

How God became a lawgiver

Konrad Schmid

University of Zurich, Switzerland
konrad.schmid@uzh.ch

Abstract

The Torah is God's law. This biblical concept is so prominent and is considered so self-evident that it has hardly been perceived as a historical problem until now. Traditionally, it was considered to be a basic element of the Bible within its historical context. But in fact, it represents an innovation in the ancient Near East, and for this very reason it should be investigated historically: In the ancient world, kings, not deities, were lawgivers. Only the legal tradition of ancient Israel developed the idea that God himself formulated laws and passed them on to his people. In the Torah, Moses plays a prominent role in this mediation. Divine laws then became a central element of religion in Judaism, Christianity, and Islam, but what historical circumstances and factors gave rise to them? The loss of kingship in Israel might have provided a major impact, but in addition to political and socio-historical developments, fundamental transformations in ancient Israel's intellectual history must also be considered, which could have led to the formation of the idea of God as a lawgiver. Due to new insights into the historical emergence of the Torah, which research has developed in recent decades, but also due to new findings on the legal tradition of the ancient Near East, there is both the possibility and the need for reconstructing the historical forces and factors that made the Torah God's law.

Keywords

Torah; legal history; legislation; Moses; divine law; monotheism; Deuteronomy; Covenant Code; Codex Hammurabi

1. The idea of divine laws in Biblical studies

The Torah is God's law. This conception arises particularly from the 58 biblical chapters between Exodus 19 and Numbers 10 in which Israel stands at Mount Sinai and Moses receives from God its laws for his people. God's very first speech-act in the Torah, wherein God addresses newly created

humanity in the context of the creation of the world – “Be fruitful and multiply!” (Gen 1:28) – is also a commandment. This clearly reinforces the biblical presentation of God as a lawgiver. Exodus 31:18; 32:16 and Deuteronomy 9:10 even go so far as to describe the first tablets of the law that Moses received on Mount Sinai as written by the “finger of God” himself.¹ However, this “theograph”² did not last long; Moses broke the first version of the tablets as soon as he came down from the mountain – a remarkable inner-biblical criticism toward a fundamentalist understanding of the law: a divinely authored text does not exist in material terms.

Within the biblical text itself, the idea of the Torah as God’s law is very prominent, yet it remains an understudied topic in biblical legal history.³ For example, in the volume of the *Handbuch der Orientalistik* pertaining to the legal history of the ancient Near East, the chapter on “Israel” contains no discussion regarding the *genesis* of the concept of divine law, rather there is only a short section stating that Deuteronomy is designed as a contract between God and his people and that breaking the law is therefore a sin against God.⁴ While there are recent works on the topic of divine

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- 1 See Erich Bosshard-Nepustil, “Der schreibende Gott am Sinai,” BZ 54 (2010):1–19; Anselm C. Hagedorn, “Sacred Law, Lawgivers and Codification: Perspectives from the Hebrew Bible, Gortyn and Selinus,” in *Writing Laws in Antiquity: L’écriture du droit dans l’Antiquité*, ed. Dominique Jaillard and Christophe Nihan, BZAR 19 (Wiesbaden: Harrassowitz, 2017), 117–140, here 119.
 - 2 See Hermann Timm, “Die Originalkopie: Plädoyer für einen Fundamentalismus des Geistes,” ZTK 90 (1993):318–327, here 321f.
 - 3 On the legal history of the Pentateuch see Eckart Otto, “Die Bedeutung der altorientalischen Rechtsgeschichte für das Verständnis des Alten Testaments,” ZTK 88 (1991):139–168; Idem, “Biblische Rechtsgeschichte: Ergebnisse und Perspektiven der Forschung,” TRV 91 (1995):283–292; Idem, *Das Gesetz des Mose* (Darmstadt: WBG, 2007); Idem, “The Study of Law and Ethics in the Hebrew Bible / Old Testament,” in *Hebrew Bible / Old Testament: The History of Its Interpretation*, ed. Magne Sæbø (Göttingen: Vandenhoeck & Ruprecht, 2015), 3.2:594–621; Olivier Artus, *Les lois du Pentateuque: Points de repère pour une lecture exégétique et théologique*, LD 200 (Paris: Cerf, 2005); Raymond Westbrook and Bruce Wells, *Everyday Law in Biblical Israel: An Introduction* (Louisville: Westminster John Knox, 2009); William S. Morrow, *An Introduction to Biblical Law* (Grand Rapids: Eerdmans, 2017).
 - 4 Tikvah Frymer-Kensky, “Anatolia and the Levant: Israel,” in *A History of Ancient Near Eastern Law*, ed. Raymond Westbrook, HdO 72.2 (Leiden: Brill, 2003), 2:975–1046, here 978.

laws – see, e.g., Rémi Brague⁵, Frederick Naiden⁶, and Christine Hayes,⁷ – their focus is not on the legal or intellectual history of the emergence of the notion as such.⁸

A new approach to the Torah as God’s law has become possible and necessary in the current research environment primarily due to three recent developments. First, since the middle of the 20th century it has become clear that the texts of the Hebrew Bible are to be understood and interpreted in their ancient Near Eastern context and cannot be regarded as having originated in *splendid isolation*.⁹ This is particularly important for the biblical legal tradition, which in some of its sections is very closely related to other ancient Near Eastern legal traditions.¹⁰ Second, legal historical research on the Pentateuch has been able to break away from the explanatory paradigm long dominated by Albrecht Alt, who divided the laws of the Pentateuch into “apodictic” and “casuistic” ones, which Alt assigned to Israel’s nomadic origin and to the Canaanite environmental influence respectively.¹¹ Alt thus determined the notion of apodictic divine law as

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- 5 Rémi Brague, *The Law of God: The Philosophical History of an Idea*, trans. L. G. Cochrane (Chicago: University of Chicago Press, 2007).
 - 6 Frederick S. Naiden, “Gods, Kings, and Lawgivers,” in *Law and Religion in the Eastern Mediterranean: From Antiquity to Early Islam*, ed. Reinhard G. Kratz and Anselm C. Hagedorn (New York: Oxford University Press, 2013), 79–104.
 - 7 Christina Hayes, *What is Divine about Divine Laws? Early Perspectives* (Princeton: Princeton University Press, 2015).
 - 8 See, e.g., Rainer Albertz, “Die Theologisierung des Rechts im Alten Israel,” in *Geschichte und Theologie: Studien zur Exegese des Alten Testaments und zur Religionsgeschichte Israels*, ed. Rainer Albertz, BZAW 326 (Berlin: de Gruyter, 2003), 187–207; Michael LeFebvre, *Collections, Codes, and Torah: The Recharacterization of Israel’s Written Law*, LHBOTS 451 (New York: T&T Clark, 2006); Konrad Schmid, “Divine Legislation in the Pentateuch in Its Late Judean and Neo-Babylonian Context,” in *The Fall of Jerusalem and the Rise of the Torah*, ed. Peter Dubovský et al., FAT 107 (Tübingen: Mohr Siebeck, 2016), 129–153.
 - 9 See, e.g., Christopher B. Hays, *Hidden Riches: A Source Book for the Comparative Study of the Hebrew Bible and Ancient Near East* (Louisville: Westminster John Knox Press, 2014), 3–38; Dieter Vieweger, *Geschichte der biblischen Welt: Die südliche Levante vom Beginn der Besiedlung bis zur römischen Zeit*, 3 vols. (Gütersloh: Gütersloher Verlagshaus, 2019).
 - 10 See, e.g., Aaron Skaist, “Ancient Near Eastern Law Collections and Legal Forms and Institutions,” in *The Oxford Handbook of Biblical Law*, ed. Pamela Barmash (Oxford: Oxford University Press, 2019), 305–318.
 - 11 Albrecht Alt, *Die Ursprünge des israelitischen Rechts* (Leipzig: Hirzel, 1934). See in his tradition, e.g., Jörn Halbe, Das Privilegrecht Jahwes Ex 34,10–26: *Gestalt und*

the bedrock of ancient Israel’s legal history;¹² legal historical developments of a “theologisation” could not come into view within this approach.¹³ Against Alt, the strict distinction between Israel and Canaan and the idea of a specific nomadic legal tradition can no longer be maintained. Even texts such as Exodus 34:18–26, which have long been regarded as very ancient, are today rightly determined to be an *epitome* of Exodus 23:14–19.¹⁴ Third, Pentateuchal scholarship has changed dramatically over the past four decades. The notion of continuous sources, which already included legal collections, has largely been abandoned in favour of a more complex picture of long-term literary growth from smaller units to more extensive literary blocks.¹⁵ One can and must therefore ask anew about the emergence of the Torah as divine law.

In the following, I will first take a brief look at the ancient Near Eastern history of law and discuss how – in broad outlines – the establishment of law relates to the sphere of the divine (2.). This will be followed by a critical examination of the biblical idea of divine laws (3.) and an inquiry into the historical driving forces that produced them (4.). Of course, the following can only be a first sketch, which requires further elaboration.

Wesen, Herkunft und Wirken in vordeuteronomischer Zeit, FRLANT 114 (Göttingen: Vandenhoeck & Ruprecht, 1975).

- 12 See Berend Meyer, *Das apodiktische Recht*, BWANT 213 (Stuttgart: Kohlhammer 2017).
- 13 See also Julius Wellhausen, *Prolegomena zur Geschichte Israels*, 3rd ed. (Berlin: Reimer, 1886), 411, 413.
- 14 See with many others Erhard Blum, *Studien zur Komposition des Pentateuch*, BZAW 189 (Berlin: de Gruyter, 1990), 69f.; Shimon Gesundheit, *Three Times a Year: Studies on Festival Legislation in the Pentateuch*, FAT 82 (Tübingen: Mohr Siebeck, 2012), 12–43.
- 15 See Jean-Louis Ska, *Introduction to Reading the Pentateuch* (Winona Lake: Eisenbrauns, 2006); Thomas Römer, “Der Pentateuch,” in *Die Entstehung des Alten Testaments*, ed. Walter Dietrich et al., TW 1.1 (Stuttgart: Kohlhammer, 2014), 53–166; Konrad Schmid, “Der Pentateuch und seine Theologiegeschichte,” *ZThK* 111 (2014):239–270; David M. Carr, “Changes in Pentateuchal Criticism,” in *Hebrew Bible / Old Testament: The History of Its Interpretation*, ed. Magne Sæbø (Göttingen: Vandenhoeck & Ruprecht, 2015), 3.2:433–466; Jan C. Gertz et al., eds., *The Formation of the Pentateuch. Bridging the Academic Cultures between Europe, Israel, and North America*, FAT 111 (Tübingen: Mohr Siebeck, 2016); Brian A. Anderson, *An Introduction to the Study of the Pentateuch* (London: Bloomsbury, 2017); Thomas B. Dozeman, *The Pentateuch: Introducing the Torah* (Minneapolis: Fortress 2017).

2. Ancient Near Eastern law collections and their anchoring in the sphere of the Divine

Nowhere in the ancient Near East is there any notion of deities who formulated specific laws themselves.¹⁶ This does not mean, however, that the sphere of law is to be determined separately from that of religion, even if research in this respect is characteristically divided. Wolfram von Soden, for example, wrote of the ancient Near Eastern legal system, “In the strict sense there is no secular law, but only a religious one.”¹⁷ On the other hand, Shalom Paul stated, “Law in Mesopotamia is a strictly secular institution.”¹⁸

Obviously, the question of the relationship between religion and law in the ancient Near East goes beyond the alternative of religious (*fas*) versus secular law (*ius*), which one likes to enter from a Roman perspective.¹⁹ It seems as if the frame of orientation is to be extended: The ancient Near East does not know a theologized law, but a religious foundation of law, and as such no law outside of a religiously describable frame of orientation. The ancient Near Eastern worldview is characterized by a conception of world order, which is usually described in legal terms.²⁰

But how do the gods relate to this structure? The Codex Hammurabi (circa 1750 BCE) is informative in this respect. The relief above the stela text shows Hammurabi receiving a ring and a staff from the sun god. Usually these objects are interpreted as insignia of royal authority. In any case, it is clear that Hammurabi does not receive the laws *from* the sun god as such but is rather commissioned in a general sense to enforce justice in the land, which then also includes his legislative activity. Remarkably, however, even the sun god is not the originator of the structure of justice in the cosmos, but this is, as it were, conceived of in a super-divine way. In the stele of

16 See Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, 2nd ed., WAW 6 (Atlanta: SBL, 1997).

17 Wolfram von Soden, *Einführung in die Altorientalistik* (Darmstadt: WBG, 1985), 124.

18 Shalom M. Paul, *Studies in the Book of Covenant in the Light of Cuneiform and Biblical Law*, VTSup 18 (Leiden: Brill, 1970), 8.

19 See also Otto, “Study of Law,” 399.

20 See Stefan Maul, “Der assyrische König – Hüter der Weltordnung,” in *Gerechtigkeit: Richten und Retten in der abendländischen Tradition und ihren altorientalistischen Ursprüngen*, ed. Jan Assmann et al. (München: Fink, 1998), 65–77.

King Yaḥdun-Lim of Mari we find the following dedication to the sun god Šamaš:

“For Šamaš, the king of heaven and earth, the ruler over gods and mankind, who cares for justice (*me-še-rum*) and to whom justice (*ki-na-tum*) has been given as a gift.”²¹

Šamaš is responsible for the realm of the law, but the legally structured world order is not created by him, but already existed before him.²² The legally describable world order (*kittum*) is thus the origin and source of law, which stands above the gods, who can, however, instruct the king to formulate it as and when necessary. This process is less a production process than a reception process: laws cannot be “invented” by the king, but must be “found” – by being derived from the dynamically experienced world order. Accordingly, law does not have a static character, but must be discovered and formulated anew in each case, even if it does not take on a fundamentally new form in this process through its reference to the world order.²³

3. Biblical law as Divine law

There can be no doubt that – despite all the differences between the present Torah and the ancient Near Eastern legal tradition – biblical law is deeply anchored in ancient Near Eastern law and participates in its basic ideas as well as in its concrete manifestations. But how are the continuities

21 See Douglas Frayne, *Old Babylonian Period (2003–1595 B.C.)*, RIM 4 (Berlin: de Gruyter, 1990), 605. On the terms *kinatum* and *kittum* see CAD 8, 1971, 383f, 468–472 as well as in detail Kai Lämmerhirt, *Wahrheit und Trug: Untersuchungen zur altorientalischen Begriffsgeschichte*, AOAT 348 (Münster: Ugarit, 2010), especially 293–336.

22 See Jacob Finkelstein, private communication addressed to Moshe Greenberg quoted in Moshe Greenberg, “Some Postulates of Biblical Criminal Law,” in *Essential Papers on Israel and the Ancient Near East*, ed. Frederick E. Greenspahn (New York: New York University Press, 1991), 333–352, here 349n7: “What the god ‘gives’ the king is not ‘laws’ but the gift of perception of *kittum*, by virtue of which the king, in distinction from any other individual, becomes capable of promulgating laws that are in accord or harmony with the cosmic principle of *kittum*”.

23 See Guido Pfeifer, “Gerechtigkeit aus der Perspektive der altorientalischen Rechtsgeschichte,” in *Gerechtigkeit*, ed. Markus Witte, UTB 3662 (Tübingen: Mohr Siebeck, 2012), 15–36, here 23.

and discontinuities between ancient Near Eastern and biblical law to be understood historically?

Within the Torah, three legal corpora are commonly identified, the Covenant Code (Exod 20–23), the Holiness Legislation (Lev 17–26), and the Deuteronomic Law (Deut 12–26).²⁴ All three collections are identified as God’s law either directly or indirectly in their present form. The Covenant Code begins as follows:

“And Yhwh said to Moses, ‘Thus you shall say to the Israelites: “You have seen for yourselves that I spoke with you from heaven.”’” (Ex 20:22)

So it is God himself who speaks here, but only to Moses, who in turn is to speak to the Israelites. God’s revelation at Sinai is apparently used as an implicit argument for his exclusive worship: Because the people of Israel have seen God speaking to them from heaven, there can be no place for other gods (and their images).

The Holiness Legislation begins with the following introduction:

“And Yhwh spoke to Moses, saying, ‘Speak to Aaron, and to his sons, and unto all the sons of Israel, and say to them: “This is the thing (hadābār) which Yhwh has commanded (sivvāh).”’” (Lev 17:1f)

So the Holiness Legislation is also God’s speech but in an even more broken form than the Covenant Code: In its speech instruction God already refers to himself in the 3rd person.

The law section of Deuteronomy is introduced in an even more distanced way, in Deuteronomy 12:1 it is Moses’s speech from the beginning, not God’s speech:

“These are the statutes (ḥaḥuqqîm) and judgments (hamišpatîm) which you shall keep doing them in the land which Yhwh, the God of

24 See Cschm,ynthia Edenburg, “The Book of Covenant,” in Barmash, *Handbook*, 157–175; Reinhard Achenbach, “Priestly Law,” in Barmash, *Handbook*, 177–198; Anselm C. Hagedorn, “Deuteronomy and the Deuteronomic Reform,” in Barmash, *Handbook*, 199–216; see also Jörg Jeremias, *Theologie des Alten Testaments*, Grundrisse zum Alten Testament 6 (Göttingen: Vandenhoeck & Ruprecht, 2015), 59–64.

your fathers, has given you to possess as long as you live on the face of the earth.” (Deut 12:1)

This peculiarity is due to the literary design of Deuteronomy as Moses’s farewell speech (see Deut 1:1), in which he passed on to Israel (in the Transjordan) the laws he had previously received at Sinai. In this respect the Deuteronomic Law, though mediated through Moses, is nevertheless marked as being of divine origin. From the point of view of literary history, one can even assume that the Deuteronomic Law was originally designed as God’s speech and so represented God’s law directly; passages such as Deuteronomy 6:17 and 28:45 could point to this, in which God seems to be explicitly presupposed as the lawgiver, even if this remains disputed.²⁵

In any case, the legal corpora of the Torah are – either directly (Covenant Code and Holiness Legislation) or indirectly (Deuteronomy) – literarily designed as divine law. As clear as the finding in the present Torah is, it has also become clear to recent research that this design as God’s law does not belong to the beginnings of the legal-historical development of the laws in the Pentateuch.²⁶ Rather, it owes itself to a longer process, which can be reconstructed most clearly within the Covenant Code (Exod 20–23).²⁷ The laws in its literary and historical core (Ex 21:12–22:14), which is doubly framed by Exodus 20:23, 24–26 / Exodus 23:13–19 and Exod 21:2–11 / Exod 23:10–12, are untheological in their own right and belong in the context

25 See Norbert Lohfink, “Das Deuteronomium: Jahwegesetz oder Mosegesetz?” *ThPh* 65 (1990): 387–391; Idem, *Studien zum Deuteronomium und zur deuteronomistischen Literatur III*, SBAB 20 (Stuttgart: Katholisches Bibelwerk, 1995), 157–165. See also Andrew D. H. Mayes, “Deuteronomy: Law of Moses or Law of God?” *PIBA* 5 (1981): 36–54.

26 See Eckart Otto, “Wandel der Rechtsbegründungen in der Gesellschaftsgeschichte des Antiken Israë: Eine Rechtsgeschichte des ‘Bundesbuches’.” *Ex XX,22–XXIII,13*, *StB* 3 (1988); Idem, “Vom Profanrecht zum Gottesrecht: Das Bundesbuch,” *TR* 56 (1991): 421–427; Idem, *Deuteronomium 1,1–4,43*, *HThK.AT* (Freiburg: Herder, 2012), 231f; Idem, “The Book of Covenant,” in *The Oxford Encyclopedia of the Bible and Law*, ed. Brent A. Strawn (Oxford: Oxford University Press, 2015), 68–77; Ludger Schwienhorst-Schönberger, *Das Bundesbuch (Ex 20,22–23,33): Studien zu seiner Entstehung und Theologie*, BZAW 188 (Berlin: de Gruyter, 1990).

27 See REINHARD G. KRATZ, *Die Komposition der erzählenden Bücher des Alten Testaments*, UTB 2157 (Göttingen: Vandenhoeck & Ruprecht, 2000), 145–150; Wolfgang Oswald, “Die Exodus-Gottesberg-Erzählung als Gründungsurkunde der jüdischen Bürgergemeinde,” in *Law and Narrative in the Bible and in the Neighbouring Ancient Cultures*, ed. Klaus-Peter Adam et al., *FAT* II/54 (Tübingen: Mohr Siebeck, 2012), 35–51, here 39–41; Schmid, “Divine Legislation,” 141–144.

of a common ancient Near Eastern legal tradition whose legal sentences are formulated in the usual casusitic “if” (*kî* respectively for subcases ’im) – “then” (continuation in imperf.) form.²⁸ They can be characterized as a provincial reception of the cuneiform legal tradition.²⁹ The shaping of the Covenant Code as divine law is the result of an interpretive process that reshaped the older, ANE-rooted legal tradition, which was not yet conceived as God’s law. This secondary interpretation is accompanied by the narrative integration of the Covenant Code into the context of the Sinai pericope, which now allows its laws to be revealed by God in this holy location.³⁰

When and how did this happen? A first clue can be derived from the introduction of the Covenant Code in Exodus 20:22f. This passage claims that God “spoke from heaven” (Exod 20:22b). This idea likely presupposes the destruction of the Jerusalem temple, after which the conception prevailed that God’s dwelling place is in heaven, from where he speaks (see Deut 4:36).³¹ In addition, the linguistic sequence “speech of Yahweh to Moses – command to pass on the speech to the Israelites – direct speech of Yahweh” is typical for priestly literature.³²

28 Edenburg, “Book of Covenant,” 158–160.

29 Raymond Westbrook, “Cuneiform Law Codes and the Origins of Legislation,” in *Law from the Tigris to the Tiber: The Writings of Raymond Westbrook*, ed. Bruce Wells and Rachel Magdalene (Winona Lake: Eisenbrauns, 2009), 73–96, here 92; 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, 2000); Edenburg, “Book of Covenant,” 160–163.

30 See Matthias Köckert, “Wie kam das Gesetz an den Sinai,” in *Vergegenwärtigung des Alten Testaments: Beiträge zur biblischen Hermeneutik für Rudolf Smend zum 70. Geburtstag*, ed. Christoph Bultmann et al. (Göttingen: Vandenhoeck & Ruprecht, 2002), 13–27, here 21.

31 See Hans-Christoph Schmitt, “Das Altargesetz und seine redaktionsgeschichtlichen Bezüge,” in *“Einen Altar von Erde mache mir ...”: FS D. Conrad*, ed. Johannes F. Diehl et al., KAANT 4/5 (Waltrop: Spener, 2003), 269–282, here 273; Christoph Koch, *Gottes himmlische Wohnstatt*, FAT 119 (Tübingen: Mohr Siebeck, 2018), 11.

32 Schmitt, “Altargesetz,” 273.

Another clue comes from the close contact of Exodus 20:24 – the so-called law of the altar – with Deuteronomy 12:13f.³³ If one holds to the (disputed)³⁴ late preexilic dating of the Deuteronomic Law,³⁵ this would mean that the divine-legal shaping of Exodus 20:24, which possibly already functioned as the introduction to (an earlier version of) the Covenant Code, should be dated prior to Deuteronomy and thus probably belongs to the late 8th or early to middle 7th century BCE.³⁶

If the emergence of the idea of divine law should still be dated to the late Monarchic period, then it can be assumed that the conditions of the exile clearly allowed for expanding this notion, which is obvious for the Holiness Legislation (Lev 17–26) in any case but should also hold true for the further literary and intellectual development of the Covenant Code as well as Deuteronomy. The sheer survival of the legal tradition in ancient Israel and Judah under post-state conditions can hardly be understood without its theologisation, if one considers the conventional function of the king as lawgiver: Without kingship, a royal law becomes obsolete; as God’s law, on the other hand, it is able to withstand the course of time and changing political fortunes.

33 See, e.g., Bernard M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (New York: Oxford University Press, 1997); Joachim Schaper, “Schriftauslegung und Schriftwertung im alten Israel: Eine vergleichende Exegese von Exodus 20,24–26 und Deuteronomy 12,13–19,” ZAR 5(1999):111–132; Eckart Otto, *Deuteronomium 12,1–23,15*, HThK.AT (Freiburg: Herder, 2016), 1158f., 1166f.

34 See the discussion between Juha Pakkala, “The Date of the Oldest Edition of Deuteronomy,” ZAW 121 (2009): 388–401; Nathan MacDonald, “Issues in the Dating of Deuteronomy: A Response to Juha Pakkala,” ZAW 122 (2010): 431–435; Juha Pakkala, “The Dating of Deuteronomy: A Response to Nathan MacDonald,” ZAW 123 (2011): 431–436.

35 On Deuteronomy 12:13f as the oldest part of the centralization law see Thomas Römer, “Entstehungsphasen des deuteronomistischen Geschichtswerkes,” in *Die deuteronomistischen Geschichtswerke: Redaktions- und religionsgeschichtliche Perspektiven zur “Deuteronomismus”-Diskussion in Torā und Vorderen Propheten*, ed. Markus Witte et al., BZAW 365 (Berlin: de Gruyter, 2006), 45–70).

36 On the problem of dating legal corpora see Pamela Barmash, “Determining the Date of Biblical Legal Texts,” in Barmash, *Handbook*, 233–253.

4. Historical factors and forces promoting the idea of Divine law

Multiple religious-historical developments were required before the deity Yhwh could be understood as a lawgiver at Sinai. Although this statement may seem trivial, it is important to keep in mind that this result was not a purposeful but an open process: that God was finally presented as lawgiver is an exceedingly contingent outcome of his religious history. But where did this path begin? The origin of Yhwh from the south is disputed;³⁷ but it seems clear that his origins may be determined as a storm and weather deity, corresponding to the Baal/Hadad type.³⁸ The worship of Yhwh did not originate in Israel and Judah, and probably did not reach there before the 10th or 9th century BCE. Upon arrival Yhwh soon ascended to the status of state-god in the Northern Kingdom and only subsequently – perhaps in the wake of the alliance of the Jerusalem dynasty with the Omrides³⁹ – in the Southern Kingdom.⁴⁰

In accordance with the monarchical constitution of Israel and Judah it can also be assumed that the state-god Yhwh was understood as king.⁴¹

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- 37 See Hendrik Pfeiffer, *Jahwes Kommen vom Süden: Jdc 5; Hab 3; Dtn 33 and Ps 68 in ihrem literatur- und theologiegeschichtlichen Umfeld*, FRLANT 211 (Göttingen: Vandenhoeck & Ruprecht, 2005); in contrast, Martin Leuenberger, “Yhwhs Herkunft aus dem Süden: Archäologische Befunde – biblische Überlieferungen – historische Korrelationen,” *ZAW* 122(2010):1–19, and again Hendrik Pfeiffer, “Die Herkunft Jahwes und ihre Zeugen,” *BTZ* 30 (2013): 11–43, as well as Martin Leuenberger, “Noch einmal: Yhwh aus dem Süden. Methodological and Religious Historical Considerations in the Recent Debate,” in *Geschichte und Gott: XV European Congress of Theology [14–18 September 2014 in Berlin]*, ed. Michael Meyer-Blanck, VWGT 44 (Leipzig: EVA, 2016), 267–287.
- 38 See, e.g., Othmar Keel, *Die Geschichte Jerusalems und die Entstehung des Monotheismus*, OLB VI,1 (Göttingen: Vandenhoeck & Ruprecht, 2007), 199–212; Reinhard Müller, *Jahwe als Wettergott: Studien zur althebräischen Kultlyrik anhand ausgewählter Psalmen*, BZAW 387 (Berlin: de Gruyter, 2008); Idem, “Die frühe Jahweverhrung im Spiegel der ältesten Psalmen,” *BTZ* 30(2013):89–119.
- 39 See Reinhard Müller, “Treue zum rettenden Gott: Erwägungen zu Ursprung und Sinn des Ersten Gebots,” *ZThK* 112 (2015): 403–428, here 408n28. The fact that Yhwh can already be presupposed as the state-god in the Northern Kingdom in the 9th century BCE is attested in the Mesha Stele (TUAT I/6, 649 ln. 18).
- 40 See Matthias Köckert, “YHWH in the Northern and Southern Kingdom,” in Kratz and Spieckermann, *One God*, 357–394.
- 41 See Siegfried Kreuzer, “Die Verbindung von Gottesherrschaft und Königtum Gottes im Alten Testament,” in *Congress Volume Cambridge 1992*, ed. John A. Emerton, VTSup 61 (Leiden: Brill, 1995), 145–161; Shawn Flynn, *YHWH is King: The Development of Divine Kingship in Ancient Israel*, VTSup 159 (Leiden: Brill, 2014); Martin Leuenberger,

However, the idea of God's kingship initially referred to his rule over the heavenly world (see Ps 29; 93; in later reception also Ps 82); "theocratic" conceptions in the narrower sense, which conceive of God as a politically involved and directly acting world ruler in the earthly sphere, emerge only in exilic and postexilic times.⁴² For the idea of God as a lawgiver, the kingship of God functions as an intellectual prerequisite but does not in and of itself represent an early development of the idea. God rules as king over the powers of chaos and the heavenly beings, while earthly kings are responsible for the rule over human beings, which of course is instituted and supervised by God, but is not directly exercised by God.

Another process that is mainly connected with the religious history of Yhwh in Jerusalem, i.e., in the Southern Kingdom,⁴³ is his solarization,⁴⁴ which, however, has to be interpreted in the broader context of the religious

"Die Jhwh-König-Theologie der formativen Psalter-Redaktion und ihre Trägerkreise," in *Trägerkreise in den Psalmen*, ed. Frank-Lothar Hossfeld et al., BBB 178 (Göttingen: Vandenhoeck & Ruprecht, 2017), 61–95; Rüdiger Schmitt, "Die Religionen Israels / Palästinas in der Eisenzeit. 12th–6th Century B.C.E.," *ÄAT* 94(2020):125–135; Theodore E. Lewis, *The Origin and Character of God: Ancient Israelite Religion Through the Lens of Divinity* (New York: Oxford University Press, 2020), 495–513.

- 42 See Martin Leuenberger, *Konzeptionen des Königtums Gottes im Psalter: Untersuchungen zu Komposition und Redaktion der theokratischen Bücher IV–V im Psalter*, AThANT 83 (Zürich: TVZ, 2004).
- 43 See Othmar Keel, "Der salomonische Tempelweihspruch: Observations on the Religious Historical Context of the First Jerusalem Temple," in *Gottesstadt und Gottesgarten: Zur Geschichte und Theologie des Jerusalemer Tempels*, ed. Othmar Keel and Erich Zenger, QD 191 (Freiburg: Herder, 2002), 9–23; Idem, *Geschichte Jerusalems*, 335f. See Friedhelm Hartenstein, "Sonnengott und Wettergott in Jerusalem?," in *Mein Haus wird ein Bethaus für alle Völker genannt werden (Jes 56,7): Judentum seit der Zeit des Zweiten Tempels in Geschichte, Literatur und Kult. Festschrift für Thomas Willi zum 65. Geburtstag*, ed. Julia Männchen (Neukirchen-Vluyn: Neukirchener, 2007), 53–69; Martin Rösel, "Salomo und die Sonne: Zur Rekonstruktion des Tempelweihspruchs I Reg 8,12f.," *ZAW* 121(2009):402–417. See the rejection by Othmar Keel, "Minima methodica und die Sonnengottheit von Jerusalem," in *Iconography and Biblical Studies: Proceedings of the Iconography Sessions at the Joint EABS / SBL Conference, 22–26 July 2007, Vienna, Austria*, ed. Izaak de Hulster and Rüdiger Schmitt, AOAT 361 (Münster: Ugarit, 2009), 213–223.
- 44 See, e.g., Bernd Janowski, "JHWH und der Sonnengott: Aspekte der Solarisierung JHWHs in vorexilischer Zeit," in *Pluralismus und Identität*, ed. Joachim Mehlhausen (Gütersloh: Gütersloher, 1995), 214–241; Idem, *Die rettende Gerechtigkeit*, BTAT 2 (Neukirchen-Vluyn: Neukirchener, 1999), 192–219; Keel, "Der salomonische Tempelweihspruch"; Idem, *Geschichte Jerusalems*; Martin Arneth, "Sonne der Gerechtigkeit": *Studien zur Solarisierung der Jahwe-Religion im Lichte von Psalm 72*, BZAR 1 (Wiesbaden: Harrassowitz, 2000), 54–108.

history of the ascent of Yhwh to the “highest God.”⁴⁵ The conceptions of God as king with solar connotations can be found, e.g., in Ps 104 (see especially v. 1f., 22f),⁴⁶ but also in Ps 5:2–4.⁴⁷ Besides Mal 3:20 (“sun of righteousness”),⁴⁸ the solarization of Yhwh is explicitly stated in Ps 84:12:⁴⁹

“For the sun and shield⁵⁰ is Yhwh Elohim.”

In addition, there are numerous texts in the Hebrew Bible that connote Yhwh in solar terms, but without directly referring to him as “sun.”⁵¹

The religious topography in Jerusalem is traditionally solar occupied, which is already indicated by the name of the city: *Uru-Šalim* “city of dusk” (Šaḥar and Šalim denote dawn and dusk).⁵² According to the Hebrew Bible, Yhwh worship arrived in Jerusalem with the transfer of the Ark by

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- 45 See Herbert Niehr, *Der höchste Gott: Alttestamentlicher JHWH-Glaube im Kontext syrisch-kanaanäischer Religion des 1. Jahrtausends v.Chr.*, BZAW 190 (Berlin: de Gruyter, 1990), 17–68, 149–163; Hubert Irsigler, “Vom Mythos zur Bildsprache: Eine Einführung am Beispiel der ‘Solarisierung’ JHWHs,” in *Mythisches in biblischer Bildsprache: Gestalt und Verwandlung in Prophetie und Psalmen*, ed. Hubert Irsigler, QD 209 (Freiburg: Herder, 2004), 9–42; Juliane Kutter, “*nūr ilī*: Die Sonnengottheiten in den nordwestsemitischen Religionen von der Spätbronzezeit bis zur vorrömischen Zeit,” *AOAT* 346 (2008): 355–417; Martin Leuenberger, *Gott in Bewegung: Religions- und theologiegeschichtliche Beiträge zu Gottesvorstellungen im alten Israel*, FAT 76 (Tübingen: Mohr Siebeck, 2011), 14f.
- 46 See Matthias Köckert, “Literargeschichtliche und religionsgeschichtliche Beobachtungen zu Ps 104,” in *Schriftauslegung in der Schrift: Festschrift für Odil Hannes Steck zu seinem 65. Geburtstag*, ed. Reinhard G. Kratz et al., BZAW 300 (Berlin: de Gruyter, 2000), 259–279, esp. 237, see also Müller, *Wettergott*, 229f; 234n157. See also Annette Krüger, *Das Lob des Schöpfers: Studien zur Sprache, Motivik und Theologie von Psalm 104*, WMANT 124 (Neukirchen-Vluyn, Neukirchener, 2010).
- 47 See Kutter, *nūr ilī*, 393; see also Bernd Janowski, *Rettungsgewissheit und Epiphanie des Heils: Das Motiv der Hilfe Gottes “am Morgen” im Alte Orient und im Alte Testament*, Bd. 1: Alter Orient, WMANT 59 (Neukirchen-Vluyn: Neukirchener, 1989), 188.
- 48 See Kutter, *nūr ilī*, 400–403.
- 49 See Kutter, *nūr ilī*, 406f.
- 50 See Reetakaisa Sofia Salo, *Die jüdische Königsideologie im Kontext der Nachbarkulturen: Untersuchungen zu den Königspsalmen 2, 18, 20, 21, 45 und 72*, ORA 25 (Tübingen: Mohr Siebeck, 2017), 242n179.
- 51 See Hos 6:5; Zeph 3:5; further Gen 32:23–33; Numbers 25:4; Judges 19:14–26; Exodus 17:8–16; Josua 10:12f; Judges 9:33; 1Samuel 11:9–11. See on this Kutter, *nūr ilī*, 373–376. The onomasticon in Judah also reflects this solarization, see Kutter, *nūr ilī*, 355f, 383, 413.
- 52 See Herbert Niehr, “The Constitutive Principles for Establishing Justice and Order in Northwest Semitic Societies with Special Reference to Ancient Israel and Judah,” *ZAR* 3 (1997): 112–130.

David. While this cannot be historically corroborated,⁵³ from a religious-historical perspective, Yhwh may indeed have come to Jerusalem in the 10th or 9th century BCE. The solarization of Yhwh brought him close to the sphere of law, since in the ancient Near East the sun-god was traditionally responsible for law, even if this does not denote an exclusive assignment.⁵⁴ The solarization of Yhwh included at the same time his universalization, but also his rationalization: through the connection with the concept of the sun, the actions attributed to Yhwh gained cosmic dimensions and regularity. Even this process did not yet elevate Yhwh to the position of lawgiver, just as little as Šamaš acts as lawgiver in the ancient Near Eastern tradition. But Yhwh moved into the sphere of law and his nature and actions became legally connoted and interpreted.

The most direct and probably also most effective expression of perceiving God in legal terms in Judah is the conceptualization of God as the treaty partner of his people, as it is reflected above all in Deuteronomy. As has become increasingly clear since the 1960s,⁵⁵ Deuteronomy can be addressed as a subversive reception of Neo-Assyrian vassal treaties, which put their own god in the place of the Assyrian Great King:⁵⁶ To him, not to the Assyrian king, Israel owes absolute loyalty, which is legally regulated (see especially Deut 13, but also Deut 6:5).⁵⁷

53 See Israel Finkelstein and Thomas Römer, “The Historical and Archaeological Background Behind the Old Israelite Ark Narrative,” *Biblica* 101 (2020): 161–185. See also Peter Porzig, *Die Lade Jahwes im Alten Testament und in den Texten vom Toten Meer*, BZAW 397 (Berlin: de Gruyter, 2009).

54 See Janowski, *Rettungsgewissheit*, 84–90; Arneth, *Sonne*, 109–170; Kutter, *nūr ilī*, 34–71; Salo, *Königsideologie*, 239–245.

55 See on the history of research, Christoph Koch, *Vertrag, Treueid und Bund: Studien zur Rezeption des altorientalischen Vertragsrechts im Deuteronomium und zur Ausbildung der Bundestheologie im Alten Testament*, BZAW 383 (Berlin: de Gruyter, 2008), 2–14.

56 On possible, though uncertain, parallels of treaties with a deity in ancient Near Eastern legal literature, see William S. Morrow, “Treaties / Loyalty Oaths and Biblical Law,” in: Barmash, *Handbook*, 319–322, 327f.

57 See, e.g., Bernard Levinson, *Deuteronomy and the Hermeneutics*; Bernard Levinson and Jeffrey Stackert, “Between the Covenant Code and Esarhaddon’s Succession Treaty: Deuteronomy 13 and the Composition of Deuteronomy,” *JAJ* 3(2012):123–140; Eckart Otto, *Das Deuteronomium: Politische Theologie und Rechtsreform in Juda und Assyrien*, BZAW 284 (Berlin: de Gruyter, 1999), critically Carly L. Crouch, *Israel and the Assyrians: Deuteronomy, the Succession Treaty of Esarhaddon, and the Nature of Subversion*, ANEM 8 (Atlanta: SBL, 2014); William S. Morrow, “Have Attempts to

What triggered the subversive interpretation of Neo-Assyrian vassal treaties in Deuteronomy? Since the finds from Tell Tayinat, there is empirical evidence that the system of vassal contracts was also used in the west of the Neo-Assyrian empire.⁵⁸ It can be assumed that Manasseh, king of Judah, was also a tributary to the Neo-Assyrian Great King.⁵⁹ After the fall of the Northern Kingdom in 722 BCE, but especially with the internal disintegration of the Neo-Assyrian power and the decline of its influence on the periphery of the Assyrian empire at the end of the 7th century BCE, the circles behind Deuteronomy seem to have seized the opportunity to replace the position of the Neo-Assyrian king with his demands for loyalty by Yhwh. It is easily conceivable, even probable, that there was a separate vassal treaty for Judah, probably in Aramaic, which provided the spiritual structure for the theological treaty model of Deuteronomy.⁶⁰

The conception of God as a lawgiver was then decisively promoted by the experience of the loss of kingship and state in 587 BCE. With the loss of the institution of kingship, the law no longer had a natural point of reference and could, indeed had to bind itself to the contracting lord Yhwh. Accordingly, it may be conjectured that the literary development of the Sinai pericope (although still disputed) took place largely during the period of exile.⁶¹ The transfer of legislative authority from the king to God was accompanied by an increase in the obligation to justify biblical legal propositions. It is noticeable that nearly half of the laws in the Pentateuch contain a motivating clause that enjoins the readership to keep them. Without state authority, the implementation of the laws relies on the insight

Establish the Dependence of Deuteronomy on the Esarhaddon Succession Treaty (EST) Failed?," *HeBAI* 8(2019):133–158.

- 58 See Jacob Lauinger, "Esarhaddon's Succession Treaty at Tell Tayinat: Text and Commentary," *JCS* 64(2012):87–123; Timothy P. Harrison, "Recent Discoveries at Tayinat (Ancient Kunulua / Calno) and Their Biblical Implications," in *Congress Volume Munich 2013*, ed. Christl Maier, VTSup 163 (Leiden: Brill, 2014), 396–425.
- 59 See Ernst A. Knauf, "The Glorious Days of Manasseh," in *Good Kings and Bad Kings: The Kingdom of Judah in the Seventh Century BCE*, ed. Lester L. Grabbe (London: T&T Clark, 2005), 164–188; Gunnar Lehmann, "Survival and Reconstruction of Judah in the Time of Manasseh," in *Disaster and Relief Management: Katastrophen und ihre Bewältigung*, ed. Angelika Berlejung, FAT 81 (Tübingen: Mohr Siebeck, 2012), 289–309.
- 60 See Koch, *Vertrag*, 274; Lehmann, "Survival and Reconstruction of Judah," 306.
- 61 See Kratz, *Komposition*, 145–155; Köckert, "Gesetz".

and self-motivation of their addressees.⁶² However, the fundamentally utopian character of biblical legislation needs to be stressed. According to its ancient Near Eastern models,⁶³ it served – at least in the literary framework of the Pentateuch – above all as the royal propaganda of its god – the world king Yhwh.

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62 See Carol A. Newsom, “Models of the Moral Self: Hebrew Bible and Second Temple Judaism,” *JBL* 131(2012):5–25; eadem, *The Spirit within Me: Self and Agency in Ancient Israel and Second Temple Judaism* (New Haven: Yale University Press, 2021).

63 See Westbrook and Wells, *Everyday Law*, 130: “What LH [sc. the Laws of Hammurabi] shows us is that such lists of laws could be used for purposes other than those initially envisioned by the scribes who authored them. In the case of LH and others (e.g., LU [Laws of Ur-Namma], LL [Laws of Lipit-Ishtar]), the lists/codes became tools for royal propaganda. They were lifted out of their original, scribal-academic context and inserted into an entirely different context: the royal inscription. They were framed by explicitly propagandistic prologues and epilogues to give them the look and feel of royal proclamation. The laws and rules of these codes were meant to illustrate how well the king, in whose name they were published, had established justice throughout this realm”.

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