How God became a lawgiver

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

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

1. The idea of divine laws in Biblical studies
The Torah is God’s law. This conception arises particularly from the 58 biblical chapters between Exodus 19 and Numbers 10 in which Israel stands at Mount Sinai and Moses receives from God its laws for his people. God’s very first speech-act in the Torah, wherein God addresses newly created
humanity in the context of the creation of the world – “Be fruitful and multiply!” (Gen 1:28) – is also a commandment. This clearly reinforces the biblical presentation of God as a lawgiver. Exodus 31:18; 32:16 and Deuteronomy 9:10 even go so far as to describe the first tablets of the law that Moses received on Mount Sinai as written by the “finger of God” himself. However, this “theograph” did not last long; Moses broke the first version of the tablets as soon as he came down from the mountain – a remarkable inner-biblical criticism toward a fundamentalist understanding of the law: a divinely authored text does not exist in material terms.

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

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laws – see, e.g., Rémi Brague\(^5\), Frederick Naiden\(^6\), and Christine Hayes,\(^7\) – their focus is not on the legal or intellectual history of the emergence of the notion as such.\(^8\)

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

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11 Albrecht Alt, *Die Ursprünge des israelitischen Rechts* (Leipzig: Hirzel, 1934). See in his tradition, e.g., Jörn Halbe, *Das Privilegrecht Jahwes Ex 34,10–26: Gestalt und...
the bedrock of ancient Israel’s legal history; legal historical developments of a “theologisation” could not come into view within this approach. Against Alt, the strict distinction between Israel and Canaan and the idea of a specific nomadic legal tradition can no longer be maintained. Even texts such as Exodus 34:18–26, which have long been regarded as very ancient, are today rightly determined to be an epitome of Exodus 23:14–19. Third, Pentateuchal scholarship has changed dramatically over the past four decades. The notion of continuous sources, which already included legal collections, has largely been abandoned in favour of a more complex picture of long-term literary growth from smaller units to more extensive literary blocks. One can and must therefore ask anew about the emergence of the Torah as divine law.

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

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12 See Berend Meyer, Das apodiktische Recht, BWANT 213 (Stuttgart: Kohlhammer 2017).
13 See also Julius Wellhausen, Prolegomena zur Geschichte Israels, 3rd ed. (Berlin: Reimer, 1886), 411, 413.
14 See with many others Erhard Blum, Studien zur Komposition des Pentateuch, BZAW 189 (Berlin: de Gruyter, 1990), 69f.; Shimon Gesundheit, Three Times a Year: Studies on Festival Legislation in the Pentateuch, FAT 82 (Tübingen: Mohr Siebeck, 2012), 12–43.
2. Ancient Near Eastern law collections and their anchoring in the sphere of the Divine

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

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

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

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19 See also Otto, “Study of Law,” 399.
King Yaḥdun-Lim of Mari we find the following dedication to the sun god Šamaš:

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

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

3. Biblical law as Divine law

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

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

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

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

The Holiness Legislation begins with the following introduction:

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

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

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

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

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

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

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

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\(^{25}\) See Norbert Lohfink, “Das Deuteronomium: Jahwegesetz oder Mosegesetz?” ThPh
65 (1990): 387–391; Idem, Studien zum Deuteronomium und zur deuteronomistischen
Literatur III, SBAB 20 (Stuttgart: Katholisches Bibelwerk, 1995), 157–165. See also
36–54.

\(^{26}\) See Eckart Otto, “Wandel der Rechtsbegründungen in der Gesellschaftsgeschichte des
Antiken Israël: Eine Rechtsgeschichte des ‘Bundesbuches’. Ex XX,22–XXIII,13,” StB
421–427; Idem, Deuteronomium 1,1–4,43, HThK.AT (Freiburg: Herder, 2012), 231f;
Brent A. Strawn (Oxford: Oxford University Press, 2015), 68–77; Ludger Schwienhorst-
Schönberger, Das Bundebuch (Ex 20,22–23,33): Studien zu seiner Entstehung und
Theologie, BZAWS 188 (Berlin: de Gruyter, 1990).

\(^{27}\) See Reinhard G. Kratz, Die Komposition der erzählerischen Bücher des Alten
Testaments, UTB 2157 (Göttingen: Vandenhoeck & Ruprecht, 2000), 145–150;
Wolfgang Oswald, “Die Exodus-Gottesberg-Erzählung als Gründungsurkunde der
judäischen Bürgergemeinde,” in Law and Narrative in the Bible and in the Neighbouring
Ancient Cultures, ed. Klaus-Peter Adam et al., FAT II/54 (Tübingen: Mohr Siebeck,
of a common ancient Near Eastern legal tradition whose legal sentences are formulated in the usual casuistic “if” (kî respectively for subcases ’im) – “then” (continuation in imperf.) form.\textsuperscript{28} They can be characterized as a provincial reception of the cuneiform legal tradition.\textsuperscript{29} The shaping of the Covenant Code as divine law is the result of an interpretive process that reshaped the older, ANE-rooted legal tradition, which was not yet conceived as God’s law. This secondary interpretation is accompanied by the narrative integration of the Covenant Code into the context of the Sinai pericope, which now allows its laws to be revealed by God in this holy location.\textsuperscript{30}

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

\begin{itemize}
\item \textsuperscript{28} Edenburg, “Book of Covenant,” 158–160.
\item \textsuperscript{32} Schmitt, “Altargesetz,” 273.
\end{itemize}
Another clue comes from the close contact of Exodus 20:24 – the so-called law of the altar – with Deuteronomy 12:13f. If one holds to the (disputed) late preexilic dating of the Deuteronomic Law, this would mean that the divine-legal shaping of Exodus 20:24, which possibly already functioned as the introduction to (an earlier version of) the Covenant Code, should be dated prior to Deuteronomy and thus probably belongs to the late 8th or early to middle 7th century BCE.

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


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

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

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


39 See Reinhard Müller, “Treue zum rettenden Gott: Erwägungen zu Ursprung und Sinn des Ersten Gebots,” ZThK 112 (2015): 403–428, here 408n28. The fact that Yhwh can already be presupposed as the state-god in the Northern Kingdom in the 9th century BCE is attested in the Mesha Stele (TUAT I/6, 649 ln. 18).


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

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


history of the ascent of Yhwh to the “highest God.” The conceptions of God as king with solar connotations can be found, e.g., in Ps 104 (see especially v. 1f., 22f.), but also in Ps 5:2–4. Besides Mal 3:20 (“sun of righteousness”), the solarization of Yhwh is explicitly stated in Ps 84:12:

“For the sun and shield is Yhwh Elohim.”

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

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

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47 See Kutter, nūr ilī, 393; see also Bernd Janowski, Rettungsgewissheit und Epiphanie des Heils: Das Motiv der Hilfe Gottes “am Morgen” im Alten Orient und im Alte Testament, Bd. 1: Alter Orient, WMANT 59 (Neukirchen-Vluyn: Neukirchener, 1989), 188.

48 See Kutter, nūr ilī, 400–403.

49 See Kutter, nūr ilī, 406f.

50 See Reetakaisa Sofia Salo, Die jüdische Königsideologie im Kontext der Nachbarkulturen: Untersuchungen zu den Königspsalmen 2, 18, 20, 21, 45 und 72, ORA 25 (Tübingen: Mohr Siebeck, 2017), 242n179.

51 See Hos 6:5; Zeph 3:5; further Gen 32:23–33; Numbers 25:4; Judges 19:14–26; Exodus 17:8–16; Josua 10:12f; Judges 9:33; 1Samuel 11:9–11. See on this Kutter, nūr ilī, 373–376. The onomasticon in Judah also reflects this solarization, see Kutter, nūr ilī, 355f, 383, 413.

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

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

54 See Janowski, Rettungsgewissheit, 84–90; Arneth, Sonne, 109–170; Kutter, nūr īlī, 34–71; Salo, Königsideologie, 239–245.
What triggered the subversive interpretation of Neo-Assyrian vassal treaties in Deuteronomy? Since the finds from Tell Tayinat, there is empirical evidence that the system of vassal contracts was also used in the west of the Neo-Assyrian empire.\(^{58}\) It can be assumed that Manasseh, king of Judah, was also a tributary to the Neo-Assyrian Great King.\(^{59}\) After the fall of the Northern Kingdom in 722 BCE, but especially with the internal disintegration of the Neo-Assyrian power and the decline of its influence on the periphery of the Assyrian empire at the end of the 7th century BCE, the circles behind Deuteronomy seem to have seized the opportunity to replace the position of the Neo-Assyrian king with his demands for loyalty by Yhwh. It is easily conceivable, even probable, that there was a separate vassal treaty for Judah, probably in Aramaic, which provided the spiritual structure for the theological treaty model of Deuteronomy.\(^{60}\)

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

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61 See Kratz, Komposition, 145–155; Köckert, “Gesetz”.
and self-motivation of their addressees.\textsuperscript{62} However, the fundamentally utopian character of biblical legislation needs to be stressed. According to its ancient Near Eastern models,\textsuperscript{63} it served – at least in the literary framework of the Pentateuch – above all as the royal propaganda of its god – the world king Yhwh.

\section*{Bibliography}


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


