

LEGAL WRITING, LEGAL PRACTICE

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LEGAL WRITING, LEGAL PRACTICE

by  
Yael Landman

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THE BIBLICAL BAILMENT LAW  
AND DIVINE JUSTICE

by  
Yael Landman

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Brown Judaic Studies  
Providence, Rhode Island

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# Abbreviations

A	Tablets in the collections of the Oriental Institute, University of Chicago
AASOR	Annual of the American Schools of Oriental Research
AB	Anchor Bible
AbB	Altbabylonische Briefe 1 F. R. Kraus, <i>Briefe aus dem British Museum (CT 43 and 44)</i> , AbB 1 (Leiden: Brill, 1964) 4 F. R. Kraus, <i>Briefe aus dem Archive des Šamaš-Ḫāzir in Paris and Oxford (TCL 7 und OECT 3)</i> , AbB 4 (Leiden: Brill, 1968) 7 F. R. Kraus, <i>Briefe aus dem British Museum (CT 52)</i> , AbB 7 (Leiden: Brill, 1977) 9 Marten Stol, <i>Letters from Yale: Transliterated and Translated</i> , AbB 9 (Leiden: Brill, 1981)
ABL	R. F. Harper, <i>Assyrian and Babylonian Letters Belonging to the Kouyunjik Collections of the British Museum</i> (Chicago: University of Chicago Press, 1892–1914)
AfO	<i>Archiv für Orientforschung</i>
Ai	Lexical series ana ittišu. See MSL 1
AIL	Ancient Israel and Its Literature
AOAT	Alter Orient und Altes Testament
AOS	American Oriental Series
AP	A. E. Cowley, <i>The Aramaic Papyri of the Fifth Century B.C.</i> (Oxford: Clarendon, 1923; repr., Osnabrück: Zeller, 1967)
ARM	Archives royales de Mari 8 Georges Boyer, <i>Textes juridiques</i> , ARM 8 (Paris: Impr. Nationale, 1958) 10 G. Dossin, <i>La correspondance féminine</i> , 2 vols., ARM 10 (Paris: P. Guethner, 1978)
Asb.	Maximilian Streck, <i>Assurbanipal und die letzten assyrischen Könige bis zum Untergange Niniveh's</i> , Vorderasiatische Bibliothek 7 (Leipzig: Hinrichs, 1916)
AT	D. J. Wiseman, <i>The Alalakh Tablets</i> (London: British Institute of Archaeology at Ankara, 1953)
AuOr	<i>Aula Orientalis</i>
b	Babylonian Talmud

- BA *Biblical Archaeologist*
- BASOR *Bulletin of the American Schools of Oriental Research*
- BATSHDK *Berichte der Ausgrabung Tall Seh Hamad Dur-Katlimmu*
- BBR *Bulletin for Biblical Research*
- BE *Babylonian Expedition of the University of Pennsylvania: Series A: Cuneiform Texts*
- 6.1 Hermann Ranke, *Babylonian Legal and Business Documents from the Time of the First Dynasty of Babylon, Chiefly from Sippar*, BE 6.1 (Philadelphia: Department of Archaeology, University of Pennsylvania, 1906)
- 6.2 Arno Poebel, *Babylonian Legal and Business Documents: From the Time of the First Dynasty of Babylon, Chiefly from Nippur*, BE 6.2 (Philadelphia: Department of Archaeology, University of Pennsylvania, 1909)
- 8 Albert Tobias Clay, *Legal and Commercial Transactions Dated in the Assyrian, Neo-Babylonian and Persian Periods ... Chiefly from Nippur*, BE 8 (Philadelphia: Department of Archaeology, University of Pennsylvania, 1908)
- BGU *Aegyptische Urkunden aus den Königlichen Museen zu Berlin, Griechische Urkunden*
- BH *Biblical Hebrew*
- BIN *Babylonian Inscriptions in the Collection of James. B. Nies* (New Haven: Yale University Press, 1918–1987)
- BJS *Brown Judaic Studies*
- BM *tablets in the collections of the British Museum*
- BWL *W. G. Lambert, Babylonian Wisdom Literature* (Oxford: Clarendon, 1960)
- BZABR *Beihefte zur Zeitschrift für altorientalische und biblische Rechtsgeschichte*
- BZAW *Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft*
- CAD *The Assyrian Dictionary of the Oriental Institute of the University of Chicago*, 21 vols. (Chicago: Oriental Institute of the University of Chicago, 1956–2011)
- CBET *Contributions to Biblical Exegesis and Theology*
- CBQ *Catholic Biblical Quarterly*
- CC *Covenant Code*
- CHANE *Culture and History of the Ancient Near East*
- COS *William W. Hallo and K. Lawson Younger Jr., eds., The Context of Scripture*, 4 vols. (Leiden: Brill, 1997–2016)
- CT *Cuneiform Texts from Babylonian Tablets in the British Museum*

DL	Deuteronomic laws
DN	Divine Name
EA	Die El-Amarna-Tafeln; El Amarna letters
EN	Excavations at Nuzi 9.2 Martha A. Morrison, <i>The Eastern Archives of Nuzi</i> , EN 9.2, SCCNH 4.1 (Winona Lake, IN: Eisenbrauns, 1993)
FAT	Forschungen zum Alten Testament
FLP	Free Library of Philadelpphia
GKC	W. Gesenius, <i>Gesenius' Hebrew Grammar</i> , ed. Emil Kautzsch, trans. A. E. Cowley, 2nd ed. (Oxford: Clarendon, 1910)
HCOT	Historical Commentary of the Old Testament
HdO	Handbuch der Orientalistik
HL	Hittite Laws
HSS	Harvard Semitic Studies 9 R. H. Pfeiffer, <i>Excavations at Nuzi II: The Archives of Shilwateshub, Son of the King (1932)</i> , HSS 9 (Leiden: Brill, 2019) 13 R. H. Pfeiffer and E. R. Lacheman, <i>Excavations at Nuzi IV: Miscellaneous Texts from Nuzi, Part I (1942)</i> , HSS 13 (Leiden: Brill, 2019)
HTR	<i>Harvard Theological Review</i>
HUCA	<i>Hebrew Union College Annual</i>
IMMP	L. E. Pearce and C. Wunsch, <i>Into the Midst of Many People: Judaean and West Semitic Exiles in Mesopotamia</i> , Cornell Uni- versity Studies in Assyriology and Sumerology 18 (Bethesda, MD: CDL, forthcoming)
IUSS	Istituto Universitario di Studi Superiori
JANES	<i>Journal of the Ancient Near Eastern Society</i>
JAOS	<i>Journal of the American Oriental Society</i>
JBL	<i>Journal of Biblical Literature</i>
JCS	<i>Journal of Cuneiform Studies</i>
JEN	Edward Chiera, ed., <i>Joint Expedition with the Iraq Museum at Nuzi</i> , 6 vols., Publications of the Bagdad School; Publica- tions of the American Schools of Oriental Research (Paris: P. Guethner, 1927–1939)
JESHO	<i>Journal of the Economic and Social History of the Orient</i>
JLH	<i>Journal of Legal History</i>
JNES	<i>Journal of Near Eastern Studies</i>
JNSL	<i>Journal of Northwest Semitic Languages</i>
Josephus Ant.	<i>Antiquities</i>
JPS	Jewish Publication Society

- JSJ*             *Journal for the Study of Judaism*  
*JSOT*             *Journal for the Study of the Old Testament*  
*JSOTSup*       *Journal for the Study of the Old Testament Supplement Series*  
  
*JSS*             *Journal of Semitic Studies*  
*JTSA*             Jewish Theological Seminary of America  
*JWB*             Cornelia Wunsch, *Judeans by the Waters of Babylon: New Historical Evidence in Cuneiform Sources from Rural Babylonia*, *Babylonische Archive* 6 (Dresden: ISLET, forthcoming in 2022)  
  
*K*                 tablets in the Kouyunjik collection of the British Museum  
*KAJ*             E. Ebeling, *Keilschrifttexte aus Assur juristischen Inhalts, Ausgrabungen der Deutschen Orient-Gesellschaft in Assur: E, Inschriften 4*; *Wissenschaftliche Veröffentlichung der Deutschen Orient-Gesellschaft* 50 (Leipzig: Hinrichs, 1927)  
  
*KJV*             King James Version  
*KUB*             Keilschrifturkunden aus Boghazköi  
*LAOS*             Leipziger Altorientalistischen Studien  
*LE*                Laws of Eshnunna  
*LH*                Laws of Hammurabi  
*LHBOTS*        Library of Hebrew Bible/Old Testament Studies  
*LIH*             L. W. King, ed., *The Letters and Inscriptions of Hammurabi, King of Babylon, about B.C. 2200 to Which Are Added a Series of Letters of Other Kings of the First Dynasty of Babylon*, 3 vols. (London: Luzac, 1898–1900)  
  
*LL*                Laws of Lipit-İštar  
*LNB*             Neo-Babylonian Laws  
*LOx*             Laws about Rented Oxen. M. Civil, “New Sumerian Law Fragments,” in *Studies in Honor of Benno Landsberger on His Seventy-Fifth Birthday, April 21, 1965*, ed. H. G. Güterbock and T. Jacobsen, *AS* 16 (Chicago: University of Chicago Press, 1965)  
  
*LTBA*             Lubor Matouš and Wolfram von Soden, *Die lexikalischen Tafelserien der Babylonier und Assyrer in den Berlin Museen*, 2 vols. (Berlin: Staatlichen Museen, 1933)  
  
*LXX*             Septuagint  
*m*                 Mishnah  
*MA*                Middle Assyrian  
*MAL*             Middle Assyrian Laws  
*MB*                Middle Babylonian  
*MDP*             Mémoires de la Délégation en Perse  
                      22 V. Scheil, *Actes juridiques susiens*, *MDP* 22 (Paris, 1930)  
  
*MSL*             *Materialien zum sumerischen Lexikon / Materials for the Sumerian Lexicon*, ed. Benno Landsberger, 17 vols., *Scripta*

- Pontificii Instituti Biblici (Rome: Pontifical Biblical Institute, 1937–2004)
- 1 Benno Landsberger, *Die Serie ana ittišu*, MSL 1 (Rome: Pontificium Institutum Biblicum, 1937)
  - 12 Miguel Civil, ed., *The Series lú = ša and Related Texts*, MSL 12 (Rome: Pontificium Institutum Biblicum, 1969)
- MT Masoretic Text
- MVAG Mitteilungen der Vorderasiatisch-Ägyptischen Gesellschaft
- 10 W. F. von Landau, *Vorläufige Nachrichten über die im Eshmuntempel bei Sidon gefundenen phönizischen Altertümer*, MVAG 10 (Berlin: Wolf Peiser, 1905)
  - 33 G. Eisser and J. Lewy, *Die altassyrischen Rechturkunden vom Kültepe*, MVAG 33 (Leipzig: Hinrichs, 1930)
  - 35.3 G. Eisser and J. Lewy, *Die altassyrischen Rechturkunden vom Kültepe*, MVAG 35.3 (Leipzig: Hinrichs, 1935)
- NA Neo-Assyrian
- NB Neo-Babylonian
- Nbn. Johann N. Strassmaier, *Inschriften von Nabonidus, König von Babylon (555–538 v. Chr.) von den Throntafeln des Britischen Museums*, Babylonische Texts (Leipzig: Eduard Pfeiffer, 1889)
- NIV New International Version
- NJPS New Jewish Publication Society of America Tanakh (1985)
- NKJV New King James Version
- NRSV New Revised Standard Version
- O. M. Sandowicz, *Oaths and Curses: A Study of Neo- and Late Babylonian Legal Formulary* (Münster: Ugarit-Verlag, 2012)
- OA Old Assyrian
- OB Old Babylonian
- OBO Orbis Biblicus et Orientalis
- OECT Oxford Editions of Cuneiform Texts
- 3 G. R. Driver, *Letters of the First Babylonian Dynasty*, OECT 3 (London: Oxford University Press, 1924)
- OLA Orientalia Lovaniensia Analecta
- OTL Old Testament Library
- P. Catt. Papyrus Cattaoui
- PBS Publications of the Babylonian Section, University of Pennsylvania
- 1/2 Henry Frederick Lutz, *Selected Sumerian and Babylonian Texts*, PBS 1, no. 2 (Philadelphia: University Museum, 1919)

- 7 Arthur Ungnad, *Babylonian Letters of the Hammurabi Period*, PBS 7 (Philadelphia: University Museum, 1915)
- PL Priestly laws
- PN Personal Name
- RA *Revue d'assyriologie et d'archéologie orientale*
- RS Ras Shamra
- RSV Revised Standard Version
- SAOC Studies in Ancient Oriental Civilization
- SBL Society of Biblical Literature
- SBLAIL Society of Biblical Literature Ancient Israel and Its Literature
- SBLWAW Society of Biblical Literature Writings from the Ancient World
- SCCNH Studies on the Civilization and Culture of Nuzi and the Hurrians
- SHCANE Studies in the History and Culture of the Ancient Near East
- SLEx Sumerian Laws Exercise Tablet. A. T. Clay, "A Sumerian Prototype of the Hammurabi Code," *Orientalische Literaturzeitung* 17 (1914): 1–3; Clay, *Miscellaneous Inscriptions in the Yale Babylonian Collection*, YOS 1 (New Haven: Yale University Press, 1915)
- SLHF Sumerian Laws Handbook of Forms. M. T. Roth, "Scholastic Tradition and Mesopotamian Law: A Study of FLP 1287, a Prism in the Collection of the Free Library of Philadelphia" (PhD diss., University of Pennsylvania, 1979)
- STDJ Studies on the Texts of the Desert of Judah
- t Tosefta
- TCL Textes cunéiformes, Musées du Louvre (Paris, 1910–1967)
- 12 Georges Contenau, *Contrats néo-babyloniens*, vol. 1: *De Téglat-phalasar III à Nabonide*, TCL 12 (Paris: P. Guethner, 1927)
- 18 George Dossin, *Lettres de la première dynastie babylonienne*, TCL 18 (Paris: P. Guethner, 1934)
- TDOT G. Johannes Botterweck and Helmer Ringgren, eds., *Theological Dictionary of the Old Testament*, trans. John T. Willis et al., 17 vols. (Grand Rapids: Eerdmans, 1974–2018)
- Tg. Targum
- TJA Émile Szlechter, ed., *Tablettes juridiques et administratives de la IIIe dynastie d'Ur et de la Ire dynastie de Babylone conservées au Musée de l'Université de Manchester et, à Cambridge, au Musée Fitz-William, à l'Institut d'études orientales et à l'Institut d'égyptologie*, Publications de l'Institut de droit romain de l'Université Paris 21a (Paris: Recueil Sirey, 1963)
- TLB Rintje Frankena, William W. Hallo, and Wilhelmus F. Lee-mans, *Tabulae cuneiformes a F.M. Th. de Liagre Böhl collectae*, 4

- vols., *Leidae conservatae* 1–4 (Leiden: Nederlands Instituut voor het Nabije Oosten, 1963)
- TSAJ Texte und Studien zum antiken Judentum
- UET Ur Excavations: Texts
- 4 Hugo Heinrich Figulla, *Business Documents of the New-Babylonian Period*, UET 4 (London: Trustees of the Two Museums, 1949)
  - 6 C. J. Gadd and S. N. Kramer, *Literary and Religious Texts*, 3 parts, UET 6 (London: Trustees of the Two Museums, 1963–2006)
- UF *Ugarit-Forschungen*
- UMBS University of Pennsylvania, The Museum, Publications of the Babylonian Section, vol. I, no. 2: *Selected Sumerian and Babylonian Texts* (Philadelphia: University Museum, 1919)
- UMM University Museum Monographs
- UAZP Moses Schorr, *Urkunden des altbabylonischen Zivil- und Prozessrechts*, Vorderasiatische Bibliothek 5 (Leipzig: Hinrichs, 1913)
- VAS Vorderasiatische Schriftdenkmäler der Staatlichen Museen zu Berlin
- 7 Liane Jakob-Rost and Joachim Marzahn, *Assyrische Königsinschriften auf Ziegeln aus Assur*, VAS n.F. 7 (Berlin: Akademie-Verlag, 1985)
- VT *Vetus Testamentum*
- WBC Word Biblical Commentary
- YOS Yale Oriental Series
- 1 Albert T. Clay, *Miscellaneous Inscriptions in the Yale Babylonian Collection*, YOS 1 (New Haven: Yale University Press, 1915)
  - 2 Henry Frederick Lutz, *Early Babylonian Letters from Larsa*, YOS 2 (New Haven: Yale University Press, 1917)
  - 5 Ettalene Mears Grice, *Records from Ur and Larsa Dated in the Larsa Dynasty*, YOS 5 (New Haven: Yale University Press, 1919)
  - 13 J. J. Finkelstein, *Late Old Babylonian Documents and Letters*, YOS 13 (New Haven: Yale University Press, 1972)
  - 19 Paul-Alain Beaulieu, *Legal and Administrative Texts from the Reign of Nabonidus*, YOS 19 (New Haven: Yale University Press, 2000)
- ZABR *Zeitschrift für altorientalische und biblische Rechtsgeschichte*
- ZAW *Zeitschrift für die alttestamentliche Wissenschaft*

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## Introduction

Prescriptive law writings rarely mirror a society's law in practice, a fact that raises special problems for the social and legal historian. Law codes or legal collections offer only a partial view of the law of a group of people in a given time or place.<sup>1</sup> To reconstruct "law in practice," historians must examine other documents, such as contracts, trial records, and private letters.

Scholars who wish to reconstruct the legal landscape of biblical Israel and Judah face certain special challenges. First, the very nature of the biblical "law codes"—the Covenant Code in Exodus; the Holiness Code in Leviticus; the Priestly laws in Exodus, Leviticus, and Numbers; and the Deuteronomic laws in Deuteronomy—is hotly debated, with scholars questioning whether these laws, and indeed ancient Near Eastern legal writings in general, were intended to bear prescriptive force at all, or to serve an altogether different purpose.<sup>2</sup> Second, the near-absence of documents attesting to legal practice makes it difficult to reconstruct that practice and to contextualize the law writings in the Bible.

This book probes the relationship between the so-called "law codes" of the Hebrew Bible and "law in practice" in biblical Israel, through close analysis of the law of bailment in Exod 22:6–14. This law refers to arrangements such as deposits of goods and animal herding, in which one person gives property to another person for temporary safekeeping or use. Standing at the crossroads of law, religion, and economics, the institution of bailment offers an underexploited window into the conceptual underpinnings of biblical law and legal practice in ancient Israel. Employing philological analysis and interdisciplinary legal theory, I draw conclusions about the institution of bailment specifically and biblical law generally.

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1. Regarding inevitable discrepancies between written law and legal practice, see Aryeh Amihay, *Theory and Practice in Essene Law* (Oxford: Oxford University Press, 2017), 187.

2. For example, were the laws primarily scholastic texts or royal apologia? For an overview of this debate, see Bruce Wells, "What Is Biblical Law? A Look at Pentateuchal Rules and Near Eastern Practice," *CBQ* 70 (2008): 223–43.

With respect to bailment, I argue that the law in Exodus concerns not just safekeeping but also fact-finding; that the law's treatment of fact-finding advances a conception of divine justice based on such concerns as protecting the vulnerable (as defined by the law) and ascertaining the innocence of the accused to the satisfaction of the plaintiff; and that ancient Near Eastern bailment laws exhibit continuity with postbiblical Jewish law. With respect to biblical law more generally, I advance an approach to the study of operative law in ancient Israel that connects pentateuchal law, biblical narrative and prophecy, and Mesopotamian legal documents. This multidimensional approach generates a reconstructed "law in practice" that can then be compared with pentateuchal law writings. The application of this approach to the law of bailment demonstrates that pentateuchal law can be descriptively accurate for the most part, even when it serves the apologetic purpose of advancing a particular conception of divine justice.

Guiding the course of this study is Exod 22:6–14, the biblical law of bailment in the collection of laws known as the Covenant Code or the Book of the Covenant. Although the term *bailment* is obscure to most non-legal specialists, I have chosen to use it here because it is the most accurate English word available. The term *bailment* encapsulates all the subtopics of this law, which include deposits of goods, herding, and animal borrowing and rental. In contrast, the term *deposit*, the choice of some other scholars who have addressed these laws, does not accurately account for all of the cases that Exod 22:6–14 treats.<sup>3</sup> The criterion for determining the relevance of other biblical and extrabiblical sources in this book is not whether they fall under the umbrella of the Anglo-Saxon legal term *bailment* per se but whether they pertain to the situations that Exod 22:6–14 envisions.<sup>4</sup>

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3. On the disadvantages of the term *deposit* in this context, see Bernard S. Jackson, *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1–22:16* (Oxford: Oxford University Press, 2006), 332 n. 2. For *deposit*, see, e.g., Ira M. Price, "The Laws of Deposit in Early Babylonia and the Old Testament," *JAOS* 47 (1927): 250–55; Eckart Otto, "Die rechtshistorische Entwicklung des Depositenrechts in altorientalischen und altisraelitischen Rechtskorpora," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung* 105 (1988): 1–31; reprinted in Otto, *Kontinuum und Proprium: Studien zur Sozial- und Rechtsgeschichte des Alten Orients und des Alten Testaments*, *Orientalia Biblica et Christiana* 8 (Wiesbaden: Harrassowitz, 1996), 139–63; Horst Seebass, "Noch einmal zum Depositenrecht Ex 22, 6–14," in *Gottes Recht als Lebensraum: Festschrift für Hans Jochen Boecker*, ed. Peter Mommer, Werner H. Schmidt, and Hans Strauss (Neukirchen-Vluyn: Neukirchener Verlag, 1993), 21–31; Raymond Westbrook, "The Deposit Law of Exodus 22, 6–12," *ZAW* 106 (1994): 390–403; reprinted in *Law from the Tigris to the Tiber: The Writings of Raymond Westbrook*, ed. Bruce Wells and F. Rachel Magdalene, 2 vols. (Winona Lake, IN: Eisenbrauns, 2009), 2:361–77.

4. Thus, for example, this study will exclude pledges, a form of bailment in which the bailee is a creditor holding onto the bailor-debtor's personal property as security for a debt. See Bryan A. Garner, ed., *Black's Law Dictionary*, 9th ed. (Saint Paul, MN: Thomson Reuters, 2009), s.v. "pledge."

Although this study makes wide use of the term *bailment*, it also questions throughout the extent to which there existed a unified concept of bailment in biblical and/or cuneiform law, and repeatedly returns to the problem of defining the term with fidelity to the ancient sources. This line of questioning further informs an account of the development of legal thinking in ancient Israel as it emerges with respect to bailments.

Though as a legal topic bailment lacks the allure of homicide or adultery, I hope that readers will see past the unfamiliarity of the word and appreciate that, as an institution, bailment was extremely ordinary—and therefore, to historians and Bible scholars interested in daily life in ancient Israel, should be a highly valuable topic of study. Bailments were deeply embedded in the socioeconomic fabric of ancient Israel. By tugging at this thread, we uncover numerous strands worth following.

The biblical bailment law appears in the Covenant Code, a set of laws from the book of Exodus. The name “Covenant Code” is a conventional rendering of the Hebrew ספר הברית (Exod 24:7) and, although I prefer the term *law collection* to *law code* to describe biblical and cuneiform legal writings, I continue to use this name because it is conventional.<sup>5</sup> Most scholars accept a preexilic date for the Covenant Code and consider it the earliest of the pentateuchal law collections.<sup>6</sup> There is no consensus, however, regarding the compositional and redactional history of the Covenant Code.<sup>7</sup> While the composition and editing of the Covenant Code are important, I am more interested in the final form of Exod 22:6–14 than in how it came to look the way it does.<sup>8</sup> I choose to adopt a synchronic

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5. For discussion of the terms *law code* and *law collection*, including views for and against the term *law code*, see Pamela Barmash, *Homicide in the Biblical World* (Cambridge: Cambridge University Press, 2005), 6–7; S. J. [Van Wyk] Claassens, “The So-Called ‘Mesopotamian Law Codes’: What’s in a Name?,” *JSem* 19 (2010): 461–78.

6. A notable exception is John Van Seters, who has argued that the Covenant was composed during the Neo-Babylonian period when Judeans lived in exile in Babylonia, and that it postdates the other biblical law collections (*A Law Book for the Diaspora: Revision in the Study of the Covenant Code* [Oxford: Oxford University Press, 2003]). For a response to Van Seters, see Bernard M. Levinson, “Is the Covenant Code an Exilic Composition? A Response to John Van Seters,” in *In Search of Pre-Exilic Israel: Proceedings of the Oxford Old Testament Seminar*, ed. John Day, *JSTOTSup* 406 (London: T&T Clark, 2004), 272–325.

7. For an overview of positions, see Barmash, *Homicide in the Biblical World*, 74–76; cf. David P. Wright, *Inventing God’s Law: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* (Oxford: Oxford University Press, 2009), 17–20.

8. Scholars favoring a diachronic approach to this pericope have suggested a number of reconstructions of its history of composition. In Eckart Otto’s view, for example, an original law included only verses 6, 7a, 9a, 11, 12, 13, and 14a; later additions sought to correct this original law in the interests of justice and of systematization. Otto thus proposes a legal history of bailment, and of the legal system more broadly, internal to Exod 22:6–14: an older law simply defined when a person had to pay single compensation and what circumstances exempted the person from payment. Additions to the law reflect increasing systematization, imposing sanctions to discourage wrongdoing and affording the court more expansive

approach to this individual legal pericope, valuing an internally consistent understanding of the law over one that views the final form of the text as contradicting itself. This approach does not invalidate diachronic analysis or its results but instead focuses on the text in front of us, including how to interpret and contextualize it and how to use it critically as one limited, methodologically thorny piece of evidence for the reconstruction of legal practice and thinking in the ancient world.<sup>9</sup>

The reader of biblical and cuneiform law will find it difficult to ignore how frequently the two corpora share cases, details, and even linguistic forms. In light of these similarities, as well as many cultural and societal affinities, scholars have posited a historical connection between the societies in which biblical and ancient Near Eastern law emerged.<sup>10</sup> Meir Malul in particular articulates a well-defined historical-comparative approach, which posits that the connections between biblical and ancient Near Eastern law are rooted in a common source or influence of one society over the other, rather than a typological approach, which compares societies with no temporal or geographical relationship.<sup>11</sup> Despite the relative consensus regarding the existence of a connection between biblical and cuneiform law, however, debate concerning the origin of this connection persists.<sup>12</sup> In the case of the Covenant Code in particular, a minority of scholars, including most recently John Van Seters and David Wright, have argued for direct literary dependence of the biblical law collection upon cuneiform forebears.<sup>13</sup> Most scholars reject this premise, instead adopting one of

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means of trying parties whose guilt might otherwise remain indeterminable (see Otto, "Die rechtshistorische Entwicklung," 139–63).

9. On the merits of adopting a synchronic approach to biblical law before turning to diachronic analysis, see Moshe Greenberg, "Some Postulates of Biblical Criminal Law," in *Yehezkel Kaufmann Jubilee Volume*, ed. M. Haran (Jerusalem: Magnes, 1960), 5–28, here 7–8. Cf. Westbrook, "Deposit Law," 362: "in a legal text, the sole criterion for resolving ambiguities of language is the most appropriate legal meaning. For that purpose it must be assumed that the law is coherent, and only if all attempts fail should recourse be had to explanations based upon error, inelegant editing, or unresolved difficulties arising from the historical development of legal conceptions."

10. A bibliography on this subject would exceed the parameters of a footnote, but, as Wells has noted, Westbrook's work on this matter has strongly articulated and bolstered the argument. See citations in Bruce Wells, *The Law of Testimony in the Pentateuchal Codes*, BZABR 4 (Wiesbaden: Harrassowitz, 2004), 7 n. 19.

11. Meir Malul, *The Comparative Method in Ancient Near Eastern and Biblical Legal Studies*, AOAT 227 (Kevelaer: Butzon & Bercker; Neukirchen-Vluyn: Neukirchener Verlag, 1990).

12. For a minority view rejecting a relationship between biblical and cuneiform law, see A. Van Selms, "The Goring Ox in Babylonian and Biblical Law," *ArOr* 18 (1950): 321–30.

13. See especially Van Seters, *Law Book for the Diaspora*, 98–99; David P. Wright, "The Laws of Hammurabi as a Source for the Covenant Collection (Exodus 20:23–23:19)," *Maarav* 10 (2003): 11–87; Wright, "The Laws of Hammurabi and the Covenant Code: A Response to Bruce Wells," *Maarav* 13 (2006): 211–60; Wright, *Inventing God's Law*. Other scholars have argued for a direct connection between the biblical and ancient Near Eastern law collections

many versions of a traditions argument, which involves the indirect absorption of features of the Mesopotamian legal tradition into biblical law.<sup>14</sup> Such models identify points of contact or conduits allowing for the influence of Mesopotamian editorial techniques and legal problems on the Covenant Code, while generally excluding the possibility of textual dependence.<sup>15</sup> This study situates itself in this latter camp, without seeking to identify precise origins of commonality.

While consideration of biblical law in its own context should always precede comparative analysis, scholars have long recognized the benefits of employing a comparative methodology as an interpretative aid.<sup>16</sup> A comparative approach accompanies all other methods of analysis in this study, with an eye toward convergences and divergences between sources, where one text raises questions about another, and how one can illuminate the other's difficulties. The comparative investigation aims not only to fulfill an exegetical and elucidatory purpose but, further, to explore whether one should explain similarities and differences in terms of underlying conceptions or ideologies, legal institutions, social or economic models, or other factors.

Although the comparative approach offers invaluable fodder for the study of biblical law, methodological blunders may neutralize its efficacy. These blunders include primarily variations on a single theme, namely, generalization. The history of comparative biblical and ancient Near Eastern studies has shifted back and forth between two trends, from viewing

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while asserting that the means of transmission cannot be identified; see, e.g., J. J. Finkelstein, *The Ox That Gored*, TAPS 71.2 (Philadelphia: American Philosophical Society, 1981), 20.

14. See especially Raymond Westbrook, *Studies in Biblical and Cuneiform Law*, CahRB 26 (Paris: Gabalda, 1988), 1–4; Reuven Yaron, *The Laws of Eshnunna*, 2nd rev. ed. (Jerusalem: Magnes; Leiden: Brill, 1988), 294–95; Ludger Schwienhorst-Schönberger, *Das Bundesbuch (Ex 20,22–23,33): Studien zu seiner Entstehung und Theologie*, BZAW 188 (Berlin: de Gruyter, 1990), 240–68; Ralf Rothenbusch, *Die kasuistische Rechtssammlung im "Bundesbuch" (Ex 21,2–11.18–22,16) und ihr literarischer Kontext im Licht altorientalischer Parallelen*, AOAT 259 (Münster: Ugarit-Verlag, 2000), 394–98; Bruce Wells, "The Covenant Code and Near Eastern Legal Traditions: A Response to David P. Wright," *Maarav* 13 (2006): 85–118.

15. Suggestions for points of contact or possible intermediary conduits have included Akkadian scribal schools in second-millennium Canaan (Westbrook, *Studies in Biblical and Cuneiform Law*, 2–3); Mesopotamian influence on the west during the Middle Bronze and Late Bronze Ages, mediated to Israel and Judah in the first millennium through a Phoenician intermediary (Rothenbusch, *Die kasuistische Rechtssammlung*, 398); and an Amorite common tradition to which both cuneiform law and the Covenant Code were heir (W. G. Lambert, "Interchange of Ideas between Southern Mesopotamia and Syria-Palestine as Seen in Literature," in *Mesopotamien und seine Nachbarn: Politische und kulturelle Wechselbeziehungen im alten Vorderasien vom 4. bis 1. Jahrtausend v. Chr.*, ed. Hans-Jörg Nissen and Johannes Renger [Berlin: D. Reimer, 1982], 312–13).

16. On the illuminative capacity of the comparative approach, see Malul, *Comparative Method*, 23–25. This is one of six uses of the comparative method that Malul identifies in the history of scholarship on biblical and cuneiform studies.

the Bible as continuous with the rest of the ancient Near East to viewing it as a unique break from the latter. The tendency to view biblical law in opposition to “cuneiform law,” the latter conceived of as a single entity, is arbitrary unless justified and risks ignoring differences between ancient Near Eastern cultures and societies that covered a vast span of time and space. Nor should one assume a monolithic “biblical law” without internal divergences, unless coherence has been demonstrated. Every primary source demands analysis in its own right before comparison with other texts, and, despite many observable cultural similarities in the ancient Near East over time, one must be sensitive to diversities amid the uniformity. This study will attempt to avoid such errors by considering each text in its own context, by studying a substantial number of texts in order to penetrate each culture’s laws more deeply, and by highlighting and exploring variety as well as uniformity, especially where cuneiform texts diverge from one another.<sup>17</sup>

In addition to exploring legal texts external to the biblical corpus, I make extensive use of nonlegal texts from within the Bible, in order to glean information that may help us approach a reconstruction of legal practice in ancient Israel and to identify a range of perspectives on justice and equity. We thus enter the tricky realm of law and literature, a school of thought whose methodologies have gained currency among scholars both of law and of literature, including biblical and Judaic studies scholars.<sup>18</sup> Whereas some scholars once understood references to law in biblical

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17. On the pitfalls of the comparative method and suggested correctives, see Barmash, *Homicide in the Biblical World*, 3–4.

18. In biblical studies, recent examples include Pamela Barmash, “Achieving Justice through Narrative in the Hebrew Bible: The Limitations of Law in the Legal Potential of Literature,” *ZABR* 20 (2014): 181–99; Barmash, “The Narrative Quandary: Cases of Law in Literature,” *VT* 54 (2004): 1–16; F. Rachel Magdalene, *On the Scales of Righteousness: Neo-Babylonian Trial Law and the Book of Job*, BJS 348 (Providence, RI: Brown Judaic Studies, 2007); Assnat Bartor, “The ‘Juridical Dialogue’: A Literary-Judicial Pattern,” *VT* 53 (2003): 445–64; and see chapters in Klaus-Peter Adam, Friedrich Avemarie, and Nili Wazana, eds., *Law and Narrative in the Bible and in Neighbouring Ancient Cultures*, FAT 2/54 (Tübingen: Mohr Siebeck, 2012). In Judaic studies, recent examples include Moshe Simon-Shoshan, *Stories of the Law: Narrative Discourse and the Construction of Authority in the Mishnah* (Oxford: Oxford University Press, 2012); Chaya T. Halberstam, *Law and Truth in Biblical and Rabbinic Literature* (Bloomington: Indiana University Press, 2010); Suzanne Last Stone, “On the Interplay of Rules, ‘Cases,’ and Concepts in Rabbinic Legal Literature: Another Look at the Aggadot on Honi the Circle-Drawer,” *Dine Israel* 24 (2007): 125–55; Steven D. Fraade, “‘The Torah of the King’ (Deut. 17:14–20) in the Temple Scroll and Early Rabbinic Law,” in *The Dead Sea Scrolls as Background to Postbiblical Judaism and Early Christianity: Papers from an International Conference at St. Andrews in 2001*, ed. James R. Davila, STDJ 46 (Leiden: Brill, 2003), 25–62; Fraade, “Navigating the Anomalous: Non-Jews at the Intersection of Early Rabbinic Law and Narrative,” in *The Other in Jewish Thought and History: Constructions of Jewish Thought and Identity*, ed. Laurence J. Silberstein and Robert L. Cohn, *New Perspectives on Jewish Studies* (New York: New York University Press, 1994), 145–65. A recent conference hosted by the Jewish Law

narrative as essentially accurate depictions of law in ancient Israel, recent scholarship has identified numerous methodological problems with such an approach.<sup>19</sup> Because literature uses the law to advance its own literary and theological program, it may skew aspects of the law and depict the legal system inaccurately.<sup>20</sup> Therefore, law and literature scholarship has moved toward an approach that does not see literature as mirroring law per se, but instead as reflecting upon it. In the landmark essay “*Nomos and Narrative*,” Robert Cover argues that “[law] may be viewed as a system or a bridge linking a concept of a reality to an imagined alternative—that is, as a connective between two states of affairs, both of which can be represented in their normative significance only through the devices of narrative.”<sup>21</sup> A narrative may distort details of the law in order to create a better story but may also do so to expose flaws in the law—for example, in cases where the law enables one person to exploit another’s vulnerability, thereby behaving legally and yet immorally—and may further imagine an alternative to the flawed law that rectifies its deficiencies.

Ultimately, though they may deviate from reality, literary texts draw from the real world, including how the law functioned and what people thought about it. Indeed, without resonance with the “real,” the text would have failed to make sense to its intended audience. Therefore, with the appropriate caveats in place, I utilize extralegal biblical texts to cull data about history, social contexts, and perceptions in ancient Israel.<sup>22</sup> In particular, I build on recent scholarship by Bruce Wells regarding the reconstruction of operative law in ancient Israel and its relationship to the pentateuchal law collections, in the absence of practice documents from ancient Israel. Wells has proposed that, if one can identify connections in the forms of similar legal issues, similar legal reasoning, and similar legal remedies between the pentateuchal law collections and ancient Near Eastern practice documents, then one can also posit a connection between the pentateuchal law collections and Israelite legal practice.<sup>23</sup> To this I add a third source of data: biblical narrative and prophecy.<sup>24</sup> If one can identify

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Association also centered on the theme of “Judaism, Law and Literature” (Antwerp, 14–17 July 2014).

19. For references to numerous works adopting such a methodology in biblical studies, see Barmash, “Narrative Quandary,” 1.

20. Magdalene, *Scales of Righteousness*, 11, 51; Barmash, “Narrative Quandary,” 2–3.

21. Robert M. Cover, “*Nomos and Narrative*,” *Harvard Law Review* 97 (1983): 4–68, here 9.

22. Compare the methodology of F. Rachel Magdalene, “Trying the Crime of Abuse of Royal Authority in the Divine Courtroom and the Incident of Naboth’s Vineyard,” in *The Divine Courtroom in Comparative Perspective*, ed. Ari Mermelstein and Shalom E. Holtz (Leiden: Brill, 2014), 167–245, here 169.

23. Wells, “What Is Biblical Law?,” 231–32.

24. For discussion of both biblical narrative and Mesopotamian practice documents in relation to biblical law, see Barmash, *Homicide in the Biblical World*, 4–6.

connections between ancient Near Eastern practice texts (i.e., documents pertaining to legal practice) and pentateuchal law, between ancient Near Eastern practice texts and biblical narrative and/or prophecy, and also between biblical narrative and/or prophecy and the pentateuchal law collections, then one can make an even stronger and richer case for the connection between the pentateuchal law collections and Israelite legal practice.

When a narrative appears to reflect a legal reality rather than fiction, a methodologically thorny question arises: What reality? Is it a reality contemporaneous with the composition—the reality of an author or editor, or of others living during their time (or during any of their times), in the same or different geographical or social setting—or a past reality known to an author or editor? Should affinities between the legal reality of a biblical narrative and the details of the Covenant Code be used as evidence of either text's date? The abundance of confounding variables, such as the tendency of biblical and ancient Near Eastern texts to mask continuous adaptations that would have occurred in reality, and the gap between the socioeconomic status(es) of authors and editors of biblical texts and others living throughout Israel and Judah, allows for too wide a margin of error for these questions to be answered meaningfully.<sup>25</sup> Without dated or datable legal documents such as contracts, trial records, and letters from ancient Israel, similar to those from the cuneiform record, the enterprise of reconstructing operative law requires restraint, with an appreciation of both the possibilities and the limitations posed by an imperfect corpus of evidence. At the same time, we can point cautiously to the generally conservative nature of biblical and ancient Near Eastern law and posit a reconstruction of aspects of bailment practice in ancient Israel that likely would not have seen drastic change over time, including details such as who could be a bailee or bailor, wrongdoings that might incur liability, and motivations underlying the initiation of bailments.<sup>26</sup> Biblical narrative and prophecy unfortunately do not offer clues regarding aspects of the Covenant Code's bailment law that feature in discussions of legal changes in ancient Israel, such as the character of associated legal procedures.<sup>27</sup> When a practice is demonstrably specific to a particular setting, I discuss

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25. See recently Roland Boer, *The Sacred Economy of Ancient Israel*, LAI (Louisville: Westminster John Knox, 2015), 102–3.

26. For the conservative nature of ancient Near Eastern law, see Bruce Wells, "Law and Practice," in *A Companion to the Ancient Near East*, ed. Daniel C. Snell, Blackwell Companions to the Ancient World: Ancient History (Malden, MA: Blackwell, 2005), 183–95; Raymond Westbrook, "The Laws of Biblical Israel," in *The Hebrew Bible: New Insights and Scholarship*, ed. Frederick E. Greenspahn, Jewish Studies in the 21st Century (New York: New York University Press, 2008), 99–119.

27. See, e.g., Bernard M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (New York: Oxford University Press, 1997), 113–30, regarding changes in location (from local



the historical contours of that practice, and its inapplicability to other settings.<sup>28</sup> My goal in reconstructing bailment in practice in ancient Israel is not to present a complete picture of the institution at one time or at all times but rather to paint in broad strokes a sketch of the institution throughout ancient Israel's history, to the extent that the available sources allow. The use of nonlegal biblical texts as sources for actual legal practice faces the same potential pitfall as the comparative method discussed above: generalization. Certainly, just as the legal reality of Babylon in the eighteenth century BCE should not be superimposed onto the reality of a sixth-century BCE Mesopotamian city, we ought not to flatten the periods and regions of the biblical world into a single, unchanging "ancient Israel." And yet, to the extent that it is possible, and without wishing to commit any flattening, I do indeed generalize, by looking for the primary features of an institution that could have traversed these particularities of time and space.

Beyond exploring the relationship between the law of Exod 22 and law in practice, I return to the conclusions emerging from the primary sources and reexamine them from a legal perspective, to address the question, What do our ancient texts tell us about how their writers thought about law? Despite the risk of anachronistically misapplying modern thought to ancient texts,<sup>29</sup> engaging modern legal theory may help to illuminate this material with a sophistication that would otherwise be impossible.<sup>30</sup> The modern legal discourse surrounding bailments facilitates an understanding of the full range of conceptual problems that a bailment may create in its distinction between possession and ownership, in particular, and further informs an account of biblical and ancient Near Eastern jurisprudence.<sup>31</sup> Beyond the results of exegetical and comparative examination, legal analysis yields insights into the following: the organization and details of the biblical and cuneiform bailment laws, including how and to what extent these laws conceive of "bailments"; concepts of liability and the circumstances under which opportunities for exoneration are allowed or curtailed; a notion of duty and how it manifests differently in

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sanctuaries to the central temple in Jerusalem) for resolving ambiguous cases between the time of the Covenant Code and the Deuteronomic laws.

28. E.g., herding practices relating to wool in Ezek 34, discussed in chapter 2 below.

29. On this, see, e.g., Bernard S. Jackson, *Studies in the Semiotics of Biblical Law*, JSOTSup 314 (Sheffield: Sheffield Academic, 2000), 171.

30. See further Amihay, *Theory and Practice in Essene Law*, 187–88.

31. For the conceptual complexity of bailments and its ramifications, see, e.g., Oliver Wendell Holmes, *The Common Law*, ed. Paulo J. S. Pereira and Diego M. Beltran (Toronto: University of Toronto Law School Typographical Society, 2011 [originally published, 1881]), 146: "The test of the theory of possession which prevails in any system of law is to be found in its mode of dealing with persons who have a thing within their power, but do not own it, or assert the position of the owner for themselves with regard to it, bailees in a word."

the Covenant Code and the Laws of Hammurabi; and a model of justice as distinct from truth. Biblical and cuneiform law collections reflect what Raymond Westbrook has called an “archaic legal system,” which deals with narrow examples of cases rather than spelling out principles of the law;<sup>32</sup> the jurisprudential underpinnings of these texts are therefore difficult to uncover. In the face of these challenges, legal analysis provides a usable set of tools for accessing and talking about the legal thinking that shaped our ancient texts.

## Summary of the Chapters

Chapter 1 focuses on the creation of bailments, including the persons who would have created bailments, why they might have wanted or needed to create them, and how they would go about doing so. Exodus 22:6–14 serves as a starting point for consideration of deposits of goods, herding arrangements, animal borrowing, and animal rental, while ancient Near Eastern law collections and documents of legal practice, as well as biblical narrative and prophecy, offer a means of fleshing out possible parameters of bailments in ancient Israel. In particular, legal documents from Mesopotamia shed light on various commercial functions of bailments that the Bible does not address, while biblical narrative points to the usefulness of bailments in a range of military contexts.

The second chapter addresses the ways in which a bailment may go awry. Biblical law envisions a range of possible mishaps, most of which find cuneiform parallels: the theft of deposited goods; death, injury, capture, predation, and theft of animals entrusted to a shepherd; and death and injury of borrowed and rented animals. In addition to mapping out the various things that can go wrong in a bailment, this chapter explores levels of human fault, including fraudulent, deliberate wrongdoing; acts of negligence; and “acts of God” that go beyond the scope of human responsibility. A new interpretation of the Hebrew verbal idiom *שָׁלַח יָד* (“to lay a hand on”) in Exod 22:7, 10 [Eng. 8, 11] as an expression for negligence yields a novel understanding of the biblical bailment law.

When a bailment goes wrong, the accuser may seek justice from the accused. The third chapter examines the range of judicial procedures that may follow in order to establish the facts of the case, such as examination of physical evidence, hearing eyewitness testimony, and allowing the accused to undertake a cultic judicial procedure. This chapter further investigates how justice is established through the determination of liabil-

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32. Raymond Westbrook, ed., *A History of Ancient Near Eastern Law*, 2 vols., HdO 1.72 (Leiden: Brill, 2003), 1:21–22.

ity and penalties for wrongdoing, including what happens when someone swears falsely to their innocence but later acknowledges their wrongdoing. In some cases, biblical narrative and Mesopotamian legal documents diverge from biblical and cuneiform law collections in the penalties they establish. Differences between the Laws of Hammurabi and Exod 22:6–14 help to clarify the interests of the biblical law, which are not limited to the topic of bailment.

Chapter 4 shifts from the use of primarily exegetical and comparative methodologies in the previous three chapters to the application of legal analysis to the primary sources. This analysis offers a means of interrogating the ways in which the drafters of ancient law collections thought about law, apart from how the law may have operated in practice. With an eye toward culling modern legal studies for precise terminology and useful frames for conceptualizing ancient laws—the risks of anachronism notwithstanding—this chapter examines how the ancient law collections treat methods of fact-finding and variations in fault and liability, as well as whether bailments in these sources may be understood using the modern categories of contract, tort, and property.

The fifth chapter moves from a reconstruction of legal practice and thought in ancient Israel to what came next in postbiblical Jewish contexts. Early Jewish legal texts include documents of legal practice from Jewish communities at Elephantine and in the Judean Desert, as well as law writings from the Tannaitic period, such as the Mishnah and Midrash. These texts offer a window into the afterlife of areas of law in communities that viewed themselves as heirs to the Bible, while also sharing aspects of other legal traditions. In particular, this chapter demonstrates continuities between ancient Near Eastern and early Jewish bailment law, with features exclusive to these bodies of law and legal practice, without parallels in biblical or Greco-Roman law. I propose different ways in which these commonalities might have arisen.

Taken together, the chapters in this book speak to overarching questions that cut at the heart of the human experience of law: What is the connection between law in the books and law on the ground? How do humans respond to the law? What does “justice” entail? By fusing close readings of primary sources with interdisciplinary humanistic analysis, I offer answers that have ramifications not only for the fields of Hebrew Bible, Assyriology, and Jewish studies but for other disciplines that involve the intersection of law, literature, and religion. Through the lens of a single legal institution, this project illuminates broader questions of definitions of justice, aspects of everyday life in ancient societies, the interaction of law and literature, and the earliest articulations of a legal practice whose relevance has persisted into the modern era.