

*YOU MUST NOT ADD ANYTHING TO WHAT I COMMAND YOU:
PARADOXES OF CANON AND AUTHORSHIP
IN ANCIENT ISRAEL*

BERNARD M. LEVINSON

Abstract

For all the debate in the contemporary humanities about the canon, there is little interdisciplinary dialogue on the issue, nor even meaningful input from the perspective of academic biblical studies, the one discipline that specializes in the formation and interpretation of the canon. Seeking to provide such a perspective, this article shows how cultures having a tradition of prestigious or authoritative texts address the problem of literary and legal innovation. Engaging the work of Jonathan Z. Smith on exegetical ingenuity, the study begins with cuneiform law, and then shows how ancient Israel's development of the idea of divine revelation of law creates a cluster of constraints that would be expected to impede legal revision or amendment. As a test-case, the article examines the idea that God punishes sinners transgenerationally, vicariously extending the punishment due them to three or four generations of their progeny. A series of inner-biblical and post-biblical responses to the rule demonstrates, however, that later writers were able to criticize, reject, and replace it with the alternative notion of individual retribution. The conclusions stress the extent to which the formative canon sponsors this kind of critical reflection and intellectual freedom.

The ideal does not always translate into the real. At just at the point where the speaker of Deuteronomy begins to propound a utopian program to eliminate poverty — “There shall be no one in need among you!” (Deut. 15:4) — he quickly pulls himself back to earth to confront the gap between vision and reality: “If there is one in need among you. . .” (Deut. 15:7). Utopian vision and pragmatic preparation are here separated only by a single word, since the Hebrew phrases involved are otherwise identical.¹ The same particle that adds declama-

¹ Precisely that similarity of construction points to an editorial interpolation. From an historical-critical point of view, the statement in Deut. 15:4 is most likely

tory force to the initial assertion (וַיִּבְרַח) is also the one that forms the later conditional statement. As with the ancient text, so with contemporary scholarship, where the dividing line between utopian vision and pragmatic reality hinges on a single word. In an ideal world, the concept of “canon” might provide a meeting point for the humanities. It would offer a bridge between the multiple, separate disciplines that operate, more or less explicitly, with canonical collections of texts and even canonical methods of research. The reality, however, is that, even as the separate disciplines actively reassess their canons—the intellectual and historical forces that defined their canons, the ideologies and biases encoded in those canons, the degree of adaptability of those canons, and the extent to which they promote or inhibit cultural change and intellectual renewal—there is a striking absence of dialogue between disciplines, precisely on the canon as the common point of ferment.

Even more striking than this lack of interdisciplinary dialogue is the failure of contemporary theory (including literary theory, post-modernism, and post-colonial scholarship) to engage with academic Biblical Studies.² Literary theory’s infatuation with ancient Jewish midrash is no exception. It romanticizes rabbinic hermeneutics as championing radical textual indeterminacy, and thus heralds the ancient rabbis as the precursors of modern critical trends.³ By disregard-

the work of a later editor, stressing the benefits that follow from obedience to the Torah, supplementing but also contradicting the original text, whereby Deut. 15:7 would have been the continuation of Deut. 15:3. See, conveniently, A.D.H. Mayes, *Deuteronomy* (New Century Bible Commentary), London: Marshall, Morgan & Scott 1979, 248. With the insertion marked by its close correspondence to the original text, at issue is a variation of a formal scribal technique, the “repetitive resumption” or *Wiederaufnahme*, as a marker of editorial activity.

² As noted by Jonathan Z. Smith, “Canons, Catalogues and Classics,” in *Canonization and Decanonization: Papers Presented to the International Conference of the Leiden Institute for the Study of Religions (LISOR), Held at Leiden, 9–10 January 1997* (*Numen* Studies in the History of Religions 82), ed. A. van der Kooij and K. van der Toorn, Leiden: Brill 1998, 295–311 (at 295–96).

³ See *Midrash and Literature*, ed. Geoffrey H. Hartman and Sanford Budick, New Haven: Yale University Press 1986.

ing the importance of law and privileging narrative, that approach completely distorts the priorities of classical rabbinic interpretation, and thus amounts to a projection.⁴ Of course, a projection always involves a repression, one that seems to apply more broadly in this case. It cannot simply be an accident that, at the precise moment when the canon has become such a point of contention in the humanities, critically absent from the discussion is academic biblical studies: the one discipline devoted to exploring what a canon is, how it emerges historically, how its texts relate to one another, and how it effects the community that espouses it. The same omission in comparative research on scripture by academic religious studies, the sister discipline of biblical studies, only doubles the irony.⁵

⁴ See Daniel Boyarin, *Intertextuality and the Reading of Midrash*, Bloomington: Indiana University Press 1990, 35–38; David Stern, “Literary Criticism or Literary Homilies? Susan Handelman and the Contemporary Study of Midrash,” *Prooftexts* 5 (1985) 96–103; *id.*, “Midrash and Hermeneutics: Polysemy vs. Indeterminacy,” in *id.*, *Midrash and Theory: Ancient Jewish Exegesis and Contemporary Literary Studies*, Evanston: Northwestern University Press 1996, 15–38; and Azzan Yadin, “The Hammer on the Rock: Polysemy and the School of Rabbi Ishmael” (forthcoming).

⁵ That gap is preserved in the otherwise valuable collection, *Rethinking Scripture: Essays from a Comparative Perspective*, ed. Miriam Levering, Albany: State University of New York Press 1989. Despite the stated goal of rethinking older models, the volume inadvertently reifies older assumptions by using the completed canon of Scripture as its intellectual point of departure. The absence of a contribution by a biblical scholar ironically perpetuates the gap between the comparative study of religion and philological analysis of the scriptural sources of religion. Granted that Barbara A. Holdrege is justified to point out that “biblical and orientalist scholars . . . have focused on particular religious texts rather than on scripture as a general religious phenomenon” (“The Bride of Israel: The Ontological Status of Scripture in the Rabbinic and Kabbalistic Traditions,” in *Rethinking Scripture*, 180–261 [at 180]). Nonetheless, the opposite extreme also entails a risk. It makes the volume’s stated goal—recovering the immanent religiosity associated with texts in ancient Israel—methodologically impossible to achieve. Holdrege construes the ancient Israelite sources anachronistically from the perspective of how they are read by later Jewish tradition, as is evident by her describing the biblical Hymn to Wisdom (Prov. 8:22–31) as a “pre-Rabbinic text” (188). Note also Holdrege, *Veda and Torah: Transcending the Textuality of Scripture*, Albany: State University of New York Press 1996.

The absence of dialogue with biblical studies impoverishes contemporary theory and deprives it of intellectual models that would actually advance its own project. German studies is a case in point. The more the discipline investigates its own history, the more salient is the missing dialogue with biblical studies. There was no German nation-state until the unification of the scores of German-speaking kingdoms, principalities, and free towns by Bismarck in 1871. But German writers and thinkers of the eighteenth and nineteenth centuries had already lain its groundwork through their promulgation of a common art, literature, and music that united German-speakers as a *Kulturnation*. Although not yet an independent political entity, therefore, the German nation already existed as a *Land der Dichter und Denker*.⁶ The nation was in effect created and sustained by its literary canon while it had no real unified political existence. That situation cries out for an exploration of the parallel with how the scriptural canon sustained “the People of the Book” for the two millennia of their life in the Diaspora. Moreover, the extent to which the classical past of the German literary canon is actually an ideological construction, an *ex post facto* product of deliberate shaping by later “editors” of that canon, only reinforces the relevance of the missing perspective of biblical studies, where such issues have long been recognized in the shaping of the canon. Using a range of techniques already well-honed by their ancient religious counterparts, therefore, German literary historians of the nineteenth century modified medieval manuscripts before publication, excised early “Frenchified” novels from their studies, and sanctified works by Goethe and Schiller as classic, all in order to “recover” a “true” German character unsullied by any influences too foreign, modern, or feminine.⁷ The ancient and the more modern editors may differ significantly in ideology but they employ strikingly similar techniques (literary and linguistic

⁶ Thus the French writer and traveler, Mme Anne Louise de Stael (1766–1817), in her influential, *De l'Allemagne* (1810).

⁷ For the discipline’s struggles with this legacy, see *Rethinking “Germanistik”: Canon and Culture*, ed. R. Bledsoe *et al.*, New York: Peter Lang 1991. I thank Ms Blythe Inners (Minnesota) for assistance with this analogy.

selectivity) to pursue a strikingly common end: the creation of a pristine past that can serve as an enduring charter.

In addition to intellectual models, there is something more fundamental at stake. With its historical approach, biblical studies provides a way of critically engaging the ideological assumptions of contemporary theory, whose concerns with the canon are certainly understandable: for being exclusive; for allegedly encoding class, race, or gender bias; for silencing competing or less prestigious voices; for eliminating difference; for arresting social change; for enshrining privilege. Yet in all such cases, the canon is taken to be a self-sufficient, unchanging entity, one that properly demands deconstruction, if not complete rejection. But in being read that way, the deconstruction of the canon itself entails an alternative construction: for the canon is conceptualized ahistorically from the perspective of the present, whereby the canon is closed, both literally and metaphorically. That approach remains blind to its own lack of historical ground. It locates critique external to the canon by transforming the canon into a lifeless literary fossil. The contrary premise here is that critical theory is not at odds with the canon but central to the canon and sanctioned by it.⁸ There is no priority of completed, authoritative canon to human critical engagement with the canon, either chronologically or ontologically. Properly understood, the canon is radically open: it models critique and embeds theory. In order to recover that absent perspective, this article seeks to open the conversation between biblical studies and the humanities.

I. Innovation and the Problem of the Canon

The idea of a scriptural canon is one of the most distinctive achievements of many major religions, both Western (Zoroastrianism, Judaism, Christianity, and Islām) and Eastern (the Pāli canon of

⁸ See Herbert N. Schneidau, *Sacred Discontent: The Bible and Western Tradition*, Berkeley: University of California Press 1977; Brayton Polka, *The Dialectic of Biblical Critique: Interpretation and Existence*, New York and London: St. Martin's 1986; and *id.*, *Truth and Interpretation: An Essay in Thinking*, New York: St. Martin's; London: Macmillan 1990.

Theravāda Buddhism).⁹ By locating its font of revelation or contemplative insight in foundational sources, however, a culture confronts an almost inevitable difficulty. The essence of a canon is that it be stable, self-sufficient, and delimited. As Moses twice admonished his addressees in Deuteronomy: “You must not add anything to what I command you nor take anything away from it, but shall keep the commandments of Yahweh your God” (Deut. 4:2; similarly 13:1 [English, 12:32]). In the Bible, this so-called “canon formula” occurs primarily in the context of Israelite wisdom literature (Qoh. 3:14; 12:12–13; cf. Sir. 42:21; Rev. 22:18–19). The association with any notion of canon, however, marks a post-biblical development. The formula actually has a long pre-history in the ancient Near East, where it originally sought to prevent royal inscriptions, including law collections and treaties (cf. 1 Macc. 8:30), from being altered. In other contexts, it affirmed the adequacy of wisdom instruction.¹⁰ Only subsequently was it taken over

⁹ For a valuable comparative perspective, see *Canonization and Decanonization* (cited n. 2 above).

¹⁰ Adducing comparative material, see Johannes Leipoldt and Siegfried Morenz, *Heilige Schriften: Betrachtungen zur Religionsgeschichte der antiken Mittelmeerwelt*, Leipzig: Harrassowitz 1953, 53–65 (stressing the origins of the formula in Egyptian wisdom literature); Nahum M. Sarna, “Psalm 89: A Study in Inner Biblical Exegesis,” in *Biblical and Other Studies*, ed. A. Altmann (Brandeis University Studies and Texts 1), Cambridge: Harvard University Press 1963, 29–34, reprinted in *id.*, *Studies in Biblical Interpretation*, Philadelphia: Jewish Publication Society 2000, 377–94 (stressing precedents in cuneiform literature); Moshe Weinfeld, *Deuteronomy and the Deuteronomistic School*, Oxford: Clarendon 1972, 261–65 (with a wide range of Near Eastern and Egyptian parallels); Michael Fishbane, “Varia Deuteronomica,” *Zeitschrift für die alttestamentliche Wissenschaft* 84 (1972) 349–52; Eleonore Reuter, “‘Nimm nichts davon weg und füge nichts hinzu’: Dtn 13,1, seine alttestamentlichen Parallelen und seine altorientalischen Vorbilder,” *Biblische Notizen* 47 (1989) 107–14; and Christoph Dohmen and Manfred Oeming, *Biblischer Kanon: Warum und Wozu? Eine Kanontheologie* (Quaestiones disputatae 137), Freiburg: Herder 1992, 68–89; Choon-Leong Seow, *Ecclesiastes* (Anchor Bible 18C), New York: Doubleday 1997, 388, 394 (stressing that the formula’s original intent was not to delimit a corpus of texts as canonical but to emphasize “the sufficiency of the text”).

by Deuteronomy's Israelite authors and applied to the Mosaic Torah.¹¹ The formula makes it clear that its intent is to preclude both literary and doctrinal innovation by safeguarding the textual status quo.¹²

With such fixity and textual sufficiency as its hallmarks, how can a canon be made to address the varying needs of later generations of religious communities? These later generations face the conflicting imperatives of subsuming their lives to the authority of the canon while adapting that unchangeable canon to realities of social, economic, political, and intellectual life never contemplated at the time of its composition. Among the vicissitudes not contemplated by the canons foundational to the three major Western monotheisms are, for example, for Judaism, the Roman destruction of the Jerusalem Temple in 70 C.E. that rendered impossible the sacrificial cultus essential to Israelite religion; for Christianity, a Messiah who failed to return, although that return in eschatological Parousia had been expected to be imminent; and, for Islām, the death of Muḥammad, the community's founder and prophetic leader, without his having appointed a successor. Of course, the theology of *O felix culpa* extends to the history of religions, where crisis may engender a productive innovation. The triumph of Pharisaic Judaism as the dominant form of Judaism, with the claim that its teachings derive by oral transmission from Sinaitic revelation; the consolidation of the Church in doctrine, organization, and admission of gentiles; and the separate developments of Sunni and Shī'ī Islām are in many ways the results of just those cases where the scriptural canon was faced with historical circumstances that threatened its viability.

¹¹ See Bernard M. Levinson, "The Neo-Assyrian Origins of Deuteronomy's 'Canon Formula,'" (forthcoming).

¹² Deuteronomy's appeal for fidelity to the legal status quo (Deut. 13:1) immediately follows a passage in which the authors have radically transformed prior religious law by demanding the restriction of all sacrifice to the central sanctuary (Deuteronomy 12). The canon formula's use in that context, in effect functioning as a colophon to Deuteronomy's radically innovative law of centralization, is therefore paradoxical. See Michael Fishbane, *Biblical Interpretation in Ancient Israel*, Oxford: Clarendon 1985, 79, 263; and Bernard M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation*, Oxford and New York: Oxford University Press 1997, 48.

If the closed literary canon as the repository of revelation or insight is the source of stability for a religious tradition, exegesis provides vitality. By exegesis or hermeneutics I mean the range of interpretive strategies designed to extend the application of a given canon to the whole of life, even to circumstances not originally contemplated by the canon itself. By means of exegesis, the textually finite canon becomes infinite in its application. One of the chief means, therefore, by which a religious tradition demonstrates its creativity is the variety of ways it finds to accommodate itself to and overcome an authoritative yet textually-delimited canon.¹³ Jonathan Z. Smith has argued that the dialectical interplay between canonical delimitation and exegetical expansion should be made central to the study of the History of Religions. He stresses that what he felicitously terms “exegetical ingenuity” represents “that most characteristic, persistent and obsessive religious activity.”¹⁴ That interplay—conflict might be the better word—between canonical constraint and exegetical ingenuity also took place within ancient Israel. But it is necessary to go beyond Smith’s model in two key ways in order to see how.

¹³ “Canonical criticism” in Biblical Studies has valuably emphasized the importance of the formative canon to Israelite religion as a repository of the nation’s identity. See James A. Sanders, “‘Adaptable for Life’: The Nature and Function of Canon,” in *Magnalia Dei: The Mighty Acts of God. Essays on the Bible and Archaeology in Memory of G. Ernest Wright*, ed. F.M. Cross, W.E. Lemke, and P.D. Miller, Jr.; Garden City, N.Y.: Doubleday & Co. 1976, 531–60; reprinted with a foreword in James A. Sanders, *From Sacred Story to Sacred Text: Canon as Paradigm*, Philadelphia: Fortress 1987, 9–39. In this understanding, subsequent generations could draw on the canon and apply it to new historical crises. Despite this proper emphasis, however, the approach tends to overlook the hermeneutical problematic inherent in just that reinterpretation and reapplication of the canon. It overlooks also the extent to which the reformulated texts challenge the authority and break down the coherence of the original texts; see Levinson, *Deuteronomy*, 13–15.

¹⁴ See Jonathan Z. Smith, “Sacred Persistence: Toward a Redescription of Canon,” in *id.*, *Imagining Religion: From Babylon to Jonestown* (Chicago Studies in the History of Judaism), Chicago and London: University of Chicago Press 1982, 36–52 (at 48). See Smith’s further reflections on that study in *id.*, “Canons, Catalogues and Classics,” in *Canonization and Decanonization* (see n. 2 above), 303–309.

First, the creativity of exegesis consists not only in its ability to adjust to new circumstances not contemplated by the canon but also in the interpreter's claim that there is no innovative or transformative activity involved whatsoever: the interpreter merely elucidates the plenitude of truth already latent in the canon. Within Jewish intellectual history, for example, Gershom Scholem has shown how each successive transformation of tradition presents itself as implicit in and consistent with, rather than as a departure from, the original canon.¹⁵ The rabbis themselves seem to have recognized the burden that they placed upon Sinai when they spoke of the Mishna's elaborately codified system of Sabbath laws as a mountain suspended by a slim scriptural thread.¹⁶ While it is a profound instrument of cultural renewal, exegesis is consequently also often profoundly a study in the "false consciousness" of the interpreter, who disclaims the very historical agency that, for Smith, makes exegesis worthy of study!

The second issue is that Smith's model presumes that exegetical ingenuity takes place subsequent to the formation of a closed canon.¹⁷ By implication, the canon is only subject to hermeneutical reapplication after its closure; alternatively, the canon is only a hermeneutical problem post-canonically.¹⁸ Such a seemingly self-evident presupposition, however, leaves unexamined the hermeneutical dynamics that operate within a culture prior to the closure of a literary canon. It is

¹⁵ See Gershom Scholem, "Revelation and Tradition as Religious Categories in Judaism," in *id.*, *The Messianic Idea in Judaism*, New York: Schocken 1971, 282–303.

¹⁶ "The laws of the Sabbath are like mountains hanging by a hair, for they consist of little Bible and many laws" (*m. Hagigah* 1:8).

¹⁷ Smith, "Sacred Persistence," 48.

¹⁸ Such a presupposition is also evident in Haim H. Cohn's analysis of the ingenious ploys used in rabbinic exegesis to transform biblical law while seeming nonetheless to honor its authoritative status; see *id.*, "Legal Change in Unchangeable Law: The Talmudical Pattern," in *Legal Change: Essays in Honour of Julius Stone*, ed. A.R. Blackshield, Sydney: Butterworths 1983, 10–33. His valuable study restricts the operation of such ingenuity to the post-biblical stage while overlooking the operation of similar stratagems within biblical law itself.

essential to understand that the ingenuity of the interpreter operates even in the formative period of the canon, while those texts that will subsequently win authoritative status are still being composed and collected. The stakes here are important, since Smith's model in effect posits a hierarchy between canon and interpretation. That hierarchy is untenable.¹⁹

That much is implicitly clear because of the contributions of the "inner-biblical exegesis" approach to biblical studies over the last two decades, which has become associated in particular with Michael Fishbane and James L. Kugel.²⁰ This "hermeneutical" turn has contributed

¹⁹ For example, as Richard E. Palmer reflects on the scene where the resurrected Jesus derives the necessity of a suffering Messiah from "Moses and the Prophets" (Luke 24:25–27), he takes at face value the statement by the Lukan narrator that Jesus "interpreted" the Hebrew Bible (*Hermeneutics: Interpretation Theory in Schleiermacher, Dilthey, Heidegger, and Gadamer* [Northwestern University Studies in Phenomenology and Existential Philosophy], Evanston: Northwestern University Press 1969, 23–24). Palmer uses the scene as a paradigm for the work of the modern reader, who must revivify the otherwise inert ancient text. In reading the text literally, however, Palmer fails to see that the Gospel text is itself already a sophisticated product of hermeneutics. The author of Luke here provides a narrative *apologia* both for the concept of a Messiah who suffers and for the christological reading of the Hebrew Bible as an Old Testament. The Lukan author thus reads hermeneutical constructions of Jesus by the later Church back into Jesus as the protagonist of the Gospel narrative. The ancient text is not merely a "Valley of Dry Bones" without an infusion of life by contemporary theory. The true beginning point of this Gospel narrative is not the oral life Palmer hopes to recover but the hermeneutics of the Lukan author. Modern hermeneutical theory is here inadequate to the theory already implicit in the ancient text. More recently, Werner G. Jeanrond still views both interpretation and reception as theological categories separate from and subsequent to the composition of the text (*Text and Interpretation as Categories of Theological Thinking*, New York: Crossroad 1988). Contrast the strong conception of hermeneutics as provided by Brayton Polka, *Truth and Interpretation: An Essay in Thinking*, New York: St. Martin's 1990.

²⁰ See Michael Fishbane, *Biblical Interpretation in Ancient Israel*, Oxford: Clarendon 1985; James L. Kugel, "Early Interpretation: The Common Background of Late Forms of Biblical Exegesis," in *Early Biblical Interpretation*, ed. J.L. Kugel and R. Greer, Philadelphia: Westminster 1986, 9–106; and *id.*, *Traditions of the Bible: A Guide to the Bible As It Was at the Start of the Common Era*, Cambridge: Har-

an important new perspective to the discipline by emphasizing the textuality of scripture, demonstrating the role of texts in the culture of ancient Israel and the Second Temple period, and by recognizing how ancient writers sought to explain, respond to, and challenge older texts that had already won cultural prestige. At the same time, both scholars leave some questions unexplored.²¹ In particular, the implications of this approach for a broader theory of canon have not been probed. Part of the difficulty is that Biblical Studies remains riven between

vard University Press 1998. Helping pioneer this approach were, among others, Sarna, "Psalm 89: A Study in Inner Biblical Exegesis" (see n. 10 above); and Jacob Weingreen, *From Bible to Mishna: The Continuity of Tradition*, Manchester: Manchester University Press 1976. As evidence of the diffusion of this approach, see Yair Zakovitch, *An Introduction to Inner-Biblical Interpretation*, Even Yehudah: Rekhes 1992 (Hebrew); and Eckart Otto, "Innerbiblische Exegese im Heiligkeitsgesetz Levitikus 17–26," in *Levitikus als Buch* (Bonner biblische Beiträge 119), ed. H.-J. Fabry and H.-W. Jüngling, Berlin: Philo 1999, 125–96.

²¹ Fishbane shows the close ties of Israelite literature to the scribal and intellectual traditions of the ancient Near East, demonstrating its sophistication, while thereby also contextualizing some of the techniques employed in later rabbinic exegesis. At the same time, it sometimes remains unclear how the approach relates to conventional models in biblical studies or what criteria control the direction of literary influence claimed between texts. Note Kugel's thoughtful review, "The Bible's Earliest Interpreters," *Prooftexts* 7 (1987) 269–83. Kugel's own work brilliantly shows how a wide range of Second Temple and classical rabbinic, Church, and Islamic literature responds to ambiguities, redundancies, or inconsistencies in the biblical text and seeks to resolve or embellish them. Inexplicably, however, this hermeneutical model is applied only to post-biblical literature in relation to the Bible as an already-formed, complete, authoritative, "canonical" text. Whether the same model might supplement the standard documentary hypothesis and prove useful for understanding the classical literary history of ancient Israel, including the formation of the Pentateuch, is not explored. The situation that results ironically brings to mind the intellectual safeguards that nineteenth century *Wissenschaft des Judentums* imposed upon itself. For example, Heinrich Graetz (1817–1891) freely applied both higher and lower criticism to the Prophets and Hagiographa. "Nevertheless, he refused to apply the same to the Pentateuch, and he insisted on the unity and pre-exilic origins of the entire Torah." See Nahum M. Sarna, "Abraham Geiger and Biblical Scholarship" [1975], reprinted in *id.*, *Studies in Biblical Interpretation*, Philadelphia: Jewish Publication Society 2000, 161–72 (at 163).

practitioners of synchronic and diachronic method, so that those concerned with meaning and theory are often not in dialogue with those whose focus is philological rigor. This essay attempts to encourage such dialogue, and to show the productivity of this approach for theoretical work in other disciplines. I therefore argue the following theses: (1) that exegesis provides a strategy for religious renewal; (2) that renewal and innovation are almost always covert rather than explicit in ancient Israel; (3) that in many cases exegesis involves not the passive explication but the radical subversion of prior authoritative texts; and (4) that these phenomena operated in the literature of ancient Israel before the closure of the canon.

II. Innovation Within the Formative Canon

The concept of divine revelation of law distinguishes Israelite religion from all of the other religions of the ancient Near East. According to this concept, Yahweh publicly reveals his will to Israel in the form of cultic, civil, and ethical law, obedience to which becomes the condition for the nation's proper relationship to God and possession of the promised land of Canaan. The most dramatic account of this legal revelation occurs when God, from the top of Mount Sinai, proclaims the Ten Commandments to the nation of Israel gathered at the base of the mountain, trembling in fear of the thunderous divine voice (Exodus 19–20). But it is not the Ten Commandments alone that the Hebrew Bible ascribes to divine revelation. By means of a redactional tour de force, the entire legal corpus of the Pentateuch, in effect all biblical law, is either attributed directly to God or indirectly to him through Moses, his prophetic intermediary.²²

1. The Legacy of Cuneiform Law

Despite this claim by Israelite authors for the divine origin of the legal collections, the archaeological remains of the ancient Near

²² Ezekiel's vision of the restored Jerusalem and its temple (Ezekiel 40–48) represents a variation of this paradigm. Law continues to be revealed by God through the mediation of a prophet: the corpus of law that is to govern the community after its return from exile here derives its authority from a new prophetic revelation.

East preclude any notion of *lex ex nihilo*. The Near East bequeathed to ancient Israel a prestigious literary genre, the legal collection, that originated in the scribal schools (or E.DUB.BA) of late third millennium Sumer and then spread up the Fertile Crescent through Babylon and Assyria into Anatolia and the Hittite Empire. Since the discovery of Hammurabi's famous "Code" in 1901, about a dozen different cuneiform legal collections have been discovered, written in Sumerian, Akkadian, and Hittite, and ranging from school exercises to extended, formal compositions. Despite the ostensible legal form, these texts were much closer to literature or philosophy than to actual law in the modern sense.²³ On the one hand, Hammurabi's Code won such cultural prestige that it was recopied for more than a millennium after its composition in roughly 1755 B.C.E., and was included by the Neo-Assyrian King Assurbanipal in his library of cultural classics at Nineveh (ca. 660 B.C.E.). On the other hand, there is no evidence for its ever having been implemented as actual law, let alone for its being cited as prescriptive, in any of the hundreds of thousands of actual court dockets that survive from the Old Babylonian period.²⁴

The biblical legal collections share many detailed points of contact with this cuneiform material in technical terminology, formulation, and legal topos. In particular, Israelite scribes learned from the cuneiform model the generic convention of framing the series of legal provisions with a literary prologue and epilogue in which a royal speaker claims

²³ On the academic nature of the legal collection, see Benno Landsberger, "Die Eigenbegrifflichkeit der babylonischen Welt," *Islamica* 2 (1926) 355–72, at 370–71; F.R. Kraus, "Ein zentrales Problem des altmesopotamischen Rechts: Was ist der Codex Hammurabi," *Genava* 8 (1960) 283–96 (at 288, 293); R. Westbrook, "Biblical and Cuneiform Law Codes," *Revue biblique* 92 (1985) 247–64; and, especially, Jean Bottéro, *Mesopotamia: Writing, Reasoning, and the Gods*, Chicago: University of Chicago Press 1992, 156–84.

²⁴ Raymond Westbrook attempts to recover some practical role for the literary law collections in actual legal practice. He posits that they "were a reference work for consultation by judges when deciding difficult legal cases" (*id.*, "Law Codes," 254). The difficulty, as he properly concedes, is that "there is no direct evidence" to support this hypothesis (*loc. cit.*).

responsibility for promulgating the laws. Using the categories of literary criticism, one might say that these legal collections were given a textual voice by means of such a frame, which put them into the mouth of the reigning monarch. It is not that the divine is unconnected to law in the cuneiform material. Shamash, the Mesopotamian sun god who is the custodian of the cosmic principles of justice, grants King Hammurabi the ability to perceive these eternal truths. Nonetheless, the laws in their actual formulation are royal. Hammurabi repeatedly boasts that the laws are *awâtīya ša ina narīya ašṭuru*, “my pronouncements, which *I* have inscribed on *my* stela” (xlix 3–4, 19–21). He refers to them as *awâtīya šūqurātīm*, “my precious pronouncements” (xlviii 12–13), and insists, *awâtūa nasqā*, “my pronouncements are choice” (xlviii 99).²⁵ Confronted by the convention of the royal voicing of law, Israelite authors pushed the genre in a different direction. When King Lear, on the storm-driven heath, was asked by blinded Gloucester for his hand to kiss it in poignant greeting, Lear demurred: “Let me wipe it first; it smells of mortality” (IV.6.133).²⁶ As Israelite authors turned their hand to law, they wiped the genre clean of mortality by transforming the royal speaker from a human monarch into their divine king, Yahweh.

With that troping of convention, Israelite scribes introduced into the ancient world a new idea: the divine revelation of law. Accordingly it was not the legal collection as a literary genre but the voicing of publicly revealed law as the personal will of God that was unique to

²⁵ On this aspect of the Laws of Hammurabi, see the important study of the contrasting ethics of cuneiform and biblical law by Moshe Greenberg, “Some Postulates of Biblical Criminal Law,” in *Yehezkel Kaufmann Jubilee Volume*, ed. M. Haran, Jerusalem: Magnes 1960, 5–28; reprinted in *id.*, *Studies in the Bible and Jewish Thought*, Philadelphia: Jewish Publication Society 1995, 25–50. In translation, the Laws of Hammurabi are most conveniently available in the excellent edition of Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor* (Society of Biblical Literature: Writings from the Ancient World 6), 2nd ed., Atlanta: Scholars Press 1997, 71–142 (at 134–36).

²⁶ William Shakespeare, *The Tragedy of King Lear*, ed. G.B. Harrison, Middlesex: Penguin 1964, 112.

ancient Israel.²⁷ That trope of divine revelation had a far-reaching impact upon the literary and intellectual life of ancient Israel. There is a clear relationship between textual voice and textual authority, so that attributing a legal text to God literally gives that text ultimate authority. So strongly was the divine voice privileged as *the* authoritative voice of law that it preempted the emergence to independent dignity of explicitly human legal compositions. Just as there is not a single law in the Bible that Israelite authors do not attribute to God or his prophetic intermediary, Moses, so is the converse also true. In the entire Hebrew Bible, not a single text, legal or otherwise, is definitively attributed to the actual scribe responsible for its composition. Except for the prophets, biblical authors never speak explicitly in their own voice. Instead, they employ pseudonyms or write anonymously. Proverbs, for example, is attributed to Solomon by means of its editorial superscription (Prov. 1:1), while Ecclesiastes is similarly ascribed to “the son of David, king in Jerusalem” (Qoh. 1:1). Neither of these attributions withstands critical examination.²⁸ Such attributions seem rather to function to lend greater authority or prestige to a literary composition by associating it with a venerable figure from the past: a royal exemplar of the wisdom tradition (1 Kgs. 3:28; 4:29–34).

If the notion of divine revelation of law opened up new intellectual and social possibilities, it equally shut down others. The technique of lending ultimate authority to law by attributing it to a divine author raises the question of the relative authority of the human legislator. In a legal and literary culture where the divine or prophetic voice has pride of place, what is the place of the human voice? The concept of divine

²⁷ This notion of divine revelation of law constitutes a crucial component of what Karl Jaspers termed the “Axial Age” breakthrough achieved by ancient Israel (*Vom Ursprung und Ziel der Geschichte*, Munich: Piper 1949, 15–106). Separate essays assess ancient Israel and Mesopotamia from this perspective in the comparative volume by S.N. Eisenstadt, ed., *The Origins and Diversity of Axial Age Civilizations*, Albany: State University of New York Press 1986.

²⁸ For a summary of the critical issues involved, see J. Alberto Soggin, *Introduction to the Old Testament* (Old Testament Library), 3rd ed., Louisville: Westminster/John Knox Press 1989, 445–47, 462–64.

revelation presents special difficulties for the problem of innovation. As noted earlier, in any culture, social, economic, and intellectual change occurs over time. How does a culture with a concept of divine revelation address the problem of legal change? How can legal texts, once viewed as divinely revealed, be revised to fit new circumstances without compromising their — or God's — authority? In order to make the case of the Bible as distinctive as possible, I will first demonstrate how a culture in which there is no concept of divine revelation resolves the problem of legal change.

The Hittite Laws, arranged on two tablets of one hundred laws each, were discovered in 1906 at Boghazköy in central Turkey. That city had served as the capital of the Hittite Empire, which flourished in Anatolia from approximately 1700–1200 B.C.E.²⁹ The laws were found in a royal archive. Although originally dating to the middle of the second millennium, they were recopied for several centuries thereafter; the copies actually unearthed date from about 1325–1200 B.C.E. Two aspects of the Hittite Laws make them of particular interest. First, they exist without a literary frame; they thus make no claims whatsoever about the authorship or origins of the legal text.³⁰ Second — precisely because they lack literary voicing — they reveal legal change and

²⁹ For a valuable survey of Hittite civilization, see O.R. Gurney, *The Hittites*, 2nd rev. ed., Harmondsworth: Penguin 1981.

³⁰ For a legal-historical study of the function of the literary frame in cuneiform, biblical, Greek, and Roman laws, see G. Ries, *Prolog und Epilog in Gesetzen des Altertums* (Münchener Beiträge zur Papyrusforschung und Antiken Rechtsgeschichte 76), Munich: C.H. Beck 1983. It should be noted that some copies of Hammurabi's Code exist without the literary frame; moreover, a version of the prologue has also been discovered without the laws. There has resulted some discussion of which is compositionally prior, the frame or the laws, and whether the combination of the two is original or a result of secondary redaction. Such issues are important to address in order to determine the literary history and the nature and function of the legal collection within Near Eastern culture. On the redactional relation between frame and legal corpus, see J.H. Tigay, "The Stylistic Criterion of Source Criticism in the Light of Ancient Near Eastern and Postbiblical Literature," in *Empirical Models for Biblical Criticism*, ed. J.H. Tigay, Philadelphia: University of Pennsylvania Press 1985, 155–58; and Victor Avigdor Hurowitz, "Inu Anum šrum": *Literary Structures in the Non-*

development openly. During their long period of recopying, they underwent not only linguistic updating but also revision in the nature and the severity of the penalties they prescribe. The formulation of the laws makes this process of revision explicit.³¹ For example, one of the laws governing personal assault reads as follows:

If anyone blinds a free person or knocks his teeth out, *formerly* (*karū*) they would pay 40 sheqels of silver, *but now* (*kinuna*) one pays 20 sheqels of silver. . . (Hittite Laws §7)³²

The legal speaker makes a clear distinction between what was formerly the case and what is now the case, between what would have been done and what is currently the practice. This opposition is marked grammatically: there is a shift from the durative-iterative form of the verb to the present tense. The new fine is only half the original one. The same formula is used to revise twenty-three of the two hundred Hittite Laws, nearly twelve percent of them.³³ Moreover, the revision and updating of older law continued to occur after the codification of

Juridical Sections of Codex Hammurabi (Philadelphia: Occasional Publications of the Samuel Noah Kramer Fund 15), 1994, 90–103.

³¹ On this issue, see E. Neufeld, *The Hittite Laws*, London: Luzac & Co. 1951, 95–101; V. Korošec, “Le Problème de la Codification dans le Domaine du Droit Hittite,” *Revue internationale des droits de l’antiquité* 4 (1957) 93–105; and the articles by Raymond Westbrook (“What is the Covenant Code?”), Samuel Greengus (“Some Issues Relating to the Comparability of Laws and the Coherence of the Legal Tradition”), and Eckart Otto (“Aspects of Legal Reforms and Reformulations in Ancient Cuneiform and Israelite Law”) in *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development* (Journal for the Study of the Old Testament Supplements 181), ed. Bernard M. Levinson, Sheffield: Sheffield Academic Press 1994, 22–28, 62–72, 175–82.

³² My translation departs slightly from that in the excellent recent edition by Henry Angier Hoffner, Jr., *The Laws of the Hittites: A Critical Edition* (Documenta et Monumenta Orientis Antiqui 23), Leiden: Brill 1997, 21.

³³ This formula occurs in the Hittite Laws §§7, 9, 19, 25, 51, 54, 57, 58, 59, 63, 67, 69, 81, 91, 92, 94, 101, 119, 121, 122, 123 (fragmentary text), 129, 166–167. For suggestive parallels to the Hittite formulary in Rabbinic and Roman law, see Martin S. Jaffee, “The Taqqanah in Tannaitic Literature: Jurisprudence and the Construction of Rabbinic Memory,” *Journal of Jewish Studies* 41 (1990) 204–25.

this text. A later copy further reduces or revises the fines, while also reorganizing the sequence of some of the laws. This updated version, however, deletes all reference to the older penalties; they are simply ignored as obsolete.³⁴ In this version, the fine for knocking the teeth out has been reduced to 12 sheqels, and a class distinction has been introduced: if the injured party is a slave, the fine is only half that amount.³⁵

If legal amendment repeatedly manifests itself within a century or two of the original codification of the Hittite Laws, similar kinds of revision would naturally be expected to take place in ancient Israel, whose literature spans nearly one thousand years.³⁶ The wrenching shifts in economy, social structure, political organization, and religion that Israel underwent in this period only increase the likelihood that legal amendment should occur. Nonetheless, the Hebrew Bible reveals

³⁴ Most valuable is the edition by R. Haase, which presents this latest version of the laws separately, as an independent work; see *id.*, *Die Keilschriftlichen Rechtssammlungen in Deutscher Fassung*, 2nd ed., Wiesbaden: Otto Harrassowitz 1979, 67–91. The more common form of publication obscures the independence of that version by blending it back into the earlier version that it seeks to update and replace. What results is an “eclectic text” that never existed in antiquity, whereby the later version’s individual stipulations are appended to the pertinent ones of the main version, and identified as “Late(r) Version.” Such is the approach of A. Goetze, tr., “The Hittite Laws,” in *Ancient Near Eastern Texts Relating to the Old Testament*, ed. J.B. Pritchard, 3rd ed., Princeton: Princeton University Press 1969, 188–97; and Hoffner, *Laws of the Hittites*.

³⁵ See Hoffner, *Laws of the Hittites*, 22 (§VII). The changes marked by the “formerly . . . but now” formula derive from a far-reaching legal reform, carried out under King Telipinu (ca. 1525–1500 B.C.E.), of a version of the laws codified a century or two earlier in the Hittite Old Kingdom. The parallel text preserving the latest version was prepared a century or two afterward (Hoffner, *Laws of the Hittites*, 221).

³⁶ The dating of the biblical literary sources is complex. The dates here extend from the Yahwist, generally considered the oldest documentary source of the Pentateuch (although certain poetry may be older), to the Book of Daniel, the latest book to enter the canon of the Hebrew Bible. For trends in the dating and analysis of biblical literature, see *The Hebrew Bible and Its Modern Interpreters* (Society of Biblical Literature: The Bible and Its Modern Interpreters 1), ed. D.A. Knight and G.M. Tucker, Philadelphia: Fortress Press, Chico, CA: Scholars Press, 1985.

a remarkable absence of explicit evidence for the revision and updating of Pentateuchal law.³⁷ The one clear case of explicit legal revision in the Hebrew Bible deals not with revealed law but with custom.

2. Legal History as Explicit in Ruth

The superscription to the book of Ruth places it in the ancient period of the Israelite settlement in Canaan, prior to the emergence of the monarchy: “in the days when the judges ruled” (Ruth 1:1). That superscription almost certainly accounts for the book’s being placed by the Septuagint (and thus, still, in Catholic and Protestant Bibles) immediately after the book of Judges, so as literally to come before the introduction of the monarchy (1–2 Samuel). Despite its narrative setting in antiquity, most scholars would date Ruth, on the basis of its language, to the post-exilic period of the reconstruction, when, under Persian sovereignty, there was no longer a Judaeen monarchy.³⁸ From that vantage point, the literary setting of Ruth rather represents an attempt at conscious archaizing. The theme of the book (the integration of a Moabite into “Israel” by means of

³⁷ There are four cases within the Pentateuch of new divine oracles, mediated by Moses, which supplement the existing provisions of covenantal law with judicial adjustments to unforeseen circumstances (Lev. 24:10–23; Num. 9:6–14; 15:32–36; 27:1–11). In these instances, the earlier law is not revoked; instead, given particular unforeseen eventualities, a divine oracle is represented as allowing Moses to render a judgment. The very *ad hoc* nature of these situations makes them the exception that proves the rule. For an astute analysis of these passages, see Fishbane, *Biblical Interpretation*, 98–102. A dissertation by Simeon Chavel currently underway at the Hebrew University of Jerusalem explores these cases in further detail.

³⁸ See Jean-Luc Vesco, “La Date du Livre de Ruth,” *Revue biblique* 74 (1967) 245–47. Maintaining a Josianic date (just prior to the exile) and providing a valuable survey of the issues, is Jack M. Sasson, *Ruth: A New Translation with a Philological Commentary and a Formalist-Folklorist Interpretation*, 2nd ed., Sheffield: Sheffield Academic Press 1989, 240–52. Good arguments also exist for a post-exilic setting. Arguing for the Persian period, see Christian Frevel, *Das Buch Ruth* (Neuer Stuttgarter Kommentar: Altes Testament 6), Stuttgart: Katholisches Bibelwerk 1992, 34. Advocating a Hellenistic setting, see Erich Zenger, *Das Buch Ruth* (Zürcher Bibelkommentare: Altes Testament 8), 2nd ed., Zürich: Theologischer Verlag 1992, 28.

marriage) engages a much larger debate concerning ethnicity and identity reflected within Second Temple period literature. Other texts, set explicitly in the Persian period, show how contested and divisive such issues were, as those who returned from exile sought to constitute themselves as a new Israel organized around a rebuilt Temple. Ezra and Nehemiah, for example, drew a firm boundary line of ethnicity around the emergent community. They took an exclusivist stance, urging expulsion of foreigners, rejecting integration through marriage (Ezra 9–10).³⁹ If Ezra’s policies were tendentiously cast as the intent of ancient scriptural tradition, so, conversely, do the policies of Ruth’s authors receive the warrant of ancient tradition: they are cast as an ancient folktale, set in the period of the Israelite settlement. In contrast to Ezra’s exclusionist stance, however, the authors of the book of Ruth promote a porous view of the community’s boundaries: they sanction inclusion through marriage.⁴⁰ This policy receives final warrant in the genealogy that concludes the book: David—the founder of a dynasty, and Israel’s greatest king—is the son of Jesse, the issue of this marriage between Israelite Boaz and Moabite Ruth (Ruth 4:17–22). The literary setting of Ruth thus represents an argument addressed to a post-exilic audience about the boundaries of the community. Narrative time here serves as a literary trope to justify an argument about ethnicity and cultural identity.

At a pivotal point in the plot, the historical distance between the book’s literary setting and the actual date of its composition (and thus of its intended readership) becomes clear. Boaz cannot legally marry Ruth until a nearer kinsman publicly surrenders his prior claim. Boaz

³⁹ See Fishbane, *Biblical Interpretation*, 114–29.

⁴⁰ Prophetic literature enters into the same debate. Ezekiel 44 advances an exclusivist position while Trito-Isaiah argues for the inclusion of the foreigner within the community (Isa. 56:3–8). Discussing the “clash of interpretations” represented by Ezek. 44: 6–9 and Isa. 56:4–7, see Fishbane, *Biblical Interpretation*, 138–43; and Joachim Schaper, “Re-reading the Law: Inner-biblical Exegesis and Divine Oracles,” in *Recht und Ethik im Alten Testament: Studies in German and English in Honor of Gerhard von Rad* (Altes Testament und Moderne 16), ed. Bernard M. Levinson and Eckart Otto, Münster/London: LIT 2002, forthcoming.

thus calls this kinsman to a legal ceremony held before the elders at the village gate, the traditional site of public justice in the ancient Near East.⁴¹ The details of the ceremony are presented in a chess-like verbal exchange whereby Boaz first invites the kinsman to exercise his right to redeem an ancestral plot of land. The solicitation secures the kinsman's initial interest (Ruth 4:3–4a). Only after the kinsman confirms his intent to acquire the land does Boaz reveal what he has not yet mentioned. Were the kinsman to assert the right of redemption of ancestral land, he is also obliged, consistent with the rules of levirate marriage, to espouse Ruth, Naomi's daughter-in-law (Ruth 4:5). But the convention of levirate marriage is that the progeny continue the line and the estate of the deceased husband, not of the new husband, or *levir*. Faced thereby with economic double jeopardy — payment for land that would not increase his estate but rather transfer out of it — the kinsman declines the offer. As intended, he cedes the right of land

⁴¹ For the role of the elders in the administration of justice, see Moshe Weinfeld, "Elders," *Encyclopaedia Judaica*, Jerusalem: Encyclopaedia Judaica 1972, 6:578–80; Leslie J. Hoppe, *The Origins of Deuteronomy*, Ann Arbor: University Microfilms 1978; *id.*, "Elders and Deuteronomy," *Église et Théologie* 14 (1983) 259–72; Joachim Buchholz, *Die Ältesten Israels im Deuteronomium* (Göttinger Theologische Arbeiten 36), Göttingen: Vandenhoeck & Ruprecht 1988); Jan Christian Gertz, *Die Gerichtsorganisation Israels im deuteronomischen Gesetz* (Forschungen zur Religion des Alten und Neuen Testaments 165); Göttingen: Vandenhoeck & Ruprecht 1994, 173–225; Hanoch Reviv, *The Elders in Ancient Israel: A Study of a Biblical Institution*, Jerusalem: Magnes 1989, 61–70 (whose analysis, however, does not address essential diachronic issues); and Levinson, *Deuteronomy*, 124–26. On the village gate as the site of public trials (note also Deut. 21:19; 22:15; 25:7), see Victor H. Matthews, "Entrance Ways and Threshing Floors: Legally Significant Sites in the Ancient Near East," *Fides et Historia* 19 (1987) 25–40; and Eckart Otto, "שער Ša'ar," *Theologisches Wörterbuch zum Alten Testament*, Stuttgart: Kohlhammer 1995, 8:358–403.

redemption — and thus of marriage — to Boaz.⁴² Just at this climax of the negotiations, an editor arrests the drama to observe:

Thus *formerly* it was done in Israel in cases of redemption or exchange: to validate any transaction, one man *would* take off his sandal and hand it to the other. Such was the practice in Israel. (Ruth 4:7)

Immediately following the annotation, the dramatic action resumes. What compelled the editor to interrupt the action at this point? The symbolic ritual of removing the sandal to mark the conclusion of the contract must have fallen into disuse. The annotation is inserted into the narrative for the benefit of the text's contemporary reader who would otherwise have found the archaic ritual unintelligible. Linguistic analysis of the annotation independently confirms its late date and its inconsistency with the temporal setting of the narrative.⁴³ The

⁴² The connection between the law of land redemption (Lev. 25:25–28; reflected also in Jer. 34:6–44) and that of levirate marriage (Deut. 25:5–10; cf. Gen. 38:1–11) is that both share the common goal of retaining ancestral land within the clan and preventing its alienation through sale or marriage. These issues are assumed in the narrative of Ruth 4. By choosing to redeem the land, the nearer kinsman would return the property to the family and thus reactivate the possibility of continuing the dead man's line. Since the deceased's widow, Ruth, still survives, the kinsman as closest relative would be expected to assume the role of levir and thus of producing children for the deceased (Gen 38:9), to whom the redeemed property would transfer as their rightful inheritance. Although the kinsman is still technically the levir even before the land is redeemed, there is no point in raising children for the deceased in the absence of property for them to inherit. The deceased's "name" (cf. Deut. 25:6–7) is tied to the hereditary property and is lost without it (Ruth 4:5, 10). In the context of the narrative, the kinsman, informed by Boaz only of the land and thus initially unaware of Ruth's existence, agrees to redeem Naomi's land, assuming that it will become part of his own patrimony. Once Boaz discloses Ruth's existence and reminds him of the duty as levir that attaches to the land, the kinsman recognizes that redeeming the land would trigger a kind of estate law double-jeopardy: he would disadvantage himself by purchasing land that would ultimately be excluded from his patrimony (Ruth 4:6). For a lucid analysis, see Raymond Westbrook, *Property and the Family in Biblical Law* (Journal for the Study of the Old Testament Supplements 113), Sheffield: Sheffield Academic Press 1991, 65–67.

⁴³ Establishing the "exilic/post-exilic" date of the editorial insertion by means of careful linguistic analysis, see Avi Hurvitz, "On the Term נָעַן אָרְשׁוֹ in Ruth 4:7,"

editor's technical formula distinguishes between what was "formerly" the case and what is implicitly now the case.⁴⁴ His annotation recalls the almost identically formulated opposition in the Hittite Laws that "formerly they would pay 40 sheqels of silver but now one pays 20 sheqels."

This example from Ruth is the single explicit acknowledgement in the Bible of a legal modification. The law involved, which marks the completion of land sale or exchange, is an unwritten common law or custom, not a formal statute. Nowhere mentioned in the Pentateuch, it does not derive from the revelation of law at Sinai. As such, its origin, like that of the Hittite Laws, is secular rather than divine. In both of these secular cases, then, the text itself makes it clear that the laws have a history: both a past, what was "formerly" the case, and a present, what is now the case. The text itself testifies that the laws change in response to social development.

3. The Impact of the Idea of Divine Revelation

An entirely new set of literary and religious issues emerge with the Pentateuchal claim that its laws originate in divine revelation. Once a law is attributed to God, how can it be superseded—that is to say, annulled—without God's prestige or authority being impaired? How can a specific component of divine revelation become obsolete without thereby qualifying the validity of God's word? Can one imagine a human editor candidly emerging from the text, as in Ruth, now, however, to announce the obsolescence of a divine commandment?⁴⁵ There thus exists an inherent tension within the bib-

in *Shnaton I: An Annual for Biblical and Ancient Near Eastern Studies*, ed. Jonas C. Greenfield and Moshe Weinfeld, Jerusalem: Israel Bible Company, Tel Aviv: M. Neuman 1975, 45–49 (Hebrew; English abstract, pp. xiii–xiv).

⁴⁴ The technical force of the formula in Hebrew, especially clear from the parallel in 1 Sam. 9:9, has been noted by E.F. Campbell, Jr., *Ruth* (Anchor Bible 7), Garden City, N.Y.: Doubleday 1975, 147–48.

⁴⁵ It is important here to distinguish between the biblical authors' attempt to maintain the adequacy of Pentateuchal legislation and their striking freedom in representing Yahweh as fallible. Indeed, so taken aback is Yahweh by the immorality

lical laws between renewal and conservatism: between the need to amend laws or create new ones in light of inevitable historical change and the desire to preserve the authority of laws claiming a divine origin.

As a result of this tension, it was necessary to develop a number of sophisticated literary strategies to present new law as not in fact involving the revision or annulment of older laws ascribed to God. The biblical authors developed what may best be described as a “rhetoric of concealment,” one that served to camouflage the actual literary history of the laws. The revision of old law and the creation of new law continued to occur, just as in the Hittite Laws or Ruth. But rather than candidly specify, “this law is no longer the case,” as the editor was free to do with secular law, the editor of divine laws found indirect ways to adapt old law to new circumstances without slighting the prestige or authority of laws that tradition ascribed to

of his creation that, in a remarkable soliloquy at the outset of the biblical flood story, he reveals his fallibility as he regrets the creation of human life (Gen. 6:6–7). In other cases as well, Yahweh concedes his fallibility, or at least the absence of omniscience, and is forced to change his plans as a result of human iniquity (1 Sam. 2:30; 15:11; note also, inconsistently, 1 Sam. 15:29!). Even divine oracles proclaimed by the prophets sometimes remained unfulfilled or were controverted by history, a problem that the editors of the prophetic books were forced to address (see Fishbane, *Biblical Interpretation*, 476–82, 521–24). In none of these cases, however, is there any question about the infallibility of the divine laws or ethical proclamations, which are the focus here. In a sense, Yahweh’s fallibility, as the flood story reveals, is that he has created a fallible humanity. For just this reason, prophetic visions of a post-exilic “new age” often include notions of the inauguration of a new moral and religious regime. Such visions often include formulae that distinguish current practice from future transformation: for example, “In those [future] days, no longer shall they say... but rather...” (Jer. 3:16; 23:7–8; 31:29–30; cf. 16:14–15; Ezek. 18:2); see Moshe Weinfeld, “Jeremiah and the Spiritual Metamorphosis of Israel,” *Zeitschrift für die alttestamentliche Wissenschaft* 88 (1976) 17–55. The new regime nonetheless presupposes the continuing validity of divine law. The change lies in the divine reprogramming of human nature, as if to enable — or coerce — fallible humans to heed God’s infallible law: “I will set my Torah within them; upon their heart will I write it” (Jer. 31:33a; similarly, Ezek. 36:27).

God. In what follows, I demonstrate a range of literary strategies that biblical authors employed to authorize — and to conceal — their reworking of authoritative laws. The Decalogue, which symbolizes the Israelite concept of revelation, provides a ready point of departure for examining these strategies.⁴⁶ The second of its commandments prohibits idolatry, because of God's professed zeal for an intimate, that is an exclusive, relationship with his nation. In its present redactional context, that commandment begins by prohibiting the manufacture of "an idol" (Exod. 20:4). It continues, prohibiting *their* worship

⁴⁶ See Moshe Weinfeld, "The Decalogue: Its Significance, Uniqueness, and Place in Israel's Tradition," in *Religion and Law: Biblical-Judaic and Islamic Perspectives*, ed. E.W. Firmage, B.G. Weiss, and J.W. Welch, Winona Lake: Eisenbrauns 1990, 3–47. That approach, which regards the Decalogue as ancient and Mosaic in origin, should be supplemented by the model of a late, deuteronomistic redaction of the Sinai pericope; see, for example, Christoph Dohmen, "Der Sinaibund als Neuer Bund nach Ex 19–34," in *Der Neue Bund im Alten: Studien zur Bundestheologie der beiden Testamente* (Quaestiones disputatae 146), ed. Erich Zenger, Freiburg: Herder 1993, 51–83; Erich Zenger, "Wie und wozu die Tora zum Sinai kam: Literarische und theologische Beobachtungen zu Exodus 19–34," in *Studies in the Book of Exodus: Redaction-Reception-Interpretation* (Bibliotheca Ephemeridum Theologicarum Lovaniensium 126), ed. Marc Vervenne, Leuven: University Press/Peeters Press 1996, 265–88. In this context, it is impossible properly to address the dating of the Decalogue. Nor can the Pentateuchal texts that refer to vicarious punishment be fully considered here. The formula is almost certainly not original to the Decalogue. It very likely circulated independently; the range and extent of its inner-biblical reuse suggest its antiquity and prevalence. Further evidence for this hypothesis is provided by the formula's attestation in non-biblical inscriptions. Inscription B from the tomb cave at Khirbet Beit Lei (sixth century B.C.E.) reuses the attributes of mercy in the context of a petition to be spared from punishment; see Frank Moore Cross, Jr., "The Cave Inscriptions from Khirbet Beit Lei," in *Near Eastern Archaeology in the Twentieth Century: Essays in Honor of Nelson Glueck*, ed. James A. Sanders, Garden City, N.Y.: Doubleday 1970, 299–306. Confirming the decipherment as dependent upon the divine attribute formula and arguing for a deliberate reformulation of it is Patrick D. Miller, Jr., "Psalms and Inscriptions," in *Congress Volume, Vienna, 1980* (Supplements to *Vetus Testamentum* 32), ed. J.A. Emerton, Leiden: E.J. Brill 1981, 328–31.

(Exod. 20:5).⁴⁷ It then offers the following rationale for the prohibition:

For I, Yahweh your God, am an impassioned God, visiting the iniquity of the fathers upon the children, upon the third and the fourth generation of those who reject me, but showing kindness to the thousandth generation of those who love me and keep my commandments. (Exod. 20:5–6)

The Hebrew participles translated “those who love” and “those who reject” are not affective but legal terms. Reflecting the terminology of Hittite and Aramaic state treaties, “love” designates political loyalty to the suzerain while “reject” denotes acts of treason.⁴⁸ Israelite authors took over this secular treaty terminology, together with the concept of a binding legal tie, in order to conceptualize the nation’s relationship with its God as a covenant. Now, despite the narrative’s ancient setting at the beginning of the nation’s history, the key theological idea of the covenant actually represents a late development which was then read back into Israel’s origins.⁴⁹ The importance of the Near Eastern treaty

⁴⁷ With its plural object, this prohibition against worship—“You shall not bow down to *them* or worship *them*” (Exod. 20:5)—cannot originally have continued the present second commandment, which prohibits the manufacture of “*an* idol,” in the singular (Exod. 20:4). More logically, it represents the continuation of the first commandment, which prohibits the worship of other deities, in the plural—“You shall have no other *gods* before me” (Exod. 20:3). At a later stage in the history of Israelite religion, as monotheism replaced monolatry, such references to actual deities were reinterpreted as designating instead the worship of inert idols. That newer perspective accounts for the interpolation here. The addition to the text prohibits the manufacture of images (v. 4), and thus separates the plural object (v. 5) from its original antecedent (v. 3). First identifying this redactional issue, see Walther Zimmerli, “Das zweite Gebot” [1950] in *id.*, *Gottes Offenbarung: Gesammelte Aufsätze zum Alten Testament* (Theologische Bücherei 19), Munich: Chr. Kaiser 1969, 234–48 (at 236–38).

⁴⁸ William L. Moran, “The Ancient Near Eastern Background of the Love of God in Deuteronomy,” *Catholic Biblical Quarterly* 25 (1963) 77–87; Weinfeld, *Deuteronomy*, 81–91.

⁴⁹ See Lothar Perlitt, *Bundestheologie im Alten Testament* (Wissenschaftliche Monographien zum Alten und Neuen Testament 36), Neukirchen Vluyn: Neukirchener Verlag 1969. For an attempt, in part, to rehabilitate and rethink the covenant in light of the theological issues raised by Perlitt’s dating, see Ernest W. Nicholson, *God*

model for covenantal theology has long been recognized.⁵⁰ These ancient Near Eastern treaties were understood as being made in perpetuity. They were therefore binding not only upon those immediately signatory to them but also upon succeeding generations. Consequently, the punishment for non-compliance stipulated the execution both of those actually party to the treaty and of their progeny. That principle of distributive justice underlies Yahweh's threat that he will visit his rage upon the third and fourth generation of those guilty of breaking the covenant.⁵¹ The extension of retribution across three generations strikingly resembles a similar formulation found in a group of treaties made between the Neo-Assyrian ruler Esarhaddon and his eastern vassals in 672 B.C.E. In order to ensure their allegiance to Assurbanipal, his heir designate, Esarhaddon required that they take an oath stipulating both loyalty and accountability across three generations: "As long as *we, our sons [and] our grandsons live*, Assurbanipal, the great crown prince designate, shall be our king and our lord. If we place any other king or prince over *us, our sons, or our grandsons*, may all the gods mentioned by name [in this treaty] hold *us, our seed, and our seed's seed* to account."⁵²

and His People: Covenant and Theology in the Old Testament, Oxford: Clarendon Press 1986.

⁵⁰ For a useful overview, see D.R. Hillers, *Covenant: The History of a Biblical Idea*, Baltimore: Johns Hopkins Press 1969.

⁵¹ Note the thorough study by Meir Weiss, "Some Problems in the Biblical Doctrine of Retribution," *Tarbiz* 31 (1961–62) 236–63; 32 (1962–63) 1–18 (Hebrew); reprinted in *Likkutei Tarbiz: A Biblical Studies Reader*, ed. Moshe Weinfeld, Jerusalem: Magnes 1979, 71–98, 99–116 (Hebrew). His argument, however, that "third and fourth" simply means "a large number of generations," and is thus equivalent to "the thousandth generation," is harmonistic. Moreover, it does not take into account the following parallels to the Neo-Assyrian treaties.

⁵² The translation of the Akkadian is my own. It draws on the excellent edition by Simo Parpola and Kazuko Watanabe, eds., *Neo-Assyrian Treaties and Loyalty Oaths* (State Archives of Assyria 2), Helsinki: Helsinki University Press 1988, 50 (§57, lines 507–12); and on Erica Reiner, tr., "The Vassal-Treaties of Esarhaddon," in *Ancient Near Eastern Texts Relating to the Old Testament*, ed. J.B. Pritchard, 3rd

By transferring this Near Eastern convention from the political to the theological domain, the biblical text formulates a doctrine of the transgenerational consequences of sin: although it is my parent who wrongs God, I and my children and my grandchildren are punished for the parent's wrongdoing, independent of any particular malfeasance on our part. The text is remarkably silent about whether the actual sinner is punished for his or her own offense or whether the expected punishment might be completely displaced onto the progeny.⁵³ Precisely this anomaly of justice occurs when God remits the capital punishment due David in double measure — for adultery with Bathsheba and for contriving the murder of Uriah, her Hittite husband — and transfers it instead to their innocent newborn son, who is stricken with a fatal illness (2 Sam. 12:1–15; similarly, 1 Kgs. 21:29).

Here there emerges a fundamental ethical and theological problem: Is it not odious for God to punish innocent persons, merely for being the progeny of sinners? Abraham took God to task for just this breach of justice while bargaining over the lives of the inhabitants of Sodom: “Shall you sweep away the innocent along with the guilty? . . . Shall not the judge of all the earth deal justly?” (Gen. 18:23, 25). Israelite authors keenly felt this problem of theodicy raised by the Decalogue's doctrine of transgenerational punishment. It was no merely abstract or modern theological problem but had vital implications for the nation's history. Ancient Israel endured a catastrophe in 587 B.C.E. when, following a two year siege, the Babylonian army breached the walls of Jerusalem, burned the city, gutted the Temple, and deported the majority of the population to Babylon. The editor of the book of Kings, charged with narrating that history, explains the destruction as the result of divine punishment for the unprecedented iniquities committed

ed., Princeton: Princeton University Press 1969, 539. Note the similar generational reference at §25, lines 283–91.

⁵³ This delay in exacting punishment was clearly intended as an expression of divine mercy towards the penitent wrongdoer; see Yochanan Muffs, *Love & Joy: Law, Language and Religion in Ancient Israel*, New York: Jewish Theological Seminary of America 1992, 19 (on Exod. 32:34).

not by the generation contemporary with the destruction but rather by King Manasseh (696–641 B.C.E.), who ruled three generations beforehand (2 Kgs. 21:1–15; 23:26–27; 24:3–4; contrast 24:19–20).⁵⁴ The biblical editor had little choice: how else to explain the gutting and burning of Jerusalem that followed so shortly after the reign of righteous King Josiah, who had been heralded for his perfect devotion to the law of Moses (2 Kgs. 23:25)?

4. Critical Scrutiny of the Principle in Lamentations

The technique of accounting for the Babylonian Exile as punishment transferred transgenerationally may well have become commonplace, since it shows up in a number of different texts from the period following the exile. These texts confirm, however, that this historiographic “solution” created as many theological difficulties as it sought to solve. Lamentations, for example, preserves a moving poetic dirge over the destruction of Jerusalem and the suffering of its population. Near the book’s close, the speaker seems to share the orientation of the historiographer of Kings as he, too, accounts for the destruction as divine punishment for the apostasy of previous generations. That rationalization is now, however, subjected to critical scrutiny.

Our fathers sinned and are no more;
But as for us — the punishment for their iniquities we must bear! (Lam. 5:7)

The terminology of the lament, which pointedly refers both “fathers” (אבות) and to “punishment for iniquities” (עונות), alludes to the Decalogue’s doctrine of the transgenerational consequences of sin, in which God describes himself as “visiting the *punishment for the in-*

⁵⁴ There were three generations from Manasseh’s reign to the time that the Babylonians ended Egyptian control over Judah and made King Jehoiakim their vassal (2 Kgs. 24:1–5): Amon, Josiah, and Josiah’s two sons, Jehoahaz and Eliakim/Jehoiakim. The first deportation occurred in the next (fourth) generation with the deportation of King Jehoiachin (2 Kgs. 24:8–17).

iquity of the *fathers* upon the sons,” פקד עון אבת על בנים (Exod. 20:5).⁵⁵ The speaker has broken apart the original genitive phrase of the Decalogue, making each of its two key terms into the subject of independent statements. As a result, God’s threat of punishment is here invoked as accomplished fact—but now from the perspective of the progeny who proclaim their innocence by restricting culpability to the previous generation. By insinuating the innocence of his own generation, the speaker asserts the injustice of divine justice. Moreover, in the Hebrew of the lament, the words for “fathers” (אבות) and for “the punishment for iniquities” (עונות) are strongly linked by both assonance and rhyme. But the pronominal suffixes that specify “our fathers” (אבותינו) and “the punishment for their iniquities” (עונותיהם) break the similarity of sound. The broken assonance highlights the fractured logic: the punishment that the speakers endure is not for their own, but for their *fathers*’ apostasy. The indirect intertextual reference in fact amounts to the censure of a text whose infrangible authority is precisely the problem.

The injustice of the doctrine raises important practical difficulties as well. It inevitably creates an overwhelming sense of the futility of historical action altogether, inasmuch as the progeny cannot free themselves from the consequences of the past. In the grim circumstances of Israel after the catastrophe of destruction and exile, the future would have seemed radically foreclosed: the direct result not of one’s own but of a previous generation’s action. Yahweh himself anticipates the despair of the first group of deportees (those who had been deported with Jehoiachin in 597 B.C.E.), citing their complaint in advance: “How

⁵⁵ Providing criteria to distinguish textual dependence from simple sharing of common language, and thus distinguishing between allusion (as intentional reuse) and “intertextuality” (which technically considers the questions of intention and of dependence irrelevant), see Benjamin D. Sommer, “Exegesis, Allusion and Intertextuality in the Hebrew Bible: A Response to Lyle Eslinger,” *Vetus Testamentum* 46 (1996) 479–89; and *id.*, *A Prophet Reads Scripture: Allusion in Isaiah 40–66*, Stanford: Stanford University Press 1998, 6–72.

then shall we survive?” (Ezek. 33:10) Any step forward — whether towards personal renewal or national reconstruction — would appear pointless. For both theological and existential-historical reasons, therefore, we can expect biblical authors to struggle relentlessly against the injustice of the Decalogue’s doctrine.⁵⁶

5. The Transformation of Divine Justice in Ezekiel

Precisely as Judah faced the prospect of national destruction, the prophet Ezekiel (active 593–573 B.C.E.) provided a profound meditation on the impact of temporality upon human action. Ezekiel had been among the upper echelon of Judean society deported to Babylon in 597 (thus prior to the destruction of Jerusalem with its Temple, and the exile of the city’s population in 587). He here reported to his fellow deportees, who lived in a period of uncertainty, still hoping for their restoration to Jerusalem, about an oracle he had recently received:

The word of Yahweh came to me: “How dare you bandy about this proverb upon the soil of Israel, ‘Fathers eat sour grapes and their children’s teeth are set on edge?’ As I live — declares the Lord Yahweh — this proverb shall no longer be current among you in Israel. Consider: all lives are mine. The life of the father and the life of the child are both mine. The person who sins, only he shall die!” (Ezek. 18:1–4)⁵⁷

The proverb cited by the prophet graphically portrays transgenerational punishment. As the prophet’s refutation implies, the proverb is not concerned with literal sour grapes but with moral ones, with sin and its consequences. The prophet rejects this proverb and substitutes for it a clear statement of individual responsibility: henceforth the father shall suffer for his own misdeeds; the child will be spared

⁵⁶ See Michael Fishbane, “Torah and Tradition,” in *Tradition and Theology in the Old Testament*, ed. Douglas A. Knight, Philadelphia: Fortress Press 1977, 275–82; and *id.*, *Biblical Interpretation*, 335–50. The following analysis is indebted to Fishbane’s work.

⁵⁷ This translation is indebted to *Tanakh: The Holy Scriptures*, Philadelphia: The Jewish Publication Society 1988; and Moshe Greenberg, *Ezekiel, 1–20* (Anchor Bible 22), Garden City, N.Y.: Doubleday 1983, 325.

inherited punishment. Strikingly, while rejecting the proverb as offensive, the prophet never disputes that the moral economy it depicts has hitherto been valid! The oracle has a parallel text in Jeremiah that also rejects the proverb: “In those [future] days, no longer shall they say, ‘Fathers eat unripe grapes and the teeth of the sons are set on edge,’ but rather, ‘Each shall die for his own iniquity; whoever eats unripe grapes, [only that person’s] teeth shall be set on edge’” (Jer. 31:29–30). In Jeremiah’s version of the oracle, the principle of individual responsibility will take effect only with the advent of a new moral and religious economy, sometime in an unspecified future (Jer. 31:27, 31, 33). Jeremiah thus concedes that the proverb continues to be valid for the present and immediate future. Only in the case of Ezekiel is the new principle immediately to replace the rejected one.

The correspondence between the rejected proverb and the doctrine of transgenerational punishment can hardly be accidental. The repudiated proverb and the Decalogue doctrine share not only the notion of retribution vicariously transmitted from one generation to the next, but also common terminology: the resonant language of “fathers” (אבות) and “children” (בנים, literally, “sons”). At the same time, the overlap is only partial: sufficient for the proverb to resonate with the Decalogue doctrine, but insufficiently specific or extensive to point to an explicit citation or reuse of that text. Might Ezekiel’s indirection be intentional? The proverb almost certainly functions as a straw man. The problem confronted by Ezekiel consists not simply in the popular sensibility of his time trenchantly depicted in the proverb: the perception among the exiles that they suffer innocently and that divine justice is arbitrary (see Ezek. 18:25, 29; 33:17). More seriously, this popular perception of divine injustice has sanction in ancient Israel’s formative canon! The explicit rejection of transgenerational punishment would require Ezekiel to repudiate an authoritative teaching attributed to Yahweh.⁵⁸ Nevertheless, failing to repudiate it validates the depor-

⁵⁸ Joel S. Kaminsky regards the principle of individual responsibility advanced by Ezekiel 18 in *ad hoc* terms, as a situation-specific response, rather than as a

tees' perception that Yahweh is unjust and that their future is fore-closed.

Ezekiel therefore uses the proverb as a strategic foil for the far more theologically problematic act of effectively annulling a divine law. The prophet in effect "de-voices" the doctrine's original attribution to God and then "re-voices" it as folk wisdom. By this means the oracle obscures its subversion of the divine instruction found in the Decalogue. While it is a simple matter to repudiate a folk saying, it cannot but raise serious theological problems to reject the Decalogue's concept of transgenerational punishment as morally repugnant. The formulation of the new conception of divine justice echoes the existing rule requiring individual liability in matters of civil and criminal law. In the latter sphere, biblical law prohibits vicarious punishment and specifies that only the perpetrator should be held accountable:

concerted rejection of transgenerational punishment altogether, let alone as a rejection of a particular text or specific tradition (*Corporate Responsibility in the Hebrew Bible* [Journal for the Study of the Old Testament Supplements 196], Sheffield: Sheffield Academic Press 1995, 189). While Kaminsky concedes the influence of the formula for secular justice (Deut. 24:24), he denies it in the case of the formula for divine justice. His approach seeks to redress the tendency of past scholarship to impose an external agenda on the chapter by regarding it as pivotal in the development of a theology of individual salvation within ancient Israel (see n. 61 below). The hesitation to assign the weight of formal doctrinal change to the chapter is therefore understandable. Yet going to the opposite extreme of denying both the diachronic development of theological ideas and the possibility of the prophet's critically challenging an existing doctrine of divine justice raises an equal concern. Eliminating both possibilities denies the prophet his agency and creativity. Further, the technique used to isolate each text from the other so as to deny textual allusion or doctrinal contradiction corresponds precisely to the method of classical harmonistic legal exegesis. That approach qualifies the otherwise nuanced theological reading.

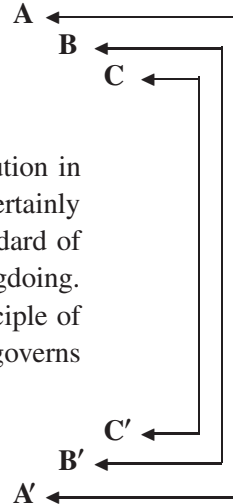
Fathers shall not be put to death on account of sons,
nor sons be put to death on account of fathers;
each shall (only) be put to death for his own offence.

(Deut. 24:16)

This judicial expectation of individual retribution in the sphere of civil and criminal law almost certainly provided a means for Ezekiel to revise the standard of punishment in the sphere of theological wrongdoing. Ezekiel's formulation chiasmatically cites the principle of secular justice, reapplying it so that it also governs offences against the deity:⁵⁹

The person who sins, (only) he shall die:
a son shall not bear the iniquity of the father,
nor shall the father bear the iniquity of the son.

(Ezek. 18:20)



The formula for individual liability in civil and criminal law thus almost certainly served as a legal and literary precedent for the prophet.⁶⁰ It enabled him to bring theological justice into conformity with secular justice by means of analogical legal reasoning.

⁵⁹ This analysis follows Greenberg, *Ezekiel*, 333; and Fishbane, *Biblical Interpretation*, 337–41. On inverted citation as marking reuse (as noted by Greenberg), see the analysis of Deut. 7:9–10 below. The likelihood of the reuse of Deut. 24:16 is increased with the recognition that Ezekiel 18 contains a complex series of reworkings of prior legal texts (Ezek. 18:7–8, 13, 16, 18 reuse Deut. 23:20–21; 24:6, 10–15, 17; so Fishbane, *loc. cit.*).

⁶⁰ The scholarly consensus, which I follow, regards Ezekiel 18 as later than Deuteronomy 24, and therefore allows for such literary dependence. A recent challenge to that consensus, however, regards Deuteronomy 19–25 as a very late addition to the legal corpus that, in effect, is “post-Deuteronomic,” and that draws upon both Ezekiel and the Holiness Code (Leviticus 17–26). That perspective reverses the direction of dependence in this case, maintaining that Deut. 24:16 depends upon Ezekiel 18. For this argument, see Georg Braulik, “Ezechiel und Deuteronomium: Die ‘Sippenhaftung’ in Ezechiel 18,20 und Deuteronomium 24,16 unter Berücksichtigung von Jeremia 31,29–30 und 2 Kön 14,6,” in *id.*, *Studien zum Deuteronomium und seiner Nachgeschichte* (Stuttgarter Biblische Aufsatzbände 33), Stuttgart: Katholi-

In the rest of the chapter Ezekiel exploits the proverb in an intricately crafted series of acute reflections upon morality in order to deprive the proverb of any moral validity whatsoever: neither righteousness nor sin, neither reward nor punishment may be communicated between generations (18:10–20).⁶¹ The prophet finally rejects the generational logic of the proverb altogether and transforms it into a metaphor for the freedom of an individual to transform and renew his life, at every moment in his life, whatever the burden of his past (18:21–29).⁶² Even if one has committed unremitting evil, Ezekiel contends,

sches Bibelwerk 2001, 171–201. Braulik himself cites challenges to his redactional analysis (*loc. cit.*, 200 n. 122).

⁶¹ The doctrine of repentance cannot be viewed as operating only in the context of the individual: its application is simultaneously individual and national. See the thoughtful study by Baruch J. Schwartz, “Repentance and Determinism in Ezekiel,” *Proceedings of the Eleventh World Congress of Jewish Studies: The Bible and Its World*, Jerusalem: World Union of Jewish Studies 1994, 123–30. Other scholars properly stress the national reference but regard it as inconsistent with a focus also on the individual; see Paul M. Joyce, “Individual Responsibility in Ezekiel 18?,” in *Studia biblica 1978: Sixth International Congress on Biblical Studies, Oxford, 3–7 April 1978*, ed. E.A. Livingstone, Sheffield: University of Sheffield 1979, 185–96; and Gordon H. Matties, *Ezekiel 18 and the Rhetoric of Moral Discourse in the Book of Ezekiel* (Society for Biblical Literature Dissertation Series 126), Atlanta: Scholars Press 1990, 113–58. Paul M. Joyce astutely rejects the widespread assumption of an evolution within ancient Israel from belief in corporate responsibility to individual responsibility, with Ezekiel 18 providing the transition between the two; see *id.*, “Ezekiel and Individual Responsibility,” in *Ezekiel and His Book* (Bibliotheca Ephemeridum Theologicarum Lovaniensium 74), ed. J. Lust, Leuven: Peeters Press 1986, 317–32.

⁶² Ezekiel’s formulation of freedom is essentially modern in its conceptual structure, despite its religious terminology. Structurally similar is the conceptualization of moral freedom as independence from the burden of the past by Immanuel Kant. He establishes a dialectical notion of freedom: although there is no freedom from causality (from an immediately preceding cause) within nature, such freedom exists from the vantage point of ethics and religion. He intricately probes the issues involved in holding someone morally accountable who is a habitual liar. “Reason is present in all the actions of men at all times and under all circumstances, and is always the same; but it is not itself in time, and does not fall into any new state in which it was not before. . . . When we say that in spite of his whole previous course of life the agent

should one repent, one will not suffer the consequences of that evil (18:21–23, 27–29). The individual is held exclusively accountable for the moral decisions he makes in the present. Ezekiel’s theology of freedom works to counter notions among his contemporaries of the futility of action. The prophet argues that the future is not hermetically closed but hermeneutically open. Ezekiel began with inexorable fate but ends with freedom, moral action, and repentance as the sole forces that govern human action.

6. The Homily on Divine Justice in Deuteronomy

An even more remarkable transformation of the Decalogue doctrine can be found within the legal corpus of the Pentateuch itself. Deuteronomy presents itself as a Mosaic address to the nation of Israel, forty years after Sinai, on the eve of the nation’s entry into the promised land (Deut. 1:1–3). According to the editorial superscription, Moses here explicates the laws that God had earlier proclaimed (Deut. 1:5) and exhorts the nation to obedience. In this new literary setting, Moses, while reviewing the past, ostensibly quotes the Decalogue (Deuteronomy 5) and then preaches to the nation concerning it. Moses thus expounds upon divine justice:

Know, therefore, that only Yahweh your God is God, the steadfast God who keeps his gracious covenant to the thousandth generation of those who love him and keep his commandments, but who requites those who reject him — to their face, by destroying them. He does not delay with anyone who rejects him — to his face he requites him. (Deut. 7:9–10)

The vocabulary of this passage makes it clear that the speaker alludes specifically to the Decalogue, which he has previously quoted (chapter 5). This reuse of the Decalogue is marked by the ancient

could have refrained from lying, this only means that the act is under the immediate power of reason, and that reason in its causality is not subject to any conditions of appearance or of time.” See Immanuel Kant, *Critique of Pure Reason*, tr. Norman Kemp Smith, unabridged edition, New York: St. Martin’s, Toronto: Macmillan 1965, 478 (A556/B584).

scribal technique of inverted citation (technically, “Seidel’s Law”).⁶³ Often in the Bible and post-biblical literature, an author will quote a source in inverted order, such that a text sequence AB would recur elsewhere as B’A’. Thus, in the present case, the first person sequence of the Decalogue — (A) “those who reject me” (לשנאי) and (B) “those who love me and keep my commandments” (לאהבי ולשמרי מצותי מצותי); Deut. 5:9–10) — is inverted. In the new context, it is recast as a third person report: (B’) “those who love him and keep his commandments” (לאהבי ולשמרי מצותו) and (A’) “those who reject him” (לשנאיו). The Mosaic speaker purports to provide a homiletic paraphrase of the formula for divine justice in the Decalogue.⁶⁴ In

⁶³ The principle of inverted citation (see also n. 59 above) is named after its discoverer: M. Seidel, “Parallels between Isaiah and Psalms,” *Sinai* 38 (1955–56) 149–72, 229–40, 272–80, 335–55 (150); reprinted, *id.*, *Hiqrei Miqra*, Jerusalem: Rav Kook Institute 1978, 1–97 (Hebrew). Seidel’s claims are often insufficiently controlled by criteria for establishing the direction of dependence. More controlled uses include Shemaryahu Talmon, “The Textual Study of the Bible — A New Outlook,” in *Qumran and the History of the Biblical Text*, ed. F.M. Cross and S. Talmon, Cambridge: Harvard University Press 1975, 362–63; P. Beentjes, “Inverted Quotations in the Bible: A Neglected Stylistic Pattern,” *Biblica* 63 (1982) 506–23; Marc Z. Brettler, “Jud 1,1–2,10: From Appendix to Prologue,” *Zeitschrift für die alttestamentliche Wissenschaft* 101 (1989) 434; and Sommer, *A Prophet Reads Scripture*, 35 and 219 nn. 11–12. On this and related editorial markers, see Levinson, *Deuteronomy*, 17–20.

⁶⁴ The proposal that “those who reject him/anyone who rejects him” (Deut. 7:10) tags לשנאי, “those who reject me” (Exod. 20:5 = Deut. 5:9), raises a series of issues that go beyond the scope of this essay to address properly. If my analysis is correct, it provides indirect evidence for the originality of לשנאי within the divine attribute formula. That indirect attestation is important because the formula for transgenerational punishment of sin is also found elsewhere in the Pentateuch where, however, the specification “those who reject me” is absent (Exod. 34:6–7; Num. 14:18). Moreover, a strong case has been made on form-critical grounds that the formulation lacking the specification (especially the version in Exod. 34:6–7) historically precedes the Decalogue version, which includes it; see J. Scharbert, “Formgeschichte und Exegese von Ex. 34,6 f und seiner Parallelen,” *Biblica* 38 (1957) 130–50 (at 145–47). The hypothesis that Exodus 34 is ancient then presses the question, how did the reference to “those who reject me” come to be introduced into the Decalogue? Weinfeld suggests that the term was introduced into Deut. 5:9 by

the editor of Deuteronomy, specifically to bring the Decalogue into conformity with the notion of individual retribution found in Deut. 7:10 (*Deuteronomy*, 318). As such, God would *only* punish transgenerationally “those who reject me”—meaning those who continue to sin. Subsequently, Weinfeld suggests, the Exodus Decalogue was “corrected” and made consistent with the Deuteronomy version. By this reading, the formulation of the doctrine of divine justice in the Decalogue would not represent, as it stands, simply the point of departure for a series of later theological corrections and reworkings. Instead, as Fishbane suggests, it would itself already represent a response to those later reworkings, with the “correction” read back into the source-text, so as to restrict punishment to “those who reject me”: that is, those who are individually guilty (*Biblical Interpretation*, 345 n. 72). Although the position taken by Weinfeld and Fishbane is well argued, that approach provides no explanation for the introduction of “those who reject him” into Deut. 7:10.

These difficulties derive in part from the long tradition in scholarship that regards the renewal of the covenant in Exodus 34 (in which Yahweh proclaims his divine attributes) as an ancient text. That version of the formula—“visiting the iniquity of the fathers upon the children and the children’s children, to the third and the fourth generation” (Exod. 34:7)—lacks the Decalogue’s reference to “those who reject me.” For both reasons, it has often been regarded as preserving the oldest form of the doctrine of divine justice. That analysis is unlikely, however. Recent scholarship has increasingly challenged the antiquity of Exodus 34, regarding it rather as a late text that reflects theological and sociological issues of the post-exilic period. On that basis, the entire question of the literary development of the various formulations of divine justice should be reopened. For the change in viewpoint on Exodus 34, see H. Louis Ginsberg, *The Israelian Heritage of Judaism*, New York: Jewish Theological Seminary 1982, 62–66; Fishbane, *Biblical Interpretation*, 194–97; William Johnstone, “Reactivating the Chronicles Analogy in Pentateuchal Studies, with Special Reference to the Sinai Pericope in Exodus,” *Zeitschrift für die alttestamentliche Wissenschaft* 99 (1987) 16–37; Erik Aurelius, *Der Fürbitter Israels: Eine Studie zum Mosebild im Alten Testament* (Coniectanea Biblica: Old Testament series 27), Stockholm: Almqvist & Wiksell 1988, 116–26; Erhard Blum, “Das sog. «Privilegrecht» in Exodus 34, 11–26: Ein Fixpunkt der Komposition des Exodusbuches?” in *Studies in the Book of Exodus: Redaction-Reception-Interpretation* (Bibliotheca Ephemeridum Theologicarum Lovaniensium 126), ed. Marc Vervenne, Leuven: University Press/Peeters Press 1996, 347–66; Shimon Bar-On, “The Festival Calendars in Exodus XXIII 14–19 and XXXIV 18–26,” *Vetus Testamentum* 48 (1998) 161–95; Eckart Otto, “Die Nachpriesterschriftliche Pentateuchredaktion im Buch Exodus,” in *Studies in the Book of Exodus*, ed. Vervenne, 62–111; David M. Carr, “Method in Determination of Direction of Dependence: An Empirical Test of Criteria Applied to Exodus 34, 11–26

fact, the homily so fundamentally transforms the original as to revoke it. The speaker strategically deletes references to the transgenerational consequences of sin and instead asserts the immediate punishment of the sinner. By implication divine punishment for sin is restricted to the sinner alone. In contrast to the Decalogue, the progeny, here strikingly unmentioned, are not explicitly visited with divine punishment.

The doctrine of individual retribution is not presented as a departure from the *status quo*, as in the case of Ezekiel. Instead, the new teaching is presented as consistent with the very doctrine that it rejects: as an authoritatively taught “re-citation” of the original *theologoumenon*. The following diagram shows how Ezekiel marshals the lemmas of the formula for transgenerational punishment against itself. Its key terms are adroitly redeployed so as to abrogate transgenerational punishment and mandate individual retribution:

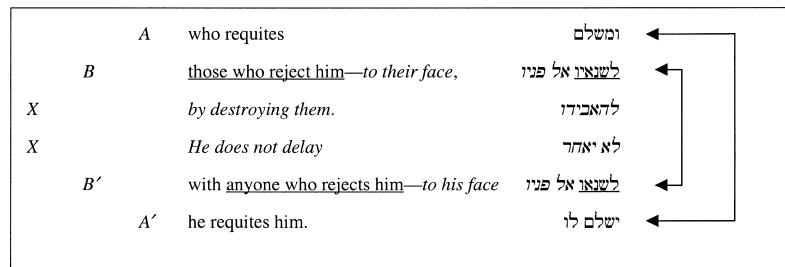


Figure 1. Lemmatic Reworking in Support of Doctrinal Innovation (Deut. 7:10)

The chiasmic pattern of the repetition frames and thus highlights Deuteronomy’s ethical innovation (marked by X): the introduction of the notion that God “does not delay” (לא יאחר) retributive justice, that

and its Parallels,” in *Gottes Volk am Sinai* (Veröffentlichungen der Wissenschaftlichen Gesellschaft für Theologie 18), ed. M. Köckert, Gütersloh: Gütersloher Verlag, 2001, 107–40; Bernard M. Levinson, “Goethe’s Analysis of Exodus 34 and Its Influence on Julius Wellhausen: The Pfropfung of the Documentary Hypothesis,” *Zeitschrift für die Alttestamentliche Wissenschaft* 114 (2002) 212–23; and *id.*, “The Revelation of Redaction: Exod 34:10–26 as a Challenge to the Standard Documentary Hypothesis” (forthcoming).

is, that punishment no longer occurs transgenerationally. That doctrinal innovation is accomplished by means of textual reformulation. As the underlining in the diagram shows, a key term from the originally problematic text is cited: the form of retribution due “those who reject him,” alluding to “those who reject me” (Exod. 20:5 = Deut. 5:9). Once cited, however, the term receives a new continuation: the new teaching of individual responsibility (as the diagram’s italicized text shows). The double annotation stipulates that God requites the sinner, literally, “to his face” (פָּנֵיךְ).⁶⁵ As the medieval commentator Rashi (1040–1105) accurately saw, the phrase means “in his lifetime” (בְּחַיֵּיךְ).⁶⁶

⁶⁵ Contrary to several modern translations, the phrase cannot mean “immediately” or “instantly.” There is no evidence in the Bible for instantaneous divine retribution for wrongdoing. Thus missing the point are the translations offered by Moffat’s American version (“immediately”) and by the new Jewish Publication Society Version (“instantly”); see *Tanakh: The Holy Scriptures*, Philadelphia: Jewish Publication Society 1988, 286. The *Tanakh* translation must derive from Arnold B. Ehrlich, *Mikra ki-Peschuto*, 3 vols., Berlin: M. Poppelauer 1899–1901, 1:323.

⁶⁶ Rashi frequently embeds classical rabbinic exegesis, particularly *midrash halakha*, in his commentary on the Pentateuch. In this case, his annotation directly reflects the Aramaic Targum Onkelos. The latter does not strictly translate the lemma of Deut. 7:10 but rather amplifies it midrashically, to argue that God “requites the good deeds of those who reject him in their lifetime (בְּחַיֵּיהֶם), so as to cause them to perish.” Ironically, the correct insight into the literal meaning of the specific phrase in the lemma — the recognition that “to his face” means “in his life” — actually comes in the service of a midrashic transformation of the verse. The verse is reinterpreted to forestall the inevitable question of theodicy raised by the verse in its literal meaning: How is it that, if God truly rewards the righteous and punishes the guilty, does the experience of life suggest the contrary: that the wicked seem to prosper in the world, while the righteous suffer? The midrashic solution to the problem is to extend the analysis into the afterlife. The wicked receive reward for their good deeds only in this life while they are requited for their iniquity by being denied a share in the world to come. The righteous, conversely, suffer only in this life for any iniquities they may have committed while being rewarded for their good deeds with the assurance of a place in the world to come. That extension of the time span of the verse into a putative afterlife, however, completely contradicts the radical claim for divine justice within history made by Deut. 7:10. These issues are overlooked in the untenable claim concerning the Targum: “The Aramaic paraphrase is a reasonable interpretation of the verse’s *peshat* [literal sense]”; so, Israel Drazin, *Targum Onkelos to Deuteron-*

The annotations redefine divine punishment and restrict it so that it no longer extends across generations. Instead, it applies only to the guilty, “in their own person” (so, correctly, NRSV).⁶⁷ The paraphrase of the source thus abrogates the source, which now propounds the doctrine of individual responsibility.

In formal terms, the new dispensation represents a studied series of annotations to the original doctrine, cited almost as a scriptural lemma that requires a gloss. In substantive terms, however, far from simply elucidating the lemma, the author of the gloss subverts it. Moreover, there is no formal demarcation between the lemma and

omy: An English Translation of the Text with Analysis and Commentary (Based on A. Sperber's Edition), Hoboken, N.J.: Ktav 1982, 115. In its rendering of Deut. 7:10, Onqelos corresponds closely to the Palestinian Targumic tradition, which has a well-known proclivity for extensive “aggadic” expansions. See the rendering of Deut 7:10 in Michael L. Klein, *The Fragment-Targums of the Pentateuch According to their Extant Sources* (Analecta Biblica 76), 2 vols., Rome: Biblical Institute Press 1980, 1:213, 2:171. For the social and theological context of these additions, see Avigdor Shinan, *The Aggadah in the Aramaic Targums to the Pentateuch*, 2 vols., Jerusalem: Makor 1979, 2:301 (Hebrew). The best edition of Rashi's Commentary on the Pentateuch, citing his classical sources (here noting the correspondence with Targum Onqelos) is Charles Ber Chavel, ed., *Perushe Rashi 'al ha-Torah*, 3rd ed., Jerusalem: Rav Kook Institute 1985–86, 532 (Hebrew). The latter, of course, does not address the exegetical issues discussed here. Finally, despite its midrashic turn, Rashi is correct to follow Targum Onqelos in understanding “to his face” (אָל פָּנָיו) as meaning “in his lifetime” (בְּחַיָּו). An equivalent idiom occurs elsewhere: “Haran died *during the lifetime of* (עַל פְּנֵי) Terah, his father” (Gen. 11:28a, literally, “upon the face of”; cf. Num. 3:4).

⁶⁷ A member of the Spanish school of medieval rabbinic exegesis, Abraham ibn Ezra (1089–1164 C.E.), rejected Rashi's midrashic approach. Ibn Ezra recognized that the issue in Deut. 7:10 is not an opposition between this world and the afterlife but between individual responsibility and vicarious punishment. He correctly, if quietly, saw that the verse contradicts the Decalogue doctrine by restricting judgment to the agent “himself” (לְעַצְמוֹ). See Abraham ibn Ezra, *Commentary on the Torah*, ed. A. Weiser, 3 vols., Jerusalem: Rav Kook Institute 1977, 3:238 (Hebrew). Ironically, ibn Ezra's rendering is almost identical to that of the modern New Revised Standard Version (NRSV). Making allowance for the NRSV's commitment to gender-neutral language, its correct translation (“in their own person”) precisely corresponds to that earlier proposed by ibn Ezra.

its annotation: in effect, the gloss on the lemma is not distinguished from the lemma itself. The revisionist voice of the glossator directly continues, and is equal in authority with, the divine voice of the source. The revision of tradition asserts the originality of tradition. Such learned reworking of authoritative texts to make them sanction the needs of later generations, or to sanction a later interpretation of religious law as having “scriptural” warrant, is more conventionally associated with a much later stage in the history of Judaism (ca. 200 B.C.E. through 150 C.E.). It is evident in the reuse of the Bible in the Dead Sea Scrolls, the book of Jubilees, and in the exegetical midrashim of the rabbinic period, for example.⁶⁸ Classical antiquity also attests a genre of scholastic commentary, formally structured as lemma and gloss.⁶⁹ Deuteronomy’s transformation of the doctrine for transgenerational punishment into one that propounds individual responsibility confirms the sophisticated use of such techniques in ancient Israel.

The authors of Deuteronomy employ two techniques to present their reformulation covertly. The first is lemmatic citation and reformulation, as what purports to be mere paraphrase in fact constitutes a radical subversion of the textual authority of the Decalogue. The new doctrine of individual retribution cites the very doctrine that it replaces, yet does so “atomistically,” selectively redeploying individual words as markers of tradition while breaking down their original semantic reference.⁷⁰ Reduced to a cluster of individual lemmas and then reassem-

⁶⁸ The literature of course is vast. Demonstrating continuities of exegetical technique between biblical and post-biblical reworking of texts is Michael Fishbane, “Use, Authority, and Interpretation of Mikra at Qumran,” in *Mikra: Text, Translation, and Interpretation of the Hebrew Bible in Ancient Judaism and Early Christianity* (Compendia Rerum Iudaicarum ad Novum Testamentum 2:3), ed. Martin J. Mulder, Assen/Maastricht: Van Gorcum; Philadelphia: Fortress 1988, 339–77.

⁶⁹ See H. Gregory Snyder, *Teachers and Texts in the Ancient World: Philosophers, Jews and Christians*, London and New York: Routledge 2000, 75–82.

⁷⁰ *Contra* Joachim Schaper, who reduces to a logical absurdity the premise that the tendentious “exegetical” reworking of a prestigious or authoritative text might either abrogate that text or curtail its authority (“Schriftauslegung und Schriftwerdung

bled in a new context, the older doctrine becomes infused with new content. Citation here seems to function less as an acknowledgement of the authority of a source than as a means to transform that source: to “re-inscribe” that source in a new context that, in effect, restricts and contracts its original authority.⁷¹ The second device is pseudepigraphy, the attribution of a text to a prestigious speaker from the past.⁷² The authors of Deuteronomy do not write directly in their own voice. Instead, they harness the voice of Moses in order, literally and metaphorically, to “authorize” their reformulation of the Decalogue. The risk of discontinuity with tradition is thus paradoxically avoided by attributing the revision of the Decalogue doctrine to the same Mosaic speaker credited with propounding it in the first place. Equally profound trans-

im alten Israel: Eine vergleichende Exegese von Ex 20.24–26 und Dtn 12.13–19,” *Zeitschrift für Altorientalische und Biblische Rechtsgeschichte* 5 [1999] 111–32). The history of interpretation requires a more dialectical model of hermeneutics. In this example, whereby transgenerational punishment is replaced by individual retribution, the latter doctrine finally controls the way that the former one is understood and taught, as the targumic tradition confirms (see next section).

⁷¹ For the same phenomenon in the legal corpus of Deuteronomy, see Levinson, *Deuteronomy*, 46–48.

⁷² See the stimulating analysis of Morton Smith, “Pseudepigraphy in the Israelite Literary Tradition,” in *Pseudepigrapha I: Pseudopythagorica — Lettres de Platon — Littérature pseudépigraohique juive* (Fondation Hardt: Entretiens sur l’antiquité classique 18), ed. Kurt von Fritz, Geneva: Vandoeuvres 1971, 191–215 (with ensuing panel discussion). Both techniques are attested within the Dead Sea Scrolls; see Moshe J. Bernstein, “Pseudepigraphy in the Qumran Scrolls: Categories and Functions,” in *Pseudepigraphic Perspectives: The Apocrypha and Pseudepigrapha in Light of the Dead Sea Scrolls* (Studies on the Texts of the Desert of Judah 31), ed. Esther G. Chazon and Michael Stone, Leiden: Brill 1999, 1–26. Concerned to redress the theological issues raised by false attribution, see David G. Meade, *Pseudonymity and Canon: An Investigation into the Relationship of Authorship and Authority in Jewish and Earliest Christian Tradition* (Wissenschaftliche Untersuchungen zum Neuen Testament 39), Tübingen: J.C.B. Mohr-Siebeck 1986. Discussing pseudepigraphy’s importance for the authority claim of rabbinic literature, see Martin S. Jaffee, *Torah in the Mouth: Writing and Tradition in Palestinian Judaism, 200 BCE–400 CE*, New York: Oxford University Press 2001, 23–25.

formations of ancient Israel's formative canon take place elsewhere in Deuteronomy, especially in its legal corpus (chapters 12–26).⁷³

This radically revisionist Mosaic speaker of Deuteronomy, despite appearances, voices the concerns of Israelite authors who were close contemporaries with Ezekiel (593–573 B.C.E.).⁷⁴ Deuteronomy is set in the distant past, prior to Israel's entry into Canaan (thus, ca. 1200 B.C.E.). Nonetheless, the actual date of its composition (that is, of its literary core) is dated by most scholars to the late seventh century, since Deuteronomy's demand for cultic centralization is viewed as the trigger of Josiah's religious reform (622 B.C.E.; 2 Kings 22–23). Material was certainly added to Deuteronomy during the exile; the instruction concerning divine justice in Deuteronomy 7 likely derives from that later activity.⁷⁵ As Deuteronomy's authors confronted the successive threats of Neo-Assyrian and then Babylonian hegemony, they fashioned a radically new vision of religion and society to enable the nation to survive. In order to sanction that vision, they tied it to the very traditions that were actually displaced. Moses, as prophetic intermediary and textual speaker, here mediates the innovative voice of Deuteronomy's authors.

7. The Interpretation of Divine Justice in the Targum

With the close of the Scriptural canon, texts such as Ezekiel 18 and Deuteronomy 7, whose authors had each earlier struggled obliquely with the authority of the Decalogue, have now themselves won authoritative status coextensive with it. Indeed, in a striking reversal of literary

⁷³ For an analysis of these changes in the areas of sacrifice, the calendar, and the public administration, see Eckart Otto, "Von der Gerichtsordnung zum Verfassungsentwurf: Deuteronomische Gestaltung und deuteronomistische Interpretation im »Ämtergesetz« Dtn 16,18–18,22," in »*Wer ist wie du, HERR, unter den Göttern?*« *Studien zur Theologie und Religionsgeschichte Israels für Otto Kaiser*, ed. Ingo Kottsieper *et al.*, Göttingen: Vandenhoeck & Ruprecht 1995, 142–55; and Levinson, *Deuteronomy*.

⁷⁴ Weinfeld, *Deuteronomy*, 158–78, 244–319.

⁷⁵ A.D.H. Mayes, *Deuteronomy* (New Century Bible Commentary), London: Marshall, Morgan & Scott 1979, 181, 186.

history, these passages now eclipse the Decalogue's doctrine of transgenerational punishment since they mediate its reception and interpretation for later communities of readers. A text from this post-biblical period offers a final strategy for the reformulation of revelation. As Hebrew ceased being spoken by Jews under Persian and then Hellenistic rule, it was gradually replaced by either Aramaic or Greek as the lingua franca. Consequently, translations of the Bible into these new vernacular languages became necessary to serve the liturgical needs of the community.⁷⁶ The Aramaic translation that eventually became dominant in Babylonia during the talmudic period (ca. 200–640 C.E.) is called Targum Onqelos. In the main, it is simple and non-expansive, and commonly regarded as a literal translation of the Hebrew. In translating the Decalogue, however, Onqelos makes several telling additions to the formula for the transgenerational consequences of sin:

... visiting the guilt of the fathers upon the *rebellious* children, upon the third and the fourth generation of those who reject me, *when the children continue to sin as their fathers.*⁷⁷

Like the “Moses” of Deuteronomy 7, the Aramaic Targum presents itself not as a revision or as a new teaching but as the original significance of the Hebrew source text. Nonetheless, by means of their additions, the post-biblical interpreters responsible for Onqelos have God restrict the punishment so that only the guilty, never the innocent, are punished. Only when sinful action is transgenerational — “when the children continue to sin as their fathers” — is the punishment fittingly transgenerational as well. As such, only “rebellious” children are punished, never the innocent progeny of sinful fathers.

⁷⁶ See Emanuel Tov, “The Septuagint,” and Philip S. Alexander, “Jewish Aramaic Translations of Hebrew Scriptures,” in *Mikra*, 161–88, 217–54 (full citation in n. 68 above). On the Targums, see also John W. Bowker, *The Targums and Rabbinic Literature: An Introduction to Jewish Interpretations of Scripture*, London: Cambridge University Press 1969.

⁷⁷ *Tg. Onq.* Exod. 20:5; see A. Sperber, *The Bible in Aramaic Based on Old Manuscripts and Printed Texts: The Pentateuch According to Targum Onkelos*, 5 vols., Leiden: Brill, 1959–73, 1:122 (my translation).

This radical reformulation of the original doctrine amounts to a post-biblical theodicy: the Targum's authors expunge the slightest chance of God's espousing a doctrine of injustice. What the text means, the Targum affirms, is that divine justice requires a notion of individual responsibility. There exists no adequate doctrine of divine justice except as the voice of Yahweh in the Decalogue is heard through and understood to be consistent with Ezekiel's prophetic oracle. In harmonizing the two texts, the authors of the Targum present their exegetical accommodation of the Decalogue to Ezekiel 18 as the literal meaning and original significance of the Decalogue itself. The human voice of exegesis in the Targum thereby creates the divine voice of the Decalogue anew in its own image.

In solving one problem, however, the Targum's revision creates others. If God only punishes those who commit wrongdoing in each generation, then the doctrine of the transgenerational consequences of sin has been entirely vitiated. While the corrected version saves God from committing iniquity, it also makes the original text redundant. What is the logic for even mentioning the generations if it is only individual retribution that operates, no longer transgenerational punishment? The drive to erase the contradiction between transgenerational punishment (Exod. 20:5 = Deut. 5:9) and individual retribution (Ezekiel 18; Jer. 31:29–30; Deut. 7:10), while at the same time preserving the integrity of the Scriptural canon, means that the problematic doctrine is formally retained even as it is substantively repudiated by means of the strategic interpolation. The original doctrine has now been reduced to a lexical shell, devoid of its original content.

In effect the Targum has created a *tertium quid*: transgenerational punishment in the Decalogue is suddenly contingent upon whether each generation involved fails to make the repentance that would abrogate the retribution. With the new formulation, another paradox emerges. The attempt to eliminate the contradiction between the Decalogue and Ezekiel 18 has introduced a new version of the Decalogue consistent neither with the original Decalogue (in substance, since it now asserts individual retribution) nor with Ezekiel 18 (in form, since the prophetic teaching is now revoiced as divine, while Ezekiel's

doctrine of repentance passes unmentioned). Nonetheless, that revisionist transformation of the Decalogue as propounding the doctrine of individual retribution became the halakhic norm, both in talmudic and in medieval exegesis.⁷⁸ Ironically, the very drive to maintain the hermeneutical coherence of the canon has abrogated, both by addition and subtraction, the primary requirement of that canon *not* to innovate, whether by addition or subtraction.

III. Conclusions: The Canon as Sponsor of Innovation

Textual authority was widely challenged and actively debated in ancient Israel. Yet that debate took place in textual terms. The “ingenuity” that, for Smith, warrants the centrality of exegesis to the study of religion thus emerges as a form of creativity that has been insufficiently recognized by the discipline of academic Religious Studies. At issue is a technical facility with texts, the meditative skill of an editor or scribe as a creative manifestation of spirit. The ineluctable connection between religious renewal and textual reworking brings into clear focus the role of the technically trained scribe as the agent of cultural change. The skilled scribe is both thinker and religious visionary; spirit becomes manifest in the scribe’s revision of a text. From the perspective of ancient Israel, therefore, revelation is not prior to or external to the text; revelation is in the text and of the text.

The conceptual breakthrough is grounded in the text; the originality of thought is a consequence of engagement with the textual curriculum; and the break with tradition presents itself in terms of continuity with tradition. Ingenuity here takes the form of literary sophistication: the skill by means of which successive writers were able to conceal the conflict between their new doctrine of individual retribution and the authoritative principle of transgenerational punishment. That ingenuity required striking technical means — dodges both of authorial voice (including devoicing, revoicing, and pseudepigraphy) and of the

⁷⁸ See *b. Ber.* 7a; *b. Sanh.* 27b; *b. Šeb* 39; as noted by Fishbane, *Biblical Interpretation*, 345 n. 72.

scribal craft (including Seidel's law and lemmatic citation and reapplication). This extensive repertoire of sleights of scribal hand suggests the difficulty of innovation in ancient Israel.

Paradoxically, such sophistication also underscores the wide-ranging possibilities of innovation, as Israel's formative canon itself finally sponsors innovation. Nor does the process cease with the canon's closure, as the Targum's reading of individual responsibility into the Decalogue demonstrates. The reworking of tradition presents itself as the original significance of tradition; the challenge to the source is read back into the source; the author renders his own voice silent by attributing that voice to the authoritative source, and thereby emerges all the more powerfully as a true author, thinker, and reworker of tradition. The Torah is radically transformed by the interpretation of Torah.

Tradition itself emerges here as a hermeneutical construction, since the citation of tradition provides a means to rework tradition. Citation does not entail passive deference to the ostensibly authoritative — canonical — source but rather critical engagement with it.⁷⁹ That generalization held true while the traditions of ancient Israel were still taking shape, as when the third person Mosaic paraphrase of transgenerational punishment actually propounds individual retribution (Deuteronomy 7). It also holds true once the canon is closed. In a final turn of the screw, the Decalogue itself — according to the Targum — now propounds individual retribution. Through various genres and periods of rabbinic literature the citation either of a scriptural or of an earlier rabbinic source will mark the transformation or even domination of that source.⁸⁰

⁷⁹ See Bernard M. Levinson, "The Hermeneutics of Tradition in Deuteronomy," *Journal of Biblical Literature* 119 (2000) 269–86 (at 283–86).

⁸⁰ On midrashic citation of scripture as involving transformation of scripture, see Boyarin, *Intertextuality*, 35. On the Amoraic domination of the Mishnah in a *sugya* from the Palestinian Talmud, see Martin S. Jaffee, "The Pretext of Interpretation: Rabbinic Oral Torah and the Charisma of Revelation," in *God in Language*, ed. Robert P. Scharlemann and Gilbert E.M. Ogutu, New York: Paragon House 1987, 73–89.

Similar issues apply to the citation of the Hebrew Bible in the New Testament and at Qumran.⁸¹

Israel's concept of textual authority was thus profoundly dialectical: the break with tradition validates itself in the vocables of tradition. For all the rhetoric of concealment—the impossibility of making innovation explicit or of employing the human voice—the very act of concealment, marked by the deliberate strategies just identified, reveals the innovator—the human author—at work. Notwithstanding its ostensible powerlessness before the authority of the canon, the human voice in ancient Israel was not diminished but augmented. Through its various forms of indirection, it purchased an autonomy sufficient to challenge tradition, sufficient to reject the received understanding of divine punishment and to substitute a new principle of justice. The divine speech of biblical law and prophecy reveals the transformative human voice: the voice of authors, thinkers, writers, passionately engaged with tradition.

The religious creativity of ancient Israel thus poses a challenge to the disciplinary conventions of the science of the History of Religions. It refuses any easy dichotomy between philology and phenomenology, between grammar and spirit, between technical scribal training and religious creativity. The discipline of Biblical Studies receives an equally important challenge. If the History of Religions must come to terms with “text,” so, conversely, must Biblical Studies recognize “meaning” and “spirit” as animating the editorial activity that it seeks to trace in the analysis of syntax and grammar. But the issues extend beyond the academic study of religion.

⁸¹ See Joseph A. Fitzmyer's discussion of “accommodated texts” in “The Use of Explicit Old Testament Quotations in Qumran Literature and in the New Testament” [1960–61], reprinted in *id.*, *The Semitic Background of the New Testament*, Grand Rapids: William B. Eerdmans; Livonia, Mich.: Dove 1997, 3–58 (at 33–45); Elisha Qimron and John Strugnell, *Qumran Cave 4, V: Miqṣat Ma'ase ha-Torah* (Discoveries in the Judaean Desert 10), Oxford: Clarendon 1994, 51, 141 (showing that the citation formula, “it is written,” may refer either to a paraphrase of a text or to no known scriptural text at all); and J.M. Lust, “Quotation Formulae and Canon in Qumran,” in *Canonization and Decanonization* (see n. 2 above), 67–77.

By challenging disciplinary conventions of both method and theory, the paradoxical structure of textual authority in ancient Israel opens out to the humanities. Except for a rather uncontrolled interest in post-biblical rabbinic midrash, which has come to be heralded as a model of textual indeterminacy and deconstructive reading, contemporary theory has all but divorced itself from the study of scripture, from thinking in a sophisticated way about religion. The biblical text, in particular, is regarded as a parade example of an unredeemed text that encodes and perpetuates concepts of power, hierarchy, domination, privilege, xenophobia, patriarchy, and colonialism. The truth is much more complex. The difficulty is that the broader university community is woefully uninformed about how to read the Bible critically, historically, and intellectually. The loss of an historical and of a philological approach to scripture, and the divorce of contemporary literary theory from Biblical Studies and Religious Studies, has transformed the scriptural text into a golden calf, lacking in intellectual complexity, awaiting theory for its redemption.

Once viewed adequately, however, the scriptural canon itself deconstructs the false dichotomies that are repeatedly projected on to it. Theory does not bring hermeneutics or revisionist reading to the ancient text; the text invites the capable reader to recognize the theory latent in it. The canonical text arises from and sustains its own history of reception and interpretation. Although chronologically prior, the canonical source is not ontologically prior, since the past is rethought and interpreted from the vantage point of the present. The authoritative source thus reveals hermeneutics. If canonization conventionally represents an anthologizing attempt to gain closure, then the texts of the Hebrew Bible militate in the opposite direction. They resist any simple notion of canonical authority or of Scripture as one-sidedly divine. They tolerate no such hierarchies or binary oppositions. Properly understood, the canon is radically open. It invites innovation, it demands interpretation, it challenges piety, it questions priority, it sanctifies subversion, it warrants difference, and it embeds critique. "You must not

add anything to what I command you nor take anything away from it.”⁸²

Department of Classical
and Near Eastern Studies
University of Minnesota
305 Folwell Hall; 9 Pleasant Street S.E.
Minneapolis, MN 55455–0125
<levinson@tc.umn.edu>

BERNARD M. LEVINSON

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