the LH) and religious ideology (in the case of the pentateuchal codes), but in terms of their legal function, they remained largely theoretical enterprises.

Biblical scholars have made use of this theory. Lisbeth S. Fried, for example, accepts this view and applies it to biblical law, asserting that the pentateuchal codes are not related to the laws that were operative and enforced in Israel and Judah.

See, for example, Levinson’s contention that Deuteronomy’s authors intended a “far-reaching transformation of . . . law” (ibid., 3) vis-à-vis his reference to the codes as “theoretical reflections” (“The Right Chorale: From the Poetics to the Hermeneutics of the Hebrew Bible,” in “Not in Heaven”: Coherence and Complexity in Biblical Narrative [ed. Jason P. Rosenblatt and Joseph C. Sitterson, Jr.; Indiana Studies in Biblical Literature; Bloomington: Indiana University Press, 1991] 129-53, here 148). See also Anselm C. Hagedorn, Between Moses and Plato: Individual and Society in Deuteronomy and Ancient Greek Law (FRLANT 204; Göttingen: Vandenhoeck & Ruprecht, 2004) 283-84, who appears to follow a version of this view in his treatment of Deuteronomic law as containing some rules and traditions that may well have been in effect in ancient Judah.


See ibid., 166-69. Priests may also have had a hand in compiling the biblical material (see Eckart Otto, Gottes Recht als Menschenrecht: Rechts- und literaturhistorische Studien zum Deuteronomium [Beihefte zur Zeitschrift für altorientalische und biblische Rechtsgeschichte 2; Wiesbaden: Harrassowitz, 2002] 57-75).
Based on her analysis of the LH in particular, Fried concludes that, in general, “the codes are separate from the life of the people.”¹⁸ Dale Patrick also seems to follow this line of thinking. Although he believes that the authors of the codes hoped to influence the beliefs and mores of their respective communities, he holds to the “theoretical character of such exercises” in legal thinking.¹⁹ According to this view, although the authors of the codes may have believed that they were engaged in work with a quasi-legal orientation, and although the codes may have eventually taken on the aura of law at some point in Second Temple Judaism, it is the theoretical nature of the codes that makes them of little value for legal historians who wish to gain insight into the law of Israelite and Judahite society.

D. Legally Descriptive Treatises

A related point of view is that of scholars who accept the basic idea of the codes’ origin as academic treatises produced by scribal schools. They then move in a different direction by claiming that these treatises or law lists are fairly accurate as descriptions of operative law.²⁰ They do not claim that the law codes themselves functioned as authoritative law—that would give the codes a prescriptive function. Rather, scholars who hold this view attribute to the codes a descriptive function. That is, whatever the precise purpose of the scribal activity that produced the codes, these collections represent repositories and descriptions of the legal rules and customs that were traditionally practiced.²¹ The scribes may also have developed hypothetical scenarios and incorporated their reasoning—even speculation—about how to handle these situations into their list of legal provisions. But their treatment of such scenarios was still in keeping with the basic approach that would have been taken by the legal systems of their respective societies.²²

¹⁹ Patrick, Old Testament Law; 200.
²² I would place the early work of Bernard S. Jackson with this view. For example, in some studies, he favored the idea that the law collections belong to a literary (i.e., scribal) rather than a legal stream of tradition, but he went on to state: “Nevertheless, much of the content may still have been taken from the real legal world” (“Reflections,” 29). In his recent work, Jackson takes a slightly
Raymond Westbrook supplements this idea by theorizing that the codes, although scribal treatises, served as a consultative aid for judges faced with difficult cases.\textsuperscript{23} They could so function not because they were seen as the law by which courts had to abide but because they described the customs that had previously held sway and the precedents that had been followed in the past.

\textit{E. Non-Legal Treatises}

There is yet another view that starts from the premise that the codes are scientific treatises produced by scribal schools. It differs from the previous two views in that both the cuneiform codes and the biblical codes are considered to be essentially nonlegal in nature. Scholars holding the theoretical-treatise view (view C) accept the possibility that the scribes saw their work—their lists of laws—as a legal, though purely academic, endeavor. Scholars who argue for the legally descriptive nature of the codes (view D) connect this legal endeavor with real law; the codes reflect the latter. The nonlegal-treatise view, however, contends that these treatises are to be connected not with law or legal thought but with moral counsel. The codes are sapiential rather than legal. The duties outlined in the pentateuchal material have a religious or moral basis only; they are not law and do not reflect the societal law of the time. Anne Fitzpatrick-McKinley provides one of the most articulate expressions of this idea.\textsuperscript{24}

In arguing for her position, Fitzpatrick-McKinley directs a number of critiques at the idea that the codes were legally descriptive treatises (view D). She rightly points out that the way to check the validity of this view is to compare the content of the law codes with what we know of actual legal practice.\textsuperscript{25} For example, one could compare the provisions of the LH with Old Babylonian legal documents of practice, such as trial records, contracts, and the like. Some Assyri-
ologists have already done work along this line. They have turned up some discrepancies between practice and the codes, but they have also found points of agreement. It is not the case, as Fitzpatrick-McKinley argues, that “if the codes were intended to describe the law in practice, it must be concluded that they are not very accurate descriptions.” The evidence is indecisive. More work remains to be done in assessing the relationship between the codes’ content and the law that was practiced.

This raises the question that I seek to address in the remainder of the article. How is this to be done with the biblical codes? In other words, if an important clue to the nature of the pentateuchal codes is their connection—or lack thereof—to practiced law, how does one go about assessing that connection? Pursuing this question is important not only for adjudicating between the two views of biblical law just discussed (views D and E) but also for bringing a more informed perspective to all of the aforementioned views. If the codes, for instance, were indeed the authoritative law of Israelite society, it would stand to reason that their rules would be reflected in the legal practice of the time.

Ideally, of course, one would like to make comparisons between Israelite and Judahite legal documents of practice and the pentateuchal laws. There are virtually no legal documents of practice, however, from ancient Israel and Judah. Although not the only other possible approach, a much more achievable task is to identify connections, if any, between the pentateuchal codes and legal documents of prac-


27 See the discussions in Fitzpatrick-McKinley, Transformation of Torah, 82-95; and Fried, “Ezra’s Mission,” 74-75. Fitzpatrick-McKinley believes that there is “an overall consensus that these discrepancies and contradictions [between the codes and practice] do exist” (p. 100 n. 51). Fried cites only one example but speaks of “the fact that many cases are resolved entirely differently than the codes suggest, as if the codes did not exist” (p. 74).


29 Fitzpatrick-McKinley, Transformation of Torah, 108. Fitzpatrick-McKinley seems a bit inconsistent on this point. Previously she stated that the evidence for legal practice is so scarce that “it is impossible to ascertain whether or not the codes reflect such practice” (pp. 99-100). Then she finds the evidence sufficient to conclude that they do not.

tice from other ancient Near Eastern societies. This is a process of reasoning from the known to the unknown. We do not know the actual legal practice of ancient Israel and Judah. What can be known is the practice of law in other ancient Near Eastern societies. If legal documents of practice from these societies reflect issues and rules similar to those in the pentateuchal codes, then a connection can be established between the codes and real-life law. This might then allow for the supposition that a connection also exists between at least some of the pentateuchal laws and the legal systems of ancient Israel and Judah. To put it another way, the evidence that the pentateuchal codes share practices, concepts, and lines of reasoning with the legal systems of neighboring societies supports the idea that the codes reveal more than religious ideology or moral wisdom. The biblical codes take up matters of law and, very possibly, matters of law in the societies from which they themselves come. To be sure, they also seem to contain some provisions composed solely for political or ideological purposes. Yet the evidence below counters any hasty or wholesale rejection of potential connections between biblical law and legal practice.

II. The Evidence of Ancient Near Eastern Practice

Looking for parallels to pentateuchal laws in the vast corpus of ancient Near Eastern legal documents of practice is not new. For example, the slave laws at the beginning of Exodus 21 have been compared to documents from Nuzi.31 The latter describe persons entering the servitude of another, sometimes as an ordinary slave and sometimes in a somewhat different capacity, perhaps as a pledge. The similarities are inexact, but a number of scholars see a connection between the legal issues addressed. Much of the evidence presented below, however, has not been treated previously in studies of biblical law. I will consider legal texts from both Mesopotamia and Syria that address issues also addressed by the pentateuchal codes. Specifically, four biblical texts—two from the Covenant Code and two from the Deuteronomic Code—will be examined and compared with these other documents. I will endeavor to show that the legal problems and even some of the actual rules that occur in the biblical material are evident as well in the Mesopotamian and Syrian texts. These biblical passages provide the opportunity to consider the principal types of connections that biblical law appears to share with the ancient Near Eastern practice of law. This list is representative rather than exhaustive, since other such connections could be cited. Three types present themselves most clearly: similar legal issues, similar legal reasoning, and similar legal remedies.

31 Paul, Studies, 45-61; Niels Peter Lemche, “‘The Hebrew Slave’: Comments on the Slave Law Ex xxi 2-11,” VT 25 (1975) 129-44; and Chirichigno, Debt-Slavery, 92-100, 200-218, 244-54.
A. Similar Legal Issues

The first type of connection entails similar legal problems, concerns, or issues. Such issues become apparent when a provision in one of the biblical codes addresses a particular situation that is dealt with also in a legal document (but not a law code) from another ancient Near Eastern culture. It is true that one could identify similarities in this regard that occur at a rather general level (e.g., both biblical law and ancient Near Eastern documents of practice treat the issue of slavery), but connections of this type would fail to tie the biblical material closely enough to the practice of law to be convincing. It is important that the similarity be sufficiently specific for one reasonably to conclude that both sets of material arise from what is essentially the same legal motivation. That is, both stem from a concern about how the situation in question should be handled as a matter of law. This does not necessarily mean that the biblical and the nonbiblical texts will arrive at the same conclusion regarding how to solve the problem or manage the issue, but it does mean that both are interested in answering a very similar legal question.

The beginning of the Covenant Code offers a useful example. Exodus 21:2-6 sets forth a law regarding male Hebrew slaves—specifically debt-slaves. The main point of the law is that the slave should serve in his master’s household for six years and go free in the seventh year. Part of the law goes on to consider what should happen if the slave enters the household unmarried and is given a wife by his master at some point during his six years of servitude. The text states: “the woman and her children belong to his master; he shall leave by himself” (v. 4). A contract from the Late-Bronze-Age site of Emar in Syria considers a similar situation. It treats the issue of what to do when a man, in servitude to another, receives a wife from his master and then leaves the household of the latter.

This contract is Emar 16 and contains an antichretic pledge agreement.


33 Following the LXX (presumably, נָּדַיְהוּ as opposed to the MT, which has “her master” בְּנוֹ).

34 Unless otherwise noted, all translations of biblical and nonbiblical texts are those of the author.

35 The tablet is published in Daniel Arnaud, Recherches au pays d’Aštata: Emar VI (4 vols.; Synthèse 18; Paris: Éditions Recherche sur les Civilisations, 1985-87). An antichretic pledge is one that can be used by the creditor. The benefit or income obtained by the creditor through the use of the pledge takes the place of any interest payment that might be attached to repayment of the loan (Carlo Zaccagnini, “Nuzi,” in A History of Ancient Near Eastern Law [ed. Raymond Westbrook; 2 vols.; HO 72; Leiden: Brill, 2003] 1. 565-617, esp. 609).
Admittedly, the status of a pledge and that of a debt-slave were somewhat different. The primary difference was that the status of a pledge was typically governed by contractual stipulations, which often limited the master’s degree of authority over the pledge. With debt-slaves, in contrast, the master had more discretionary power. The two types of status, however, still share a number of features. “Debtors could give themselves or persons under their authority to creditors by way of pledge. The resulting conditions were analogous to those of slavery: the pledge lost his personal freedom and was required to serve the pledgee, who exploited the pledgee’s labor.”

It was possible for both a pledge and a debt-slave to be redeemed, usually with repayment of the debt. Moreover, the creditor could ordinarily not sell a pledge or a debt-slave to another owner. Thus, the fact that this contract from Emar is about a pledge rather than a debt-slave by no means prevents its use as an object of comparison with the Exodus text. The contract reads as follows:

Sin-abu, son of Ba’al-qarrad, said: “Bazila, son of Arad-il, is my servant for forty-one shekels of silver. Now I have cancelled twenty shekels of silver from that amount. In addition, I have given him Abiqiri for his wife. During the days that Sin-abu and Arnabu, his wife, shall live, Bazila will serve them. If he serves them, then after they pass away, he may take the hand of his wife and his children, and he may go where he pleases. But he will pay twenty-one shekels of silver to our sons.”

If, in the future, someone offers silver to Bazila, he will give it to Sin-abu and his wife. And after his silver is paid, Bazila will serve them all the days that Sin-abu and his wife shall live.

If, in the future, Sin-abu and his wife say to Bazila, ‘Return our silver and go away from our house,’ then Sin-abu and his wife will have no claim to their silver. Bazila may take the hand of his wife and his children and may go where he pleases.

If Bazila says to Sin-abu and his wife, ‘I will not serve you—take your silver, for I am going away from your house,’ then Bazila will have no claim to his wife and his children. He will pay sixty-one shekels of silver to Sin-abu and his sons, and he may go where he pleases.

If, in the future, Bazila dies, then Abiqiri, his wife, will serve them all the days that Sin-abu and his wife shall live. If she serves them, after they pass away in the future, Abiqiri, as a widow, will be with the widows and, as a divorcée, will be with the divorcées. The sons of Sin-abu will not sue her. If they sue, this tablet will defeat them. If Abiqiri dies, then Bazila will serve them all the days that Sin-abu and his wife shall live. After they pass away, he may go where he pleases.

If, during all the days that Sin-abu and his wife shall live, he does not pay them those twenty-one shekels of silver, in the future Bazila will pay twenty-one shekels of silver to the sons of Sin-abu, and then he may go where he pleases.”


Ibid., 1636 and 1643.
The main character in the contract is Bazila, who enters the household of Sin-abu as a pledge. The debt owed by Bazila to Sin-abu is forty-one shekels of silver, a debt he cannot pay. When Bazila enters his household, Sin-abu cancels almost half the debt, leaving a balance of twenty-one shekels. He also gives Bazila a wife. The main point of the contract is to require Bazila to take care of Sin-abu and Sin-abu's wife for the remainder of their lifetimes. After they die, Bazila is free to take his own wife and children and go wherever he likes, but only after he pays the outstanding twenty-one shekels to Sin-abu's sons.

The contract then envisions six contingencies that might affect how all of this transpires. The first has to do with the possibility that someone else might want to pay off Bazila's debt. The next two consider what to do if either party—Bazila or Sin-abu—reneges on the agreement. The fourth and fifth contingencies involve the possible untimely death of Bazila and his wife. If one dies, the other must continue taking care of Sin-abu and his wife until they pass away. The last simply states that if Bazila fails to pay the remainder of the debt while Sin-abu and his wife are still alive, he must pay it to their sons. In most of these instances, Bazila has the opportunity to fulfill his obligation to take care of Sin-abu and his wife, to pay off the debt, and then to take his wife and children with him when he leaves. If he is the one to renege on the agreement, however, and decides that he wants to leave before Sin-abu and his wife have passed away, the contract states that he may do so, if he pays off the debt plus a very high interest charge, nearly fifty percent. But he is not allowed to take his wife and children with him in this case. They remain in the household of Sin-abu. It is this contingency that presents a thematic connection with the law of the male debt-slave in the Covenant Code.

Both the Emar contract and the law in Exodus consider how to handle situations in which a master gives a wife to one who is in his service—either a slave or a pledge. Both address the question: should the slave or pledge be allowed to take his wife and children with him when he leaves the service of his master? The Emar contract grants the pledge this privilege in most cases, though it denies him the opportunity when he fails to fulfill his contractual obligations. The text in Exodus does not explicitly grant this privilege. It seems to imply that any wife given by the master will always remain with the master, but it does not speak to the variety of scenarios that the Emar contract envisions. Perhaps it would allow such a wife to go with the departing debt-slave in certain instances, such as when a contract includes provisions to that effect. This is admittedly speculative, and the mat-

38 Other texts also deal with this same issue and state when a man who is in an inferior position (e.g., slave, pledge, adoptee) can keep a wife given to him by his superior (master, creditor, adoptive father). These include AO 5, 234 no. 14 from Emar and JEN 610 from Nuzi (on this text, see Paul, Studies, 48-49; and Chirichigno, Debt-Slavery, 215-16). Both of these texts contain restrictions similar to the one in the Emar contract.
ter must remain uncertain for the time being. Nevertheless, the same essential legal problem turns up in both cases. Thus, the Emar contract provides evidence that the passage in Exodus deals with an issue that was of genuine concern in the legal system of an ancient Near Eastern society.39

B. Similar Legal Reasoning

One could say that it is somewhat unremarkable that laws in the Pentateuch address topics or concerns that also arise in ancient Near Eastern legal documents of practice; in some respects, this type of link is to be expected. The connections between biblical law and ancient Near Eastern practice, however, run to a deeper level. There are rules in the biblical codes that reflect ways of thinking—particular lines of legal reasoning—that are present in a number of ancient Near Eastern texts as well. This type of similarity tightens the connection between biblical law and the world of legal practice.

One of the best illustrations comes from the law in Deut 21:1-9. Others have observed this particular connection, but it warrants repeating here.40 The law prescribes what should happen when an apparent murder has taken place in a rural area. There are no witnesses, and no one has any idea as to the perpetrator. The law requires the city closest to where the slain body was found to take responsibility for dealing with the crime. The elders of that city must perform a ritual that absolves them and their city from the guilt of murder. As part of the ritual, they must declare that they, representing the inhabitants of their city, have not committed the murder, nor do they know who did (“our hands did not shed this blood, and our eyes did not see it” [v. 7]).41

39 Other examples could be cited as well. For instance, the law of deposit in Exod 22:6-8 discusses what to do when a dispute arises between the depositor and the receiver over goods that have allegedly gone missing. The law considers several scenarios, including deceit on the part of either the depositor or the receiver of the goods. This very issue is at the heart of a trial from Nuzi recorded in HSS 9, 108 (Excavations at Nuzi Conducted by the Semitic Museum and the Fogg Art Museum of Harvard University, with the Cooperation of the American School of Oriental Research in Baghdad [Harvard Semitic Series 5, 9, 10, 15; Cambridge, MA: Harvard University Press, 1929–]). There, the depositor accuses the receiver of misappropriating his goods, but the former is ultimately the one found guilty of fraud. There are also the documents of practice that relate to the law of redemption in Lev 25:47-55, as cited in Reuven Yaron, “Redemption of Persons in the Ancient Near East,” RIDA 6 (1959) 155-76.


41 One of the purposes of the ritual may be to remove from the community the pollution and defilement that have come upon it as a result of the taking of innocent life (Barmash, Homicide, 104-
There are five Akkadian texts from Late-Bronze-Age Ugarit that assign culpability for unsolved murder cases in a fashion similar to that of the Deuteronomic law. These include three treaties between the cities of Carchemish and Ugarit (Ras Shamra [RS] 17.146; 17.230; and 18.115), one letter from the king of Carchemish to the king of Ugarit (Ugaritica V no. 27), and one trial record that appears to deal with a case of this nature (RS 20.22).42 The text of one of the treaties states the following:43

If merchants serving the king of Ugarit are killed within the land of Carchemish, and their murderers are apprehended, the citizens of Carchemish shall make full reimbursement for their [the victims’] goods and their possessions, according to what [i.e., the amount] their [the victims’] colleagues state. The citizens of Carchemish shall also pay three minas of silver as compensation for each person (killed). The citizens of Ugarit shall swear regarding (the amount of) their [the victims’] goods and their possessions. The citizens of Carchemish shall make reimbursement accordingly for their goods and their possessions. If someone’s body is discovered, but their murderers are not apprehended, the citizens of Carchemish shall go to the land of Ugarit and shall take the following oath: “We do not know their murderers,44 and the goods and possessions of these merchants have been lost.” Then the citizens of Carchemish shall pay three minas of silver as compensation for each person (killed). (RS 17.146, lines 6-27)

In this document, as in the others, the issue of murder by an unknown assailant arises. Moreover, in all five the issue is resolved by having the leaders of the city where the body was found be responsible for absolving themselves and their community of the crime, just as Deut 21:1-9 states that the elders of the closest city must do.45 The city leaders achieve this by making a sworn statement, similar to...
the one in Deuteronomy. They specifically state that they do not know who committed the murder, and, in so doing, they imply that they themselves are not guilty. These documents present a method of reasoning about a legal issue that parallels the one found in Deuteronomy. In the event that the identity of a murderer remains unknown, it is the city or town in the vicinity of which the murder took place that must deal with the matter. In the biblical text, the elders of the town are responsible to Yhwh for absolving themselves of this guilt and, presumably, sparing their community from punishment. In the documents from Ugarit, the leadership of one city bears this responsibility with respect to that of another. The basic line of reasoning in both instances, though, remains quite similar.46

C. Similar Legal Remedies

A third type of connection is at the level of similar legal remedies. One of the Covenant Code’s principal laws on theft is found in Exod 21:37 and 22:2b-3. The intervening statements in 22:1-2a are related to the topic but interrupt the flow of thought that carries over from the end of 21:37 to the beginning of 22:2b.47 Thus, the combination of 21:37 and 22:2b-3 forms its own coherent law. This law states that someone who steals a herd animal (שׁור) or a flock animal (שׂה) will have to pay back a multiple of what was stolen. If the animal is slaughtered or sold, the payment is fivefold for herd animals and fourfold for flock animals. If the stolen animal is discovered alive in the possession of the thief, the payment is twofold, irrespective of the herd/flock distinction.

Middle Babylonian documents of practice from the late Kassite period (the late second millennium B.C.E.) offer a significant parallel. A number of them are records of trials from the city of Ur, and several of these deal with the theft of cattle.48 The punishment for such theft is not clear in all cases, owing to damage to...
the tablets, but it is clear in some. The following is a portion of one of these documents, UET 7, 43, beginning with line 15 on the obverse side.49

One ox belonging to Shagarea, son of Sin-kūt(?), was stolen by Abu-tābu, Zēru-kīnu, and Sin-pūtu; replacements(?) were seized and Shagarea received three cows from Abu-tābu. Six arīpu garments from Abu-tābu Sin-mutīr-gimilli, the mayor, received.

All this is what Shagarea received from Abu-tābu.

One cow belonging to Dan-Nergal was stolen by Abu-tābu, Zēru-kīnu, and Sin-pūtu; replacements(?) were seized and Dan-Nergal received two cows from Abu-tābu. One shekel of red gold Sin-mutīr-gimilli, the mayor, received.

All this is what Dan-Nergal received from Abu-tābu.50

The punishment for the first theft appears to be a threefold payment, while the punishment for the second is a twofold payment. The reason that the first payment seems higher may be that the stolen item was a bull or an ox, which may have been deemed more valuable than a cow. The fine is paid in cows, as opposed to oxen; perhaps, therefore, a payment of three cows was considered roughly equivalent to a payment of two oxen.51 The payments going to the mayor are the latter’s compensation for adjudicating the case.

With respect to their handling of the crime of animal theft, these Middle Babylonian trial records manifest an approach that is similar to that of the Covenant Code. The punishment is set at a multiple of the number of animals stolen. Moreover, the same multiple—the twofold penalty—turns up in both the biblical text and the Mesopotamian documents. Unfortunately, the latter do not provide enough information to ascertain whether the Mesopotamian courts made the same distinctions as those found in Exodus: herd animals versus flock animals and sold or slaughtered animals versus live animals in the possession of the thief. Nevertheless, they do provide evidence that an ancient Near Eastern legal system imposed punishments quite similar to those called for in the pentateuchal passage.

Another similar legal remedy occurs with the law in Deut 19:16-21 that governs false accusation. It states: “if the witness is a false witness and has accused the other falsely, then you shall do to the witness just as the witness intended to do to the other person” (vv. 18-19). There are Mesopotamian documents from earlier periods, such as the Old Babylonian period, according to which witnesses who

49 Published in O. R. Gurney, *Middle Babylonian Legal Documents and Other Texts* (Ur Excavations Texts 7; London: British Museum Publications, 1974).


51 UET 7, 15 also reflects a twofold penalty for theft of a cow (see Gurney, *Middle Babylonian Legal and Economic Texts*, 60-62). For the theft of four cows, UET 7, 10 records a penalty of twelve cows along with the transfer of a young girl to the victim (see ibid., 49-52). This would amount to a fine in excess of three times what was stolen.
give false testimony are punished. But often these witnesses are not parties to the trial. The law in Deuteronomy 19 is not about false testimony in general; it is specifically about false statements by an accuser, the one who brings the case to court. Moreover, the punishment it outlines is a particular type of punishment—talianic retribution. The question, then, is whether there is evidence for talionic punishment of false accusers in ancient Near Eastern legal practice. Some of the best evidence for this comes from Neo-Babylonian trial records. In several of these, the court imposes this very punishment. One such record, Nbn 13, comes from the reign of Nabonidus.

Belilitu, daughter of Bel-ušezib . . . spoke to the judges of Nabonidus, king of Babylon, saying: “In month 5 of year 1 of Nergal-šar-ūṣur, king of Babylon, I sold my slave Bazuzu for thirty-five shekels of silver to Nabu-ahhe-iddin, son of Šula. He made out a promissory note, but did not pay the silver.” The royal judges heard (her statement) and brought Nabu-ahhe-iddin to stand before them. Nabu-ahhe-iddin carried in the written agreement that he had made together with Belilitu (as proof that) he paid her the silver, the purchase price of Bazuzu, and he showed (it to) the judges. Then Zeriya, Nabu-Šum-lišir, and Ettelu testified before the judges that the silver of Belilitu, their mother, had been paid. The judges deliberated, and they ruled against Belilitu for thirty-five shekels of silver, as much as her claim was, and awarded it to Nabu-ahhe-iddin.

This document records the details of a suit in which a woman, Belilitu, lodges an accusation against a man, Nabu-ahhe-iddin. She had sold a slave to this man three years prior to bringing the suit. Belilitu accuses Nabu-ahhe-iddin of not having paid the thirty-five shekels of silver, the purchase price of the slave. In his defense, Nabu-ahhe-iddin provides to the judges the tablet showing that he paid the full price to Belilitu. As if that were not enough, the three sons of Belilitu then testify against their mother. They assert that their mother did indeed receive all of the money to which she was entitled. Then, the judges “ruled against Belilitu for thirty-five shekels of silver, as much as her claim was, and awarded it to Nabu-ahhe-


54 For more on the Neo-Babylonian evidence, see Wells, Law of Testimony, 149-55.

55 Published in Johann N. Strassmaier, Inschriften von Nabonidus, König von Babylon (555–538 v. Chr.) (Babylonische Texte 1-4; Leipzig: Eduard Pfeiffer, 1889).

56 This translation is adapted from that in Wells, Law of Testimony, 181.
iddin. Thus, the amount of the fine equals the amount that Nabu-ahhe-iddin would have had to pay, if the judges had found in favor of Belilitu. As the law in Deuteronomy would have required, the court in this case imposes talionic punishment on the plaintiff for false accusation.

The law in Deut 19:16-21 appears to have much in common with provisions in other law collections. It has been argued that Deuteronomy is relying on the stream of tradition represented by these provisions in the cuneiform codes for its own law that stipulates talionic punishment for false accusers. This may be correct. It does not necessarily follow, however, that this law in Deuteronomy and the stream of tradition from which it appears to derive fail to reflect what went on in actual practice. Thus, the question is not whether the authors of Deuteronomy drew from scribal academic or literary tradition, on the one hand, or from legal practice with which they were familiar, on the other. Regardless of the source the authors of Deuteronomy may have used, the question at issue here is whether the rule represented by this law was applied in ancient Near Eastern legal practice. The Neo-Babylonian evidence cited above demonstrates that, to some extent, it was.

III. Conclusions

The evidence from ancient Near Eastern legal documents of practice points to a number of conclusions that can be drawn regarding the legal material in the Pentateuch. First, there are pentateuchal texts and ancient Near Eastern documents of practice that appear to address similar legal issues. The connection between the law in Exodus on male debt-slaves and Emar 16 illustrates this point. Both face the question of whether a wife given to a male slave or pledge by his master can be allowed to accompany her husband when he is released from servitude. That their respective answers to the question differ does not necessarily preclude the answer in Exodus from reflecting actual legal practice. Second, there are pentateuchal texts and ancient Near Eastern documents of practice that appear to share similar legal reasoning. The law in Deut 21:1-9 and the documents from Ugarit are a case in point. When faced with an unsolved—and apparently unsolvable—homicide, both reach the conclusion that it is the local municipality where or closest to which the murder took place that should bear responsibility for the matter. Third, certain

57 For example, Laws of Lipit-Ishtar §17 and Laws of Hammurabi §§1-4.
59 Other examples of similar legal remedies could be cited. Eckart Otto (“Neue Aspekte zum keilschriftlichen Prozessrecht in Babylonien und Assyrien,” Zeitschrift für altorientalische und biblische Rechtsgeschichte 4 [1998] 263-83, here 279), for example, refers to a Neo-Assyrian trial record (SAAS V No. 14) that contains a sentence corresponding to the stipulation in Exod 22:2b: a thief who cannot make restitution will be sold for his theft.
pentateuchal laws and ancient Near Eastern documents of practice reveal similar legal remedies. Middle Babylonian trial records from Ur contain penalties for cattle theft that largely correspond to the approach outlined in the Covenant Code for the same crime. In addition, Neo-Babylonian trial records show Mesopotamian courts implementing a rule nearly identical to the one in Deuteronomy 19 when they punish those who are guilty of false accusation.60

It must be admitted, though, that not every law in the Pentateuch possesses strong similarities to documents of practice from ancient Near Eastern societies. For some pentateuchal laws, there are virtually no documents that provide the kind of evidence for legal practice that I have been describing here. The laws on the goring ox in the Covenant Code (Exod 21:28-32, 35-36) are an example of this. To be sure, these laws are most likely related to a set of long-standing traditions about the problem of a goring ox—a set of traditions reflected in the Laws of Eshnunna (LE §§53-55) and the Laws of Hammurabi (LH §§250-52). It is not at all clear, however, whether these laws are related to how the legal systems of the ancient Near East would have actually handled such matters. What does all this mean for how we are to understand the nature of biblical law?

The evidence provided by legal documents of practice from ancient Near Eastern societies other than Israel and Judah would seem to warrant the following conclusion: some pentateuchal laws reflect ancient Near Eastern legal practice, and some may or may not. That some pentateuchal laws share similar legal issues, reasoning, and remedies with ancient Near Eastern documents of practice strengthens the likelihood that others, though not all, do as well. Thus, this evidence appears to favor only some of the points of view described in the first section of the article. Although it does not provide decisive proof, 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 (authoritative law), B (competing sets of authoritative law), and D (legally descriptive treatises). It tends to disfavor those views that sever the connection between the codes and legal practice: views C (theoretical treatises) and E (nonlegal treatises).

Ultimately, though, it seems that a single view is insufficient to explain all the material in the pentateuchal laws. I prefer view D (legally descriptive treatises) as

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60 Most of the ancient Near Eastern documents of practice that provide parallels to the pentateuchal rules discussed above come from the latter half of the second millennium B.C.E. This does not, of course, require the biblical codes or any portion of them to be dated to that time period. It is clear, though, that several pentateuchal laws show similarities to what would appear to be older legal practices: those specifically cited from Emar, Ugarit, and Ur, along with other parallels from Nuzi (see nn. 38-39 above). Moreover, much of the evidence for these older practices comes from outside the Mesopotamian heartland and from outside Babylonia in particular. Thus, if rules like a number of those in the Pentateuch were in use at such an early date and well to the west of Mesopotamia, it may be reasonable to assume that similar laws could have been practiced in Israel and Judah as well.
an explanation for much of the material in the codes. This is due to the connections with ancient Near Eastern practice described above 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. Still, this explanation does not seem to work in every case. It is likely that at least some of the laws in the biblical codes reflect the idiosyncratic ideals of a particular code’s authors. The most obvious examples might be the Deuteronomic provisions that promote the centralization of worship and those that regulate the power of the king. What other laws, then, are also innovative in nature? Would these laws have ever been put into actual practice? It may well be that some sort of combination of viewpoints is required. Questions could also be raised regarding the relationship between many of the Pentateuch’s legal provisions and the religious, political, and social goals of their respective authors. Nonetheless, the demonstrable connections between pentateuchal rules and ancient Near Eastern legal practice—and what would thus appear to be the genuinely legal nature of much of the pentateuchal codes—warrant important consideration in further analysis into the nature of what we call biblical law.