

Exodus 22:6-8 and the Question of the Authority of the Law in the Bible and the Ancient Near East

Matthew Monger

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Table of Contents

| | |
|---|----|
| Abbreviations..... | 3 |
| 0.0 Introduction..... | 4 |
| 0.1 Methodology..... | 5 |
| 0.2 Inspiration..... | 6 |
| 0.3 A Brief History of Research | 7 |
| 1.0 Exodus 22:6-8 and the Book of the Covenant | 8 |
| 1.1 Translation, Philological, Social and Historical Notes on Exodus 22:6-8 | 8 |
| 1.1.1 Translation | 9 |
| 1.1.2 Textual, Philological, Social and Historical Notes | 9 |
| 1.1.3 Interpretation | 20 |
| 1.2 The Form of the Laws in the Book of the Covenant and CH | 22 |
| 1.2.1 Casuistic and Apodictic Laws in the Book of the Covenant | 22 |
| 1.2.2 Law Forms in Codex Hammurabi | 23 |
| 1.2.3 Comparison of Law Forms in The Book of the Covenant and CH..... | 25 |
| 1.3 The Literary Structure of Ancient Law Codes | 27 |
| 1.3.1 The Structure Book of the Covenant | 27 |
| 1.3.2 The Framework of Ancient Near Eastern Law Codes..... | 29 |
| 1.3.3 The Book of the Covenant as the Framework for an Ancient Near Eastern Law Code | 31 |
| 1.4 The sources the Book of the Covenant..... | 34 |
| 1.4.1 Israel Internal Sources | 35 |
| 1.4.2 Ancient Near Eastern Sources | 36 |
| 1.5 Conclusions | 43 |
| 2.0 The Authority of the Law..... | 43 |
| 2.1 Legal Systems in the Ancient Near East and Israel and their Use of the Law Codes | 44 |

| | |
|--|----|
| 2.1.1 The Legal System of Ancient Babylon | 44 |
| 2.1.2 The Legal System in Ancient Israel | 47 |
| 2.1.3 The Use of the Book of the Covenant and Codex Hammurabi | 48 |
| 2.2 The Purpose of the Internal Structure of the Law Codes..... | 50 |
| 2.2.1 Codex Hammurabi..... | 50 |
| 2.2.3 The Book of the Covenant | 54 |
| 2.3 The Ideological Orientation the Book of the Covenant and CH..... | 56 |
| 2.4 Conclusion: The Authority of the Book of the Covenant | 60 |
| 3.0 Literature..... | 62 |

Abbreviations

- BDB F. Brown, S.R. Driver and C.A. Briggs, *A Hebrew and English Lexicon of the Old Testament*. (Peabody: Hendrickson, 1906).
- CAD *The Assyrian Dictionary of the Oriental Institute of The University of Chicago*. 21 Volumes, eds. A. Leo Oppenheim and Martha Roth. Chicago: The Oriental Institute, 1964 -
- CH Codex Hammurabi
compl. Ludwig Koehler and Walter Baumgartner (Leiden: Brill, 1994 – 2000).
- HALOT *Hebrew and Aramaic Lexicon of the Old Testament, CD-ROM edition*
- LXX Septuagint
- MT Masoretic Text
- OB Old Babylonian (dialect of Akkadian)
- SAM Samaritan Pentateuch
- TDOT *Theological Dictionary of the Old Testament (15 volumes)*, ed. G.J. Botterweck and H. Ringgren (Grand Rapids: Eerdmans, 1974 -).
- TWOT Harris, R. Laird, ed. *Theological Wordbook of the Old Testament*. Chicago: Moody Press, 1980.

0.0 Introduction

The Book of the Covenant (Exodus 20:22-23:33) gives us a unique look into the judicial situation of the ancient Israelites. Studies in the Book of the Covenant reveal an understanding of the legal system of ancient Israel as well as the cultural background in which that legal system was practiced. These findings also give information that can be compared with the legal situation in other areas of the ancient Near East, which help us to understand how Israel was similar to and different from other places. In comparison with other ancient Near Eastern documents, especially Codex Hammurabi (CH), the Book of the Covenant does not appear to be a special invention of the Hebrew people. Rather, there are remarkable similarities between the texts of the two law codes. The question is, however, what do these similarities mean and how can they be explained? The answer to this question will be looked at here.

Another question that is quite relevant in this setting is why do these law codes that have such different cultural situations have the authority that they possess? Especially interesting here is the way in which the law is seen as authoritative. Any law must have a certain authority connected to it in order to function, whether that authority is connected to a political, religious or social power. The translation of Exodus 22:6-8 is an interesting example. Translators have often chosen to translate the MT הַשֹּׁפְטִים in these verses as *judges* based on an understanding of the judicial system and references in the Targumim.¹ But this betrays a completely different understanding of the authority of the Law and legal situation than a translation that reads *God*. Thus, the translation of such passages is intertwined with the understanding of the authority of the Law in ancient Israel, and the authority of the Law must be seen as expressed in the Book of the Covenant.

This thesis is an examination of Exodus 22:6-8 and parallels in Codex Hammurabi with a special focus on what it has to say for the question of authority. The purpose such an examination is to gain a greater understanding of the text of Exodus 22:6-8 and other passages of the Book of the Covenant, as well as understanding the authority of the Biblical law code.

¹ See discussion below in section 1.2 note 8.

My understanding is that the Book of the Covenant must be viewed and interpreted as it appears in its highly redacted literary framework as compared with similar cuneiform law codes. The syntactic and literary evidence can help us to understand what stands out in Israelite law, because it is so similar to the other law codes of the ancient Near East. These similarities will be discussed below, as will the differences, and what they have to say about the unique nature of Israelite Law.

0.1 Methodology

This thesis consists of two main parts, the first part is an exegesis of Exodus 22:6-8. In this section I will be highlighting the syntactic, semantic, literary and functional parallels the text has with cuneiform law. At the same time I will be examining the differences that arise in comparison with other similar laws from the CH. I will be using modern techniques of historical-critical study in this undertaking: textual criticism, form criticism, source criticism, redactional criticism and literary criticism. Through this study, I will establish the case for understanding the Book of the Covenant as an ancient Near Eastern law code, and show how it is related to CH.

Section 1.1 provides a textual analysis of Exodus 22:6-8 – a translation with philological, social and historical notes. Section 1.2 is a form critical comparison of the laws in the Book of the Covenant and CH. Section 1.3 focuses on the literary structures of the two ancient law codes, while section 1.4 deals with the question of CH as a source for the Book of the Covenant. Section 1.5 is a summary of the findings throughout the first part of this thesis.

In the second part of this thesis, I will look at the evidence gathered evaluating how the forms and structures of the law codes reflect their understanding of the authority of the law. Here I will also rely on comparative evidence from cuneiform law, especially CH, as well as cultural information on the legal systems of Babylon and Israel. Using this evidence, I will argue that both biblical law and cuneiform law are products of their social and literary contexts, and that the idea of the authority of the law is deeply rooted in that context.

Section 2.1 describes the legal systems of ancient Babylon and ancient Israel and how they take use CH and the Book of the Covenant, respectively. Section 2.2

discusses the implications of the internal structure of the law codes and the forms of the laws. Here, the purpose of the law codes is discussed. Section 2.3 looks at the differences between the ideological standpoint of the Book of the Covenant compared with CH, and discusses the ideological orientation that is specific for the Book of the Covenant. Section 2.4 concludes the thesis, looking at how the understanding of the law code as a whole affects the reading of Exodus 22:6-8.

Verses quoted are the Hebrew verse numbers, not the English. I have used the text of Biblia Hebraica Stuttgartensia and the translations are my own where nothing else is noted. Quotes from CH are my own translations, but I have often consulted the translations in Roth² to insure accuracy. Original Akkadian texts are taken from Borger's edition.³ Denotation follows the stela version of CH found at the Louvre Museum in Paris, with column and line numbers. Any mistakes in the translations are purely my own.

0.2 Inspiration

My personal inspiration for this thesis began during my Akkadian studies at the University of Oslo (2007-2008) where I was constantly amazed at the parallels between CH and the Hebrew Bible. As I read more and more Akkadian, I saw more and more similarities, in form and in meaning, especially in the section of the Book of the Covenant often called the Mishpatim. I felt, however, that this high amount of parallels was often written off as coincidence based in the common legal situation. In addition, the parallels spoken of were generally only the obvious ones, such as the goring ox (Exodus 21:28-32). I felt that other texts, such as Exodus 22:6-8⁴ had very interesting thematic and linguistic parallels that were left unexplained. This led me first to an analysis of this passage, which I felt was highly connected to CH, not only to a common Near Eastern law. What I found most enticing in this text was the understanding of authority. It seemed as though the fundamental difference

² (Roth 1995, 71-142)

³ (Borger 1979)

⁴ This is admittedly a difficult parallel, without the simple direct correspondences that the laws of the goring ox and others have. I do, however, see clear parallels to CH here, as will be discussed below in section 1.5. Carol Meyers, sees this as a strong enough parallel to say "such correspondences suggest a direct textual dependence of the Exodus rulings on the Code of Hammurabi." (Meyers 2005, 184)

between the legal device of CH and the Book of the Covenant was different. Thus, my investigation here is in the area of the authority of the law as seen in the Book of the Covenant and CH.

0.3 A Brief History of Research

Research in the area of the Book of the Covenant is too expansive to cover here. I will present the basic lines here, especially the developments that have come in the 1900's, where activity increased a great deal.

Modern study of the Pentateuch begins with Wellhausen's documentary hypothesis presented first in 1883. Here, the Book of the Covenant is presumed to be part of the E (Elohist) source because of the understanding of the development of the cultic laws in Exodus 20:24-26;23:10-19 in relation to Deuteronomy 12.⁵ After the discovery and subsequent translation of CH in 1902, the Book of the Covenant was "no longer considered as the literary creation of the Elohist but as the end product of a traditio-historical process."⁶

The next great breakthrough in the study of the Book of the Covenant came with A. Alt's form-critical study.⁷ Here, he distinguished between the different forms of laws found in the Book of the Covenant, and begins the discussion into where the different types of laws originate. Alt's findings are discussed below in section 1.4.1.

Shalom M. Paul expanded the study of the connections with ancient Near Eastern law to include the literary structure of the Book of the Covenant.⁸ His findings are influential here and are discussed more fully in section 1.3

More recently, the discussion has gone in different directions. Raymond Westbrook has led the study of a "legal model" of the Mishpatim in which the law code builds upon precedence and legal reform to come to the form that is has now.⁹ Otto¹⁰, on the other hand, has focused on the socio-historical developments in Israel to give a

⁵ (Van Seters 2002, 8)

⁶ (Van Seters 2002, 8)

⁷ (Alt 1934)

⁸ (Paul 1970)

⁹ See (Jackson 2006, 10-16)

¹⁰ (Otto 1988)

model of how the different areas of Israelite law came to be combined in one document.¹¹

David P. Wright¹² and John Van Seters¹³ have taken a different approach to the study of the Book of the Covenant, seeing the connections between CH and the laws of the Book of the Covenant in a more positive light.¹⁴ Their goals and conclusions are quite different, but both view CH as a more important source for the Book of the Covenant than other scholars have.

This present work is an attempt at combining the different areas of study of the Book of the Covenant in order to look at the question of the authority of the Law. The form critical, literary critical and source critical methods are all employed in order to see if all areas of the composition are comparable with CH.

1.0 Exodus 22:6-8 and the Book of the Covenant

My starting point for this thesis is in the text of Exodus 22:6-8. Therefore, I will begin with an analysis of the text here. After a translation with textual, philological, social and historical notes, follows an interpretation of this text. Section 1.2 takes a starting point in Exodus 22:6-8 to look at the forms of laws in the Book of the Covenant as compared with CH. Section 1.3 looks at the literary structure of the Book of the Covenant as a whole in the context of the ancient Near East. Section 1.4 looks at the evidence for viewing CH as a primary source for the Book of the Covenant. Section 1.5 is a summary of the information presented in the first 4 sections and draws conclusions as to the nature of our text.

1.1 Translation, Philological, Social and Historical Notes on Exodus 22:6-8

I have chosen to integrate textual, philological, social and historical notes into one section due to the brevity of the text. The notes appear in the order in which they occur in the text. Following the notes is an interpretation of the verses as a whole.

¹¹ See below 1.4.1

¹² (Wright 10 (2003))

¹³ (Van Seters 2002)

¹⁴ See below 1.4.2

1.1.1 Translation

6 When₁ a man₂ gives₃ silver₄ or goods to his neighbor₅ for safekeeping and it has been stolen away₆ from the man's house – if₇ the thief is found, he shall repay double. 7 If the thief is not found the owner of the house shall be brought before God₈ to swear₉ that he did not stretch out his hands to his neighbor's property. 8 In all matters of misappropriation₁₀ concerning an ox, an ass, a sheep, a garment or any lost thing about which someone says "This is it" - The case of the two parties shall come before God₁₁. He whom God declares guilty₁₂ shall repay double₁₃ to his neighbor.

1.1.2 Textual, Philological, Social and Historical Notes

1) MT וַיִּשְׁׁ can function as a demonstrative particle, bearing the meaning of *yes, indeed, truly* or as a conjunction bearing roughly the meaning of English *when, if* or *that*.¹⁵ In the Book of the Covenant there is a systematic pattern of usage for וַיִּשְׁׁ and the semantically similar וַיִּשְׁׁ. Here, וַיִּשְׁׁ is used to introduce the protasis of conditional sentences, while וַיִּשְׁׁ is used in subsequent secondary phrases.¹⁶ Evidence of this is seen in this verse, where וַיִּשְׁׁ introduces the main sentence while וַיִּשְׁׁ introduces subsequent sentences that provide further conditions. BDB explains that "וַיִּשְׁׁ has a force approximate to *if* though it usually represents a case more likely to occur than וַיִּשְׁׁ."¹⁷ This is a syntactic feature quite unique to the casuistic laws of the Book of the Covenant. Elsewhere in the Hebrew Bible, וַיִּשְׁׁ can have a wide range of meanings, as mentioned above. The systematic use here serves the purpose of distinguishing between the main law, introduced by וַיִּשְׁׁ and the secondary stipulations introduced by וַיִּשְׁׁ. This is exemplified in the framework of the current text: The main sentence provides the initial situation that must take place for the law to be in effect, and the secondary sentences provide different conditions, which cannot all take place. In CH and other law codes in OB, the conjunction *šumma* is used for both the main clause

¹⁵ (Holladay 2000, 155)

¹⁶ HALOT s.v. וַיִּשְׁׁ cf. (Waltke 1990, 637)

¹⁷ BDB 473

and subsequent subordinate clauses.¹⁸ It can be represented using one of the syllabic permutations or by the logogram MAŠ,¹⁹ meaning *if*. Interestingly, *šumma* can also function as the adverb *when, now, truly*; corresponding to the Hebrew כִּי. In CH it is most likely a similar situation to the Book of the Covenant, *šumma* being the introductory element to a conditional clause. To distinguish between כִּי and אִם in translation, I use *when* for כִּי and *if* for אִם.²⁰

2) MT אִישׁ can refer to both man and mankind.²¹ Conceptually, אִישׁ distinguishes between man and אִשָּׁה *woman* on the one hand and *adult man* and יָלֵד *child* or נַעַר *youth*. אִישׁ is used over 2000 times in a range of contexts. In our context, it may be implicit in the term that this is concerning free, adult, Israelite²² men. The argument for social classes is strengthened in that there were different titles for different social groups used in Israel. In the Book of the Covenant alone we find mention of אִישׁ *man* (21:26, et al.), עֶבֶד עִבְרִי *a Hebrew Slave* (21:2), עֶבֶד מִצְרַיִם *male slave* (21:20, et al.), אִמָּה *female slave* (21:20, et al.) גֵּר *stranger* (22:20, et al.), אִלְמָנָה *widow* (22:21, 22:23) and יָתוּם *orphan* (22:21, 22:23).

It is clear that the Book of the Covenant sees a distinction between אִישׁ on the one hand and עֶבֶד עִבְרִי and אִמָּה on the other. This is quite obvious in several laws, one example being the goring ox in 22:28-32. V.28 reads "And if an ox gores a man אִישׁ or a woman אִשָּׁה to death, the ox shall be stoned and its flesh shall not be eaten; but the owner of the ox shall go unpunished." While v.32 reads "If the ox gores a male slave עֶבֶד or a female slave אִמָּה, the owner shall give his master thirty shekels of silver, and the ox shall be stoned." So it seems that the laws distinguish between the classes of free and slave. In addition the stranger, orphan and widow are singled out as needing special protection (22:21-22). Here, as in Deuteronomy, these groups are singled out as needing extra help, such as gleaning the fields after the harvest (Deut. 24:19) and tithing (Deut. 26:12). This would correspond to the

¹⁸ Cf. CH 9-12 as one large conditional clause. The situation is that of missing property found with a third party. Stipulations are given for each situation for how the property came to be with the possessor. Each new stipulation is introduced with *šumma*. Cf. discussion below 1.4.2.

¹⁹ (Huehnergard 2005, 534)

²⁰ A further discussion of conditional clauses follows in 1.3.2 below.

²¹ Cf. TDOT I, 222-235

²² Cf. discussion on the Hebrew יִשְׂרָאֵל in note 5 below

evidence from cuneiform law, especially CH which has a complex social class system that requires different laws depending on the classes of the parties involved.²³

I see two ways of dealing with this information. The first is that these groups are simply those who need additional laws because of their status within Israelite society. They were not excluded from the main body of laws of the Book of the Covenant, but rather needed some points of clarification or protection that others did not need. The other possibility is that these groups were in fact subject to differing levels of judicial protection. Free men were protected by stricter laws than the slaves, who were likewise on a different level than the stranger, widow or orphan. The latter seems to be likely as the slaves and men are mentioned with different punishments to the same crimes. CH has a clear social class system that offers different punishments depending on the class of the victim and/or perpetrator, so this idea is not foreign to ancient Near Eastern law. The use of **וְאִישׁ** in the Book of the Covenant is thus reflective of the Israelite male governed by the covenant.²⁴

3) MT **יִהְיֶה** is the imperfective third person masculine singular. Waltke & O'Connor connect the use of the imperfective in conditional sentences with the use of the imperfective to express the irreal mode.²⁵ The imperfective can, when combined with a particle of contingency, represent a situation that only comes about through in certain situations. The verbal form of conditional sentences is discussed more fully below.

4) MT **כֶּסֶף** can mean both *silver* and *money*. Semantically, it is more likely that *silver* was the original meaning and that the meaning *money* came about by analogy because of the use of silver to mint coins.²⁶ In this case it is not important whether the silver that was deposited was meant as silver metal or money, as both have the same value in the system of weights and measures. Silver was used as form of payment for among other things, slaves (Genesis 17:27), property (Genesis 23:15,16) and food (Genesis 42:25). It was also used to describe the metal in the form of jewelry (Genesis 24:53), idols (Exodus 20:23) and various other items.

²³ See (Van De Mieroop 2007, 114) on the class system in CH.

²⁴ Cf. note 5, below

²⁵ (Waltke 1990, 510-511)

²⁶ (De Vaux 1961, 206-209)

5) MT רֵעֵהוּ *his neighbor*. Durham argues that neighbor here refers to “as at other places in Exodus (cf. 2:13; 20:16-17; 21:14) a fellow Israelite, one bound by the same covenant to Yahweh...”²⁷ Kellermann argues that the original denotation was “a member of one’s own tribe...”²⁸ though usage can cover everything from countryman to another (undetermined) person. The question here is to what degree this law text would be valid vis-à-vis a neighbor (person) who was not a fellow Israelite bound by the covenant. The cited texts from Durham, especially 2:13 where two Hebrews are addressed, make a good case for the usage here. It is, in fact, possible to interpret רֵעֵ in the book of Exodus as a whole as referring to fellow Israelites. It is used 19 times in Exodus, always in a context that makes sense as referring to two Israelites rather than one Israelite and one foreigner. The use here, as otherwise in the Book of the Covenant (Exodus 21:14,18,35; 22:6,7,8,9,10,13,25) seems to reflect the usage in Exodus 18:16, where Moses appoints leaders to judge over the disputes of Israel,²⁹ between a man and his neighbor רֵעֵהוּ.

6) MT וְנִגְבָּ. Sam. reads וְנִגְבָּ (niphal); 4Qpaleoexodus reads וּנְגַב. There is very little distinction between the meanings of the two: *to be stolen* in niphal and *to be stolen away* in pual³⁰ I follow MT here.

7) MT אִם Cf. note 1. This introduces the subordinate clause which provides the first option for dealing with the situation described above. The second possible situation is introduced by אִם at the beginning of v.7.

8) MT הַאֱלֹהִים. Targum³¹ Onqelos רִיבֵינֵי, Targumim Psuedo-Jonathan and Neofiti רִיבֵינֵי, LXX τοῦ θεοῦ. The translation of הַאֱלֹהִים here is difficult. Houtman gives three possibilities for interpretation.³² The first possibility is that הַאֱלֹהִים in this context means that the parties are required to appear before judges. This is supported by Childs who interprets this as “older language” saying: “The older language ‘before

²⁷ (Durham 1987, 325)

²⁸ TDOT XIII, 526

²⁹ Cf. note 8 below

³⁰ HALOT s.v. נִגַב cf. BDB p.170

³¹ Use of the Targumim here as textual evidence is supported by the traditional use of the targumic translation. Neither MT nor LXX supports reading *judges*, even though this is a well known interpretation. The Talmudic interpretation follows the Targumim, cf. (Freedman 1935, 247).

³² (Houtman 2000, 197)

God' = at the sanctuary, has been retained."³³ This is also backed by the further use of the same term in v.8, where both parties are to appear before **הָאֱלֹהִים**, and pay according to what **אֱלֹהִים** decides.³⁴ *Judges* is also supported by the readings in the three Targumim to Exodus 22. Targum Onqelos reads **דִּיִּינִיא**, Targumim Psuedo-Jonathan and Neofiti read **דִּיִּינִיא**. Houtman rejects this position saying that the current context requires a decision by (a) God because there is no obvious solution for the judges to make. Propp argues against this position saying that modern scholarship would never accept the translation of **אֱלֹהִים** as human judges,³⁵ based on the overwhelming use of the term in a religious, divine sense in the Bible.

Childs' argument, with the targumim that this is older language referring to judges is attractive here, but only inasmuch as the judges are directly connected to a certain cultic site or religious function. Although I think Childs' argument of this being older language is entirely plausible, it is difficult and dangerous to build an argument for the definition of an otherwise widely attested lexeme on the evidence from two dubious verses. In addition, the LXX reads **τοῦ θεοῦ**, *God* in the singular, bearing witness to the tradition for understanding the divine here. An interpretation of **הָאֱלֹהִים** as strictly meaning *judges* is therefore difficult here.

Houtmans's second option is that **הָאֱלֹהִים** refers to the local shrine or sanctuary. This locative reference would expand the meaning of **הָאֱלֹהִים** to include the place where God is worshiped. This sort of analogy is quite common, a place being called after the person or entity connected to that place. Durham reports that **קָרַב** is used in the hiphal in a highly specialized cultic sense, meaning to draw near to God with an offering, being used 89 times in Leviticus and 49 times in Numbers.³⁶ He compares the use of the Niph'al here with Exodus 16:9-10, 1 Sam 14:36-37 and Deut 5:27, all Qal, where the meaning is to draw near "to a place of theophany."³⁷ These arguments do make a case for understanding the combination of drawing near to God as approaching a place where God is present, or makes his word known. This

³³ (Childs 1974, 475)

³⁴ Cf. note 10 below

³⁵ (Propp 2006, 246)

³⁶ (Durham 1987, 326)

³⁷ (Durham 1987, 326)

option is plausible in the current context, as well as in v.8, where Houtman points out that the judgment of **הַאֱלֹהִים** must then come from a “representative of God, a priest or another cultic official.”³⁸ This is not problematic. To expect that a priest or cultic official was seen as bearing the authority to contact a god and receive a divination or judgment is not a foreign concept. In the Hebrew Bible, this is evident in passages such as Numbers 5 and Exodus 18, discussed further below.

Houtman’s third suggestion for interpretation is that **הַאֱלֹהִים** refers to household deities. Houtman defends this position saying that

The household gods are uniquely qualified to pass judgment on what happens in and around the house. They are familiar with what happens there (22:7) and know what belongs to the house and what not (22:8). Therefore, a master of the house who acts deceitfully invites doom upon himself. He can no longer feel secure in his own home.³⁹

Houtman further defends this position by connecting the context envisaged here to pre-monotheistic Israelite polytheism. He claims that “Exod. 21:6; 22:7f. are to be regarded as rudiments of folk religion, more specifically of family worship, which are preserved in the documents of Israel’s official worship.”⁴⁰ His argument is that these remains of older religion survived the redaction process that left the Pentateuch largely monotheistic only because the term **הַאֱלֹהִים** had come to be interpreted as meaning *judges*.⁴¹

This argument needs a bit of clarification. It seems that Houtman actually is interpreting two layers of semantic meaning in the term **הַאֱלֹהִים** seeing the original context as most likely being the household deities that were a part of Israelite folk religion. On the next level, the term has been reinterpreted not to mean something polytheistic, but rather as a socio-religious term referring to judges, almost certainly acting on the behalf of God. This, then, explains why this text that Houtman interprets as polytheistic made it through the redaction process.

³⁸ (Houtman 2000, 197)

³⁹ (Houtman 2000, 197)

⁴⁰ (Houtman 2000, 121)

⁴¹ (Houtman 2000, 121)

Houtman's arguments are well founded, but my opinion is that he complicates the matter too much by looking for a strictly historical explanation without considering the juridical context of this passage. We have to remember that the sole purpose of this text is to provide guidelines for coming to an agreement in a situation where something has gone missing. In such situations it cannot be expected that the two parties are able to come to agreement by themselves. Therefore, I see it necessary that there be someone else present when the case is decided. *Logically*, this can be any person of authority, for example an elder, priest or judge. In addition, it seems odd to use the terminology of *going to God* in a situation where the parties most likely are already in the house, where the house gods would be.

However, it remains clear that there is someone with the function of the mediator at the place where the owner of the house is taken. In this case, we can say that Houtman's first two interpretations merge, that the owner of the house is taken to a place of God, a certain cultic or religious site where he is to swear an oath, whereby an authority figure can make a judgment in the case. The fact that justice was done in public is not disputed.⁴² Propp argues that this is precisely why the text in Exodus specifically mentions the divine, rather than a secular alternative. This is to specify that the decision is to be taken at a cultic place, not as a judgment by the elders at the gate.⁴³ It is entirely correct that there is no good reason why an author intending to speak of the judicial realm would not use שפוט or דין. Instead, the decision is to be made in the cultic setting, being influenced by God, as he speaks through his representative. Evidence of this method for obtaining a decision from a judge/cultic leader at a holy place can also be found in Judges 4:5, and 1 Samuel 7:16.

Further, evidence from Exodus 18 may help clarify the context of this passage: Exodus 18:13-27 tells of how Moses' father-in-law encourages Moses to set up "leaders of thousands, of hundreds and of fifties and of tens." And to "let them judge the people at all times, and let it be that every major dispute they will bring to you, but every minor dispute they themselves will judge" (Exodus 18:21-22). There are

⁴² (De Vaux 1961, 155)

⁴³ (Propp 2006, 246)

two important features to this text in our setting. First, Moses appoints here leaders שֹׁרֵה who were to learn the statutes הַחֻקִּים and the laws הַחֹרֵת. The understanding is that these statutes and laws that these leaders were to learn were clear and made cases easy to distinguish. This supports the idea of the existence of a set of guidelines by which these judges could evaluate the cases brought before them. When they had a statute or law that clearly fit the situation, they were to deal with the matter without consulting Moses. This brings us to the second point: It is only the more difficult cases, where God needs to be consulted, i.e. where the evidence is lacking, that are to be brought before Moses. The parallels here are clear. In Exodus 22:7-8 we have two references to precisely this situation, where instead of being able to be decided by the civil authorities that had the power to decide, the decision is to be found before God. The implication here is that according to the statutes in place, the judgment is obvious only in the situation where the thief is taken. If no thief is found, and when there is a dispute, both parties go “before God” אֶל־הָאֱלֹהִים . This is the exact formula that is used here, as well as in Exodus 21:6, where this exact situation is described. Also, it is documented in 1 Kings 8:31-32 that such oath swearing at the temple is an established part of the religious and legal situation of the temple.

In my translation I have chosen the to follow the tradition of translating הָאֱלֹהִים as God, understanding it bearing a connotation of God being at a specific place in the religious understanding of the time. To be taken *to God* is a physical act of movement to the (perhaps one of many) place where God is to be consulted.

9) MT שֹׁרֵה הָאֱלֹהִים Here, the LXX adds καὶ ὀμνῶται *to swear*. This is a logical clarification as the MT does not appear to be complete, seemingly omitting a verb describing what is to be done before God. Commentators are not in agreement here, though there is always some sort of reference to the juridical context of the text. Houtman reads “...so that it may become clear...” Childs reads “...to determine...” JPS reads “the owner of the house shall depose before God...”

Joüon⁴⁴ explains that the original formula for oaths and curses included either *כִּי יַעֲשֶׂה* = May God do this (curses) or *נִשְׁבַּע* = to swear (oaths). These formulae are followed by, in different situations, *כִּי*, *אִם* or *לֹא אִם*. According to Joüon, these formulae could be left out with the conjunctions remaining as the only evidence of the oath. The problem is the current passage reads *לֹא אִם* the standard formula for a *positive oath*, but that doesn't make sense in the context. Here, one would expect to see a *negative oath* ("that he did not"). The expected form of a positive oath here would be *אִם*.⁴⁵ Propp offers two explanations: On the one hand it could be a simple mistake, or, on the other hand, it could be that we simply know too little about the usage of oath formulae in indirect speech.⁴⁶ Propp then proposes that the answer is neither option, but that it is in fact the plaintiff (i.e. the owner of the deposited property) is the speaker of the oath text, not the defendant (i.e. the owner of the house). In this situation Propp sees both parties present before God and the plaintiff first making his accusation, which would logically be followed by an oath by the defendant, after which a decision was reached.

The logic of this argument cannot be doubted, but there are too many holes for it to be taken as the most likely alternative. First of all, it is clear from the text that the *owner of the house* is taken before God so the emendation to the text is quite large if we are to change it to read *the owner of the property shall swear*. In addition, the oath formula is quite similar for the positive and negative, making it much more likely that the oath is meant as a negative: *that he did not...*

10) MT *פָּשַׁע* offers here different options for translating. The root most commonly means a transgression⁴⁷ but carries the general sense of a "breach of relationships, civil or religious, between two parties."⁴⁸ TWOT continues by saying that *פָּשַׁע* is used in some cases of disputes concerning personal property. Houtman reads *embezzlement*, while NASV and RSV read *breach of trust*. Childs and JPS read *misappropriation*. Seebass⁴⁹ claims that the negative interpretation of transgression

⁴⁴ (Joüon 2005, §165)

⁴⁵ (Waltke 1990, 679)

⁴⁶ (Propp 2006, 247)

⁴⁷ BDB 833

⁴⁸ TWOT s.v. *פָּשַׁע*

⁴⁹ TDOT XII, 139

is the only documented denotation, that is that this cannot be a neutral situation referring to a matter or a case, but only to a transgression. Thus, he interprets this verse to mean that the owner of the house is necessarily implicated by the formulation of the law. This interpretation contains a valid point in that there is no good evidence for translating פֶּשַׁע as *matter* or *case*, especially in light of the formulation of a similar passage in Exodus 18:19 which uses instead הַדְּבָרִים. But, the interpretation is not necessarily so simple. The outcome of this situation is that *the one whom God declares guilty shall repay double to his neighbor*. In this case it is possible for both parties to be wrong. If the owner of the house did indeed take his neighbor's property, he shall repay double. But, if the owner of the house has not taken the property, then it seems that the accuser is to pay double to the accused, the owner of the house. This is quite interesting considering the cuneiform evidence. CH §126 describes a situation where someone has made a false accusation against their district:

Šumma awīlum mimmûšu lā ḫaliq-ma mimmê ḫaliq iqtabi babtašu ūtebbir kīma mimmûšu lā ḫalqu bābtašu ina maḫar ilim ubâršū-ma mimma ša irgumu uštašannā-ma ana bābtīšu inaddin

If a man whose property is not missing has said "my property is missing," and has accused his district, his district shall prove before the god that his property is not missing, and he shall give his district twice the claim of his suit.

The final verdict is that that someone who makes false accusations concerning property (in this case accusing his district), he shall be taken before the god and then be forced to pay double his accusation back to the district. So it is clear that there is legal precedence in the ancient Near East for false accusers to be assessed a fine similar to that which would be assessed to a criminal. This reciprocal judgment can also be seen in other laws in CH such as §2-3. Other evidence of double payment is found in the strikingly similar §120 that will be further analyzed below: Here it is the owner of the house who, when found guilty, must repay double to the depositor.

This evidence supports the viewing this visit to God as a step in the legal process, seeing both the misappropriation of goods and the false accusation of misappropriation as crimes suggest that a valid translation is matters of misappropriation, because that is what the accusation concerns, regardless of the result of the case. I follow Childs and JPS, though *embezzlement* (with Houtman) is a valid synonym.

11) Cf. discussion on אֱלֹהִים above, note 8. The same arguments apply here. The situation is slightly different, as it is the *case of two parties* that shall come before God, and there is no oath formula. This is clearly legal terminology, and pushes further for a judicial mediator being present where the case of the two parties is heard. Still I would argue that the element of the divine is necessary to fully understand the text. I translate again with *God*, with the assumption of an inferred judge/cult leader who decides the case in the name of God.

12) The MT here reads hiphil imperfective, 3rd person masculine plural. It is quite noteworthy that the verb appears in the plural here, with the subject אֱלֹהִים. There are several ways of understanding this situation. On the one hand, there are very few instances where אֱלֹהִים is used in conjunction with a plural verb when the one God of Israel is the inferred subject.⁵⁰ It is rather the standard that God appears with a singular verb, even though the grammatical form of אֱלֹהִים is plural. One explanation is that this is simply an old text, with a remnant of the grammatical agreement between the subject and the verb, before אֱלֹהִים came to be seen as a purely singular word. This is the case in several instances, notably Gen. 20:13, 31:53 and Josh. 24:19, all being cases where the subject is undoubtedly the God of Israel.

A second option pertains to the discussion above, that this text is simply not referring to the God of Israel, but rather to either human judges or house gods, thus requiring a plural verb, as is common when אֱלֹהִים is predicating something other than the God of Israel. This new evidence, however, is not strong enough to change the conclusion of the discussion above. Understanding this text in its cultural context makes highly unlikely that the element of the God of Israel was not present in the

⁵⁰ Cf. (Kautzsch 1910, §145i)

understanding. Such a secularized statement is quite out of place in the religious environment of ancient Israel. It is therefore out of place to make an argument of either translating judges or house gods as mediators based on these verses.

Propp, on the other hand, sees the use of the plural verb *יִרְשִׁיעוּ* as ambiguous.⁵¹ He proposes that we read instead of a paragodic nun with the MT “an archaic energetic singular suffix (-an(na)) or a defectively written pronominal suffix (-nu).” He then claims the latter as the better alternative based on the evidence from the Samaritan Pentateuch. The harmonizing nature of the Samaritan Pentateuch⁵² raises questions to whether this argument stands on its own.

My opinion here is that the inferred subject is the God of Israel, and that the plural verb must either be understood as older, a mistake or with Propp, a pointing problem on in the MT. In any case, the translation must reflect that the purpose is to show God as the source of the judgment, whether it is mediated by a judge or a cultic priest.

13) MT *יְשַׁלֵּם שְׁנַיִם* *repay double*. The text here that refers to double compensation here is not debated. The meaning is also quite clear: the amount of twice the original value of the case is to be paid by the losing party to the winning party. This is known from one other reference in the Book of the Covenant (Exodus 22:4). It is also attested in CH⁵³, where the verb *šanum* has a lexicalized meaning in the Št-stem, *šutašnūm*, which means *to double, give twice as much*.⁵⁴ This shows that the idea of double compensation was an accepted legal penalty.

1.1.3 Interpretation

These three verses represent three different nuances of what is in essence a similar situation. The situation is this: a member of the covenant community has given either silver or a possession to a fellow member of the covenant community for safekeeping. The possession has gone missing and the owner demands an explanation. V.6 deals with a situation where a thief is found in with the possession

⁵¹ For this discussion see (Propp 2006, 249)

⁵² (Tov 1992, 81-100) outlines the tendencies of the Samaritan Pentateuch.

⁵³ Especially relevant here are laws concerning safeguarding: CH§120, §124 and §126.

⁵⁴ (Huehnergard 2005, 521 cf. 435)

– the thief is guilty of stealing the possession and must repay double. V.7 concerns the situation where the possession cannot be found. In this case the owner of the house *and* the owner of the possession are to appear before God, where the owner of the house is to swear that he has not taken the possession for himself. Here the punishment is not explicitly stated for the crime meaning one of two things: either the owner of the house is assumed to be innocent by his oath or the punishment is subsumed under the punishment in v.8. I see the most likely answer to be in v.8, as there most certainly would be situations where the owner of the possession would be uncertain even though the owner of the house had sworn before God.

CH §120-125 deal with the question of safekeeping. Here, there are rules for having witnesses to verify the delivery of something for safekeeping, and the fixing of a price for these services. It is under these expectations that the current law also operates. The question here is not whether or not something has been given into safekeeping, but rather what happens when that item is not returned to the rightful owner. There are only two possibilities, that a thief has stolen it, or that the owner of the house has taken it.

V.8 presents two new dimensions to the case. First, all cases of misappropriation are taken into account, not just silver or goods. Second, it allows for the situation that the owner says “That is it!” This separates v.8 from vv.6-7. In vv.6-7 the case was a missing item not found, but in v.8 the case concerns an item that the owner has seen in the hands of another. Here, both parties are to go before God, who will give a judgment. Both the accuser and the accused risk a penalty if the case goes against them.

CH §9-13 provides a lengthy case that provides interesting insight here. It begins “If a man who claims to have lost property then discovers his lost property in another man’s hands...”⁵⁵ The man who is found with the possession then claims to have purchased it. All the possible scenarios of misappropriation are then dealt with, whether it is the one caught with the property, the seller of the property or the owner of the property who is at fault. The procedure here is that “the judge shall

⁵⁵ CH VI 70 – VII 5

examine their cases, and the witnesses...shall state the facts known to them before the god."⁵⁶ I see this context as revealing the otherwise unclear situation envisaged in v.8. If a man sees his possession with another man, then they are to go to God to find who is at fault. The Biblical situation opens also for a different option, that it is not the property at all. In such a case it is the accuser who is to pay double back to the accused.

1.2 The Form of the Laws in the Book of the Covenant and CH

The form of the laws in the Book of the Covenant is an issue that needs addressing to be able to establish how similar laws in the Book of the Covenant are to the ancient Near Eastern laws, typified in Codex Hammurabi. I will begin here by describing briefly the forms found in the book of the covenant, and then I will proceed to compare this evidence with the forms of laws in CH.

1.2.1 Casuistic and Apodictic Laws in the Book of the Covenant

A. Alt in his groundbreaking work *Die Ursprünge des israelitischen Rechts*,⁵⁷ groups the laws of the Book of the Covenant into two different categories: casuistic and apodictic laws.⁵⁸ The definition is according to the nature and form of the laws. In this section I will focus primarily on the form of the laws, the use of the thematic contents in order to establish a history of the laws will be evaluated in section 1.4.

1.2.1.1 Casuistic laws

Casuistic laws use cases in order to prescribe juridical judgments. The typical form of a casuistic law is a conditional sentence. Laws of the casuistic form are found almost exclusively in the section of the Book of the Covenant called the Mishpatim (21:2 – 22:16). Here, almost the entire body of laws is presented in the casuistic form. In the Book of the Covenant, as mentioned above in section 1.1 note 1, there is a highly systematized use of the conjunctions וְ and כִּי. These are used to create a series of conditional sentences of the type "if...when." The normal form of the casuistic law in the Book of the Covenant is through asyndetic coordination of two clauses. The first clause, the protasis, is introduced with וְ and uses the

⁵⁶ CH VII 27-36

⁵⁷ (Alt 1934)

⁵⁸ The source-critical ramifications of this will be discussed below in 1.4.2.

imperfective form of the verb. The apodosis has either no introduction, or has a waw apodosis⁵⁹ and also uses the imperfective. An example of the basic form is Exodus 21:28: וְכִי־יִגַח שׁוֹר אֶת־אִישׁ אוֹ אֶת־אִשָּׁה וָמָת כָּקוֹל "When an ox gores a man or a woman and he dies, it shall be stoned."

The conjunction וְאִם, also meaning *if*, is used to introduce a secondary protasis that is dependent on the first protasis being fulfilled before it can take place. An example is from the current passage, Exodus 22:6-7, where וְאִם introduces two hypothetical results, the thief being caught, and the thief not being caught.

In a standard casuistic law, with no additions, there are two main verbs, one in the protasis defining the situation, and one in the apodosis, calling for the punishment.

Generally, the casuistic laws in the Book of the Covenant concern secular affairs, such as economic and social concerns, as well as crimes such as theft and violence.

1.2.1.2 Apodictic laws

Apodictic laws differ in many ways from casuistic laws. Whereas the casuistic laws were characterized by a case-law form, apodictic laws are prohibitions and commands. In the Book of the Covenant, we find apodictic laws in the sections called the *debarim* found in 20:22-26, 22:27 – 23:33.⁶⁰ The form of the apodictic law is not as simple as the casuistic. It seems that the apodictic law can be either an imperative, imperfective or a participle form of the verb. Most common is the prohibitive form, using the negating particle אַל followed by the imperfective (jussive) form of the verb, meaning roughly "you (pl) shall not...." Here, in addition to specifying a crime or command instead of a case, the formulation has only one verb connected to the command/prohibition.

In the Book of the Covenant, apodictic laws generally concern cultic and moral questions. Apodictic laws, in contrast to the casuistic laws are not unique to the Book of the Covenant within the framework of the Hebrew Bible.

1.2.2 Law Forms in Codex Hammurabi

⁵⁹ Cf. (Waltke 1990, 519-522)

⁶⁰ (Bäntsches 1903) cited in (Childs 1974, 452)

The form of laws found in the Book of the Covenant is quite interesting seen in light of the evidence found in a similar investigation of law forms in Codex Hammurabi. Again, in CH one can distinguish between two forms of laws, casuistic and apodictic. The location of the laws within the literary structure of the two law codes will be examined below, but first I will present the syntax of the Akkadian laws found in CH and compare them with the forms in the Book of the Covenant.

1.2.2.1 Casuistic Laws in Codex Hammurabi

Again here, as in the Book of the Covenant, the form is the conditional sentence where the protasis describes the situation and the apodosis lays out the punishment. In the basic casuistic law in Codex Hammurabi, the protasis is introduced by the conjunction *šumma*. Further, the standard opening is *šumma awīlum...* meaning *If a man...*

In old Babylonian, "...in main clauses, the Perfect denotes the central event in a sequence of events, the event on which the action in subsequent clauses is based."⁶¹ Thus, the main verb of the protasis of the conditional sentence used in CH is most often in the Perfect stressing that these are the circumstances which led up to the point of judgment. A simple example is CH 14:

*šumma awīlum mār awīlim šeḫram ištariq, iddak*⁶²

If a man has stolen the young son of a man, he shall be executed.

If, however, the protasis consists of more than one clause, most often only the verb of the last clause (sometimes of the last two) is Perfect, while the verb(s) of the foregoing clause(s) is (are) Preterite. The last verb is Perfect because it indicates the critical event, the event upon which the judgment in the second set of clauses (the apodosis) is based.⁶³

⁶¹ (Huehnergard 2005, 157)

⁶² CH VII 25-29

⁶³ (Huehnergard 2005, 157)

The verb of the apodosis is almost exclusively a durative.⁶⁴ The durative can denote several things, including present, durative and habitual actions,⁶⁵ but in this case it is most likely that the durative is used to express the simple future, contrasting with the Perfect or Preterite of the protasis.

1.2.2.2 Apodictic Laws in Codex Hammurabi

The apodictic laws in CH are to be found as third person imperatives (precatives), and prohibitions (vetitives). The precative is the Akkadian verb form used for third and first person wishes or indirect commands.⁶⁶ The prohibitions are given in the vetitive, which is the verb for expressing a negative wish. In Akkadian, there are two ways of expressing the negative injunctive,⁶⁷ the prohibitive and the vetitive. The prohibitive is formed by negating the durative and has the meaning of a true negative command: *lā tašappar = do not send*. The vetitive on the other hand expresses the negative wish. This is formed by adding the prefix *ayy-* or *ē-* to the Preterite form: *ayy-itūrūnim = may they not come back*.

1.2.3 Comparison of Law Forms in The Book of the Covenant and CH

The forms of the laws found in the Book of the Covenant and CH are in many ways similar. I will here discuss the similarities and differences in order to establish whether or not we can speak of the laws as being similar enough to be different varieties of the same forms.

1.2.3.1 Casuistic Laws

The forms of the casuistic laws are quite similar in the Book of the Covenant and CH. The use of *כִּי אִישׁ* in the Book of the Covenant and *šumma awīlum* in CH to open the casuistic laws is a clear typological parallel. The fact that the laws are generally written using the conditional forms is a choice over against other forms of law. In addition, as discussed above in 1.1.2 note 2, it is plausible to view *אִישׁ* in the Book of the Covenant as being in opposition to other terms such as slave, woman or child.

⁶⁴ (Huehnergard 2005, 98-99) uses the term durative for what is generally called the Present or the Present-future in other grammars. (Von Soden 1995, 127) uses *Das Präsens*, (Buccellati 1996, 100-105) uses *the present*. I follow Huehnergard here as elsewhere in this thesis.

⁶⁵ (Huehnergard 2005, 98-99)

⁶⁶ See (Huehnergard 2005, 144-146)

⁶⁷ The following is from (Huehnergard 2005, 146-147)

This is the same situation as found in CH where *awīlum* is in opposition to the other social classes and women.⁶⁸

What remains to be answered then, is whether the verbal systems give any clue as to the relation between these laws. As noted above, the Hebrew paradigm is the prefix conjugation in both the protasis and the apodosis, whereas in Akkadian the standard is the Perfect in the protasis and the Durative in the Apodosis. The difference here seems to have to do with the perception of whether the crime is seen as already having taken place (CH) or to take place in the future (the Book of the Covenant). First, we must establish if this is a valid alternative.

The main verb of the protasis in CH is most often in the Perfect, but it is not necessarily expected that a translation of the Akkadian Perfect should lead to a Hebrew verb in the suffix conjugation (perfective). Buccellati argues that the Perfect is actually only the Preterite of t-stem verbs, meaning that the separative meaning of the t-infix in the Gt-stem (Bt in Buccellati) is often misinterpreted as having purely tense-related relevance.⁶⁹ Despite this, it seems that a direct translation of the laws of CH would yield the perfective in Hebrew. This means that either the laws forms are similar due to the syntactic structures of the languages being so similar, or that there has been a conscious change in the view of the temporal aspect of the laws. This goes to say that if the Book of the Covenant is based on CH, it has not been copied using a strict direct syntactic correspondence.

1.2.3.2 Apodictic Laws

The apodictic laws in the Book of the Covenant and CH are also quite similar. There is little doubt that the syntax of these is comparable, as the use of the jussive in the Book of the Covenant and the precativ in CH demonstrate. Again, though, based on purely syntactic grounds it is impossible to see that the forms of the Book of the Covenant are reliant on the syntax of CH. The precativ is a form that morphologically is not found in Classical Hebrew, even though the jussive functions semantically similar. In addition, the use of the vetitive in the Akkadian does not

⁶⁸ Cf textual note 2 above

⁶⁹ (Buccellati 1996, 109)

have much bearing on the results of a comparison, as the Hebrew lacks the distinction.

The presence of the jussive and the precative in the respective verbal systems is not strange, nor are these forms unexpected in this sort of writing. Thus, we must be satisfied with seeing the clear parallels between these forms here, before moving on to literary and thematic analysis which will provide a greater framework for answering the question of whether or not these laws should be seen as having connection with one another. That is the purpose of the next sections of this thesis.

1.3 The Literary Structure of Ancient Law Codes

The literary context of Exodus 22:6-8 is a somewhat complicated matter. The immediate surroundings of the text are the casuistic laws called the *mishpatim* in the Book of the Covenant. But when looking at the larger surroundings of the passage in Exodus, there are revealing parallels between the Book of the Covenant as a whole, and Codex Hammurabi. I will begin this section by briefly looking at the literary structure of the Book of the Covenant. Then, I will present the literary structure of ancient Near Eastern law codes in general. Then, I will present the evidence for interpreting the literary structure of the Book of the Covenant as the framework for an ancient Near Eastern law code. Again, here, my main source is for ancient Near Eastern law is Codex Hammurabi, though the evidence is considered to be valid also in relation to the other known ancient Near Eastern law codes.

1.3.1 The Structure Book of the Covenant

In the Book of the Covenant, the law as seen especially in the *mishpatim*, is the center of a narrative construction. This core of the law is surrounded by two distinct parts, namely Ex. 20:18 – 21:1⁷⁰ and Ex. 23:20 – 23:33. In chapter 20, the narrative tells of how the people see the thunder and the lightning from the mountain, and where God has spoken to Moses. The Israelites are afraid, but ask Moses to speak to them on behalf of God. After this there is a section of cultic law, which establishes

⁷⁰ Ex. 20:18-21 are difficult. On the one hand they clearly connect to the description of what happens on the mountain in chapter 19. On the other hand, they can be seen as a narrative technique justifying the further law-giving that takes place after. I see these verses as a part of the literary construction of the Book of the Covenant as it is now.

the religious context of the law as a whole. Following this is the law proper, the casuistic section of laws in 21:1 – 23:19. The final section contains promises, blessings and curses. The division looks like this:

| | |
|--------------|--|
| 20:18 – 21:1 | Narrative; preparing for giving of the law |
| 21:1 – 23:19 | Legal Material |
| 23:20-33 | Promises, blessings and curses |

This outline shows a three-way division of the materials, with the laws grouped in between two other sections. The question that is most relevant in light of this is to what degree the Book of the Covenant should be considered a whole, or smaller parts that are only held together by a forced narrative analysis. Childs argues convincingly that

...the fusion of the two halves of the Book occurred at the literary stage. The *mishpatim* were joined to the cultic laws which already had received a place within the Sinai narrative. It is highly likely that the same redactor rearranged his material and gave the altar law its present leading position. However without sufficient evidence it is idle to speculate on the shape of this material prior to its combination.⁷¹

On the same topic, Paul argues that

...although several of these sections might well have had an originally different *Sitz im Leben* and thus are to be studied as independent units, when once arranged in their present literary complex, they exhibit an overall structure which must be subject to further investigation. Here, then the whole may consist of more than its component parts.⁷²

With this considered, it is necessary to view the Book of the Covenant not only from a traditional source-critical perspective, but as a literary unit that first gives real meaning to the parts when it is seen as a whole. The point of this here is that our evaluation of the Book of the Covenant is not complete without considering it as it stands, without attempting to delineate the different strands that may have been preexistent to the current form. Though the earlier forms of possible sources can

⁷¹ (Childs 1974, 458)

⁷² (Paul 1970, 27-28)

provide insight into the development of law in general in Israel, it does not help explain how and why the Book of the Covenant looks like it does without considering the entire Book of the Covenant as a coherent whole. Westbrook states that

The starting point for interpretation must therefore be the presumption that the Covenant Code is a coherent text comprising clear and consistent laws, in the same manner as its cuneiform forbears. Apparent inconsistencies should be ascribed to the state of our ignorance concerning the social and cultural background to the laws, not necessarily to historical development and certainly not to an excess of either subtlety or incompetence on the part of their compiler.⁷³

1.3.2 The Framework of Ancient Near Eastern Law Codes

The literary structure of the Book of the Covenant is especially telling when seen in light of the structure of ancient Near Eastern law codes. I will here use CH as an example to show the structure most common to these law codes.

The normal structure of the ancient Near Eastern law code is a prologue, a main body, and an epilogue. In this section I will present the literary structures without looking at the question of what these structures can mean for the purpose of the law code as a whole. This will be addressed later, in the second section of this thesis.

1.3.2.1 Prologue

The prologue of CH is filled with references to gods, its style is narrative, beginning by telling of Hammurabi as called by Anu and Enlil to be the leader:

When the great god Anu, king of the Anunnaku, and the god Enlil, lord of heaven and earth, who decides the destinies of the land, allotted supreme power over all peoples to the god Marduk, the firstborn son of the god Ea...at that time, the gods Anu and Enlil called me by my name, Hammurabi...⁷⁴

The language of the prologue uses first the preterit form of the verb, then switches to a long series of participles describing Hammurabi. The theme of the prologue is overwhelmingly religious. The names of Anu and Enlil occur repeatedly throughout the prologue. The material here is about Hammurabi's greatness. Here the gods

⁷³ (Westbrook, *What is the Covenant Code* 1994, 36)

⁷⁴ CH I 1-28

play the roll of sender and Hammurabi as actor on behalf of the divine. He is hailed as the ruler who protects the cultic practices of the cities under his domain. He is also credited with defeating the enemy and being the bringer of peace and prosperity. Roth states that

The prologue stresses the gods' appointment of Hammurabi as ruler of his people, his role as guardian and protector of the weak and powerless, and his care and attention to the cultic needs of the patron deities of the many cities incorporated into his realm.⁷⁵

The prologue then concludes with a segue to the body of main laws:

When Marduk sent me to rule over men, to give the protection of right to the land, I did right and righteousness in...and brought about the well-being of the oppressed.⁷⁶

1.3.2.2 Main Body

The main body of laws consists of laws, the majority of which are formulated in the casuistic style. This is true not only of CH but also other codes such as the Code of Lipit-Ishtar⁷⁷ and the Code of Eshnunna.⁷⁸ The form of the laws of the main body of CH has already been discussed in 1.2. There does not seem to be any specific pattern for choosing what type of laws should be included. Several laws may deal with the same issue, and judgments may be clarified in successive laws in order to deal with the different possibilities that may exist.

1.3.2.3 Epilogue

The Epilogue of CH is again in a more narrative style. It is again Hammurabi who speaks. Here, Hammurabi takes credit for the judgments passed in the main body:

These are the just decisions which Hammurabi, the able king, has established and thereby has directed the land along the course of truth and the correct way of life. I am Hammurabi, noble king...⁷⁹

⁷⁵ (Roth 1995, 71)

⁷⁶ CH V 14-24

⁷⁷ The Code of Lipit-Ishtar is written in Sumerian, but also has the same casuistic form, using the Sumerian *tukum-bi* "when/if."

⁷⁸ See (Roth 1995)

⁷⁹ CH XLVII 1-10

The text continues by proclaiming the good which has come about because of Hammurabi's just ruling. Then, the focus turns to the protection of the weak. The poor, orphan and widow are encouraged to seek protection "at the stela."⁸⁰ The epilogue ends with a series of blessings and curses upon "any king who will appear in the land in the future."⁸¹ If he chooses to follow the pronouncements, Hammurabi proclaims "may the god Shamash lengthen his reign, just as for me, the king of justice, and so may he shepherd his people with justice." But the king who does not heed the words of the stela is cursed, calling upon all the gods to curse him in different ways. The epilogue, and thus the law code, ends with these curses.

1.3.3 The Book of the Covenant as the Framework for an Ancient Near Eastern Law Code

An analysis suggests that it is possible to see the Book of the Covenant as the framework for a law code, in the tradition of CH. There are several factors that lead to this understanding; I will here discuss how the prologue, main body and epilogue of the Book of the Covenant can be compared with that of CH. Then, I will look at whether this three-fold division is valid.

1.3.3.1 Prologue

Exodus 20:18 begins telling how the people have seen God's presence on the mountain in clouds and thunder and lightning. Here, the narrative provides the same background information as in CH, the reason why the people are safe. Here as well, the style is narrative. In Hammurabi the range is much wider, because Hammurabi includes the gods of various peoples all over the kingdom, while in the Book of the Covenant the redactor has focused on the one God.

The second parallel is the strongest. The seeming focus of Hammurabi's prologue is on the cities that he has taken/protected, but when looking deeper it is clear that he is not only the protector of the cities, but the protector of the cultic activities there. One example is ii 32-36: "The warrior, showing mercy to the city of Larsa, renewing the Ebabbar temple for the god Shamash his ally."

⁸⁰ CH XLVII 59-78

⁸¹ CH XLVIII 59-62

There is a strong parallel here to the cultic laws in Exodus 20.

You shall make an altar of earth for Me, and you shall sacrifice on it your burnt offerings and your peace offerings, your sheep and your oxen; in every place where I cause My name to be remembered, I will come to you and bless you. If you make an altar of stone for Me, you shall not build it of cut stones, for if you wield your tool on it, you will profane it. And you shall not go up by steps to My altar, so that your nakedness will not be exposed on it. (Exodus 20:24-26)

First, we see that the multiplicity of places that is so clear in Hammurabi is subsumed under one phrase *בְּכָל-הַמְּקוֹם אֲשֶׁר אֶזְכֵּר אֶת-שְׁמִי* *in every place where I cause my name to be remembered*. In this way, the part of the law focusing on the protection of the cult is general, letting the laws be valid in “every place.” The second point here is the way in which these rules are formulated. The rules concerning the cult here are not written as statutory rules that are set in relation to a punishment, but they are in order to insure the holiness of the altar. The reason for not using cut stones is simply that “if you wield your tool on it, you will profane it.” This means that the offerings made from such an altered would be marred. One is not to climb up to the altar so that “your nakedness will not be exposed on it.” Again, it is the validity of the offerings from a defiled altar that is the focus here, not the rule as a punishable offence. In this way, it is clear that the cultic regulations found here are not to be interpreted along the same lines as the other legal matters, but simply as God’s protection of the cult. This is part of the narrative framework of the law code. This framework serves a two-fold function here. First, it serves to introduce God as the main player in the giving of the law. His presence is what makes the giving of the law here possible at all. Second, the cultic regulations provide a clearly religious context for the laws. The Law is not given in a secular, royal context as CH is, but is given by God in connection with the cult.

1.3.3.2 The Main Body of Laws

The form and structure of the body of laws in the Book of the Covenant is a close parallel to CH. It has already been established that the linguistic forms of the laws are very similar. Below, in 1.4.3 the themes of the laws will be discussed. In this setting, it is most important that the main body of laws has two important features.

First is the casuistic style. The style of the main body of laws is clearly distinguishable from both the prologue and the epilogue. It is not difficult in either the Book of the Covenant to see where the main body begins and ends. In addition, both have generalizing formulae that introduce the main body. CH ends the prologue/begins the main body with

When the god Marduk commanded me to provide just ways for the people of the land and for appropriate behavior, I established truth and justice as the declaration of the land, I enhanced the well-being of the people. At that time...⁸²

The transition between the narrative/cultic section of the Book of the Covenant and the main body is “now these are the ordinances which you are to set before them.”⁸³

1.3.3.3 The Epilogue

There are also clear parallels with the epilogue of CH. There are two main areas of connection here. First is the explicit focus on the care of the weak of society. CH says “In order that the mighty not wrong the weak, to provide just ways for the orphan and the widow, I have inscribed my precious pronouncement upon my stela.”⁸⁴ Compare with Exodus 22:21-22: “You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt. You shall not afflict any widow or orphan.” The connection here is deeper than this, as we can see by looking back to comments on the social systems. It seems that both codes have a clear idea that the laws are valid within the context of a social hierarchy, something which the widow and the orphan are not assumed to be part of.

The second set of parallels has to do with the blessings and curses found in both epilogues. In CH the last several columns are devoted to blessings and curses. In the Book of the Covenant, blessings and curses are found from 23:20-33. The CH blessings are quite short

⁸² CH V 14-25

⁸³ Exodus 21:1

⁸⁴ CH XLVII 59-63

If that man (=the ruler) heeds my pronouncements which I have inscribed upon my stela, and does not reject my judgments, change my pronouncements, or alter my engraved image, then may the god Shamash lengthen his reign...⁸⁵

This is followed by a long series of curses upon the ruler who does not follow the pronouncements: "May the great god Anu, father of the gods, who has proclaimed my reign, deprive him of the sheen of royalty, smash his scepter, and curse his destiny....⁸⁶" This type of curse continues in, with Hammurabi calling on the curses of 14 different gods. The situation is somewhat different in the Book of the Covenant, where the blessings far outweigh the curses.⁸⁷ Exodus 23:20 says "But if you truly obey his voice and do all that I say, then I will be an enemy to your enemies and an adversary to your adversaries." Following this is a long list of promises concerning the land where the people are to take possession. The last verse of the Book of the Covenant warns the people that

You shall make no covenant with them or with their gods. They shall not live in your land, because they will make you sin against Me; for if you serve their gods, it will surely be a snare to you."

1.3.3.4 Conclusions

We have now seen that the literary structure of the Book of the Covenant shares many features with that of CH. The similarities are not only in the form of the laws, but in the whole framework of the law codes and even in the actual themes of the individual parts of the framework. The presence of these formal and thematic parallels makes it difficult to conclude with anything else than the Book of the Covenant is to be considered within the same framework and genre as CH. That is that the Book of the Covenant is to be considered an ancient Near Eastern law code on the lines of CH.

1.4 The sources the Book of the Covenant

Having established formal and literary connections between the Book of the Covenant and CH as an ancient Near Eastern law code, it is now our task to discuss

⁸⁵ CH XLIX 2-14

⁸⁶ CH XLIX 45-52

⁸⁷ The theological significance of this will be discussed below in section 2.

CH as a source for the Book of the Covenant. I will briefly look at models which look to Israel internal sources for the Book of the Covenant before turning to the models which see CH as a source.

1.4.1 Israel Internal Sources

Traditionally, the Book of the Covenant was understood as the legal material given by Moses. Later, Wellhausen's documentary hypothesis first placed the Book of the Covenant in the J material, though he later reevaluated this decision.⁸⁸ Though other scholar's placed the legal material in the E source, the entire Book of the Covenant was eventual seen as "an older collection of laws which was independent of the usual critical sources"⁸⁹

Later, Albrecht Alt used the form critical material, as presented above in 1.3, to establish links between the forms of the laws and their history. His *Die Ursprünge des israelitischen Rechts* concluded that the casuistic laws were at home in the ancient Near Eastern legal tradition, while the apodictic laws were particular to Israel and its covenantal law.⁹⁰ Though Alt's thesis has had an impact on all work with the Book of the Covenant, the problem is generally agreed to be much more complicated.

Recently, Otto has launched a theory citing sources within Israel making up the different forms and functions of the laws of the Book of the Covenant.⁹¹ His claim is that apodictic law is at home within the clan, where the paterfamilias is the head of the family, and deals with criminal law. The casuistic laws reflect the laws arising from disputes between clans or families. Here there was an outside mediator (i.e. judge, priest, etc.), and the cases were limited to reimbursement, thus civil law. Otto's argument is that the monarchy caused a social upheaval which led to the end of the paterfamilias as enforcer of the internal family law, this was now the job of the courts. On the other hand new jurisdiction was needed for the protection of the social classes. In the end, all of these different areas of law both pre-monarchical

⁸⁸ (Childs 1974, 452)

⁸⁹ (Childs 1974, 452)

⁹⁰ Summary in (Childs 1974, 453) cf. (Alt 1934)

⁹¹ (Otto 1988)

and monarchical were combined into the Book of the Covenant as we have it today. The forms are the casuistic civil law, the casuistic criminal law, the apodictic criminal law and the casuistic social law.⁹² These forms then reflect the growth of the law over time in Israel's history.

Otto's theory represents a highly technical evaluation of the materials that leads to a just as highly speculative reconstruction of the facts. The fact is that these assessments of the forms and functions of the laws may well be correct, but could be anachronistic in the setting of the Book of the Covenant. The laws could well be reliant on material centuries older than the Biblical material, and the monarchy for that matter, making the hypothetical reconstruction chronologically impossible. It is also suspect because of the isolationist perspective it gives to Israel. It seems that the collecting of laws together in Israel was more influenced by outside sources than this theory allows, as we shall see below.

1.4.2 Ancient Near Eastern Sources

Above, I discussed the presence of parallels in CH for Exodus 22:6-8. Here, I will discuss the question of sources within the Book of the Covenant as a whole.

David P. Wright has explored the points of correspondence between CH and the Book of the Covenant,⁹³ providing an analysis of structure of CH and the Book of the Covenant, comparing the locations of the corresponding laws. His findings are quite revealing, and I will discuss them here.

Wright's primary observation, and he admits that this is his motivation for his study, is that there are "fourteen laws in the central casuistic laws of the two collections (Exod 21:2-22:16; LH 1-282...) that run in the same or nearly the same order."⁹⁴ Wright's analysis groups the laws of the Book of the Covenant together thematically, and then looks at the thematic parallels in CH. For the most part, his correspondences are true parallels, having both thematic and linguistic similarity. I will briefly present his findings here, commenting on specific items that need

⁹² (Westbrook, *What is the Covenant Code* 1994, 17) I follow Westbrook's summary of Otto for easier access to the German text.

⁹³ (Wright 10 (2003))

⁹⁴ (Wright 10 (2003), 13)

clarification below. The following table shows the correspondences in the order they appear in CH:⁹⁵

| CH | The Book of the Covenant | Topic |
|-----------------------|--------------------------|--|
| 117 | 21:2-7 | Temporary debt servitude |
| 148-149 | 21:7-11 | Marrying a second wife |
| 192,193,195 | 21:15,17 | Child rebellion |
| 196-201 | 21:23-27 | Talion laws and injuring a slave |
| 206 | 21:18-19 | Striking in a fight and providing for a cure |
| 206,207 | 21:12-14 | Homicide |
| 208 | 21:20-21 | Striking and killing one of a lower class |
| 209-214 | 21:22-24 | Striking/knocking a pregnant woman |
| 229-240 | 21:33-34 | Negligence |
| 250-252 | 21:28-32, 35-36 | A goring ox |
| 265 | 21:37, 22:2-3 | Animal theft |
| 265-266 (120,124-125) | 22:6-8 | Safekeeping |
| 266-267 | 22:9-12 | Death or injury of animals |
| 268-271 | 22:13-14 | Animal rental |

Two of the correspondences above need commenting, before I look at the passages in the Book of the Covenant absent from this table. The first is CH 229-240/Exodus 21:33-34. The text of Exodus 21:33-34 concerns an animal falling into a pit, and the responsibility of the digger of the pit to compensate. Wright sees a correspondence in CH 229-240 which also deal with the theme of negligence. Two specific examples are 229-230 which describe a situation where a house falls and the owner, or his son, is killed. Here, he sees linguistic parallels, though as the case matter is entirely different, it seems difficult to rely on these to establish the correspondence. His conclusion is that

⁹⁵ The following is based upon (Wright 10 (2003), 47-50)

LH 229-240, especially 229-230 may have raised the issue of negligence at this point in the sequence, the context of ox laws led to creatively drafting a law on negligence specifically dealing with an ox...⁹⁶

Though this explanation is plausible within the theory of direct dependence of the Book of the Covenant on CH, it is not sufficient evidence to warrant use as an argument here. But it does serve an explanatory purpose for the placement of these laws precisely here within the Book of the Covenant, if the theory holds.

The other correspondence that needs commenting is from the main text of this paper: Exodus 22:6-8 and the deposit laws, or laws of safekeeping as Wright calls them. Wright sees these primarily as parallels with CH 120 and 124-125, I have discussed above the option of also including CH 9-12 in this analysis above. Wright's main hypothesis, though, is that the inspiration for including these laws comes from elsewhere:

In brief, what appears to have happened is that LH 265-266 raised the issue of safekeeping. CC then developed a law using ideas from these laws as well as other safekeeping laws in LH.⁹⁷

The laws in CH 265-266 read as follows:

265 If a shepherd, to whom cattle or sheep and goats were given for shepherding, acts criminally and alters the brand and sells them, they charge and convict him and he shall replace for their owner the cattle or sheep and goats tenfold that he stole.

266 If a plague of the god should break out or a lion make a kill, the shepherd shall clear himself before the god, and the owner of the enclosure shall accept responsibility for him for the loss sustained in the enclosure

The parallel here is between the akkadian *ana maššarūtīm* for *safekeeping* and *ana re'êm* for *shepherding*. It is not surprising that *ana maššarūtīm* is not used in the context of CH 265 as there already is a verb "to shepherd" or "to watch the flocks." This *figura etymologica* is the semantic choice when the cattle or sheep are given for

⁹⁶ (Wright 10 (2003), 26-27)

⁹⁷ (Wright 10 (2003), 29)

safekeeping. So, even though the direct correspondence of safekeeping is absent here, it is implied in the terminology of giving.

Wright's logic here is basically the same as the previous discussion, using one idea to spark the inclusion of laws concerning a similar phenomenon. The same arguments apply here. If the theory of direct dependence upon CH hold true, then this is a valid hypothesis as to why deposit law is addressed here, as opposed to at the very beginning where the more thematic parallels would be found. He does not speculate as to why the idea did not strike the author of the Book of the Covenant when he read through the laws of deposit in CH 120-125 in the order they do appear. Later in the article though, Wright points out that there are many fragments, not all of them whole, or rather to say none of them whole, in theory making a case for the absence of any correspondences of laws before CH 117.⁹⁸

In addition to these two difficulties, there are four passages not accounted for in Wright's theory: Exodus 21:16, 22:1-2, 22:4-5 and 22:15-16.

Exodus 21:16 concerns kidnapping, that has a thematic parallel in CH 14. Strangely, however, 21:16 comes directly in the middle of laws concerning child rebellion. Wright points out that CH 194 provides a similar break in the laws concerning child rebellion (CH 192-195), providing a law concerning a wet-nurse caring for a child.⁹⁹ Though the contents of CH 194 is far from that of Exodus 21:16, it is interesting that both come as interjections into an otherwise united set of laws, and both concern children, though with a completely different angle. This would also be in keeping with the ordering theory which Wright operates with.

Exodus 22:1-2 concerns burglary. Although there is a parallel in CH 21, Wright does not make much of this. The law in CH 21 is much more concise, pronouncing the death penalty upon anyone caught breaking into a house. Following Wright's logic, it makes sense to be included here, with laws about theft simply by the type of association that seems to take place in other laws, notable Exodus 21:16 above.

⁹⁸ (Wright 10 (2003), 67-71)

⁹⁹ (Wright 10 (2003), 32)

Exodus 22:4-5 are laws concerning one person's problem causing harm to another. 22:4 concerns an animal grazing on another's field and in 22:5 a fire that gets out of control causing harm to another's field. The former has a correspondence in CH 57-58, and Wright sees close linguistic parallels here. He does not explain the placement of these laws here, but it seems quite that the contents of the first law relates best to the topic of animal theft, addressed in the previous section of laws. The law concerning the spreading of fire is closely related to the animal grazing outside its field, making the connection clear.

Exodus 22:15-16 concerns the seduction of a virgin. There is a parallel in CH 130, though Wright sees perhaps closer parallels elsewhere.¹⁰⁰ The addition here is unclear, and Wright offers no explanation as to the presence of this law in the Book of the Covenant.

Von Seters¹⁰¹ presents a similar table comparing the themes of the Book of the Covenant with laws from CH. His analysis is somewhat less detailed than Wright's, but follows the same general outline. Paul¹⁰² in a footnote observes some correspondences between the placement of laws in the Book of the Covenant and CH, but does not make a point out of this.

Based on these findings the first question to be raised is whether or not the Book of the Covenant was intentionally created as a single document, or if it was formed over time by different editors or writers.

Wright sees three main possibilities to explain these similarities: polygenesis, indirect dependence and direct dependence. The theory of polygenesis is discredited by the shared logic and the shared invention in the two law codes. Wright argues that it is not only the shared ideas of cases that stand out in the comparison of CH and the Book of the Covenant, but it is the "chain of progression" within the laws that is most interesting. "Successive laws in Near Eastern collections are developed on the basis of numerous variables that can be introduced into a particular case. These variables

¹⁰⁰ (Wright 10 (2003), 33)

¹⁰¹ (Van Seters 2002, 97)

¹⁰² (Paul 1970, 73-74)

create forks in the conceptual road.”¹⁰³ These “forks in the road” are what make the Book of the Covenant’s similarities too exact and illogical to be accounted for by an accidental polygenesis.

The second main theory as to the sources of the Book of the Covenant is that there is some sort of indirect dependence upon another law code. There are several options for how this dependence took place. First, there could be an indirect dependence upon a well known law code. This relates to the common legal environment theory, saying that a legal code or several legal codes were simply so well known that they are paradigmatic for others. The second alternative is that the Book of the Covenant directly depends upon a mediating source or sources that again rely upon CH. Wright sees this likely as a translation of CH into a Northwest Semitic language.¹⁰⁴ This alternative is difficult for two reasons. First, it is highly speculative and requires a greater degree of difficulty than direct dependence. The fact that there are no mediatory texts available means that in the end, all options are speculation. The second point of difficulty is that there is no evidence in the Book of the Covenant of any intermediary cultural problems. Had the text gone via another language and culture, some variants in The Book of the Covenant vis-à-vis CH would most likely show connection to something outside the realm of Israel.¹⁰⁵

Because there is a lack of evidence to the contrary, Wright sees the only option as being to interpret the Book of the Covenant as having some sort of direct dependence upon CH. Because of all of the thematic and structural parallels, the writer of the Book of the Covenant had to know the Akkadian text of the law. The main argument against this position would be the ability of an Israelite to know Akkadian and have contact with legal material in the time before the exile. Wright documents the abundance of sources for Hammurabi which quite interestingly are extant from the Old Babylonian Period all the way to the Neo-Assyrian Period.¹⁰⁶ In

¹⁰³ (Wright 10 (2003), 48)

¹⁰⁴ (Wright 10 (2003), 49)

¹⁰⁵ (Wright 10 (2003), 49)

¹⁰⁶ See (Wright 10 (2003), 67-71)

addition, he lists all the possible contact points that are documented between Israel and the Akkadian-speaking world.¹⁰⁷

Van Seters also finds the information here too convincing to deal with in any other way:

The arrangement of the laws in Exod 21:12–22:16 [17] reveals a unified corpus that depends heavily upon the Hammurabi Code or its literary descendant. It is not just the continuity of certain legal traditions concerning matters of homicide and bodily injury and of property and marriage, transmitted by some vague process of cultural diffusion, that is attested here. It is the way that they are put together and related to each other that points to direct literary dependence upon the Babylonian legal tradition. Where the arrangement differs, one can account for it by seeing in the Covenant Code the influence of other parts of the Hebrew legal tradition. This is not just a matter of inserting into a fixed corpus an alien block of material but a skillful fitting together of legal materials to create a compositional whole.¹⁰⁸

Against this opinion is Jackson, who sees this view as “an extreme literary-diffusionist view of the origins of the Covenant Code.”¹⁰⁹ His understanding of Wright and Van Seters is that they “deny, or at least are skeptical about, the relationship of the content of the rules to ancient Israelite society and culture.”¹¹⁰ His opinion is that the laws in the Book of the Covenant reflect oral tradition, and that the Mishpatim are themselves representative of a stage of transmission from oral to written law.¹¹¹ Thus, the only possibility is the common law view. The difference rests in the understanding of the common Near Eastern legal tradition. While Jackson is opposed to the idea of textual dependence, Wright and Van Seters see textual dependence as a natural option and the best for explaining the precise nature of the

¹⁰⁷ See (Wright 10 (2003), 58-67)

¹⁰⁸ (Van Seters 2002, 98-99)

¹⁰⁹ (Jackson 2006, 9)

¹¹⁰ (Jackson 2006, 9) This understanding is strongly influenced by his own opinion, which he sees to be at odds with that of Van Seters and Wright. I see no evidence that Van Seters and Wright are skeptical to the idea of the laws being anchored in ancient Israelite society. On the contrary, Van Seters argues for composition of being a Hebrew adaption of Babylonian law that takes into account the specific needs of Hebrew Law, cf. (Van Seters 2002, 173).

¹¹¹ (Jackson 2006, 9-10)

literary parallels that would be less likely based on a purely oral transmission of common legal ideas.

With this evidence, it is difficult to deny that the most reasonable interpretation of the facts is that there is some sort of knowledge of CH visible in the Book of the Covenant. It seems that until other sources are found which may prove a form of indirect dependence, the best understanding must be that the writer of the Book of the Covenant was aware of the text of CH.

1.5 Conclusions

The discussion so far has focused on the connections between the Book of the Covenant and CH. The question of the sources of the Book of the Covenant is a difficult one, as discussed above in the introduction and no matter how convincing arguments may seem, it is difficult to prove beyond the shadow of a doubt any connections. This paper has been focused on three different issues: linguistic, literary and thematic parallels. The linguistic parallels proved to be valid, meaning that the laws most likely rely on the same drafting techniques. The literary parallels have shown that the structure of the Book of the Covenant fits nicely into the genre of ancient Near Eastern law codes. Finally, we have seen that the thematic presentation of the laws in the Book of the Covenant is in some way reliant on the contents of CH. With all of this combined, the question remains to be answered: to what degree the laws in the Book of the Covenant are reliant on CH for their form, contents and structure. Based on the state of the evidence, it seems that the most reasonable position is that of the Book of the Covenant being directly dependent upon CH in some way. This brings us back to the text we began with, a text which betrays the connection to CH, but which leaves no room for the civil establishment of judges which CH relies on. This is not unique to this passage, but fits into a series of thematic differences between CH and the Book of the Covenant. This is the topic of the second section of this thesis.

2.0 The Authority of the Law

The first section of this thesis laid out the case for seeing the Book of the Covenant as an ancient Near Eastern law code. The arguments were based on formal, literary

and source-critical grounds. The conclusion was not only that the Book of the Covenant must be seen as an ancient Near Eastern law code, but that it must be seen as having some form of dependence upon Codex Hammurabi. It is clear from the text of the Book of the Covenant that it is not a direct translation of CH. Though the evidence points to a strong connection between these two law codes, there are differences that warrant review. These differences will help in understanding the law codes and their purpose. I will begin by looking at the structure of the law codes, and the function and use of the structures of the Book of the Covenant and CH. But first I will look briefly at the legal systems in Babylon and Israel to get an overview of the situation in which these law codes were meant to go.

2.1 Legal Systems in the Ancient Near East and Israel and their Use of the Law Codes

In order to understand how the law codes play a role in the authority of the law, it is necessary to take a deeper look at the legal systems of the ancient Near East and Israel. Also, it is important to see how these law codes were actually used in their respective societies. This is not a comprehensive presentation, but focuses on the levels of the legal systems which are necessary for understanding the law codes. The information concerning the use of the law codes is meant to highlight the uses can be documented.

2.1.1 The Legal System of Ancient Babylon

The legal system of Ancient Babylon is by no means clear, but there is much evidence that can suggest how things functioned. There are three issues important to the understanding of the legal system which will be addressed here: the connection between lawgiving and law enforcement, the different levels of courts and the role of the judge.

The first important point here is that in the ancient Near East there is no evidence of a separation between the executive and the judicial branches of the government. In addition, the king seems to be the only true law giver on the national scale.

The king was the primary source of legislation...What appears to be lacking is a legislative branch of government, in the form of some assembly or a collective body to debate, formulate, and promulgate new laws.¹¹²

The implication of this is that there is a very close connection between the authority of the government and the authority of the law. The law cannot be viewed in a modern system of checks and balances – the king had absolute power despite the appearance of a neutral law code.

The second point here is the levels of the courts. There were three distinct levels of the court system, though there was no appellate link between them.¹¹³ At the highest level it was the king who held ultimate power. No authority was higher than the king when it came to judicial matters. The king could handle cases that were brought to him in their own right or could look at a case petitioned to him by a subject who felt himself wronged in a lower court. In such a case, the king “either tried the case himself and gave final judgment, decided a point of law and remitted the case to a local court for a decision on the facts, or remitted the entire case to a local court.”¹¹⁴

The next level of the courts was to be found in the provinces that made up the administrative infrastructure. Here, there were administrative officials appointed by the king who acted as the king’s representatives in the districts.¹¹⁵ These officials could hold a range of positions, and could either have one central seat or function as circuit judges. These officials had a special mandate from the king to uphold the law. The highest ranking officials under Hammurabi were two senior officials responsible for two areas of Babylonia. Under them were governors for smaller provinces and cities. Though these officials were given much responsibility in different areas, it was not unknown for Hammurabi to get involved in the day to day operations of his kingdom.¹¹⁶

¹¹² (Westbrook, *The Character of Ancient Near Eastern Law* 2003, 27)

¹¹³ (Westbrook, *Judges in the Cuneiform Sources* 12 (2005), 28)

¹¹⁴ (Westbrook, *Judges in the Cuneiform Sources* 12 (2005), 28)

¹¹⁵ (Westbrook, *Judges in the Cuneiform Sources* 12 (2005), 28)

¹¹⁶ (Westbrook, *Old Babylonian Period* 2003, 365)

The final level was at the local courts. Cities had a mayor and a council or assembly as their leading body,¹¹⁷ and there are many references to the judges in an area.¹¹⁸ However, the identity of these judges is not so easy to attain. It seems that the judges at the local level were most often grouped together in a group. The town council or group of elders could function as a group of judges, and it is unclear who else may be considered judges, though the role clearly exists.¹¹⁹ It is also difficult to ascertain if the judges were professional judges who heard cases on a permanent basis or judge implied “merely a function.”¹²⁰ But, judges seemed not to have been trained in a technical interpretation of the law.¹²¹

There seems to be a somewhat paradoxical situation between the local, provincial and central levels of the system. On the one hand the power was certainly in the hands of the king and his direct subordinates, the provincial governors. But, there is evidence that local law was more important when deciding cases. Westbrook cites a text from one of Hammurabi’s letters: “When they arrive, examine their evidence, decide their case, and cause them to have judgment in accordance with the law that is currently practiced in Emutbal.”¹²²

The third issue to be dealt with here is that of the judges. The biggest problem is that there seem to be no indications of there being judges in the modern sense of the word. Judges had several sources which they could rely on in the deciding of cases. First, and easiest, would be decisions based on a decree of the king. The judge would then have the text of the decree available for support.¹²³ But, this was not the norm. The idea of legal precedence was not well established in cuneiform law, so the citing of laws or previous court decisions as arguments for a decision in a case is not common. There was, however, a great collection of unwritten law that the judges would have had access to. Interestingly, this is not connected with the idea of wisdom in the cuneiform sources. “The term ‘wise’ (*emqu*) is not attested in

¹¹⁷ (Westbrook, *The Character of Ancient Near Eastern Law* 2003, 28)

¹¹⁸ (Westbrook, *Judges in the Cuneiform Sources* 12 (2005), 29)

¹¹⁹ (Westbrook, *Judges in the Cuneiform Sources* 12 (2005), 28)

¹²⁰ (Westbrook, *The Character of Ancient Near Eastern Law* 2003, 30)

¹²¹ (Westbrook, *Judges in the Cuneiform Sources* 12 (2005), 29)

¹²² (Altbabylonische Briefe in Umschrift und Übersetzung 1964-) cited in (Westbrook, *Judges in the Cuneiform Sources* 12 (2005), 31)

¹²³ (Westbrook, *Judges in the Cuneiform Sources* 12 (2005), 29)

association with the judges or judging.”¹²⁴ Thus, the judges are not seen as wise people, raised over others in society, but have an authority by virtue of their role as judge.

In summery, it seems clear that for those who had the position of an official in the government, judging was party of their official duties.¹²⁵ The most common form for judgment was that it took place in groups, that is that the judges operated together in an assembly, especially at the local level.¹²⁶ The Judges did not use a system of precedence in deciding a case, but only viewed evidence.¹²⁷ Also, Westbrook points out that “the role of the divine should not be underestimated.”¹²⁸ In cases where parties were required to take an oath before the gods, it was not uncommon for one party to settle to avoid the oath.

2.1.2 The Legal System in Ancient Israel

The legal system of Ancient Israel is not well documented. Prior to the monarchy, it is assumed that there were two main areas of law, family internal law and village law.¹²⁹ The *pater familias* was the main authority figure in family law, and seems to have great powers in both the interpretation and administration of the law.¹³⁰ At the village level, there was a group of village elders, probably representatives from the various families, who decided the law. They were responsible for the protection and welfare of the village, thus dealing with cases that were not simply disposed of within the family unit.

During the monarchy, judges were placed in every town. 2 Chronicles 19:4-11 reports that Jehoshaphat appointed judges in all the fortified cities of Israel. In this way, Jerusalem was not the only place where the official interpretation of the law could take place. At the same time, it is clear that the king wanted to have control of the judicial system, not leaving the judicial responsibilities to a group of town elders, as had been in the pre-monarchy period.

¹²⁴ (Westbrook, Judges in the Cuneiform Sources 12 (2005), 31)

¹²⁵ (Westbrook, Judges in the Cuneiform Sources 12 (2005), 38)

¹²⁶ (Westbrook, Judges in the Cuneiform Sources 12 (2005), 38)

¹²⁷ (Westbrook, Judges in the Cuneiform Sources 12 (2005), 38)

¹²⁸ (Westbrook, Judges in the Cuneiform Sources 12 (2005), 39)

¹²⁹ (V. H. Matthews 1991, 67-70)

¹³⁰ (V. H. Matthews 1991, 68-69)

A judge (שֹׁפֵט) is mentioned in a few places, but the meaning of the word is twofold. The judge can be both a judicial figure and a political leader.¹³¹ As we saw above in the Babylonian system this was a natural connection between two roles: the king placed his representatives in the provinces that had administrative and judicial duties. In the case of the Biblical material, Exodus 18:13-27 explains that Moses appointed שֹׁפֵט, rulers, over the people, who were to judge serve as judges in disputes in order to give Moses more time for ruling. Disputes that could not be easily resolved were to be taken to Moses himself, who could take the issue before God. Deuteronomy 16:18-20 also prescribes that judges and officers be established in the towns, to make righteous judgments. This is the only reference in the law codes of the Bible to what seems to be the office of the judge.¹³²

There does not seem to be a distinction between the religious and secular areas of Israelite law before the monarchy. We have seen that within the framework of the Book of the Covenant there are both religious/cultic regulations and secular/social laws. Also evident of this is Samuel, who judged Israel from the sanctuaries at Bethel, Gilgal and Mispah.¹³³ Jehoshaphat, however, introduces a distinction, setting the Levites up as judges at the temple in Jerusalem.¹³⁴

The king also played a significant role in the legal system. As in the Babylonian system, the king had the ability to create law (1 Samuel 30:24-25) as well as decide cases (1 Samuel 8:5). In addition, as seen above in the references to Jehoshaphat's reform, it seems that the king had the authority to completely redesign the judicial system. Jehoshaphat's reform put official judges in place of local councils or elders, and made the distinction between religious and social law. In this way, the king exercised great legal authority, having the ability to assign the judges who were to serve in the cities.

2.1.3 The Use of the Book of the Covenant and Codex Hammurabi

¹³¹ HALOT s.v. שֹׁפֵט

¹³² (De Vaux 1961, 153)

¹³³ 1 Samuel 7:16

¹³⁴ 2 Chronicles 19:4-11

Both the Book of the Covenant and Codex Hammurabi were used extensively in their respective societies for a long period of time. We have seen above, in the discussion of the legal systems, how the laws were used specifically in the context of case law. Here, we will briefly highlight the way in which the law codes as a whole have impacted their societies.

2.1.3.1 Codex Hammurabi

Codex Hammurabi has a place of great stature in the legal history of the ancient Near East. Not only is it one of the most complete and well attested law codes, it also has been translated and passed on through more than a millennium. Copies of CH are attested from the time of Hammurabi in the Old Babylonian period all the way to the Neo-Assyrian period a thousand years later.¹³⁵ Rykle Borger¹³⁶ has given a comprehensive overview of the extant texts (as of 1979) for CH. The sheer number of copies that have been found is impressive, but the interesting here is the variation in language style. CH is assumed to have been written in the middle of the 18th century, BC – during the Old Babylonian period. The Old Babylonian (as well as Old Assyrian) dialect of Akkadian was in use from approximately 2000 – 1500 BC. Middle Assyrian and Middle Babylonian were used between 1500 and 1000 BC, and Neo-Assyrian and Neo-Babylonian were used from 1000 to 600 BC.¹³⁷ The differences between the dialects are big enough to make the classification of texts possible. That is to say that one would not confuse the Neo-Assyrian version of CH with the Old Babylonian. This is important for understanding the use of CH in Mesopotamia. The text of CH is not only known throughout the centuries, but it is constantly reproduced. The text was used in scribal training (see below) but is also an important influence on later bodies of law. The Middle Assyrian Code, generally considered a product of the reign of Tiglath-Pileser I (1114-1076 BC), is written in the same style and following the same literary pattern as CH.¹³⁸ So it is plain to see that CH lived a life of its own, long after Hammurabi's time. In section 2.2 we will return to the purpose and use of CH.

¹³⁵ (Roth 1995, 74)

¹³⁶ (Borger 1979, 2-4)

¹³⁷ (Huehnergard 2005, xxiii - xxv)

¹³⁸ (V. H. Matthews 2006, 120)

2.1.3.2 The Book of the Covenant

The Book of the Covenant has also had a great impact on the legal history of Israel. The Deuteronomic Law in Deuteronomy 12-26 is generally understood as an expansion of or replacement for the Book of the Covenant. There are countless contact points between the two law codes, but all in all the Deuteronomic Law is more detailed and reflects a process of interpretation of the Book of the Covenant. In this way, the Book of the Covenant serves as a model for the later Deuteronomic law code.¹³⁹ Influence of these two earlier codes is also seen on the Holiness Code in Leviticus 17-26. So it is quite clear that the Book of the Covenant was used as a model for the Law in Israel.

Psalms 1 shows how important the Law was to the life of Israel: "Blessed is the one who does not walk in the council of the wicked, nor stand in the way of sinners, nor sit in the seat of scorners; But his delight is in the Law of the Lord."¹⁴⁰ In addition to this, and perhaps different from the use in Babylon, the laws found in the book of the Covenant have been understood, at least in later tradition, as being normative. The interpretation of these laws in the Talmud has guaranteed an understanding of the laws which could be carried on and passed down. The laws have had such influence as to still be understood as carrying meaning for practicing Jews to this day.

2.2 The Purpose of the Internal Structure of the Law Codes

Against the backdrop of the legal setting of the ancient Near East, we can now look into the purpose of the law codes. Here it is important to distinguish between the purpose and use. It is obvious from the previous section that the Book of the Covenant and CH played different roles in their respective societies, although there were also similarities in their uses. In this section, we will use the literary analysis of the structures of the Book of the Covenant and CH to discuss what purpose the structure has. We have seen that both law codes have a prologue, a main body and an epilogue. Here, we will see how this structure is used and can be interpreted.

2.2.1 Codex Hammurabi

¹³⁹ See (Rendtorff 1983, 153-154)

¹⁴⁰ Psalm 1:1-2

There have been numerous attempts to account for the purpose of CH. Early on, the law code was considered to be a system of laws, in the sense of a modern law system.¹⁴¹ This view has not held out, and there have been numerous attempts at explaining what, in fact, CH is.

One theory has held that the main function of CH was scribal training. The length of the text and the formulaic laws fit well into the scribal education. The purpose of CH then, is not to provide a set of laws normative for any jurisdiction, but rather served as a training tool for scribal students in need of school texts. The structure, then, serves as a pedagogical framework for learning different styles of writing. The narrative and religious tones of the prologue, the formal casuistic laws of the main body and the lengthy precative style of the epilogue all serve as models for different educational needs in the scribal school. In addition, the form of the laws is a scientific form, also typical of the other scientific literary genre, the omen text.¹⁴² The wide attestation of Hammurabi also gives weight to this argument as scribal schools are known throughout the ancient Near East.¹⁴³

There are two main arguments against the scribal theory. First, there exists a wealth of other texts known simply as *scholarly texts*¹⁴⁴ that were used for scribal education. These texts are not as lengthy as CH nor as comprehensive. The development of CH as a scribal text primarily is thus not supportable. The second point is that this theory does not distinguish between the intention and the use of CH. It is quite clear that CH was copied and used for at least a millennium after it was written,¹⁴⁵ but this does not mean that CH was intended to be a scribal text. I think the argument should go in the opposite direction. CH proved to be so influential that it was included in the curriculum of school texts for scribes as a model of good writing.

The second theory we will look at is the idea that CH was royal propaganda directed towards people and/or history. That is to say that CH was meant to prove to people of Hammurabi's time and the future that he was a great and just king. The prologue

¹⁴¹ See (Davies 1905, 7-15)

¹⁴² (Westbrook, *Biblical and Cuneiform Law Codes* 92 (1985), 252)

¹⁴³ (Westbrook, *Biblical and Cuneiform Law Codes* 92 (1985), 252-253)

¹⁴⁴ Cf. (Huehnergard 2005, xxvi)

¹⁴⁵ See (Borger 1979) for an overview of the different copies of CH.

shows the achievements of Hammurabi, one after the other. When people hear of all the deeds that Hammurabi has done, he will be known and remembered as a great ruler. The fact that he has subdued the people and brought peace to the land is to be Hammurabi's legacy. According to this theory, the section of laws shows the best of Hammurabi as a just king. His judgments are written down not as prescription for his day and the future, but as a representation of the good that Hammurabi has done. The epilogue looks forward and sets Hammurabi himself and his laws as the standard by which future kings are to be judged. Thus, Hammurabi has assured that the people of his day and in the future will remember him as the great ruler.¹⁴⁶

This theory has a better understanding of why CH was put together than the scribal theory. There is no doubt that Hammurabi had in mind to be remembered by the grand stele that he set up, the mere sight of it is still a tribute to his greatness today. However, the fact that Hammurabi wanted to be remembered for his greatness is argument enough for that being the entire purpose of the creation of CH.

A third option for the purpose of CH is presented by Paul.¹⁴⁷ Here, he suggests that religious tone of the prologue is to be interpreted as the main purpose of CH. The deeds of Hammurabi as presented in the prologue are not only seen as having relevance for the people but also for the gods. It is the gods Enlil and Anu that give power to Marduk who in turn gives power to Hammurabi, and Hammurabi's deeds are seen as preserving or protection the cult and the place of the gods.¹⁴⁸ In the epilogue, Hammurabi takes responsibility for the poor and underprivileged and forces future kings to either live up to the greatness of Hammurabi or to be seen as letting the gods down. Thus, the structure here is seen as proving to the gods that Hammurabi has done good things and ensured that also future kings will do what is right. In this way, Hammurabi proves himself as a *šar mēšarim* (a just king).¹⁴⁹

This understanding raises valid concerns. That Hammurabi was interested in being seen as a *šar mēšarim* is not in doubt, nor the fact that the religious tones of the

¹⁴⁶ (Finkelstein 15 (1961), 101-104)

¹⁴⁷ (Paul 1970, 21)

¹⁴⁸ Cf. 1.3.2.1

¹⁴⁹ (Paul 1970, 26)

prologue are meant with great respect for the gods. It is, however, difficult to explain that such an expansive set of laws would be needed in order to prove Hammurabi's greatness for the gods. The narrative of Hammurabi's great deeds as well as the curses and blessings wished upon future kings could surely be enough to convince the divine beings that Hammurabi was just. There are other genres of royal apologia which would be more suitable to this style. But here we are still dealing with law, and we must find out what place the law actually has in this structure.

2.2.2 CH as Authorization of the Law

I propose that the structure of CH does not function as an apologetic text for the people or for the gods, and it is not primarily a scribal training tool (though it is used as such later). The primary function of CH is to give authority to the law and the juridical structures in place at the time of Hammurabi.

The prologue of CH lists the accomplishments of Hammurabi and puts them into two different perspectives at the same time. On the one hand, the accomplishments show the power of Hammurabi to subdue the people at will. Hammurabi has conquered cities and brought peace and prosperity to the land. On the other hand, Hammurabi has protected the interests of the local deities. Not only does Hammurabi have in mind the welfare of his people, but he also protects their gods and cults. In this way, Hammurabi has established himself as the true protector of the people. Thus Hammurabi says:

When the god Marduk commanded me to provide just ways for the people of the land for appropriate behavior, I established truth and justice as the declaration of the land, I enhanced the well-being of the people. At that time:¹⁵⁰

The set of laws that is presented in the main body is not meant to be an exhaustive and comprehensive body of laws. The laws that are selected are rather meant to give a wide perspective of the cases which have been tried, to show that the rulings that are laid down are to be followed. If the purpose is not to use these laws as precedence in cases to come, then interpretation of the individual laws also becomes

¹⁵⁰ CH V 14-25

easier, because inconsistencies in the punishments of crimes is less important if the laws are merely descriptive and not expected to be followed. The laws cover topics from every day life, and give a diverse picture of the types of rulings one could expect. The laws themselves are formulated in a way which leaves no doubt to their interpretation or application.

The epilogue functions in the same way to point out that the underprivileged are also protected by the law and to secure the use of the laws in the future. This appeal to the poor and underprivileged is a key to the success of the law. If the lower classes and those abused feel that the law is on their side, then there is no need for rebellion against the law. In addition, the curses upon a future king who should change the laws or go away from them shows that Hammurabi expects the authority of these laws to be valid over time. The authority of the law is in the continuation of the same principles into the future, not simply in them being established.

The law that is authorized by the law codes is not identical with the contents of the legal section of the codes themselves. The laws are certainly not meant to be a comprehensive treatment, nor precedence for all future law. They are simply a representation of the judgments which must be respected. The authority is important in the system of law in which the laws were meant to fit. The legal system of Hammurabi's time will now be investigated below.

2.2.3 The Book of the Covenant

The evidence suggests that CH should also be understood as an authorization of the law and the lawgiver. If the Book of the Covenant and CH are as connected as has been suggested above, then we must evaluate whether or not the Book of the Covenant can be seen as an authorization of the law in Israel. The arguments connecting CH and the Book of the Covenant are presented above, so here the focus is upon whether the structure of the Book of the covenant also serves as an authorization of the law.

The first point of interest is the prologue. The prologue as we have defined it here has two important features. The first is that the law is given through Moses by God.

All the people perceived the thunder and lightning flashes and the sound of the trumpet and the mountain smoking; and when the people saw it, they trembled and stood at a distance. They said to Moses, "speak to us yourself and we will listen; but let not God speak to us, or we will die."¹⁵¹

The characters here are Moses, God and the people. The scene is dramatic, with thunder, lighting and smoke. This is an image that is not easily forgotten. Moses' place here is as the mediator. Moses is seen as being able to talk to God, even when the people know that they will die if they themselves should talk to God. The picture of Moses is that of a hero, as he is presented in the entire book of Exodus. So it is quite clear that the connection of Moses to the law is not only narrative, but it is to give an authoritative strength to the law itself.

The second important feature of the prologue is that the prologue clearly attempts to protect the cult of God, the religious reality of the Israelites who would receive the law. The fact that the introduction of the main body of laws is most concerned with regulations that protect the people from (accidentally) defaming the altar and invalidating their ability to offer sacrifices shows that primal significance of the cult. If the laws were simply in the legal context, there would be no connection to the side of life that otherwise is the most important, the religious. In this case, the regulations that introduce the prologue serve as a starting point, a focusing of the law in such a way as to give the entire body of laws the religious authority that it needs in order to be valid in the culture.

The main body of laws, like those in CH, is not meant to be exhaustive. There is a twofold meaning to this as well. On the one hand, the laws give a wide and representative picture of the sort of laws that generally could be decided by a court of law. A trial takes place in a situation where parties are not able to agree amongst themselves how to deal with a situation. In such cases, whether it be slave law, family law, property law or criminal law, it is the task of the court (whether that be a judge or a cultic representative) to decide. The laws of the Book of the Covenant can be used as direct legislature in cases that identically match a criminal situation,

¹⁵¹ Exodus 20:18-19

but mostly, they provide a paradigm of what laws look like and validate their existence.

The second meaningful side of the main body of laws is in the way they are formulated. The terse, compact style of the laws gives weight to them as authoritative. The conditional clauses set a standard that there are specific ways of dealing with certain crimes. This establishes the fact that the law is in many cases not debatable. When a judge claims that the punishment for a certain crime is double repayment, then the party understands that it is being a legal standard, and not a subjective interpretation of the facts. Thus the law is authoritative, and not to be doubted.

The epilogue, like that of CH, focuses attention on poor and underprivileged. Here, this focus also gives them a positive starting point when they are wronged. When the poor are protected by the law, they can give more authority to the law. The change in tone from the main body of laws with its direct attention to details turns to a more generalized cry for protecting the poor – an indication that the goal of the structure here is to establish an authoritative base for the Law by using the form of the law code. In addition to this, the epilogue lists the blessings that will come to the people if they follow the Law. Just as the prologue put the law code in the religious context, the epilogue offers guarantees from God that following the Law leads to blessings. The authority of the Law is thus not only in the laws themselves, but in the promises surrounding.

Seen as a whole, the structure leads to an understanding of the Law in the religious context. The prologue and epilogue provide a clear connection between the laws that are given and God's presence with the Israelites. The covenant established between Israel and God is the foundation for all law and without this covenant, Israel has no future. The Book of the Covenant gives authority to the Law by placing a systematic presentation of laws in this religious context of the covenant, so that the people are bound not only to a passive following of God, but to active participation by following the Law.

2.3 The Ideological Orientation the Book of the Covenant and CH

There are a few major differences in the orientation of the Book of the Covenant that need to be noted in comparison with CH. These are matters that go beyond the level of content and deal with the basic cultural features that underlie the thinking of the two law codes. These differences help to understand how the Book of the Covenant was made to fit into the Israelite understanding of God and society.

Monotheism

The Book of the Covenant is a clearly monotheistic work. In the prologue the cult of the one God is a major issue. This is quite noteworthy in comparison with the prologue of CH, in which Hammurabi is described as the champion and protector of numerous different gods. In the main body of laws, both law codes mention God/gods. The tendency in CH is to use the generic *ilum* to refer to “a god/gods” or “the god/gods” as in phrases such as “he must go before the god(s).” In this way, the gods are not specifically mentioned in these passages of CH. As discussed above,¹⁵² the use of the term **הָאֱלֹהִים** refers to none other than the God of Israel.

Just Punishment

The Book of the Covenant calls for capital punishment in some cases. But, the use of capital punishment is restricted compared with that of CH. In addition “brutal and multiple punishments frequently found in several extra-biblical legal collections are all but absent from Israelite law.”¹⁵³ The punishment of crimes is supposed to be just – an eye for an eye, a tooth for a tooth. The Biblical paradigm seeks to punish the offender in a way that corresponds to the crime. Where CH¹⁵⁴ requires capital punishment if a thief is unable to repay the amount of his crime, Biblical law requires no such punishment.

The Biblical paradigm is seen clearly in our passage, Exodus 22:6-8. The final judgment is that the offender must repay the victim double the matter of the case. At first glance this may seem to be a form for multiple punishment, but in reality it is only a single punishment. The first repayment covers the original loss, so that the victim no longer is missing his property. The double repayment then serves as the

¹⁵² See 1.1.2 note 8

¹⁵³ (Paul 1970, 39)

¹⁵⁴ CH §8

punishment for the crime, because theft would be more or less risk free if the worst punishment was to return the item that had been stolen.

Instruction

The Book of the Covenant is Torah, instruction, directed at the entire community. The public nature of the Book of the Covenant makes it a Law that was meant for people to know and teach to their children.¹⁵⁵ CH, on the other hand, explicitly says that offended parties should come and look at the stela to see about the matter,¹⁵⁶ making it a law that was only really known in the judicial and scribal circles.¹⁵⁷ The difference shows the important position of the law in Israelite society. The law was not merely the solution when two parties were in conflict, but it was a way of life.

Covenant

The focus on the law as a way of life is in many ways connected to the fact that the Law was at the heart of the covenant between God and Israel. The Law was not an attempt by the king to get control over the people, but was the way in which the people could live in fellowship with their God. The promises of the covenant are for the people as they follow the law. CH has no concept of this. The law given in CH is from the king, and while it provides justice for the people, it is the king's way of being just and keeping order. The authority of the king's law was decisive in having a peaceful kingdom. After Hammurabi had conquered the surrounding kingdoms and established peace in his kingdom, the only thing left was to ensure that the people would not rebel. The authority of his law is then key in his success. The Book of the Covenant shows no such idea. The people are in a covenant with God, and awaiting the fulfillment of that covenant.

A Holy People

As people of the covenant, Israel is required to live as a holy people. "Each member of the community knows prospectively of his individual and communal obligations. Since law serves as an instrument of education, a didactic aim is to be found only in

¹⁵⁵ (Paul 1970, 39)

¹⁵⁶ LH XXV 3-19

¹⁵⁷ (Paul 1970, 39)

biblical legislation.”¹⁵⁸ Israel, as a people, is thus as a whole community to live in conjunction with the Law, and the Law served as a guiding line for the people to follow. The laws are meant to protect the people from breaking the covenant, from doing wrong. This is quite unique. The people are then responsible for their conduct and the ethical, social concerns are woven in with the religious, making all areas of life dependent on God and his divine revelation to the people.

Divine Law

The Book of the Covenant is directed to the people, so that the people may live according to the Law, and in covenant with God.¹⁵⁹ In CH, as is common in ancient Near Eastern law codes, the king was receiver of divine wisdom and was thus able to make laws that reflect his position as a just king. Hammurabi’s ultimate goal as a king was to be seen as just. In the Book of the Covenant, however, the goal is not for the king, or for Moses, to be seen as just and good. On the one hand, God wants to appear as just, and on the other hand he calls the people live as holy people. The covenant established between God and Israel is a form of direct connection between God and the people. The paradigm found in CH is that the king connects with the gods, but the people are to go through the king. The biblical paradigm is that the laws are given to the people as is evident in Exodus 21:1 “These are the ordinances which you shall set before them.”

In the end, it is God who is the lawgiver. The Sinai Narrative is a somewhat confusing story to read. The roles of Moses and God are intertwined, and it is not always clear who is writing the law. Moses is seen as a mediator between God and the people, but there is never any doubt as to what is happening: God is making his will known to the people. The presence of God in the story gives the ultimate authority to the Book of the Covenant. It is God’s will that the people should have the laws, and follow them. Moses serves as a mediator between God and the people, and at the same time, Moses establishes the legal system that will enforce the law. Moses is the judge who can go to God to discern answers, but it is God who is the primary lawgiver and the final judge.

¹⁵⁸ (Paul 1970, 39)

¹⁵⁹ (Paul 1970, 38)

The differences in ideological orientation between CH and the Book of the Covenant are important. They show that the Book of the Covenant was not a wholesale acceptance of the laws or ideas in CH, and that the cultural situation of Israel is an integral element to understanding the Book of the Covenant. The Book of the Covenant provides the authority for the Law, for the way in which Israel was to live in order to maintain their covenant with God. The people of Israel were expected to know the story related to the Book of the Covenant, and to know the law – thus the authority that the book provided was strong enough that the people chose to follow. The most important evidence of this is the longevity of the Law. The Law itself has remained authoritative to certain groups to this day. The authority of the law, and its basis in the tradition from Sinai is one of the binding elements in Israelite religion.

2.4 Conclusion: The Authority of the Book of the Covenant

The Book of the Covenant is best understood as a contextualized interpretation of CH. It is obvious that the intention of the author of the Book of the Covenant was not to reproduce CH, nor to copy every detail. The links between the two documents prove to be too strong to view them as secondary, as was seen in the first section of this thesis. The use of CH by the Book of the Covenant is more than accidental. The structural framework of the two law codes shows that they were not just independently formed, but use a common starting point to give authority to the law. This shared framework provides us an insight into these law codes, letting us see them as more than just a system of laws. The great amount of correspondence in contents between the two law codes strengthens suspicions of the connection between the two. The contents are so similar that some sort of direct dependence was suggested. The common framework has been interpreted here as attempt to give authorization and legitimacy to the Law. The laws themselves do not represent a comprehensive set of laws, they are a paradigm for other laws that have not been recorded, or that are still to be made.

Despite all these similarities, there were also many points of conceptual divergence between CH and the Book of the Covenant. When comparing the two law codes, it is apparent that the cultural background for the two is different. The differences help us to see some of the main points of Israelite culture and make it clear that the law

code that they took into use was not simply a verbatim copy of another, but is an interpretation made to fit into their own society.

The composition and style of the Book of the Covenant show that religion is of the utmost importance. God is the source of the law, but he is also the champion of the people, protector of the underprivileged and the final judge. Already from the beginning of the Book of the Covenant we see this. In the prologue the law is meant to protect the people from defaming their cultic sites. In the main body of laws, it is clear that the final authority and judge is God himself. In the epilogue, it is God who demands protection of the underprivileged and promises blessings and curses depending on how well Israel follows the Law.

The features of Israelite law can be seen in the text of Exodus 22:6-8. This is a clear example of a situation where a judge or local council of elders would not be able to determine which of the parties was speaking true, and which had committed a crime. In such a case, it was the task of God, or God's representative, to decide. In the Babylonian model, oaths before a god were common, but were simply to see how committed the person was to their position. No person should want to lie before the gods. But at the same time, it is clear that cases still came before judges after both persons had sworn an oath, in such cases, it was the judges who made the ultimate decision. In Israel, these difficult cases come before God, who is the final authority. This understanding of the religious nature of the Law leads to the understanding that the text in question suggests that cases that cannot be determined by the secular authority are subject to God's decision. Reading the Book of the Covenant as a contextualized version of CH gives us the understanding that Exodus 22:6-8 calls for such cases to truly be handled in such a fashion.

3.0 Literature

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