Throughout most periods of ancient Near Eastern history, religious rituals frequently played an important role in the resolution of legal disputes that were brought to trial. It appears that judges would make use of them sometimes arbitrarily but often when they felt the available evidence was insufficient or at least too ambiguous to render a decisive verdict. The rituals—or cultic procedures, as I will call them—fall essentially into three categories, memorable for their alliteration: the oath, the oracle, and the ordeal (each term is sometimes preceded by the word “judicial” to distinguish it from similar rituals that occurred outside the context of a trial). By means of these procedures, courts appealed to the divine realm to help decide the matter at hand. Some recent scholarship has observed changes in how and how often these procedures were used in later periods, predominantly in Mesopotamia. These studies suggest that the degree to which Mesopotamian courts relied on such methods decreased in the Neo-Assyrian, Neo-Babylonian, and Persian periods. Trials began to take on a less religious orientation. In light of the changes that

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1 Portions of the research for this article have been funded by the U. S. National Endowment for the Humanities and its award of a Collaborative Research Grant for the project, “Neo-Babylonian Trial Procedure.” Any views, findings, conclusions or recommendations expressed in this publication are those of the author alone and do not necessarily represent those of the National Endowment for the Humanities. The abbreviations and text citations in the article follow the conventions of The Assyrian Dictionary of the Oriental Institute of the University of Chicago, ed. A. L. Oppenheim et al. (Glückstadt: J. J. Augustin, 1956-92; Winona Lake, Ind.: Eisenbrauns, 1999–); and The SBL Handbook of Style: For Ancient Near Eastern, Biblical, and Early Christian Studies, ed. P. H. Alexander et al. (Peabody, Mass.: Hendrickson, 1999). Additional abbreviations include: BZAR = Beihefte zur Zeitschrift für altorientalische und biblische Rechtsgeschichte; FLP = Free Library of Philadelphia; Spar = I. Spar, “Three Neo-Babylonian Trial Depositions from Uruk,” in Studies in Honor of Tom B. Jones (AOAT 203; Kevelaer: Butzon & Bercker, 1979), 157-172; ZAR = Zeitschrift für altorientalische und biblische Rechtsgeschichte

occur, some have gone so far as to propose a process of “secularization” during this time in Mesopotamia.\(^3\)

The relevant evidence from Mesopotamia—cuneiform texts related to trial proceedings and other judicial matters—deserves a more thorough examination than it has previously received. In addition, evidence from biblical texts, specifically Deuteronomic and priestly legal texts from ancient Judah, is important to include in this discussion. The primary purpose of this study is to consider the evidence for changes in Judahite and Mesopotamian judicial procedure and explore the possibility of a relationship between the changes that took place in both regions. The combined evidence points to a number of potential conclusions. The frequency with which courts resorted to cultic procedures to resolve legal disputes does indeed seem to decline in the second quarter of the first millennium B.C.E. The nature of the oath and how it is used at trial also appears to change during this same time period, as the oath begins to play a less crucial role in the judicial process. Moreover, connections can be observed between features of these developments in Mesopotamia and significant aspects of biblical legal texts that deal with judicial procedure. Thus, this article agrees with the basic premise of the few previous studies on this topic, although it takes exception to some of their conclusions, which, I will argue, were based on too little data. In brief, in both the biblical and Mesopotamian material, there appears to be a distinct move toward a greater reliance on rational or empirical methods to decide cases. Most of the evidence—biblical and cuneiform—for this stems

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from the late seventh through the early fifth century B.C.E. That this phenomenon is the result of a widespread process of secularization or increasing rationality in the ancient Near East, however, seems unlikely. There appear to have been other factors (e.g., economic, political) at work, driving this tendency to disfavor the use of cultic procedures and to rely more strictly on what I will call forensic procedures: ordinary judicial and investigative procedures such as the hearing of witness statements and the examination of physical evidence. While it is fairly clear that the former were not entirely abandoned in either Mesopotamia or Judah, the evidence strongly suggests an important and even radical shift in the legal thinking of this era.

I. Terminology and the Three O’s

There is some debate regarding how precisely to understand the oath, the oracle, and the ordeal. Standard terminology in Assyriological circles distinguishes between the rational (what I am calling forensic procedures) and the supra-rational (what I am calling cultic procedures). This language can be problematic because it assumes a particular way of thinking about rationality that may be unhelpful. That is, using this terminology could imply that a decrease in the use of “supra-rational” procedures would almost certainly result in a corresponding increase in rationality, as we moderns conceive of rationality, but this may or may not be the case. I have decided to use what seems to be a more neutral

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4 In terms of Mesopotamia, one reason for this may simply be that the bulk of the extant first-millennium documents from Babylonia (southern Mesopotamia) comes from this time period; see M. Jursa, Neo-Babylonian Legal and Administrative Documents: Typology, Contents and Archives (Guides to the Mesopotamian Textual Record 1; Münster: Ugarit-Verlag, 2005), 1-2.

term—namely, cultic. A closer look at each of the three main types of procedures reveals the distinctly cultic nature of each.6

I begin with the oath. When ancient Near Eastern courts7 employed the judicial oath, they would require one of the litigants (less frequently, the witnesses for one of the litigants) in a trial to swear by one or more divine beings that his or her version of events is true.8 Litigants who took such an oath won their case, because the oath was dispositive: it automatically disposed of the case in favor of the oath-taker. When the courts resorted to the oath, they were transferring the responsibility for ensuring that justice was done to the divine court, which would be certain to punish anyone who happened to swear falsely.9 The judicial oath is mentioned more frequently in trial records from Mesopotamia than in those from other regions. It occurs in Old Akkadian trial records10 from the third quarter of the third millennium B.C.E., appears regularly in Neo-Sumerian11 and Old Babylonian12

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10 See, e.g., MAD 1 135 and Gelb OAIC 7 and 51.

11 See the Neo-Sumerian texts discussed by Falkenstein, Die neusumerischen Gerichtsurkunden, including nos. 32, 80, and 177.
trial records, and remains a fixture of Mesopotamian trials well into the Neo-Assyrian period. While not frequently mentioned in biblical texts, the judicial oath is referred to in a variety of places, including Exod 22:9-10, Lev 5:21-26, Num 5:11-31, Deut 21:1-9, and 1 Kings 8:31-32.

Use of the oracle occurred when a verdict was sought directly from a deity, usually by consulting cultic paraphernalia. Evidence for judicial oracles in Mesopotamia is scarce. Oracles and divinatory procedures of other types were prevalent, but very few extant records show trial courts relying on oracles to decide cases. There are at least three Neo-Assyrian trial records, in which the god Adad is said to be the one who issued the verdict. In addition, prayers and other literary texts may reflect some knowledge of the judicial oracle in Mesopotamia. By way of contrast, there is a fair amount of data from Egypt on the use of judicial oracles, particularly from the New Kingdom site of Deir el-Medina. There, it was typically the statue of the deified Amenhotep I that was consulted. Israel and Judah also utilized the judicial oracle (e.g., Exod 18:15-16; 22:6-8). One of the prime

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12 See, e.g., CT 4 47a, CT 47 12, and YOS 8 150. See also a number of the texts cited by Dombradi (Die Darstellung des Rechtsaustrags in den altbabylonischen Prozessurkunden).
14 See the discussion of most of these texts in Lafont, “La procédure par serment,” 193-97.
15 Jas, Neo-Assyrian Judicial Procedures, 17-19 (no. 7) and 21-24 (nos. 10 and 11).
16 See I. T. Abusch, “Alaktu and Halakhah: Oracular Decision, Divine Revelation,” HTR 80 (1987) 15-42. Abusch speaks of how “divine deliberation came to be seen as a judgment, and the revelation of the divine decision by means of signs as the handing down of a verdict” (ibid., 26). He adds, “It should not be forgotten that divination may be used to settle legal matters when normal ‘human’ juridical processes are unable to resolve the problem” (ibid., 26 n. 34), though he does not cite any specific examples.
examples is the trial of Achan in Joshua 7. The text indicates that the guilty party was pinpointed when Yahweh “selected” (lākad) the appropriate tribe, clan, household, and then the individual.19 What is sometimes described as the casting of lots was likely one of the means by which an oracle from Yahweh was solicited.20

Though probably not unheard of in ancient Israel and Judah, the judicial ordeal is best known from the river ordeal described in a number of Mesopotamian texts.21 This was a special means of soliciting a verdict from the divine court. Typically, one of the litigants would be instructed to enter a river in order to see what would happen to the person. Unfortunately, the details of the procedure are rather obscure, though it was probably the case that persons who floated were deemed in the right, while those who sank were judged to be guilty. References to the river ordeal occur in several law collections and in documents of practice from a variety of time periods.22

It is certainly understandable why some scholars apply the term “supra-rational” to these procedures. They constitute methods that rely not on the examination of what today

19 See Josh 7:14-18. HALOT, 530, gives a translation “to select by lot” for the Qal of the root lkd and “to be selected by lot” for the Niphal of lkd.
21 For Mesopotamia, see T. Frymer-Kensky, “The Judicial Ordeal in the Ancient Near East” (Ph.D. diss., Yale University, 1977) and the other literature cited below. On biblical references to the river ordeal, see P. K. McCarter, Jr., “The River Ordeal in Israelite Literature,” HTR 66 (1973): 403-12. McCarter concludes that most, if not all, allusions to the ordeal in the Hebrew Bible are metaphorical in nature and stem from mythological concepts that Israel and Judah shared with other ancient Near Eastern societies. There is no mention of it in biblical legal texts, and thus a great deal of doubt exists regarding whether it was ever part of Judah’s judicial system.
would be considered empirical evidence but on particular beliefs about divine beings and supernatural reality. In this way, they can be seen as going beyond the realm of human logic or rationality. Nevertheless, it is not clear that it is the supra-rationality per se of these procedures that linked them together in the minds of ancient scribes, litigants, judges, and other legal practitioners. The more evident unifying factor among these procedures is their cultic nature. To be sure, ancient Near Eastern courts made regular use of forensic procedures and often employed both forensic and cultic procedures in the same trial. A given trial, for instance, could entail the hearing of witness statements and the examination of documentary evidence and then conclude with a cultic procedure such as the oath. Still, it was the cultic procedures that carried a decisive force that their forensic counterparts typically lacked.

II. A Shift in Mesopotamia

Three scholars to date have explicitly proposed that a shift away from a reliance on cultic procedures to decide trials occurred in Mesopotamia during the first millennium B.C.E. The first was Eckart Otto in a 1998 article. He observed that, in the Neo-Assyrian period (he does not comment on any texts from the Neo-Babylonian or Persian periods),

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23 It should be noted that ancient Near Eastern legal systems do indeed appear to have maintained a conceptual distinction between cultic or supra-rational procedures and what I term forensic procedures. This distinction can even surface at the level of terminology. In the Middle Assyrian Laws, for example, the D-stem of the verb bâru (“to affirm, declare, specify”) is reserved for the use of forensic procedures, while the D-stem of the verb kânu (“to establish, confirm, prove”) refers only to cultic procedures (Westbrook, “Evidentiary Procedure”).

24 See, e.g., the Old Babylonian document YOS 8 150. The text refers to oral statements made before judges, the presence of a tablet recording the sale under dispute, and a court-ordered judicial oath.

the frequency with which the oath was employed appears to have been significantly less than in the Old Babylonian period and that the oath and the ordeal were used only in exceptional cases in the Neo-Assyrian period. In the following year, 1999, Gerhard Ries published his observations that the judicial oath was now, as reflected in Neo-Babylonian trial records, susceptible to contradiction by rational evidence.\footnote{Ries, “Zur Strafbarkeit des Meineids,” 457-68.} He states that this demonstrates a weakening of the complete and unwavering trust that previous eras had placed in their religiously oriented methods for resolving legal disputes. In fact, both Otto and Ries use the word “Säkularisierung” to describe what is happening within Mesopotamia’s legal system.\footnote{See n. 2 above.} The third scholarly reference to this trend came in F. Rachel Magdalene’s 2004 article on legal metaphors in the book of Job and their connections to Neo-Babylonian and Persian-period law.\footnote{Magdalene, “Job’s Redeemer.”} For Magdalene, new developments in how the judicial oath is utilized during these periods may mark “one of the most significant shifts in ancient Near Eastern trial procedure that occurred from Old Babylonian times to the Hellenistic period.”\footnote{Ibid., 308.} These three studies begin to point toward a significant phenomenon.

As Magdalene’s article indicates, the best evidence for this phenomenon—relying less on cultic and more on forensic procedures—comes in the several hundred Mesopotamian trial records that date to the sixth and fifth centuries B.C.E. They come mainly from southern Mesopotamia, and because they are written in Neo-Babylonian Akkadian, they are often referred to simply as Neo-Babylonian (or, at times, Late Babylonian) texts, though they span both the Neo-Babylonian and Persian periods. To
begin with, these documents contain no record of a judicial oracle. Admittedly, this is not completely unexpected, since oracles—that is, specifically judicial oracles—were already a rare phenomenon in Mesopotamia during previous periods. There are, however, other and much more unexpected features of these records that warrant close examination. Three principal features stand out: (1) the disappearance of the judicial ordeal; (2) changes in the use of the judicial oath; and (3) an increase in courts’ demands for empirical evidence.

No Judicial Ordeal

One striking characteristic of Neo-Babylonian trial records is their lack of any reference to the use of the judicial ordeal. Francis Joannès finds this particularly surprising. In light of this, Joannès goes on to suggest that particular oath procedures were substituted for the ordeal; that is, a prescribed oath-taking ritual became the ordeal through which an individual had to pass in order to achieve legal victory. As the individual uttered the oath, official onlookers would observe certain phenomena in the sky in order to determine the gods’ reaction to the person’s attempt to succeed at the ordeal. Joannès refers to a handful

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of texts that mention oaths that invoke stars or planets (e.g., Sirius, Venus). These documents give no indication, though, that observation of astral phenomena took place during the utterance of these oaths.

His strongest argument comes from another text, Nbn 954, which dates to the 16th year of Nabonidus and which requires the swearing of an oath “before Šamaš” and “in the magic circle.” The text reads as follows:

On the 20th day of the first month, Nabû-utirri, the slave of Iddinaya, shall appear and shall, before Šamaš at his rising, swear an oath by the gods in the magic circle against Nādin, son of Marduk-šum-uṣur, as follows: “If the debt of 1 mina 10 shekels of silver that . . . .” . . . he will pay to Nādin.

Witnesses. Babylon, day 19, month 1, year 16 of Nabonidus, king of Babylon. If the 20th is a clear day, he will take the oath. If not, he will take the oath on the 20th day of the second month.

Unfortunately, the tablet has a substantial break in the middle of the oath. Still, Joannès surmises that this type of oath procedure took on an ordeal-like quality and that the situations in which oaths like this one occurred were similar to those in which courts of

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31 Joannès, “La pratique du serment,” 173 n. 36. He lists FLP 1530, GCCI 2 395, CT 55 191, Dar 468, and PBS 2/1 140. For the purposes of this discussion, the first four are largely inconsequential, since they refer either to promissory oaths or to oaths outside of a judicial context. Moreover, apart from their reference to a star or planet, they offer no further details to support Joannès’ contention that the oath language disguises what is really an ordeal procedure. As for PBS 2/1 140, it records a case in which both litigants swear the “oath of the god by the great star.” Again, there are no details to indicate that an ordeal has occurred. This case is further discussed below.

32 One other document, YOS 7 61, also refers to an oath that is to be taken “before Šamaš” and “in the magic circle.” It seems to entail a dispute between two men over a gem contained within a necklace belonging to the plaintiff. If the latter takes the oath assigned to him on the appointed day, the defendant will have to hand over the disputed item. Unlike Nbn 954, the text says nothing about ensuring that the oath is taken on a clear day.

33 Unless otherwise noted, all translations are those of the author.
earlier periods would have made use of the river ordeal. “L’on peut dès lors émettre l’hypothèse que lors de ces prestations de serment, la configuration du ciel diurne ou nocturne était examinée, et que le modifications qui pouvaient alors survenir (nuages, halos, variations d’éclat... etc) servaient d’épreuve en ce sens qu’elles validaient ou infirmaient la bonne foi de celui qui jurait.”

His view finds some support in the text’s stipulation that an overcast sky would require the postponement of the oath-taking by one full month. It is not hard to understand his reasoning.

The evidence that this text provides must be re-evaluated, however, due to the recent discovery and publication of a tablet fragment from the British Museum. This fragment (BM 33145) is clearly to be joined with Nbn 954 and fills in much of the sizeable lacuna in the latter. Cornelia Wunsch’s publication of the two fragments together allows us now to speak of the complete tablet as Wunsch Egibi 166 and to understand better the import of the text. Much of what was missing from Nbn 954 was the content of Nabû-utirri’s oath. As it turns out, the oath has several parts: that a certain Nabû-ēreš, recently deceased, owed money to Nabû-utirri; that he (Nabû-utirri) has not yet taken anything from the estate of Nabû-ēreš (apparently overseen by Nādin); and that he (Nabû-utirri) has not altered the records documenting the existence of the debt. Following the oath, the text states (lines 23-25): “Wenn er (dies) geschworen [haben wird, wird die Vermögenswerte . . . .] Nādin freigeben. Wenn er nicht geschworen haben wird, wird Nabû-utirri den früheren Verpflichtungsschein vom Monat [Dûzu] zurückbringen und an Nādin geben.”

This statement makes clear what will decide the case: whether or not Nabû-utirri appears on the

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36 Ibid., 2.200.
required day and actually takes the oath. It is not, therefore, an ordeal in the sense that the sun is observed during the pronouncement of the oath in order to determine the guilt or innocence of Nabû-utirri. That the oath must be taken on a clear day means simply that, in order for the oath to be valid, the oath-taker must stand directly before the sun, representing the god Šamaš, without any interfering cloud cover. Thus, this oath is much more like standard judicial oaths from earlier periods; the party required to swear can win the case by taking the oath. It is unlikely, therefore, that oaths by the sun or other astral bodies took the place of the ordeal in the judicial system of the Neo-Babylonian and Persian periods. Based on the extant evidence, the ordeal really is absent.\(^{37}\)

**A Different Judicial Oath**

Prior to the Neo-Babylonian period (and possibly even the Neo-Assyrian period, though this is less clear), the judicial oath seems to have been the most important method that Mesopotamian trial courts believed they had for determining the truth in a legal dispute.\(^{38}\) It was dispositive, imposed at the court’s discretion, and valued above all other forms of evidence. Trial records from the Neo-Babylonian and Persian periods reveal, however, several uses of the oath that run contrary to what was previously standard practice.\(^{39}\)

First, the judicial oath from this time is no longer always dispositive—that is, it no longer always means decisive victory for the litigant who takes the oath. This is noted by

\(^{37}\) See further, Magdalene, “Job’s Redeemer,” 307 n. 70.


\(^{39}\) There are several trial records that date to the Persian period and that come from the community living at Elephantine in Egypt. A few of these appear to refer to the standard type of judicial oath as it was practiced throughout much of Mesopotamian history. Legal developments in Egypt during this time, however, were not consistent with those occurring in Mesopotamia; see F. R. Magdalene, *On the Scales of Righteousness*, 81 n. 126.
Magdalene.\textsuperscript{40} She points out that Old Babylonian judicial oaths that invoked the gods were always dispositive. Neo-Babylonian judicial oaths, on the other hand, also invoke the gods but are usually not dispositive. This is not to say that dispositive oaths, like judicial ordeals, completely disappear from the documentary evidence. Some texts do indeed refer to what appear to be dispositive oaths. The text quoted above, Wunsch \textit{Egibi} 166 (Nbn 954 + BM 33145), plainly refers to an oath that, if taken, will decisively conclude the case in favor of the oath-taker. YOS 7 61, the one other text that mentions the “magic circle” in connection with the oath, does as well. But few others clearly do.\textsuperscript{41} By contrast, there are a number of published Neo-Babylonian trial records in which oaths are sworn—oaths that invoke the gods—but in which the trials and investigations still continue, as in YOS 7 152.\textsuperscript{42}

Innin-zēr-ībnī, son of Ina-tēši-ēṭīr, an oblate of Ištar of Uruk, swore by Bēl, Nabû, and the \textit{adū} of Cambyses, King of Babylon, King of the Lands, to Nabû-mukīn-apli, administrator of the Eanna temple, son of Nādin, of the Dabibī family, and to Nabū-āḫ-iddin, royal commissioner of the Eanna

\textsuperscript{40} Magdalene, “Job’s Redeemer,” 304-9.

\textsuperscript{41} Other Neo-Babylonian texts that may refer to dispositive oaths include BM 77425, UET 4 186, UET 4 171, and YOS 6 225. Most of these are, however, ambiguous in terms of the evidence they provide on this issue. UET 4 186 appears to refer to an oath outside the context of litigation. It is not clear that the oath in UET 4 171 is part of a trial. BM 77425 involves the oath of third-party witnesses regarding the contents of a missing document. YOS 6 225 indicates that the plaintiffs in the case took an oath, but it does not record the court’s reaction to the oath. On all of these, see the more detailed comments in Magdalene, “Job’s Redeemer,” 305-7 nn. 66-69. Documents such as YOS 6 202 and YOS 6 224 also provide ambiguous evidence. The oath in the former may or may not be part of litigation, and the oath in the latter appears to serve only an evidentiary function and thus not a dispositive function. On this understanding of YOS 6 224, see S. E. Holtz, “Neo-Babylonian Decision Records and Related Documents: Typological, Procedural and Comparative Aspects” (Ph.D. diss., University of Pennsylvania, 2006), 316-17.

\textsuperscript{42} Other documents recording situations where investigations or trials can occur or continue beyond the swearing of an oath include Cyr 312, Dar 53, \textit{Iraq} 59 155 (no. 9), PBS 2/1 140, TCL 12 122, TCL 13 179, TCL 13 181, YNER 1 2, YOS 6 156, YOS 6 169 (= YOS 6 231), YOS 7 140, and YOS 7 192 (several of these are discussed below).
temple: “If I took silver or anything whatsoever from the possession of the runaway oblates of Ištar of Uruk and then let them go (. . .).” After the oath, Sūqayu, son of Arrabi, and Nanaya-īnīya, oblates of Ištar of Uruk, testified in the assembly against Innin-zēr-ibni. They said: “In Karkara, you and Balātu, son of Šulâ, received 3 shekels of silver and 50 liters of beer from Iqīšâ, the šušānu, and then let him go. Also, you took 2 shekels of silver and 50 liters of beer from the possession of Šamšaya, the farmer under the supervision of Nādin, in the house of Kuzub-Anu, and then let him go.”

Witnesses. Uruk, month 10, day 22, year 3 of Cambyses, King of Babylon, King of the Lands.

The defendant in this case, Innin-zēr-ibni, swears to his innocence and invokes both the gods and the king in the oath. In previous periods of Mesopotamian history, this type of oath would have ended the case and ended it in Innin-zēr-ibni’s favor. In this situation, however, the case continues, and the judges (i.e., the two temple officials) hear further testimony from two other temple slaves—testimony that is not given under oath.

The second notable feature of the judicial oath recorded in Neo-Babylonian legal documents can be seen in its relationship to other types of evidence. Ries observes that in the Neo-Babylonian and Persian periods, unlike all previous periods, courts began to allow other types of evidence to contradict and take precedence over statements given under oath.

43 The unstated but assumed apodosis of most judicial oaths is that the gods will punish the oath-taker. Thus, the oath-taker says, in essence, “If I am guilty, may the gods punish me” but utters aloud only the first half of the statement. Dandamaev seems to misunderstand this particular oath and translates Innin-zer-ibni’s statement as a confession: “I took the money and everything the runaway temple slaves of Ištar of Uruk possessed and let (them) go” (*Slavery in Babylonia: From Nabopolassar to Alexander the Great [626-331 BC]*, trans. V. Powell [DeKalb, Ill.: Northern Illinois University Press, 1984], 491). For a defendant to confess by means of an oath would be anomalous for this or any other period.
oath. Extrapolating from this point, Ries claims that, since judicial oaths could now be contradicted and thus proved false, courts began imposing penalties on false oath-takers (previously they had not and assumed the gods would inflict any necessary punishment). Although his first observation appears to be accurate, this latter claim rests on shaky evidence. Ries identifies two texts—these are the only two, he says—that mention punishing a person for uttering a false judicial oath: YOS 7 192 and Iraq 59 155 (no. 9). Each document records its respective defendant swearing by the gods Bēl and Nabû and by the adû of the king that he did not commit the wrongdoing at issue. Also, each text states that, if an additional witness appears and offers testimony incriminating to the defendant, then the defendant will be subject to punishment.

The question is whether any of this punishment is for the defendant’s having sworn falsely. Ries assumes that it is and bases his conclusion primarily on YOS 7 192. There, the defendant, if found guilty, will be subject to a 30-fold fine (he allegedly stole a donkey belonging to the temple), and the text also states that, literally, “he will bear a penalty of the king” (ḫi-ṭu šā LUGAL i-za-ab-bil). Ries claims that the fine is clearly for the theft and that the subsequent statement must then refer to punishment for taking a false judicial oath. It is unlikely, however, that this is what the statement denotes. Several dozen legal documents from the Neo-Babylonian and Persian periods contain this same basic statement, and most of these documents have nothing to do with judicial oaths. In fact, in every case, the statement refers to an administrative violation—that is, a violation of an

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46 Ibid., 464. It should be noted that Ries’ interpretation of Iraq 59 155 (no. 9) is based on this conclusion regarding YOS 7 192.
47 See the documents listed in B. Wells, The Law of Testimony in the Pentateuchal Codes (BZAR 4; Wiesbaden: Harrassowitz, 2004), 73 nn. 75-80.
order issued by one’s administrative superiors or the violation or non-fulfillment of a duty owed to such superiors. Duties and orders of this sort could entail delivering goods by a given deadline, performing required guard duty, supervising slaves, and the like. Violations of these duties were qualitatively different from what could be considered criminal offenses (e.g., theft). Thus, the statement appears to be reserved for administrative misconduct. No other attestation of this statement plainly supports Ries’ conclusion that it relates to false oaths.

In the text on which Ries relies, YOS 7 192, the statement can also be interpreted as referring to an administrative violation. If it should turn out that the defendant in the case did indeed thieve the donkey in question, then he also took, albeit unknowingly, the written “message of Nabugu,” whom we know to be the son of the frequently mentioned Persian official, Gobryas. Perhaps the message was in a satchel strapped to the donkey. This unwitting interference with governmental administrative affairs—preventing the timely delivery of Nabugu’s dispatch—constitutes not a full-fledged crime but a wrong of a different nature, namely, violation of the duty not to interfere with state business. To be sure, the 30-fold fine corresponds to the crime of theft, but the statement about bearing a penalty of the king corresponds to the other, less serious wrongdoing of which the defendant may be guilty. There is thus no clear evidence for courts punishing false oath-takers—specifically for swearing falsely—in the Neo-Babylonian and Persian periods.

Nevertheless, several texts confirm Ries’ point that judicial oaths are now subject to contradiction. The two texts he cites, YOS 7 192 and Iraq 59 155 (no. 9), indicate that additional testimony (most likely unsworn testimony) could prevail over a judicial oath.

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48 For a discussion of this point, see ibid., 73-78.
YNER 1 2 and the text cited above, YOS 7 152, also establish this. In addition, YOS 6 169 (=YOS 6 231) records that a man stands accused of having stolen temple sheep. He says in his defense that it was a temple shepherd who gave the sheep to him. The shepherd is summoned and swears by “the gods and the king” that he in fact did not give the sheep to the defendant. Following the oath, the text indicates that the defendant then had the opportunity to provide to the court documentation supporting his defense. Presumably, if he had produced such evidence, which he did not, the court would have found in his favor and thereby rejected the sworn testimony of the temple shepherd. These texts reflect a judicial oath that appears to have diminished substantially in terms of its evidentiary value.

The third and fourth distinguishing features of judicial oaths from the Neo-Babylonian and Persian periods are related. To begin with, the oath could be taken voluntarily. Prior to these periods, the judicial oath was typically court-ordered. While a few court-ordered oaths do occur in these periods, most judicial oaths are presented as if they were taken of the litigant’s or witness’ own accord. This development seems to have led to another: the swearing of judicial oaths by both parties to a trial. In PBS 2/1 140, the defendant, a member of the Murašû clan, “prononce le serment du dieu par la Grande

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49 YNER 1 2 begins with an oath, in which the defendant denies any involvement in the wrongdoing of which he stands accused. Then, in like fashion to YOS 7 192, the text goes on to state that, should an additional witness appear and testify against the defendant, the latter will be found guilty. Thus, subsequent testimony could supercede the defendant’s judicial oath.


51 The texts that contain non-dispositive oaths (see n. 41 above) show these oaths being taken voluntarily. A few texts record orders—either explicitly or implicitly from the court presiding over the case—for a person to take a judicial oath. These include BM 77425, CM 120 66, Spar 1, YOS 6 156, and YOS 7 61. The oath that is ordered and then taken in YOS 6 156 is non-dispositive. In Spar 1, the man who is ordered to swear does not do so but makes a brief though rather incomprehensible statement. The document records nothing about the court’s reaction to the man’s statement.

52 This is also noted by Magdalene, “Job’s Redeemer,” 305.
“Etoile” and thus swears to his innocence. This prompts the plaintiff to swear in the exact same manner that the defendant is guilty. In the end, the plaintiff wins the case. This type of dual oath-taking seems to be unprecedented in ancient Near Eastern history and further supports the idea that the use of the judicial oath underwent significant changes throughout the sixth and fifth centuries B.C.E.

New Evidentiary Demands

At the same time that the significance of judicial cultic procedures appears to be on the decline, Neo-Babylonian legal documents also reveal the increasing importance of empirical evidence. During the Old Babylonian period, it seems to have been virtually standard procedure for courts to resort to the court-ordered judicial oath to resolve difficult cases. There is ample documentation, however, to indicate that the courts of the Neo-Babylonian and Persian periods favored a different approach. At least forty trial records from these periods refer to instances when courts, confronted with little or no evidence, postpone rendering a verdict and instead explicitly require that one of the parties produce further rational evidence. In almost every instance, the required evidence is oral testimony; that is, the court requires either the accuser or the defendant to produce an additional corroborating witness. YOS 17 32, from the reign of Nebuchadnezzar, illustrates this practice.

On the day when a witness has come on behalf of Bēlšunu, son of Lû-ahûa, and has established—against Tabnea, son of Bēl-uballit, of the Ibni-Sîn

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53 See the translation of this text in Joannès, “La pratique du serment,” 172. The only other text, as far as I know, in which both parties are said to have sworn judicial oaths is YOS 7 140 (see Holtz, “Neo-Babylonian Decision Records,” 94-96).


55 See the texts cited in Wells, Law of Testimony, 108-26; and Holtz, “Neo-Babylonian Decision Records,” 145-78.
family—(the fact) that he (Tabnea) took a ram from the possession of Bēlšunu, the shepherd for the Lady-of-Uruk (i.e., Ištar), and that he [. . . ], then Tabnea will pay back 30 (rams) to the Lady-of-Uruk. Witnesses. Babylon, month 2, day 15, year 19 of Nebuchadnezzar, king of Babylon.

It can be inferred from this text that Bēlšunu has accused Tabnea of stealing a temple ram. The court in this case—who has apparently ordered that this document be drawn up—does not resort to a cultic procedure in order to reach an immediate and decisive verdict. Rather, it is willing to wait until further forensic procedures, namely, the hearing of oral testimony, can take place. The responsibility for initiating this rests with Bēlšunu, and he may, in the event that he fails, ultimately be liable for damages since the stolen ram was in his care. The text then implies that if no further testimony is forthcoming, Tabnea will be considered innocent in the matter, but it is very clear about his fate should Bēlšunu meet the court’s demand. In these documents, the court in essence promises that, if the party to whom it has assigned this responsibility should bring an additional witness to court who supports that party’s position in the case, then the court will find in favor of that party. The judicial oath is no longer the court’s preferred method of deciding hard cases. It is now the oral testimony of at least two witnesses: the testimony of one of the parties in combination with that of a corroborating witness. The evidence from these documents, in combination with the apparent decrease in the importance of cultic procedures, points to a growing trend that relies more heavily on the forensic as opposed to the cultic. This is not to say that forensic procedures were little used in previous periods or that cultic procedures now vanish entirely from the documentary record. Rather, it is to say that the extant evidence reveals an apparent—and relatively dramatic—shift in
the degree of reliance on both types. Interestingly, this shift has echoes in biblical texts as well.

III. Signs of a Shift in Judah

A discussion within biblical scholarship, into its fourth decade now, is important for this topic and has focused mainly on texts in the book of Deuteronomy having to do with judicial procedure (e.g., Deut 17:2-7, 8-13; 19:15, 16-21). Before examining the import of these texts, it is crucial to acknowledge scholarship’s uncertainty regarding the relationship between the stated law of the Pentateuch and the law that was practiced in ancient Judah. Unfortunately, the evidence for the latter is negligible. Thus, it is not clear whether any of the measures advocated by the authors of Deuteronomy or by those of other pentateuchal texts were ever made effective and enforced. It seems reasonable to conclude that some portion of pentateuchal law might well reveal a number legal traditions that were operative in ancient Judah, but, for the purposes of this article, such a conclusion is not necessary. What this section and the next section consider is the legal thinking that underlies certain pentateuchal texts like those in Deuteronomy pertaining to judicial procedure. The next section will go on to compare this way of thinking with that reflected in Mesopotamian legal texts from the Neo-Babylonian and Persian periods. The latter clearly had an impact on the actual practice of law within its respective society; the former may or may not have had a similar impact. The discussion of biblical texts below, therefore, proceeds with a focus on what appears to have been in the minds of the biblical authors—what these particular Judahites wanted to see happen. I do not claim to describe here what actually took place at this point within Judah’s legal system.

The key texts in the book of Deuteronomy are important because they appear, at least, to call for nearly all courts in ancient Judah to eschew cultic methods for resolving
legal disputes and to rely primarily on forensic procedures. One exception comes in Deut 21:1-9. This text describes the discovery of a murdered body with no evidence or indication regarding who the assailant might be. Due to the lack of evidence, the text calls for the elders of the town nearest to the location of the slain body to perform a purification ritual and to swear an oath that absolves them from guilt. One other possible exception—there is some debate regarding this point (more on this below)—could have to do with the highest court in the land, usually referred to as the central court since its location is identified by the same terminology that is applied to the central shrine. This central shrine is most likely the first temple in Jerusalem, though Deuteronomy never explicitly states this. It is also likely that much of the book comes from the last half of the seventh century, B.C.E., specifically during the reign of Josiah (640-609 B.C.E.) and thus shortly before the onset of the Neo-Babylonian period in Mesopotamia. Some have argued, therefore, that Deuteronomy’s authors, perhaps high religious or political officials within Josiah’s administration, were willing to allow the use of cultic judicial procedures at the central court but not at any other. In any event, biblical scholarship has proffered several theories in an effort to explain Deuteronomy’s texts on judicial procedure, and many see these texts as an attempt by the book’s authors to fashion a legal system largely, though perhaps not entirely, devoid of the cultic procedures that were, in all probability, put to frequent use prior to this point in Judah’s history.

Secularization

In the early 1970s, Moshe Weinfeld pointed to what he perceived as a secularizing trend within the legal material of the book of Deuteronomy. On the one hand, such

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secularization meant “the general tendency to free religious institutions and ways of thinking from strict adherence to rules of taboo, etc. and thus to give them a more secular appearance.” On the other hand, it also meant the freeing of certain social institutions from the religious significance and, often, the religious rituals with which they had previously been associated. For instance, Deuteronomy’s establishment of cities of refuge comes across as an essentially non-religious enterprise, unlike texts on the same topic in other sections of the Pentateuch. According to Weinfeld, one of the primary features of this latter type of secularization was the book’s approach to adjudication, which advocated ordinary forensic methods and eschewed “sacral” methods for resolving disputes. This approach stood in contrast to that advocated apparently at previous times in ancient Israel and Judah. For instance, the Book of the Covenant in Exodus 21-23 refers to both the judicial oracle and the judicial oath as seemingly standard procedures (Exod 22:6-8, 9-10). Weinfeld contended that this process of secularization was due in part to the efforts of cultic centralization during the reign of the Judahite king, Josiah. If cultic practices were to be carried out only at the central shrine (the Jerusalem temple), then courts in outlying areas, without access to the central shrine, would have to rely solely on forensic procedures. Weinfeld made it clear, however, that he believed these developments went beyond cultic centralization. For the authors of Deuteronomy, this process was not to be merely a result of centralization but an integral part of their overall program. Thus, when an outlying local court could not reach a verdict in a case and sent the case on to the central court (Deut 17:8-13), then that court, too, which clearly had access to the central shrine, relied strictly on forensic procedures. “The central judiciary also dispensed with the

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59 Ibid., 233-34.
sacral media of jurisdiction (lot-casting, ordeal) and conducted its proceedings through the mediation of purely human factors.” In Weinfeld’s view, then, the authors of Deuteronomy, while devoted to their particular brand of Yahwism, were willing to see a number of social and governmental activities deprived of their religious elements and consequently imbued with a more secular character.

Rationalization

Rather than emphasizing a growing secularization in Judahite circles, of the type described by Weinfeld, Michael Fishbane, in the mid-1980s, argued that Deuteronomic law reflected an increasing emphasis on rationality. Utilizing in part Max Weber’s theories on social development, Fishbane attempted to establish a “typological continuum of biblical law.” This continuum involved four basic stages: “(i) the ‘formally irrational’; (ii) the ‘substantively irrational’; (iii) the ‘substantively rational’; and (iv) the ‘formally rational.’” While cultic judicial procedures dominated the first stage and continued to play an important role in the second stage, it was Deuteronomy’s laws on judicial procedure, according to Fishbane, that reflected the third stage. He states:

Indeed, the legal corpus in the Book of Deuteronomy shows, in its own right, many new tendencies in the increasing rationalization of the juridical process. Among these one may note the consolidation of the judiciary into municipal and provincial courts which are hierarchically related (Deut.

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60 Ibid., 235.
17:8-12), and technical references to judicial inquiry (e.g. 19:15, 17:4, 9, 19:17-18) and witnesses (19:15-19).\footnote{Fishbane, \textit{Biblical Interpretation}, 244.}

At about the same time that Fishbane published his work, Dale Patrick reached very similar conclusions in his analysis of texts regarding Judahite legal procedure. Prior to Deuteronomy, it may have been customary to have disputing parties appear in a sanctuary to take oaths and perhaps have the case resolved by lot. If so, D has changed the mode of resolving the conflicting testimony from a sacred to a judicial procedure—diligent inquiry involving cross-examination and review of the evidence. Such a change would fit D’s general preference for rational deliberation.\footnote{D. Patrick, \textit{Old Testament Law} (Atlanta: John Knox, 1985), 125.}

For these scholars, the authors of Deuteronomy differed substantially from earlier Judahite (and perhaps also Israelite) intellectuals in their approach to adjudication. It was their reliance on the “rational,” in this view, that led them to advocate for the primacy of forensic over cultic procedures.

\textit{Centralization}

Scholarship on biblical law began to take a different tack in the 1990s. Several scholars began to reconsider the nature and significance of cultic centralization. Their work tended to imply that Weinfeld had overestimated the breadth of what he identified as a secularizing trend. The latter was not likely to have been a development in and of itself but rather an inevitable consequence of cultic centralization. It was, therefore, not a larger phenomenon. Features in Deuteronomic law that might appear to be indicative of a process of secularization—or even of an increasing emphasis on rationality—were, in fact, the
direct result of centralization and its ramifications for other areas of Judahite society. Eckart Otto, for example, has argued in several studies that the authors of Deuteronomy drew upon the legal content of the Book of the Covenant in Exodus but that they reinterpreted those laws in light of their agenda to confine worship and ritual practices to the central shrine in Jerusalem. This reinterpretation impacted how trials were conducted and decided. Deuteronomy’s approach differed significantly, therefore, from that advocated in the Book of the Covenant, which explicitly allowed outlying courts to utilize cultic procedures.


Deuteronomy’s restrictions on where cultic activities could be performed would have forced these local courts to act otherwise and to appear to have experienced a process of secularization.

Bernard M. Levinson’s important 1997 analysis of Deuteronomy’s legal hermeneutics also placed great emphasis on the role of centralization in Deuteronomy’s

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legal and cultic innovations. One of the most important developments, says Levinson, occurred in the realm of judicial procedure. The rule in one of the key passages on procedure, Deut 17:2-7, is especially important. This text calls for magistrates in local communities—those outside of Jerusalem—to convict apostates and sentence them to death when at least two witnesses have offered incriminating testimony. According to Levinson, “The function of Deut 17:2-7 is to demarcate the domain of local justice.... The authors select the particular case of apostasy precisely because of its gravity and in order to drive home...the secularization of judicial procedure in the local sphere.” It is the requirement for at least two witnesses that leads Levinson to refer to this as a secularization of the local courts. Previously, cultic procedures—chiefly the judicial oath and oracle—served as the most decisive means local courts had at their disposal to adjudicate a trial. Now, a new standard by which to judge cases has been established in this Deuteronomic text. It is a non-cultic standard, a secular method for obtaining a decisive verdict. Moreover, this particular form of secularization was due entirely to the centralization reforms carried out under Josiah. Religious rituals had to be eliminated from the local courts outside of Jerusalem. Thus, in Levinson’s view, such courts had no other choice but to make use only of empirical evidence to reach their decisions.

Both Otto and Levinson go on to imply that the efforts to centralize worship did not effect the central court in this same way. Cultic procedures would still have been available for use by the central court but only by that court. The law in Deut 17:8-13, which follows immediately after the text discussed above, describes what course of action to take should local courts be unable to reach a verdict in a given case. It is to the central court

\[
\text{ḥammāqōm } \text{‘āšer yibḥar yhwh } \text{‘ĕlōhēkā bō “the place that Yahweh your god has chosen”}
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67 Levinson, Deuteronomy and the Hermeneutics of Legal Innovation.
68 Ibid., 118.
[Deut 17:8]) that the case should be submitted in these situations. The question then becomes whether Deuteronomy’s authors believed the central court should employ cultic procedures in order to resolve these cases. Otto and Levinson opt for an affirmative answer. Otto asserts that the central court would have made use of both types of procedures, cultic and forensic, but would have reserved for cultic procedures the role as the ultimately decisive factor in a case. Levinson’s claims are only somewhat different. In his view, the provision in Deut 17:8-13 “mandates cultic resolution.” He goes on to state: “Even civil cases that could not be empirically resolved because of evidentiary insufficiency were referred to the cultus for an oracular responsum.” In his view, cultic procedures appear to be the principal, if not the only, means by which Deuteronomy’s authors wanted the central court to decide the cases brought before them. Based on this argument, one might conclude, then, that Deuteronomy’s authors were not averse to cultic judicial procedures and even wished them to remain in use in ancient Judah but to be practiced only by the central court at the central shrine.

Religious Developments

More recent work on this question emphasizes the role of religion. As religion began to change, other aspects of society were impacted and, at times, unintentionally so. This approach is not the same as that described above, which focuses on the effects of centralization. Rather, this view holds that religious developments, larger in scope than that of cultic centralization, gradually influenced segments of Judahite society and led to new perspectives and behaviors, perhaps even to new approaches to resolving legal disputes.

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70 Levinson, Deuteronomy and the Hermeneutics of Legal Innovation, 116.
71 Ibid., 127 (see also 129).
Reinhard G. Kratz sets forth an argument along these lines. He claims that the impetus for many of the new ideas that appear in both Deuteronomistic (including the book of Deuteronomy) and priestly literature is the development of monotheism. Essentially, Kratz describes the rise of monotheism within Judah as a phenomenon of theologizing. By that he means that biblical authors subjected numerous aspects of Judahite culture and society to particular theological understandings. The dominant theological tenet for them derived from the first commandment: “I am Yahweh your god who brought you out from the land of Egypt, from the house of bondage. You shall have no other gods before me” (Deut 5:6-7). Thus, their view of law, their view of the history of their people, and their view of their own future were seen through the lens of that command. Law ought to be an expression, in various ways, of that command. But there was more to this process of theologizing, according to Kratz: “Theologisiert werden allerdings nicht nur das Recht oder die Politik, sondern auch die herkömmliche Religion und deren Theologie.” From contemporary religious beliefs, such as the belief in Yahweh as the national deity of Judah, biblical authors developed a special, highly focused type of belief in Yahweh. Existing religion took on a more concentrated, radicalized form. This, he says, led to monotheism.

Ironically, monotheism brought with it an unintentional and, very likely, an unexpected consequence. According to Kratz, “die Hauptsache des monotheistischen Bekenntnisses” is “die strikte Unterscheidung von Gott und Welt.” Just as the concept of deity became radicalized, so too did the concept of the secular realm or the world: “Auf

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73 Ibid., 59
74 Ibid., 61.
This sort of attitude finds its most stringent and explicit expression in the book of Deuteronomy and those of the Deuteronomistic History. What this means in practical terms is that the authors of these books advocated a conspicuous differentiation between the sacred and the secular, and certain activities that formerly held cultic significance, therefore, lost that significance. In a sense, then, Kratz agrees with those scholars who follow either Weinfeld’s notion of secularization or Levinson’s emphasis on centralization. Deuteronomy’s authors placed rigid boundaries around where and how the Yahwistic cult could be practiced. He differs from them, however, on the driving force behind this development. For Kratz, it is above all a religious phenomenon driven primarily by the movement toward monotheism. Cultic centralization and the secularization of some spheres of society, such as the practice of law in outlying areas, are the result of this larger development within the Judahite worldview.

In contrast to all of the views presented above is that of Bernard S. Jackson. He argues for what is in many respects the precise opposite of the idea that Deuteronomy’s laws represent a shift away from relying on religiously oriented modes of adjudication. In spite of this, it is worth including a description of his view here because it is one of the most recently argued positions and because it, like that of Kratz, identifies developments within the area of religion, among others, as an important causal factor behind changes within Judahite law. To begin with, Jackson believes that many biblical laws did not originate within a specifically legal or judicial setting. Rather, they developed within the same milieu that spawned early wisdom traditions. In a sense, then, they were not laws, strictly speaking, and they were certainly not written down anywhere. They were, instead,

75 Ibid.
traditions or customs by which most, if not all, members of early Judahite/Israelite society expected other members to abide. In the event of one member doing wrong toward another, these traditions gave victims the right to self-help—i.e., the right to seek damages directly from the perpetrator. Moreover, many of these traditions, according to Jackson, were developed with the intention that they be self-executing—i.e., that the two parties would be able to resolve their dispute without recourse to a third party for adjudication. These traditions, says Jackson, reflect much of the collective knowledge and experience of community leaders within this society and thus constitute a store of early wisdom; hence, his term “wisdom-laws” for the provisions in the Book of the Covenant.

A subsequent development then takes place. Jackson states, “With the growing social complexity of Israel’s society in the period of the monarchy, however, and an increasing number of cases where legal questions are disputed, the need for institutionalisation of proceedings arises.”77 Third-party adjudication could not be postponed inevitably and thus became an increasingly important part of the judicial system. Still, according to Jackson, it was not the kind of adjudication with which we moderns are familiar. Jackson distinguishes between “charismatic” adjudication and “rational” adjudication (the latter being the general counterpart to modern methods).78 The charismatic approach pursued justice by relying “upon some form of inspiration or revelation, whether that be the divinely inspired wisdom of the judge or revelation by oracular means.”79 This is the type of adjudication to which he believes Deuteronomy refers. Deuteronomy’s authors say nothing regarding the “use of written rule-books,” and

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77 Ibid., 33.
78 Ibid., 411-12.
79 Ibid., 412. Elsewhere, Jackson contrasts this approach with the rational approach by stating that the former relied “upon intuitions of justice (often conceived as divinely inspired) against a background of custom, rather than the analysis of linguistically formulated rules” (ibid., 30-31).
Jackson sees such omission as a telltale feature of the charismatic approach.\textsuperscript{80} He claims that this approach characterizes adjudication in Deuteronomy both at outlying courts and at the central court.\textsuperscript{81} The next development in Jackson’s view comes with greater involvement on the part of religious officials, especially priests, in the judicial process. It was in the interests of these officials “to retain a maximum of control over the judicial system.”\textsuperscript{82} This, argues Jackson, seems to be the reason for the emphasis on certain cultic procedures in some biblical laws (e.g., the oath and oracle in Exod 22:6-10). “Such procedures would appear on the argument here advanced not to be a functional supplement to a regular system of adjudication but rather to represent the growing claims of priestly jurisdiction.”\textsuperscript{83} Thus, rather than saying that the cultic procedures in Exodus eventually give way to a more rational approach in Deuteronomy, Jackson favors the reverse: the charismatic approach in Deuteronomy may have faced stiff competition from or even lost out to a more rigid procedural system headed by priests. The latter manifests itself only at the editorial level of the Book of the Covenant, whose original provisions would have reflected the type of early wisdom-law system that Jackson describes.

Jackson’s claims clearly run contrary to many of those set forth by the other scholars discussed above. He does not find in Deuteronomy’s laws on judicial procedure an approach that favors forensic procedures over cultic procedures, even if one limits that approach to courts outside of Jerusalem. His claims regarding Deuteronomy deserve a response, and the section below is, in part, such a response, since it presents an interpretation that is clearly at odds with his. My analysis examines Deuteronomic and

\textsuperscript{80} Ibid., 416.
\textsuperscript{81} Ibid., 420-22.
\textsuperscript{82} Ibid, 424.
\textsuperscript{83} Ibid., 403 (see also 430).
other biblical texts on judicial procedure in light of the evidence from the Neo-Babylonian and Persian-period legal documents discussed earlier. In so doing, it diverges from the scholarly views presented thus far. While agreeing with scholars like Weinfeld that the authors of Deuteronomy disfavor the use of cultic procedures by both local courts and the central court, the remainder of the article argues that the preference for forensic procedures on the part of Deuteronomy’s authors comes through in terms stronger than and, in all probability, for reasons different from those suggested to date.

IV. Deuteronomic, Priestly, and Mesopotamian Judicial Procedure

Several issues confront any analysis of biblical texts on judicial procedure. With respect to Deuteronomy, one must ask whether the book’s authors expected the central court to resolve the cases that came before it by means of cultic procedures, forensic procedures, or both. It is also necessary to ascertain whether any connections can be observed between Deuteronomy’s rules of procedure and those by which the courts of the Neo-Babylonian and Persian periods appear to have operated. Finally, how should other biblical material from the mid-first millennium be understood? I am referring specifically to the priestly sections of the Pentateuch, which include both narrative and legal passages related to judicial procedure. What do these texts tell us regarding the thinking of other Judahite intellectuals on this matter? These are the questions that this section of the article considers. It begins by examining several of these issues by means of a comparison of Deuteronomic and Mesopotamian judicial procedure.

*Deuteronomy and Neo-Babylonian Legal Texts*

Deuteronomy’s three most important texts on judicial procedure are Deut 17:2-7, 17:8-13, and 19:16-21. The first deals exclusively with courts in local municipalities
outside of Jerusalem. The latter two center around procedure at the central court, again, presumably intended by the authors to be in Jerusalem.

Deut 17:2-7 describes how to handle religious apostasy by an inhabitant of a Judahite town. It states:

(2) If there is found among you, in any of your towns that Yahweh your god is giving to you, a man or a woman who does evil in the sight of Yahweh your god by violating his covenant, (3) and who goes and worships other gods and bows down to them—to the sun or the moon or any heavenly body that I have not sanctioned—(4) and it is reported to you, then you shall hear, and you shall investigate thoroughly. If it is true, the fact is established, that this abomination has been committed in Israel, (5) you shall take that man or that woman, who did this evil thing, out to your gates, and you shall stone the man or the woman to death with stones. (6) On the testimony of two witnesses or three witnesses shall the one to die be put to death; that one shall not be put to death on the testimony of one witness. (7) The hands of the witnesses shall be the first against that person to put the person to death, and the hands of all the people after that. Thus you shall purge the evil from your midst.

Three aspects of this text appear to parallel the approach to adjudication manifest in the Mesopotamian trial records from the Neo-Babylonian and Persian periods. First, as Levinson and others have noted, the passage disfavors the use of cultic procedures. Even when the wrongdoing at issue is the practice of false religion, the text eschews cultic methods for deciding the case. It calls for neither an oath, an oracle, nor an ordeal. Second, what the text does call for is judicial investigation into the matter. This entails, at the
beginning, the hearing of testimony. The root šm’, used in v. 4 at the beginning of the
apodosis of this law, can have this particular connotation—namely, the hearing of
testimony by the presiding judges—and no other connotation seems as apt for this
context. Following this, the judges are to “investigate thoroughly” (dāraštā hēṭēb;
literally, “you shall investigate thoroughly”). Scholars are agreed that this admonition, in
this particular text, refers to the gathering of further empirical evidence—most likely
further testimonial evidence, given what comes later in this text—and not the performance
of a cultic procedure. This type of endeavor, to look for additional evidence to help
decide the matter at hand, appears to be quite similar to what the Mesopotamian courts of
the Neo-Babylonian and Persian periods tend to do in the face of insufficient evidence.
Third, this Deuteronomic text makes clear in v. 6, with its reference to “two witnesses or
three witnesses,” that the preferred form for this additional evidence is oral testimony and
that the required minimum for reaching a verdict is two witnesses. The judges referred to
in the Neo-Babylonian and Persian-period trial records appear to be making decisions
based on nearly identical preferences and minimums when they require one of the parties
to produce a corroborating witness before they decide the case.

Relating Deuteronomy’s judicial procedure to these Mesopotamian texts becomes
more problematic with another of the book’s important texts, Deut 19:16-21.

(16) If a malicious witness rises against any person to accuse the latter falsely,
(17) then both parties to the dispute shall appear before Yahweh and before
the priests and the judges who are in office in those days. (18) The judges
shall investigate (dāraš) thoroughly, and if the witness is a false witness and

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has accused the other falsely,\textsuperscript{19} then you shall do to that person just as the person intended to do to the other. Thus you shall purge the evil from your midst.\textsuperscript{20} The rest of the people shall hear and fear and shall never again commit any such evil among you.\textsuperscript{21} Your eye shall not pity; it shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.

Here, unlike the provision in Deut 17:2-7, there are not two witnesses that together favor one side in the case. It appears simply to be one person’s word against that of another. Also in contrast to Deut 17:2-7, the litigants are instructed to “appear before Yahweh,” most likely a reference to the central shrine. The authors are not, therefore, referring to a trial within the local court system, but to one that is to be conducted at the central court, the only place where one could, in fact, stand before the deity. Nevertheless, there is still in this text the stipulation that “the judges shall investigate thoroughly.” Is this sufficient to connect the text with the approach advocated in Deut 17:2-7 and that reflected in the Neo-Babylonian texts? The Hebrew term \textit{dāraš} (translated here as “investigate”) can, and often does, refer to oracular inquiry. Because of this possible connotation and because of the reference to priests, it might seem reasonable to conclude that this passage wants—or, at least, is willing to allow—the central court not to investigate but instead to utilize cultic procedures to decide the case at hand.

This requires a closer look at how the verb \textit{dāraš} is used throughout the Hebrew Bible. The term occurs 164 times in biblical texts. While it carries a variety of connotations, I identify six general semantic categories for the term. Admittedly, this system of analysis may be somewhat oversimplified. In the semantic category labeled below as “to look for,” for example, \textit{dāraš} can convey different nuances, such as “to look for someone or something for the purposes of treating that person or thing benevolently” or...
“to try to achieve a goal or obtain an object.” In addition, some uses of the word are difficult to categorize; at times, a reasonable argument could be made for placing a given use in at least two different categories. Despite these sorts of disadvantages, however, the categories listed here are useful in assessing how the syntax of a clause in which dāraš occurs can influence the connotation of the term. The six categories are as follows (subcategories with several references have their references listed in the notes).  

1) “to look for”
   - 18 times with an explicitly stated direct object
   - 2 times in the passive voice; the object of the action is the subject of the clause in each instance (Isa 62:12; 1 Chr 26:31)
   - 1 time with an implied direct object (“my flock” in Ezek 34:6)
   - 6 times with an accompanying prepositional phrase that explains either what is looked for or where the act of looking takes place

2) “to ask” (i.e., to request information from or concerning someone or something)
   - 1 time with an explicitly stated direct object (2 Chr 32:31)
   - 1 time in the passive voice; the object of the action is the subject of the clause (Ezek 36:37)
   - 5 times with an accompanying prepositional phrase that indicates either the object or the source of the requested information

3) “to require” (in the sense of requiring an account for some action taken)

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87 Lev 10:16; Deut 11:12; 22:2; 23:7; Jer 29:7; 30:14; 30:17; Ezek 20:40; 34:8, 10, 11; Amos 5:14; Ps 38:13; Job 3:4; Prov 11:27; 31:13; Est 10:3; Ezra 9:12.
88 Isa 34:16; Jer 38:4; Pss 109:10; 142:5; Job 39:8; Qoh 1:13.
89 Deut 12:30; 2 Sam 11:3; Isa 11:10; 2 Chr 24:6; 31:9.
- 8 times with an explicitly stated direct object
- 1 time in the passive voice; the object of the action is the subject of the clause (Gen 42:22)
- 3 times with an implied direct object (“the wicked one” in Ps 10:4 and 13; and the execution of Zechariah by Joash in 2 Chr 24:22)
- 3 times with an accompanying prepositional phrase that explains why or from whom an account is required (Deut 18:19; Mic 6:8; Job 10:6)

4) “to be pious” (usually to “seek” Yahweh, in the sense of participating in appropriate religious rituals and other acts of piety)
- 51 times with an explicitly stated direct object
- 2 times in the passive voice; the object of the action is the subject of the clause in each instance ( Isa 65:1; Ps 111:2)
- 1 time with an implied direct object (“Yahweh” in 2 Chr 14:6)
- 10 times with an accompanying prepositional phrase that indicates, most often, the object of the piety (usually Yahweh preceded by le) or, least often, the location of the acts of piety

5) “to make oracular inquiry”
- 20 times with an explicitly stated direct object

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90 Gen 9:5 (3 times); Deut 23:22; Ezek 33:6; Pss 9:13; 10:15; 1 Chr 28:9.
91 Deut 4:29; Isa 1:17; 9:12; 16:5; 31:1; 55:6; 58:2; 65:10; Jer 8:2; 10:21; 29:13; Hos 10:12; Amos 5:4, 5, 6; Zeph 1:6; Pss 9:11; 14:2; 22:27; 24:6; 34:5, 11; 53:3; 69:33; 77:3; 78:34; 105:4; 119:2, 10, 45, 94, 155; Lam 3:25; Ezra 7:10; 1 Chr 15:13; 16:11; 28:8, 9; 2 Chr 1:5; 12:14; 14:3, 6; 15:2, 12; 19:3; 22:9; 25:15, 20; 26:5 (2 times); 30:19.
92 It may be possible that, in these particular instances, the function of the word le is to mark the direct object. See HALOT, 509-10; and B. K. Waltke and M. O’Connor, An Introduction to Biblical Hebrew Syntax (Winona Lake, Ind.: Eisenbrauns, 1990), 210-11.
93 Deut 12:5; Ezra 4:2; 6:21; 1 Chr 22:19; 2 Chr 15:13; 17:3, 4; 20:3; 31:21; 34:3.
94 Gen 25:22; Exod 18:15; 1 Sam 9:9; 1 Kgs 14:5; 22:5, 8; 2 Kgs 3:11; 8:8; 22:13, 18; Jer 21:2; 37:7; Ezek 20:1, 3; 1 Chr 13:3; 21:30; 2 Chr 16:12; 18:4, 7; 34:21.
- 4 times in the passive voice; the object of the action is the subject of the clause in each instance (Ezek 14:3; 20:3, 31 [2 times])
- 1 time with an implied direct object (“prophet” in Ezek 14:10)
- 17 times with an accompanying prepositional phrase that describes either to whom (e.g., Yahweh) or how (e.g., by consulting with a prophet or a medium) the oracular inquiry is made

6) “to investigate” (in a judicial sense)
- 1 time with an explicitly stated direct object (Ezra 10:16)
- 4 times with no direct object and no accompanying prepositional phrase (Deut 13:15; 17:4; 19:18; Judg 6:29)

The number of uses of dāraš listed above for these six categories comes to a total of 160. Three of the remaining four occurrences are infinitive absolutes, used to add emphasis to other forms of the term. The last remaining use comes in Deut 17:9, which states: “You shall go to the levitical priests and the judge who are there in those days. You shall seek (dāraš), and they shall declare to you the verdict of the case (dēbar hammišpāṭ).” It seems possible to classify this use of the term under the rubric “to ask” and to say that it carries an implied direct object, namely, “the priests and the judge.” Other scholars, however, prefer to understand the term’s use in this verse as connoting judicial inquiry. The pericope in which this verse occurs will be discussed shortly.

What is noteworthy from this overview of how dāraš is used in the Hebrew Bible is that one of two factors is present with nearly every occurrence of the term. First, an object

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95 Deut 18:11; 1 Sam 28:7; 1 Kgs 22:7; 2 Kgs 1:2, 3, 6, 16 (2 times); Isa 8:19 (2 times); 19:3; Ezek 14:7; Job 5:8; 1 Chr 10:13, 14; 2 Chr 18:6; 34:26.
96 The form in the MT of Ezra 10:16 is lēdaryōš, which should probably be emended to lidrōš. See GKC §45.
97 See, e.g., Wagner, “drš,” 297.
of the action indicated by dāraš occurs with 115 of its uses. The object usually appears as an explicitly stated direct object in the clause but can also occur as the subject of a passive form of the verb or as an implied—I would say, clearly implied—object, though unstated within the clause employing dāraš. Second, if no object is indicated for dāraš, then most other occurrences of the term are accompanied by an explanatory prepositional phrase. Such a phrase appears with 41 uses of the term. Together, these two factors account for 156 of the term’s 164 biblical occurrences. When one then eliminates the three uses of dāraš as an infinitive absolute and its somewhat ambiguous occurrence in Deut 17:9, that leaves only four remaining uses: Deut 13:15; 17:4; 19:18; Judg 6:29. Again, these four contain no object for dāraš and have no accompanying prepositional phrase. Two other features bind the three Deuteronomistic uses together even more closely: (1) the fact that all three occur in laws relating to judicial procedure; and (2) the fact that all three of these uses of dāraš are modified by the term hētēb (“thoroughly”). There is virtually no debate that the connotation of dāraš in Deut 13:15 and 17:4 and in Judg 6:29 is judicial investigation. Given the features that Deut 19:18 shares with these other verses in terms of both syntax and subject matter, it stands to reason that dāraš connotes judicial investigation—and not oracular inquiry—there as well. Thus, it is rather unlikely that the law in Deut 19:16-21 is calling for, or even allowing for, the central court to make use of a cultic procedure to decide the trial that the passage presents.

This analysis seems sufficient to connect the approach to adjudication in Deut 19:16-21 with that revealed in the Neo-Babylonian and Persian-period trial records. There is another factor, though, that reinforces this conclusion. The issue of false witness is dealt with in the Book of the Covenant in Exodus by means of a judicial oracle. The emphasis

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98 Westermann also groups these four verses together, along with Ezra 10:16, and states that dāraš means “untersuchen (gerichtlich)” in these texts (“Begriffe für Fragen und Suchen,” 16).
on judicial investigation in Deut 19:16-21 is in stark contrast to that approach. Exod 22:8 raises the possibility that a person (the depositor) might falsely accuse another (the depositee) of stealing goods that the former had deposited with the latter. The verse raises this possibility by stating: ‘āšer yaršî ’un ’ēlôhîm yēšallêm šēnayim lērē’ēhû (“the one whom Elohim convicts shall pay double to the other”). If the depositee did indeed misappropriate the depositor’s goods, then the fine is twice the amount of goods in question. On the other hand, if the depositee should be innocent of the charges, then the oracle (the verdict revealed by Elohim) would indicate that the depositor is guilty.\footnote{The reference to Elohim is clearly a reference to the deity and not to a group of judges as some commentators have observed. For a concise and cogent statement of this point, see Levinson, Deuteronomy and the Hermeneutics of Legal Innovation, 112 n. 37.} But of what is the latter guilty? The penalty answers the question. The depositor, too, must pay twice the amount of goods in question—a penalty that matches the very penalty the depositor was hoping to inflict on the depositee. Evidently, then, this is a penalty for false accusation.\footnote{R. Westbrook, “The Deposit Law of Exodus 22,6-12,” ZAW 106 (1994): 309-403, esp. 397.} Thus, both the text from Exodus 22 and the one from Deuteronomy 19 agree that false accusers should be punished in a talionic manner by receiving a penalty that mirrors what they were seeking when they first brought charges. The texts disagree, however, on the means by which to decide that an accusation is false. One opts for cultic procedures; the other for forensic. This shift to forensic procedures in situations that previously were handled with cultic procedures corresponds to the shift identified within the Mesopotamian judicial system of the Neo-Babylonian and Persian periods.

The remaining text that bears significantly on Deuteronomy’s approach to judicial procedure is Deut 17:8-13. This text, like Deut 19:16-21, has the central court in view. This is clear from the language is vv. 8 and 10, which employ the centralization formula
The text addresses cases that are too difficult for local courts outside of Jerusalem to resolve. The translation below comes from the NRSV.

(8) If a judicial decision is too difficult for you to make between one kind of bloodshed and another, one kind of legal right and another, or one kind of assault and another—any such matters of dispute in your towns—then you shall immediately go up to the place that the LORD your god will choose, where you shall consult (דָּרָשׁ) with the levitical priests and the judge who is in office in those days; they shall announce to you the decision in the case. (9) Carry out exactly the decision that they announce to you from the place that the LORD will choose, diligently observing everything they instruct you. (10) You must carry out fully the law that they interpret for you or the ruling that they announce to you; do not turn aside from the decision that they announce to you, either to the right or to the left. (11) As for anyone who presumes to disobey the priest appointed to minister there to the LORD your god, or the judge, that person shall die. So you shall purge the evil from Israel. (12) All the people will hear and be afraid, and will not act presumptuously again.

There is little if anything in this text that would appear to refer to a cultic procedure. Perhaps the presence of priests alludes to such, yet their presence is not sufficient to make cultic procedures more than a mere and remote possibility. That Deut 19:16-21 speaks of the central court, composed partially of priests in that text as well, as basing its decision on judicial investigation renders doubtful the idea that Deut 17:8-13 would have the central court operating in a notably different manner. The Deuteronomic authors likely envisioned priests as part of the central court that would judge the cases brought before it based on the...
examination of real or ordinary evidence and without recourse to any particular cultic procedure. Neo-Babylonian legal documents reveal that religious and temple personnel were frequently involved in judging trials that covered a broad range of issues and that they often served alongside non-temple officials in this capacity. Why should the situation necessarily be different in Judah? It might also be argued that the term *dāraš* in v. 9 carries an oracular connotation and thus indicates that the passage has a cultic procedure in view. This seems unlikely since *dāraš* in all of Deuteronomy’s other laws on judicial procedure clearly refers to the search for and the examination of evidence—i.e., forensic procedures. Ultimately, the import of Deut 17:8-13 is not to stipulate the use of cultic procedures at the central court but to offer the local courts assistance when faced with difficult cases. The magistrates from the local courts are to take the case to the central court and perform there the action of *dāraš*. This may entail further investigation or examination of the evidence with the aid of the members of the central court. It may also be that of presenting the case to the central court and allowing the latter full authority in the decision-making process. The text leaves little to no room for interpreting it as a call for the central court’s use of cultic procedures, since it makes no reference whatsoever to an oath, an ordeal, or an oracle. It is thus congruent with the judicial approach in Deut 17:2-7 and 19:16-21, as well as the approach attested by the Neo-Babylonian and Persian-period trial records.

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102 For example, Jackson believes that *dāraš* here suggests the use of an oracle or other cultic procedure by the central court. He cites a few texts (e.g., 2 Kings 22:13, 18) that use *dāraš* in this way but says nothing about other uses of *dāraš* in Deuteronomy’s laws on judicial procedure (*Wisdom-Laws*, 420-22, esp. 421 n. 173).

103 On this point, I agree with Patrick (*Old Testament Law*, 118-19) but disagree with Levinson, who claims that it is the two litigants who are to go to the central court (*Deuteronomy and the Hermeneutics of Legal Innovation*, 129).
Priestly Texts

Despite the foregoing evidence that points towards a shift, at least in the minds of the authors of Deuteronomy (or D), toward a strong preference for forensic over cultic procedures, the priestly texts (or P) of the Pentateuch cannot be ignored in the effort to assess how broadly this shift in legal thinking may have influenced Judahite society. With many other scholars, I prefer an exilic or post-exilic date for much of the priestly material (c. mid-500s or later). This places P precisely in the time period under discussion in this study. At first glance, the priestly material appears to reveal the opposite of what one finds in Deuteronomy. Some of their narratives about events in the desert show Moses seeking direct revelation from Yahweh regarding what to do with lawbreakers. In addition, a lengthy description occurs in Numbers 5 of an elaborate ritual that probably served as a judicial oath procedure. Was it only the authors of D that preferred forensic procedures, and does this point to direct conflict between the approach of D and that of P? While the priestly texts do not appear to eschew cultic procedures to the same degree as Deuteronomy, a careful examination of the relevant texts reveals a more ambiguous state of affairs. P does indeed show signs of a potential shift, albeit more subtle than D’s, toward a more forensic model of adjudication.

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104 For this and later dates for P, see the overview in R. Achenbach, Die Vollendung der Tora: Studien zur Redaktionsgeschichte des Numeribuches im Kontext von Hexateuch und Pentateuch (BZAR 3; Wiesbaden: Harrassowitz, 2003), 14-22. For an earlier date (c. 700 B.C.E.), see M. Weinfeld, The Place of Law in the Religion of Ancient Israel (Leiden: Brill, 2004).

105 While it is often interpreted as a judicial ordeal, the ritual and its accompanying statements primarily exhibit features of the judicial oath; see A. M. Kitz, “Numbers 5:11-31: Oath or Ordeal? That Is the Question” (paper presented at the annual meeting of the Society of Biblical Literature; San Antonio, Texas, 23 November 2004).
Two texts that recount events in the desert are instructive: Lev 24:10-14 and Num 15:32-36. Both describe acts of wrongdoing. In Leviticus 24, a man is said to have cursed haššēm, that is, the name of Yahweh. The text from Numbers speaks of a man found gathering sticks on the Sabbath. In both instances, the perpetrator is placed in holding and under guard. Also in both instances, reference is made to eyewitnesses. Lev 24:14 refers to those who witnessed the cursing as haššōmē’îm, “the hearers” or “those who heard.” In Numbers 15, those who discovered the stick-gatherer are called hammōše’îm in v. 33—“those who found” or “those who caught [the man] in the act.” By declaring the presence of eyewitnesses and by referring to the placement of each man under guard, the texts imply that the guilt of both men has already been decided by the time they are confined. Any sort of imprisonment was rare in the ancient Near East, but the forcible holding of persons that is attested typically occurs while the authorities await the payment of a fine, the apprehension of an accomplice, or the decision of a sentence. Individuals were not placed in custody pending the return of a verdict. If courts should decide to delay the verdict, they would release defendants on their own recognizance, though they often assigned to another person the responsibility of ensuring that the defendant returned to court when summoned. It is true that in both of the biblical texts under discussion, Moses receives direct revelation regarding the guilty parties (Lev 24:13-14; Num 15:35), but this revelation comes later, after the determination of their guilt and the commencement of their confinement. Thus, even though both texts refer to oracles, the

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106 Jackson refers to these and other such texts as “the narratives of desert adjudication” and argues that they actually show a pronounced emphasis on what I am calling cultic procedures (Wisdom-Laws, 425-30).
107 The clause is wayyannî́hū bammīšmār in Lev 24:12; wayyannî́hū ʿōtō bammīšmār in Num 15:34.
109 Magdalene, On the Scales of Righteousness, 77-78.
oracle in each instance relates only to the sentencing stage of the trial. The actual verdict—the determination of guilt or innocence—is based on forensic grounds, namely, eyewitness testimony. Why these texts prefer the oracle for the sentencing phase is not clear. It may be that the authors want to lend divine authority to the idea that rule-breakers of this sort really ought to be killed and not offered the opportunity of a mitigated sentence. This would be in keeping with other priestly rhetoric that inveighs against punishments that fall short of the harshest penalty allowed by law.\textsuperscript{110} It is not a foregone conclusion, therefore, that these desert narratives emphasize cultic adjudication.

The ritual described in Num 5:11-31 also appears to be an example of a priestly text that prefers cultic rather than forensic procedures. Again, though, a closer look reveals ambiguity on this point. A husband who suspects his wife of adultery, according to the text, may bring her to “the priest” (v. 15) in order to have this ritual performed. The text qualifies the circumstances in which a husband may do this, however, by stating that ʿēd ʾēn bāḥ wēhî ʾlōʾ nītpāsâ (“there is no witness against her, and she herself was not caught [in the act]”).\textsuperscript{111} This statement captures the two forms of evidence most highly prized by ancient Near Eastern courts: testimonial evidence and the catching of the perpetrator in the commission of the crime. A trial record (BE 9 24) from the reign of Artaxerxes illustrates the court’s desire to have one or the other:

\textsuperscript{110} See Num 35:30-31, which stipulates the death penalty for murderers. The text goes on to say that a monetary payment or ransom should not be accepted in lieu of executing the perpetrator, a practice that may well have been a common one.

\textsuperscript{111} The New JPS Translation (Second Edition) renders the relevant part of v. 13 as follows: “and she keeps secret the fact that she has defiled herself without being forced, and there is no witness against her.” This translation assumes the connotation of tāpas here to be that of forcible sex or rape. The NRSV, on the other hand, states: “she is undetected though she has defiled herself, and there is no witness against her since she was not caught in the act.” Of the two, I prefer the latter, though I opt to maintain a distinction between the woman’s being observed by a witness and her being caught in the act, perhaps by her husband. See M. Fishbane, “Accusations of Adultery: A Study of Law and Scribal Practice in Numbers 5:11-31,” \textit{HUCA} 45 (1974): 25-45, esp. 35.
Enlil-šum-iddin, son of Murašû, spoke to Aqûpu, son of Zabdiya, and said:
“You have taken 300 head of livestock, white and black.” Then Aqûpu spoke: “I have not taken [any] apart from the 110 head.” On the day when Aqûpu is caught red-handed (qāt šibitti),\(^{112}\) or an accuser or witness has, apart from the 110 head, incriminated him, he shall pay 300 head of livestock to Enlil-šum-iddin. Witnesses. Nippur, month 1, day 8, year 31 of Artaxerxes.

In this latter text, the court is willing to wait until one or the other form of evidence becomes available. The authors of Numbers 5 are, apparently, not so inclined. Nevertheless, by referring to the absence of these two forms of evidence, they indicate that either type of evidence, if available, would take precedence and render the performance of the described ritual unnecessary.

A final text that is important for this discussion is Lev 5:20-26. The basic issue that the text addresses is the combination of theft—in a variety of forms such as lying about deposited goods, extortion, lying about another’s lost property (vv. 21-22)—and a false oath by the defendant accused of theft. The main point of the text is to provide a way for the person, who at first gets away with this wrongdoing, to make things right. Such a person must certainly pay a penalty, but the penalty is remarkably light.\(^{113}\) The person has only to restore the items that were wrongfully taken and then pay a twenty-percent fine. Although this is the extent of the judicial punishment, cultic atonement is also necessary, and the text requires a guilt or reparation offering. But it is not clear whether the offering is to atone for the theft, the false oath, or the combination of the two. Regardless, the

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\(^{112}\) On the translation “caught red-handed” for the expression qāt šibitti, see CAD § 156-57.

\(^{113}\) See the discussion in Milgrom, *Leviticus 1-16*, 335-378, especially 328-30, where he lists the typical penalties for theft.
consequences still appear to be minimal. One might have expected more severe measures in light of the false oath. It may well be that this text reflects an approach that assigns a lower level of significance to the judicial oath than the type of approach that prevailed throughout most of ancient Near Eastern history. If so, then this priestly pericope would share, in part, the approach revealed by the Neo-Babylonian and Persian-period trial records. To judge from other texts (e.g., Num 15:32-36), the priestly authors were much more concerned about ritual behavior such as Sabbath observance than they were about false judicial oaths.

V. Conclusions

This article has attempted to describe what appears to be a significant and, in some ways, surprising change in legal thinking regarding judicial procedure in ancient Judah and Mesopotamia. The extant evidence points toward a decline in the perceived value of cultic judicial procedures in both regions and a concomitant increase in a preference for forensic procedures, primarily the hearing of oral testimony. While most of this evidence comes primarily from the second quarter of the first millennium B.C.E., it can be located more precisely within the time period from the late seventh century to the early fifth century (though a few relevant Mesopotamian texts date to the late fifth century), especially if one assigns an exilic or early post-exilic date to the priestly material of the Hebrew Bible. In addition, the Mesopotamian documents reveal the courts of the Neo-Babylonian and Persian periods acting in a manner consistent with the judicial approach outlined by the authors of Deuteronomy. To be sure, cultic procedures were not completely abandoned in either Judah or Mesopotamia. Still, if the extant evidence accurately reflects the judicial landscape of these two areas—or, in the case of Judah, the procedure advocated by a
particular group of intellectuals—one cannot help but wonder about the driving force behind these developments.

Several options present themselves. One could, I suppose, surmise that a wave of what we moderns might call rationality or secularism or some combination of the two was spreading across the ancient Near East and leading to a distrust in the reliability of the previously cherished cultic procedures. Perhaps this evidence heralds an ancient Near Eastern enlightenment of sorts. Such a conclusion, though, seems rash and beyond the bounds of the evidence at hand, given how tenaciously both societies continued to hold to longstanding religious beliefs. Another proposal might be that the evidence points to an early beginning in the separation of law and religion. The state-run legal system could have been gradually shedding its connection to the state-run religious system and finding ways to carry out its duties without extensive reliance on the latter. This conclusion is hard to accept when the evidence from both Mesopotamia and Judah speaks of religious functionaries fulfilling significant roles within the judicial system. Other ideas may be possible. One drawback, however, with many of the theories proposed by biblical scholars (e.g., cultic centralization, the move toward monotheism) is that, even though these theories might explain some of the biblical data, they fail to take the Mesopotamian evidence into account. Given the similarities between Deuteronomy’s approach to judicial procedure and the practice of the Neo-Babylonian and Persian-period court system, an explanation that considers both sets of data and attempts to account for the changes in both systems is preferable. The theory that I would posit, therefore, is that changes in judicial procedure were part of a larger effort on the part of officials in both regions to acquire stricter administrative control over economic, political, and even religious affairs within their respective societies.
There was an incentive for this sort of control in both situations. In Judah, Deuteronomy’s laws on judicial procedure were likely promulgated during and in support of the reform efforts carried out under the rule of Josiah. These reforms included the centralization of worship at the temple in Jerusalem and the prohibition of religious activities away from the central shrine.114 Such reforms may well have been politically motivated. Josiah is considered by many scholars to have resisted the hegemony of the Neo-Assyrian empire, which was, at the time, dominating substantial portions of Syria and Palestine.115 Moreover, Assyrian religious and worship practices appear to have been fairly widespread prior to Josiah’s reign. A program to clamp down on religion in outlying areas may have been specifically aimed at eliminating Assyrian religion from Judah. This would certainly have bolstered Josiah’s political efforts. Undoubtedly, and biblical texts confirm this (2 Kings 22-23), political and religious officials worked in tandem toward these goals. It would thus have not been out of character for this same administration to want greater control over the legal system. By greatly reducing the system’s reliance on cultic procedures, they could increase the number of matters over which they would have control and severely restrict the number of those left, in a sense, to chance. Put another way, by employing the sort of rhetoric found in Deuteronomy, these officials could, at the very least, claim the right to wield greater control over the legal system.

Much of the evidence cited from the Neo-Babylonian and Persian periods comes from those cases adjudicated by officials of the Eanna temple in Uruk. This temple, like

114 This understanding of Josiah’s reforms is still the consensus among biblical scholars, though it has been challenged recently by L. S. Fried, “The High Places (bāmōt) and the Reforms of Hezekiah and Josiah: An Archaeological Investigation,” JAOS 122 (2002): 437-65, esp. 461.
many of its counterparts, played a prominent role in its society’s economy. This was likely an important reason why the temple’s chief administrators were, on a consistent basis, royally appointed officials and chosen from the local nobility. They collaborated with religious personnel on a variety of economic and administrative endeavors. Many of the cases over which these two officials preside involve theft of temple property or other interference in the temple’s business dealings. In a number of the documents recording these cases, the temple administrators appear intent on recovering their institution’s missing property and obtaining ample compensation for business transactions gone awry. They, and others with similar responsibilities during these periods in Mesopotamia, may have endeavored to exert greater control over what was happening by eschewing cultic judicial procedures (in spite of their direct and prominent connection with the temple) and opting instead for procedures that would allow them to continue investigating until they were, at some level, satisfied. Recourse to a cultic procedure could cut short an investigation; it might identify a “guilty” party but leave the administrative or economic problem unresolved. Since oral testimony was the most highly valued type of forensic evidence throughout the ancient Near East, it is not surprising that they, like the authors of Deuteronomy, seek to obtain a minimum level of such evidence before deciding certain cases.

Even this theory, however, does not necessarily explain the similarities between Deuteronomy’s legal theory, as it were, and the praxis of courts in southern Mesopotamia during the 6th and 5th centuries, nor might it adequately account for the type of procedure outlined in the biblical priestly texts. As for Deuteronomy, some might want to suggest that the book’s authors borrowed their rule about two or three witnesses from the practice

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116 Jursa, Neo-Babylonian Legal and Administrative Documents, 49-50.
of the Mesopotamian courts or even vice versa. Although the notion of such direct
dependence seems unlikely, this idea should probably not be dismissed out of hand, and
whether any sort of direct connection can explain the similarities will, for the time being,
remain an open question. In any case, further study of the apparent changes described in
this study and the evidence for these changes is amply warranted. This would include
research into time periods beyond the one examined here. For instance, it is not clear, at
least to me, what the precise nature of the judicial systems in subsequent periods was like.
Also, additional analysis of the periods leading up to the late seventh century might shed
light on whether such changes are as noteworthy as they appear to be and, if so, what
causal factors may underlie them. Finally, it remains uncertain as to the degree to which
any developments within the judicial systems examined above could be representative of
broader trends within Judah, Mesopotamia, and the ancient Near Eastern world, the impact
and nature of which may still have yet to be identified.