

# The Genesis of Normativity in Biblical Law

## Historical and Theological Observations on the Development of the Canonical Notion of Law in the Hebrew Bible and its Applications on Nature

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### I. The Hebrew Bible as “Law”

Within Christian communities, the Hebrew Bible (as their “Old Testament”) can be termed *in toto* as “law.” The New Testament itself refers to Hebrew Bible passages (also from prophetic or sapiential books) as “law” (*nómos*; see John 10:34; 15:25; 1 Cor 14:21). In contrast, the Hebrew Bible does not present itself *as a whole* as “law” (*torah*), but, as a matter of course, it *contains* “law.” Its tripartite canon differentiates between “law” (*Torah*; Genesis-Deuteronomy), “prophets” (*Neviim*; Joshua-Malachi), and “writings” (*Ketuvim*; Psalms-2 Chronicles). Nevertheless, it is undisputed that the “law” (*Torah*) constitutes its most prominent and important part. This is made especially clear by the introductory passages of the “prophets” (*Neviim*) in Josh 1:7 and the “scriptures” (*Ketuvim*) in Ps 1:1 where clear references to the “law” are given in order to subordinate these subsequent canonical blocks to the “law” (*Torah*):

Josh 1:7: “Only be strong and very courageous, being careful to act in accordance with all the *law* (*Torah*) that my servant Moses commanded you; do not turn from it to the right hand or to the left, so that you may be successful wherever you go.”

Ps 1:1–2: “Happy are those who do not follow the advice of the wicked, or take the path that sinners tread, or sit in the seat of scoffers; but their delight is in the *law* (*Torah*) of the LORD, and on his law they meditate day and night.”

In this usage, “law” (*Torah*) is an emphatic singular and means the one and complete, normative, literally codified will of God that is given to Israel so that they might follow it. The function of “law” in this sense is multi-valent: it not only regulates social conflicts, but it is the one and only way to a successful life and an adequate relationship to God.

In the following I will call this broad concept of *Torah* its “canonical” notion. It is historically indisputable that this notion of “canonical law” was not present at the beginning of the literary and theological development of the Hebrew Bible. It instead belongs to the later stages of its formation, being fully developed only in its canonical shape. The Hebrew Bible contains a library of books that were written over nearly 1000 years (roughly from the tenth to the second century BCE).<sup>1</sup> Within this time span some very decisive changes in the concept of “law” took place. The so-called canonical notion of “law” found in Josh 1:7 and Ps 1:1–2 emerged at the end of a long process of reception and transformation and, in all probability, presupposes the formation of the Torah, the so-called five books of Moses, which can be dated to the end of the fourth century BCE.<sup>2</sup>

It is quite clear that *Torah* (“law”) in its “canonical” sense possesses other nuances than “law” in modern civilizations. However, the canonical usage probably influenced the use of the term in legal studies and the natural sciences in the pre-modern and modern eras.

This contribution will not elaborate on these important processes of “*Wirkungsgeschichte*” of the canonical concept of “law.” It instead investigates this specific notion of “law” in the later stages and the final shape of the Hebrew Bible in order to understand its intellectual development within the Bible and its ancient Near Eastern context.

Furthermore, it attempts to explore how and why “legal” terminological elements, apparently intellectually and historically related to the canonical concept of “law” in the Hebrew Bible, were applied to phenomena of nature as well. Various texts in the Hebrew Bible speak of the “ordinances” (*khuqqot* or *khuqqim*) of nature, which imply a lawful order of nature, implemented by God.

My argumentation will proceed in the following steps. Section 2 will contextualize the canonical concept of “law” of the Hebrew Bible in its ancient Near Eastern setting in order to demonstrate its peculiarities. Sections 3 and 4 will investigate the reasons for the intellectual development that led to the canonical notion of “law” in the Hebrew Bible: Section 3 will focus more on political and historical perspectives, section 4 more on religious and intellectual aspects. Section 5 will discuss the transfer of “legal” terminology to the order of nature in the Hebrew Bible in order to further elucidate the canonical concept of “law.” The final section will provide some brief concluding remarks.

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<sup>1</sup> See Konrad Schmid, *Literaturgeschichte des Alten Testaments: Eine Einführung* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2008).

<sup>2</sup> Konrad Schmid, “The Late Persian Formation of the Torah: Observations on Deuteronomy 34,” in *Judah and the Judeans in the Fourth Century B.C.E.*, eds. Oded Lipschits, Gary Knoppers, and Rainer Albertz (Winona Lake, IN: Eisenbrauns, 2007), 236–45.

## II. “Law” in the Ancient Near East and in the Hebrew Bible

### 1. “Codices” or “Law Books” in the Ancient Near East?

Although there has been an extended debate on the function of ancient Near Eastern law collections, there is a growing consensus that these collections primarily had a *descriptive*, and not a *normative*, status. They do not contain rules for everyday life situations. Instead, they seem to be products of learned scribal training that mainly dealt with complicated and extraordinary cases. Everyday conflicts were mostly solved according to customary legal traditions that did not need to be fixed in writing but were part of a legal “common sense.”

Therefore, the common designation of ancient Near Eastern law collections as “codex”/“codices” (see “Codex Ur-Nammu,” “Codex Lipit-Ishtar,” etc.)<sup>3</sup> is rather misleading. The notion of a “codex” implies normativity and completeness, but these texts are collections of exemplary cases rather than of “normative law.” More suitable would be the term “law books.” They provide “help, but not rules in the finding of justice.”<sup>4</sup> Their language is *informative* rather than *performative*. If these codices had authority, then it was not rooted in their character as codified texts. Rather, it was dependent on the authority of the king who repeatedly re-enacted these laws. The case of pre-Demotic ancient Egypt where no written laws at all are extant – with the one exception of a decree of eighteenth dynasty King Haremhab – therefore is not an exception in the history of ancient Near Eastern law but only a very poignant example: The legislative authority was the king and not a text.

### 2. Law in the Hebrew Bible

The law texts in the Hebrew Bible are both different from *and* similar to this general characterization of ancient Near Eastern law.

Remarkably *different* from common ancient Near Eastern law is the “Torah” (i.e., the books Genesis through Deuteronomy) *as a whole in its canonical shape*. The “Torah” as the basic document of ancient Judaism clearly functions as a normative text *per se*, demanding personal submission and obedience (see e.g. Deut 30:1–14). It is “law” in the sense of an emphatic singular; it is a “codex” in the proper sense. Its authority is not backed by the king but is inherent to it as a normative text claiming divine origin. This is also true for the different law collections contained within

<sup>3</sup> See Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor* (Atlanta: Scholars Press, 1997).

<sup>4</sup> Jan Assmann, *Herrschaft und Heil: Politische Theologie in Ägypten, Israel und Europa* (Munich: Beck, 2000), 179 (my translation); for the “Codex Hammurabi” as a “memorial” or “commemorative inscription” see *ibid.*, 179–80.

the Torah – the Covenant Code (Exod 20–23), Deuteronomy, and the Holiness Code (Lev 17–26).

This may be illustrated with an example from the Covenant Code:

Exod 22:21–24: “You shall not wrong or oppress a resident alien, for you were aliens in the land of Egypt. You shall not abuse any widow or orphan. If you do abuse them, when they cry out to me, I [i.e., God] will surely heed their cry; my wrath will burn, and I will kill you with the sword, and your wives shall become widows and your children orphans.”

Two features of this text should be highlighted:

1) This legal stipulation is formulated in the second person and not in the third person, and the speaker is not the king, but God. Ancient Near Eastern laws outside Israel were the king’s laws. Of course, the law – like all other arenas of public and private life – had a religious basis, but concrete legislation was the task of the king. The laws of the Hebrew Bible in their present shape, however, are not the king’s laws but God’s law. Already the oldest collection of law rules in the Hebrew Bible, the so-called Covenant Code in Exod 20–23, is shaped, albeit redactionally, by its introduction in Exod 20:22–21:1 as a speech of God. Therefore, all laws therein must be read as the expression of the will of God.

2) As with many other cases in the Hebrew Bible, this legal instruction is followed by a rationale (“for you were aliens in the land of Egypt”) or a threat (“If you do abuse them, when they cry out to me, I will surely heed their cry”) that seems to compensate for its lack of integration into state jurisdiction.

“Fifty percent of biblical laws have a clause attached that may underline the origin of law, make a promise for keeping it, explain the reason for it, hold out threats, and give purpose for the laws . . . The need to persuade . . . hints that the laws do not carry the legislative weight of being backed by officially mandated violent acts.”<sup>5</sup>

Nevertheless: Despite this specific outlook of many laws in the Hebrew Bible, the canonical shape of its law collections cannot hide the fact that the legal texts in the Hebrew Bible are deeply rooted in the ancient Near Eastern tradition of “law books” and show close *similarities* to these “law books.” Fragments of the commonly known specifics of ancient Near Eastern “law books” can still be found in some core texts in the Covenant Code (Exod 20–23), namely those texts formulated in the third person and speaking of God in third person:

Exod 22:7–9: “When someone delivers to a neighbor money or goods for safekeeping, and they are stolen from the neighbor’s house, then the thief, if caught, shall pay double. If the thief is not caught, the owner of the house shall be brought before God, to determine whether or not the owner had laid hands on the neighbor’s goods. In any case of dis-

<sup>5</sup> Tikva Frymer-Kensky, “Israel,” in *A History of Ancient Law*, ed. Raymond Westbrook (Handbuch der Orientalistik 72.2; Leiden: Brill, 2003), 2:975–1046.

puted ownership involving ox, donkey, sheep, clothing, or any other loss, of which one party says, 'This is mine,' the case of both parties shall come before God; the one whom God condemns shall pay double to the other."

This sample of a traditional core text in the Covenant Code could – in this form – also be part of a regular ancient Near Eastern law book. At any rate, it shows that the law texts in the Hebrew Bible were not *originally* formulated as part of a normative body of legal tradition (say of a "codex") stipulated by God himself, but that they were *reinterpreted* in that way at some redactional stage of their literary development.<sup>6</sup> "Law books" and "canonical law" therefore are not parallel to the distinction between ancient Near Eastern law and ancient Israelite law. While ancient Near Eastern juridical literature is shaped and transmitted in the form of "law books," ancient Israelite law – in its ancient Near Eastern context – *began* as "law books," too, but then developed the notion of "canonical law" which is unknown in the ancient Near Eastern law tradition.

What can be known about the processes that led to the emergence of this specific "canonical" notion of a written "law" in ancient Israel?

The following attempt does not claim to formulate strict historical explanations for the genesis of "canonical law." Instead, it tries to understand this development in the context of the broader political and intellectual changes in ancient Israelite history and religion, which can especially be traced back to the loss of state and king and the contemporaneous rise of monotheism. Needless to say, such processes of a "theological reframing"<sup>7</sup> of the legal tradition were gradual, manifold and not uniform, as the different theological profiles of the biblical law texts sufficiently show.

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<sup>6</sup> See e.g. Ludger Schwienhorst-Schönberger, *Das Bundesbuch (Ex 20,22–23,33): Studien zu seiner Entstehung und Theologie* (Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft 188; Berlin: de Gruyter, 1990); Ralf Rothenbusch, *Die kasuistische Rechtssammlung im ‚Bundesbuch‘ (Ex 21,2–22,18–22,16) und ihr literarischer Kontext im Licht altorientalischer Parallelen* (Alter Orient und Altes Testament 259; Münster: Ugarit-Verlag, 2000); Bernard S. Jackson, *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1–22:16* (Oxford: Oxford University Press, 2006).

<sup>7</sup> Rainer Albertz, "Die Theologisierung des Rechts im Alten Israel," in *Geschichte und Theologie: Studien zur Exegese des Alten Testaments und zur Religionsgeschichte Israels* (Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft 326; Berlin: de Gruyter, 2003), 187–207.

### III. The Loss of Royal Legislative Authority as Incentive for the Development of “Canonical Law” in the Hebrew Bible and Other Historical Factors

The impact of the loss of state and king (eighth and sixth century BCE) is probably one of the most important factors for this development. The history of the kingdoms of Israel and Judah as sovereign states is significantly shorter than the history of the great state cultures of the ancient Near East in Mesopotamia and Egypt. As a kingdom, Israel existed from ca. 1000 to 722 BCE, and Judah from ca. 1000 to 587 BCE. Most literary production of the Hebrew Bible falls into epochs *without* the institution of a kingdom.<sup>8</sup> This distance from state and king facilitated, even necessitated, the development of a law tradition that claimed divine authority beyond a king. In the ancient Near East, the legislative authority was the king. After the demise of the kingdoms of Israel and Judah, there was an urgent need for a functionally adequate replacement and as such, the main conditions for the rise of “canonical law” were in place.

A second historical impact towards the development of “canonical law” can be seen in the fact that the first theological redaction of the Covenant Code and the book of Deuteronomy are strongly influenced by Neo-Assyrian vassal treaties in form and content.<sup>9</sup> These vassal treaties call for unconditional loyalty and strict submission to the Neo-Assyrian king; they are sealed by blessings and curses. In the late seventh century BCE, when the Neo-Assyrian power was fading away, some scribes in ancient Israel adopted this concept, transformed it subversively, and incorporated it into their own legal tradition. The ancient Israelite law collections now demanded a similar kind of loyalty and strict submission, not to the Neo-Assyrian king, however, but to their own God. The gods were present in the Neo-Assyrian treaties too, not as partners, but as warrants of these treaties. In Israel, God became involved in the treaty itself; indeed, the treaty was established between the people and their God. The clearest example of such a transformed “Neo-Assyrian treaty” can be found in the book of Deuteronomy (the curse section in Deut 28:20–44 is a clear adaptation from Neo-Assyrian texts, see n. 9). The redactionally transformed Cove-

<sup>8</sup> See n. 1.

<sup>9</sup> Hans Ulrich Steymans, *Deuteronomium 28 und die adê zur Thronfolgeregelung Asarhaddons: Segen und Fluch im Alten Orient und in Israel* (Orbis biblicus et orientalis 145; Fribourg: Universitätsverlag; Göttingen: Vandenhoeck & Ruprecht, 1995); “Eine assyrische Vorlage für Deuteronomium 28,20–44,” in *Bundesdokument und Gesetz: Studien zum Deuteronomium*, ed. Georg Braulik (Herders biblische Studien 4; Freiburg i.Br.: Herder, 1995), 119–41; Eckart Otto, *Das Deuteronomium: Politische Theologie und Rechtsreform in Juda und Assyrien* (Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft 284; Berlin: de Gruyter, 1999).

nant Code (Exod 20–23) is also an important example. One can hardly overestimate the significance of this new theological paradigm that develops the idea of a covenant between God and the people based on the “law.” “Law” now becomes the decisive factor in the relationship between God and humankind. Observance of the “law” is not simply a matter of avoiding or solving conflicts; it becomes a matter of blessing and curse (see Deut 28–30) and of life and death (see Deut 30:15). The attitude towards “law” even becomes the main factor determining the course of history (see the presentation of the history of Israel in Exodus-2 Kings). Another point might be worth mentioning: In this new paradigm, “law” is attributed to a subject: God. This also seems to be a new development because the principles of “law” (*kittu* and *mešaru*; often rendered as “justice” and “righteousness”) in the ancient Near East are not authored by gods but are both preexistent and also compelling factors for the gods themselves.<sup>10</sup> The motives underlying the choice of this vassal treaty paradigm by the Israelite scribes for determining Israel’s relationship to God remain to be explored further. They probably result from their attempt to rewrite the main contemporary expression of political power into the religious sphere in order to formulate and stress God’s all-inclusive sovereignty over his people. This means that the intellectual matrix of ancient Israelite religion simultaneously begins to undergo a fundamental shift: God becomes the “Lord” (*adonay*) *par excellence*.<sup>11</sup> In the legal sphere he becomes the subject of “law,” the divine lawgiver.

As a third factor, one can point to the impact of Persian administrative policy on the formation of the Torah (fifth and fourth century BCE) into the kernel of the biblical canon. The Neo-Babylonian Empire that destroyed Judah and Jerusalem in 587 BCE survived only for a few decades after that event before Babylon itself surrendered to the Persians under King Cyrus. There was no central law within the Persian Empire (539–331 BCE). Instead, the different peoples under Persian rule were to live according to their own laws and rules, which however needed to be authorized by the central administration. It is worth reflecting on the possibility that the formation of the Torah as the first and most important part of the biblical canon resulted from this special Persian imperial policy: The Jews decided to live according to the Torah, and thus, the Torah increased in normative status.<sup>12</sup>

<sup>10</sup> Eckart Otto, “Recht und Ethos in der ost- und westmediterranen Antike: Entwurf eines Gesamtbildes,” in *Gott und Mensch im Dialog: Festschrift Otto Kaiser*, ed. Markus Witte (Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft 345/I; Berlin: de Gruyter, 2004), 105.

<sup>11</sup> Martin Rösel, *Adonaj – warum Gott “Herr” genannt wird* (Forschungen zum Alten Testament 29; Tübingen: Mohr Siebeck, 2000).

<sup>12</sup> See James W. Watts, ed., *Persia and Torah: The Theory of Imperial Authorization of the Pentateuch* (Atlanta: Society of Biblical Literature, 2001); Schmid, “The Late Persian Formation of the Torah.”

Finally, it would be worthwhile to investigate whether there is any influence from Spartan and early Roman law traditions, which seemed to develop the notion of a strict normativity of laws around the same time.<sup>13</sup> There was cultural contact and exchange in the ancient Mediterranean world; therefore, such a hypothesis would not be impossible. At any rate, it is remarkable that the *normativity* of laws seems to have emerged especially in non-monarchic political entities (Israel, Sparta, Rome).

#### IV. The Emergence of Monotheism and Scripture as Intellectually Adjuvant Factors

Focusing more on intellectual processes, it seems possible to establish a connection not only between the loss of the kingdom in Israel and Judah and the development of a written “law” in the Hebrew Bible in the aforementioned “canonical” sense, but also between the rise of monotheism in ancient Israel and “canonical law.” Of course, there is also an internal relationship between the demise of the state in Israel and Judah and the development of monotheism: the downfall of the political system necessitated a reorientation of the religious system. It would either disappear or be transformed in order to cope with the new situation. In ancient Israel, apparently, the latter was the case. The notion of God was universalized and superseded the traditional concept of a national deity.

A possible connection between monotheism and “canonical law” need not to be one of logical consequence (*propter hoc*), but monotheism and “law” might also be different *expressions* of a broader shift in the intellectual history of ancient Israel.

##### *1. Aspects of the Current Debate on the Rise of Monotheism in Ancient Israel*

As the origins of biblical monotheism have been heavily discussed in the last 30 years,<sup>14</sup> some preliminary and very basic remarks on the history of

<sup>13</sup> Alan Watson, *The Laws of the Ancient Romans* (Dallas: Southern Methodist Press, 1970); Douglas Maurice MacDowell, ed., *Spartan Law* (Edinburgh: Scottish Academic Press, 1986); Ernst Baltrusch, *Sparta: Geschichte, Gesellschaft, Kultur* (Munich: Beck, 1998).

<sup>14</sup> See among others Robert Gnuse, *No Other Gods: Emergent Monotheism in Israel* (JSOT.S 241; Sheffield: Sheffield Academic Press, 1997); “The Emergence of Monotheism in Ancient Israel: A Survey of Recent Scholarship,” *Religion* 29 (1999): 315–336; Mark Smith, *The Early History of God: Yahweh and the Other Deities in Ancient Israel*, 2nd ed. (Grand Rapids: Eerdmans, 2002); Erich Zenger, “Der Monotheismus Israels: Entstehung – Profil – Relevanz,” in *Ist der Glaube Feind der Freiheit? Die neue Debatte um den Monotheismus*, ed. Thomas Söding (Questiones Disputatae 196; Freiburg i.Br.: Herder, 2003), 9–52.



scholarship might be helpful. The most recent discussions substantially return to the state of the discussion at the beginning of the twentieth century, which was mainly shaped by the “*Religionsgeschichtliche Schule*.” It is quite interesting to follow the development of the discussion in the different articles on “*Monotheismus und Polytheismus*” in the second, third, and fourth editions of the encyclopedia *Religion in Geschichte und Gegenwart*. In 1930 Max Haller wrote in the second edition:<sup>15</sup>

“M.[onotheismus] als bestimmt formulierte Lehre vom Dasein eines einzigen Gottes lässt sich erst vom Exil an belegen.”

“Monotheism as a distinctive doctrine of the existence of one god can only be found in the exile and afterwards.”

Quite contrary to this statement, in 1960 Friedrich Baumgärtel thinks that biblical monotheism is a Mosaic institution. He stated in the third edition:<sup>16</sup>

“Der M.[onotheismus] in der at. Religion ist zwangsläufige Folge ihres Grundverständnisses von Gott, mit dem sie wie ein erratischer Block aus den Umweltreligionen herausragt.”

“The monotheism of the Old Testament religion is a necessary consequence of its foundational understanding of God. With this understanding, the Old Testament religion sticks out like an erratic block in the midst of the religions of the surrounding cultures.”

In 2002 Hans-Peter Müller writes in the fourth edition:<sup>17</sup>

“Einen reflektierten M.[onotheismus] gibt es erst als Antwort auf die Exilskrise.”

“A reflected monotheism first arises as an answer to the crisis of exile.”

What happened in the time between the second, the third, and the fourth editions of the *Religion in Geschichte und Gegenwart*? Many reasons could be given, but I will restrict myself to two of them. First, the theological climate changed significantly during the twentieth century. The *Religion in Geschichte und Gegenwart* in its 1st and second editions was shaped by the *Religionsgeschichtliche Schule*, while the third edition was controlled by the kerygmatic theology of post World War II Protestantism in Germany. Since then, however, the discussion concerning the rise of biblical monotheism has, to a certain extent, returned to some basic convictions of the beginning of the twentieth century. Secondly, in the last 30 years, significant new archeological evidence has been published, and this

<sup>15</sup> Max Haller, “Monotheismus und Polytheismus II. Im AT,” *RGG*<sup>2</sup> IV (Tübingen: Mohr Siebeck, 1930): 192.

<sup>16</sup> Friedrich Baumgärtel, “Monotheismus und Polytheismus II. Im AT,” *RGG*<sup>3</sup> IV (Tübingen: Mohr Siebeck, 1960): 1113.

<sup>17</sup> Hans-Peter Müller, “Monotheismus und Polytheismus II. Im AT,” *RGG*<sup>4</sup> V (Tübingen: Mohr Siebeck, 2002): 1461.

new evidence has dramatically changed the image of ancient Israelite and Judean religion in the monarchic period. The historical picture provided by the recent archeological finds differs significantly from the biblical presentation. The biblical God Yhwh was clearly not the only divine power recognized by the ancient Israelites. Whoever left the borders of Israel naturally entered another god's sphere of control: *Cuius regio eius religio*. Certain documents even witness to a female partner of Yhwh named Asherah.<sup>18</sup> Only in the seventh and sixth century BCE does evidence in biblical and nonbiblical sources appear for the gradually exclusive veneration of one God. It is noteworthy that at the end of this era the very notion of "God" (capitalized) was being shaped in biblical Hebrew:<sup>19</sup> It originally denoted a category, but at this time the article is waved and it is used as a proper name (see especially Genesis 1), as it is common in current English ("God"), German ("Gott") and French ("Dieu"). As there is only one God, his name can be "God."

In the current discussion it therefore seems clear that explicit monotheistic concepts in Biblical literature can hardly be found before the seventh century BCE. The most prominent monotheistic statements in the Hebrew Bible can be found in Second Isaiah and in the Priestly Code, both stemming from the Babylonian Exile or the early Persian period.

Nevertheless, this development has its deeper roots in the Neo-Assyrian period and the Deuteronomic notion of God as the absolute sovereign described as described in section 3. above. Once Judean theologians in the seventh century BCE started to transfer the Neo-Assyrian royal ideology to their God, one of the most important bases for the monotheistic notion of God was established.

## 2. *The Rise of Monotheism, the Intellectual Disentanglement of God and World, and the Introduction of the Law as Medium of God's Presence in the World*

The reason for postulating an intrinsic link between the emergence of "monotheism" and a written "law" (meaning that "scripture" should also be taken into account) lies in the observation that the implementation of monotheism in ancient Israel's religion marked a fundamental intellectual re-orientation. "Monotheism" not only means the conviction that there is

<sup>18</sup> Judith M. Hadley, *The Cult of Asherah in Ancient Israel and Judah: Evidence for a Hebrew Goddess* (University of Cambridge Oriental Publication 57; Cambridge: Cambridge University Press, 2000).

<sup>19</sup> Albert de Pury, "Gottesname, Gottesbezeichnung und Gottesbegriff. Elohim als Indiz zur Entstehungsgeschichte des Pentateuch," in *Abschied vom Jahwisten. Die Komposition des Hexateuch in der jüngsten Diskussion*, eds. Jan Christian Gertz, Konrad Schmid, and Markus Witte (Beihefte zur Zeitschrift für die Alttestamentliche Wissenschaft 315; Berlin: de Gruyter, 2002), 25–47.

not more than just one God. Rather, it entails the notion that God and the world are fundamentally differentiated: God is God, and the world is the world. There is no worldly quality of God, and there is no divine quality of the world. If deities are not mere extrapolations or interpretations of different powers in nature, as some polytheistic religious systems may be interpreted, if a deity is rather conceived as the only power controlling the world, then the sharp dichotomy between this deity (more precisely: God) and world is the logical consequence.

It is helpful to interpret this process in terms of shifting “*Leitdifferenzen*” (“basic differences”) as proposed by Fritz Stolz,<sup>20</sup> who argues that religions tend to formulate “basic differences” to express their world views. In monotheistic religions the dichotomy between “God” and “world” fits this category of “basic difference,” replacing the former “basic difference” between “cosmos” and “chaos.” Ancient Israelite religion in the monarchic period was mainly interested in the divine establishment of “cosmos” over against the dangers of the “chaos” that were always threatening the divinely protected cosmos. “Chaos” could be represented by storms, droughts, political enemies, foreigners, wars, wild animals, and so on.

Monotheism instead states that “cosmos” and “chaos” are just elements *in* the creation (within the world), and God controls them both, even though this is neither immediately evident nor fully comprehensible to human understanding. How can God create chaos? But this is exactly the intellectual consequence monotheism draws: “I form light and create darkness, I make weal and create woe; I, Yhwh, do all these things” (Isa 45:7). A vivid example of this concept can be found in the divine speeches in the book of Job as well: The one and only God creates and controls cosmic and chaotic elements in his creation (see e.g. Job 38:39–41).

This new dichotomy between “God” and “world” entailed various consequences. One of them concerns the intelligibility of the “world,” comprised of political, social, and natural life. While empirical evidence still opens some pathways to understanding the “world,” gaining proper, fundamental, and complete knowledge of the world is only possible *by inquiring into the will of the creator* which reveals the “world’s” inner secrets. Therefore, special revelation *provided by scriptural texts* is required to attain insight into the ordering principles of creation that concern both politics and nature.

In ancient Israel it seems that especially the biblical “law texts,” shaped in terms of divine authorship, took on this function. The Torah contains a comprehensive body of legal texts which present the revealed will of the

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<sup>20</sup> Fritz Stolz, “Unterscheidungen in den Religionen,” in *Wirkungen hermeneutischer Theologie*, eds. Hans Friedrich Geisser and Walter Mostert (Zürich: Theologischer Verlag, 1983), 11–24; *Grundzüge der Religionswissenschaft* (Göttingen: Vandenhoeck & Ruprecht, 1988), 234–6.

creator God. It is not primarily through elements of the traditional cult that communication with God can be established, but it is instead the study of legal texts that provide access to his will.

Why is it especially the *law* texts that became so important for ancient Israel's religion? Historically speaking, this too is probably the heritage of the Neo-Assyrian conception of the great king and his relationship to his vassals: God is conceived as the universal lawgiver. Like the Neo-Assyrian king, God is far removed from his subjects; however, he can establish the presence of his will amongst them by giving them a law to follow in order to profit from his benevolence. From a systematic perspective, it remains most noteworthy that ancient Israel's theologians shaped the relation between God and his people in juridical terms: God is God, and as such he is completely free, but he committed himself to the law as the basis of his interactions with his people. Thus the Bible highlights justice and not arbitrariness as one of the chief qualities of God.

## V. The Application of Legal Terminology to the Order of Nature

In the Hebrew Bible the idea of "canonical law" eventually seems to have also had some influence on its interpretation of the natural and cosmic orders. This specific process, however, has a long prehistory itself.<sup>21</sup>

There is a widespread opinion that the notion of "laws of nature" is of Greek origin. Gerhard Frey's article on "Naturgesetzlichkeit, Naturgesetz" in *Historisches Wörterbuch der Philosophie* starts with Anaximander, Heraclitus, Plato, and Aristotle.<sup>22</sup> Wolfgang Kullmann's lengthy and rich presentation of ancient precursors to the concept of "laws of nature" exhibits the following structure:

"1. Einleitung, 2. Archaische und klassische Zeit, 3. Platon und Aristoteles, 4. Die Redner, Theophrast, Aristoteles' Rhetorik, Stoa, 5. Dionysios von Halikarnass, Philon, 6. Lucretz und Seneca, 7. Kaiserzeit, 8. Griechische Kirchenväter, 9. Lateinische Kirchenväter, 10. Zusammenfassung."<sup>23</sup>

<sup>21</sup> See also the contribution of Jörg Hübner to this volume.

<sup>22</sup> Gerhard Frey, "Naturgesetzlichkeit, Naturgesetz," *HWP* 6 (Basel: Schwabe, 1984): 528–31.

<sup>23</sup> Wolfgang Kullmann, "Antike Vorstufen des modernen Begriffs des Naturgesetzes," in *Nomos und Gesetz: Ursprünge und Wirkungen des griechischen Gesetzesdenkens: 6. Symposion der Kommission "Die Funktion des Gesetzes in Geschichte und Gegenwart,"* eds. Okko Behrends and Wolfgang Sellert (AAWG.PK III/209; Göttingen: Vandenhoeck & Ruprecht, 1995), 36–111.

Hartbecke also begins with the Presocratic philosophers and pays especially close attention to their idea of *anagkē* “necessity” in order to explain their approach to the “laws of nature.”<sup>24</sup>

Apparently these highly valuable contributions are convinced that the roots of Western culture and science, including the beginnings of the notion of “laws of nature” are to be found in ancient Greece. However, this assumption can be falsified empirically by looking into the traditions of the ancient Near East and the Bible: The description of astronomical phenomena with legal language has a particularly important prehistory in Mesopotamian astronomy and also in biblical literature.<sup>25</sup> Although no explicit and exact Akkadian or Hebrew counterpart to the term “laws of nature” can be found, the notion of legal interpretation of cosmic phenomena is clearly present. Perhaps most striking are the parallel formulations of most ancient Near Eastern *omina* on the one hand and legal regulations in law books on the other hand. Both are usually shaped as conditional clauses in which the protasis begins with *šumma*, “in case, if,” and is then followed by the apodosis. Maul notes correctly that these sentences share the obvious conviction of the presence of a legal structure within the world view of the ancient Near East.<sup>26</sup>

As a matter of fact, some ancient Near Eastern texts explicitly present the *legal* arrangement of the cosmos, especially the heavenly order. For example, the text K 7067, though fragmentary, still exhibits this notion:<sup>27</sup>

- 1) “Ea in the Apsu . . .
- 2) The Great Gods took council and their d[ecisions
- 3) The stars, like a beaut[iful] glo[w of
- 4) The vast heavens [ . . .
- 5) From sunrise to sunse[t
- 6) They multiplied the width by the height”

<sup>24</sup> Karin Hartbecke, “Geschichte des Naturgesetzbegriffs: Methodologische Überlegungen,” in *Naturgesetze: Historisch-systematische Analysen eines wissenschaftlichen Grundbegriffs*, eds. idem and Christian Schütte (Paderborn: mentis, 2006), 25–35.

<sup>25</sup> Hermann Hunger and David Pingree, eds., *Astral Sciences in Mesopotamia* (HdO I/44; Leiden: Brill, 1999); Noel M. Swerdlow, ed., *Ancient Astronomy and Celestial Divination* (Cambridge MA: MIT Press, 1999); Francesca Rochberg, *The Heavenly Writing. Divination, Horoscopy, and Astronomy in Mesopotamian Culture* (Cambridge: Cambridge University Press, 2004); see already Edgar Zilsel, “The Genesis of the Concept of Physical Law,” in *The Social Origins of Modern Science* (Kluwer: Dort, 2003), 96–122, reprinted from *Philosophical Review* 51 (1941): 254–79.

<sup>26</sup> “Allen Satzgefügen dieser Art ist in jedem Falle gemein, dass der durch die Verknüpfung von Protasis und Apodosis hergestellte Zusammenhang im altorientalischen Weltbild das Offenlegen einer Gesetzmässigkeit des dynamischen Weltgefüges darstellt.” Stefan M. Maul, “Omen, Omina,” *Reallexikon der Assyriologie* (Berlin: de Gruyter, 2003–5), 10:45–88.

<sup>27</sup> Wayne Horowitz, *Mesopotamian Cosmic Geography* (Winona Lake, IN: Eisenbrauns, 1998), 147–8.

Quite comparable is the series MUL.APIN, which contains mathematical rules describing the rising and setting of the stars (see esp. I, iii, 34–48. 49–50).<sup>28</sup> Babylonian science apparently understood the natural order of the celestial bodies according to fixed mathematical relations: The natural order results from the various laws imposed on it.

The Babylonian cosmological epic *Enuma Elish*, which establishes the predominance of the Babylonian city god Marduk over the other Mesopotamian gods (who are represented by different astral entities like stars and planets) is remarkable in this respect too. Tablets I–IV describe the chaotic state of the world before Marduk’s ascent to power, while tablet V establishes the heavenly order under Marduk’s rule.<sup>29</sup> In addition, tablet V, 1–22 describes the Babylonian chief god, Marduk setting up a controlling star (*neberu*) that makes sure that none of the stars “shall sin.” Numerous texts include the expression *šitir šame* (“script of heaven”) with the meaning of a cosmic codex about the rising and setting of the stars.<sup>30</sup>

Mesopotamian astronomy and cosmology were certainly known and influential in ancient Israel especially since the Babylonian Exile – where the deported Judean priestly intelligentsia came into contact with ancient Mesopotamian science.

Within the Hebrew Bible the notion of legally-structured ordinances for the cosmos is expressed in Jer 5:23–25, Ps 19, 104:9, 148:1–6, Prov 8:29–30; Job 28, 38, Jer 31:35–37, 33:25–26. The Vulgate even uses the term “*lex*” in Job 28:26 and Prov 8:29. These rather late texts – in no case predating the sixth century BCE – use explicit legal terminology to describe the order of nature. According to these texts nature is not a self-contained unit, but is instead determined by the will of God, which is identified by the texts as his lawful ordinance for nature. The theological contexts of these passages are especially noteworthy: They normally deal with human experiences of crisis, and they strive to overcome these crises by pointing to the divine ordinances in nature that ensure the commonly known order. There may be difficulties in discerning God’s hand in history, but the heavenly order leaves no doubt concerning God’s enduring will to secure his creation.

In the book of Job, for example, in which the protagonist loses his family and livelihood as the result of a divine test he is not informed about,

<sup>28</sup> Hermann Hunger and David Pingree, eds., *MUL.APIN. An Astronomical Compendium in Cuneiform* (Archiv für Orientforschung, Beiheft 24; Horn: Ferdinand Berger, 1989).

<sup>29</sup> Horowitz, *Mesopotamian Cosmic Geography*, 114–5.

<sup>30</sup> Matthias Albani, “‘Kannst du die Sternbilder hervortreten lassen zur rechten Zeit ...?’ (Hi 38,32): Gott und Gestirne im Alten Testament und im Alten Orient,” in *Das biblische Weltbild und seine altorientalischen Kontexte*, eds. Bernd Janowski and Beate Ego (Forschungen zum Alten Testament 32; Tübingen: Mohr Siebeck, 2001), 181–226.

God finally answers Job's complaints by pointing to the fixed ordinances of heaven and earth, which prove that even though Job's own world may be in complete disorder, the world as a whole is and will remain under God's ordered control.

Job 38:12: "Have you [Job] commanded (*tsw*) the morning since your days began, and caused the dawn to know its place?"

Job 38:33: "Do you know the ordinances (*khuqqot*) of the heavens? Can you establish their rule on earth?"

The terms rendered as "to command" (*tsw*) and as "ordinances" (*khuqqot*) in Job 38:33 stem from legal terminology (see also Job 28:26). The root *tsw* "to command" is best known from the Hebrew word for "commandments" (*mitswot*); according to the Jewish tradition, the Torah of Moses consist of 613 *mitswot*. "Ordinances" (*khuqqot*) also denote the legal rules comprised in a law collection. Here the "ordinances of the heavens" are addressed, thus implying the lawful structure of the cosmos.

Some late texts in the book of Jeremiah comfort their reader by drawing attention to the ordinances of heaven and earth, which function as a guarantee that the people of Israel and the Davidic Dynasty will be maintained:

Jer 31:35–36: "Thus says Yhwh, who gives the sun for light by day and the ordinances (*khuqqot*) of the moon and the stars for light by night, who stirs up the sea so that its waves roar – Yhwh Sabaoth is his name: If these ordinances (*hakhuyim*) were ever to cease from my presence, says Yhwh, then also the offspring of Israel would cease to be a nation before me forever."

Jer 33:25–26: "Thus says Yhwh: Only if I had not established my covenant with day and night and the ordinances (*khuqqot*) of heaven and earth, would I reject the offspring of Jacob and of my servant David and not choose any of his descendants as rulers over the offspring of Abraham, Isaac, and Jacob."

Or, as a final example, the book of Psalms ends in Ps 145–147 by praising God for providing the very basic elements of "world" order. Ps 148–150 conclude the book by stating in Ps 148:

Ps 148:1–6: "Praise Yhwh! Praise Yhwh from the heavens; praise him in the heights! Praise him, all his angels; praise him, all his host! Praise him, sun and moon; praise him, all you shining stars! Praise him, you highest heavens, and you waters above the heavens! Let them praise the name of Yhwh, for he commanded (*tsw*) and they were created. He established them forever and ever; he fixed their ordinance (*khoq*), which cannot be trespassed."

In Ps 145–150 the political and the cosmic order of the "world" are thus seen as parallel. The lawful ordinances of heaven illustrate the reliability of God's enduring will toward creation. Even after the earthly orders had empirically darkened, the heavenly orders were visible to all and could serve as a model for the opaque experiential patterns of history.

Apparently, as the notion of “canonical law” emerges within the growing Hebrew Bible, this concept also imposed itself on the interpretation of regularities in the natural world. Albeit the legal interpretation of cosmic phenomena, given its Mesopotamian prehistory, is much older than even the earliest texts of the Hebrew Bible, it seems to have been received and processed only in later stages of its formation – when the Hebrew Bible already had developed the notion of normative law on its own. Although the means and ways of intercultural exchange between Greece and Israel in antiquity are not easy to reconstruct, it is quite probable that the legal interpretation of the cosmos and nature found in biblical texts served as a trajectory for this concept from its Mesopotamian origins into the Mediterranean world. The relatively late reception of concepts known from Mesopotamia in the Bible is no exception. For example, the theme of the righteous sufferer from the post-exilic book of Job is well known from much older Mesopotamian sources, but it was taken up in ancient Israel only at a time when this topic became a pressing issue in Israel’s own intellectual history.

## VI. Concluding Remarks

“Law” in its canonical sense, as a normative entity without the institutional backing of a king, is an achievement of the intellectual history of ancient Israel that came about as a result of various influences. Chief among the factors might be – from a historical-political perspective – the loss of the traditional royal legislative authority in the wake of the demise of the institution of kingship in ancient Israel and Judah and – in terms of intellectual history – the rise of monotheism in ancient Israel and the closely related “scriptural turn”<sup>31</sup> of its religion which established the presence of God in the world through his legally-shaped will, which is in accordance with the Neo-Assyrian royal ideology and its system of vassal treaties.

It is, of course, possible and even necessary to mention the problematic aspects of the concept of a divine law that is normative in itself, as for example Michael Welker does in his contribution with regard to Deuteronomy. It is not at all difficult to enumerate historical occasions where this concept has been abused for ideological purposes. Nevertheless, there are also important valuable aspects that should be named:

Firstly, the notion of a divine law, despite its inherent ideological dangers, helps to point out the relativity of human processes of lawgiving. Human laws are always preliminary entities. If a culture exhibits the concept

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<sup>31</sup> Jan Assmann, *Die Mosaische Unterscheidung oder der Preis des Monotheismus* (Munich: Hanser, 2003), 145–51.



of a divine law over against human laws, the relative character of the juridical system becomes evident.

Secondly, in relation to the aforementioned point, ancient Israel was quite aware of the fact that even its legislation, which is literarily presented as being of divine origin, cannot claim timeless normativity regardless of its historical situation. Because the oldest law collection in the Hebrew Bible, the Covenant Code in Exod 20–23, is already presented as God’s will, all later additions to this law corpus therefore needed to take the form of *interpretation*. The authority of God could not be replaced (or even out-ranked) by any other authority but could only be *interpreted*. Ancient Israel therefore developed a sophisticated system of legal hermeneutics<sup>32</sup> which mediated between tradition and innovation and was and is a continuing source of intellectual stimulation not only for the realm of legal studies.

The impact which the concept of “canonical law” developed in the Hebrew Bible had on later intellectual history, especially on its differentiations into non-religious arenas (e.g., natural sciences, legal studies), is a task that needs and deserves close investigation. In any case, this impact has taken place and seems to have fundamentally influenced modern culture – directly or indirectly. One might, however, ask whether the success of the notion of “law” also produced some intellectual imbalances: Does it tend to minimize singularities and possibilities over against regularities and realities? Has the enormous significance of “law” in the modern world distracted attention from concepts like “contingency” or “creativity,” concepts that might be equally important for understanding what keeps the world running?

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<sup>32</sup> See Bernard M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (Oxford: Oxford University Press, 1997); Levinson, *Legal Revision and Religious Renewal in Ancient Israel* (Cambridge: Cambridge University Press, 2008).