

INVENTING GOD'S LAW

*How the Covenant Code of the Bible Used and Revised
the Laws of Hammurabi*

DAVID P. WRIGHT



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For Dianne

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Preface

It was by accident that the thesis of this book came to be. I had accepted and operated according to the standard critical understanding of the Covenant Code and its relationship to Mesopotamian legal tradition. This viewed the biblical law collection as the result of stages of development over several centuries. The similarities it had with texts such as the Laws of Hammurabi were due to Israel's and the Bible's inheriting oral traditions that circulated in Syria and Canaan before Israel appeared on the historical scene. I assumed, too, that the laws of the Covenant Code in large part reflected the practice of early Israel.

Then, one day in the fall of 1998 while preparing a lecture for a course on biblical and Near Eastern law at Brandeis University, I noticed that passages from the Covenant Code and the Laws of Hammurabi that I had assigned for an upcoming class session on a new topic happened to follow, in sequence, passages in these texts that I had assigned from the previous class session that was devoted to a different topic. I spent the next several hours looking for other sequential correlations between the two collections. By dinner time, I had charted a list of ten such laws or legal topics. Thus this study was born.

Since that day, I have spent time testing, expanding, questioning, and refining the evidence and arguments. My first paper on the topic was at the New England Regional Meeting of the Society of Biblical Literature, April 1999 (Newton, Massachusetts). Since then, I have reported on my findings at various national and international professional meetings. I also published preliminary versions of my findings in three articles, the first in *Maarav* ("The Laws of

Hammurabi as a Source for the Covenant Collection,” 2003, appeared 2004) and two in the *Zeitschrift für altorientalische und biblische Rechtsgeschichte* (“The Compositional Logic of the Goring Ox and Negligence” and “The Fallacies of Chiasmus,” 2004). These early publications sought to elicit response from colleagues. One such considered response, by Bruce Wells, allowed me in turn to restate and sharpen the presentation of the data in a second *Maarav* article (“The Laws of Hammurabi and the Covenant Code: A Response to Bruce Wells,” 2006, appeared 2007). Some material from these articles has been incorporated, with extensive revision, at places in this study. I thank these journals for permission to reuse this material.

The thesis of this book requires detailed textual examination and is therefore by necessity technical in nature. In order to facilitate a basic grasp of the evidence, to serve nonspecialists as well as specialists who want an overview, I have summarized the thesis and evidence in chapter 1. Reading this along with the conclusion (chapter 13) will give any reader a solid understanding of the study’s claims. A more intensive reading would include chapters 2–4 (part I), which lay out in detail the evidence for the Covenant Code’s dependence upon Hammurabi’s Laws and explain when this borrowing occurred. A fully engaged reading would add chapters 5–12 (part II). They describe how the Covenant Code transformed its sources and explain the purpose and ideology of the work. At the suggestion of colleagues, I have provided in most cases citations of texts in translation and in the original languages to allow immediate critical analysis. I have also included translations of citations from contemporary European scholarship in the main text of the chapters (and in the notes of chapter 1) for the benefit of nonspecialists.

I am deeply grateful to several colleagues for their help and criticism: Bernard Levinson, for taking an early interest in my findings, responding to drafts of some of my papers on the book’s thesis, critiquing and refining some of my arguments in his own publications, and sharing his offprints and some prepublication manuscripts; Jeffrey Stackert, my student during the years that this study was in formation and from whom I learned much, for providing a critical ear in hours of discussion and evaluating some early drafts of chapters; my Brandeis colleague Tzvi Abusch, for being an incisive sounding board for ideas, helpful with Assyriological matters, and an advisor on how to present the data and arguments on such a complicated topic; Bruce Wells, for his resistance and criticisms, not only in his review article, just noted, but in friendly discussions over the past few years, which have helped me see a wider set of questions; Bernard Jackson, for corresponding with me about my first articles and sharing the prepublication proofs of his now recently published book, *Wisdom-Laws*; Eckart Otto, for sharing his work with me over the years and for recently facilitating the presentation of my ideas in *ZABR*; William Morrow, for his cautionary questions and sharing a manuscript of a forthcoming article; Simo Parpola, for asking me to summarize my thesis for his online Melammu Project (see Wright, “The Codex Hammurabi as a Source for the Covenant Collection”);

and John Van Seters, for sending me offprints of his articles and discussing his approach and views with me.

In addition, I thank other scholars for suggesting references, engaging in discussions, and offering critiques, including Joel Baden, Simeon Chavel, Andrew Cohen, Tikva Frymer-Kensky, Samuel Greengus, Dale Patrick, Jan Wagenaar, Emily West, and Raymond Westbrook. I acknowledge several of my Brandeis colleagues for their critique and suggestions, including Marc Brettler, Bernadette Brooten, Jonathan Decter, Jon Levisohn, Antony Polonsky, and Eugene Sheppard. I also thank the several students who served as research assistants on this work in its various stages: David Bokovoy, Jason Gaines, and Michael Singer. I also recognize a debt to other graduate students who have argued with me and provided suggestions, including Molly DeMarco, James Getz, Eric Grossman, Alan Lenzi, Sarah Shectman, Sheila Reeder, Susan Tanchel, and Ilona Zsolnay.

I thank the British Museum and cuneiform collection curator Jonathan Taylor for allowing me to examine and photograph unpublished neo-Assyrian fragments of Hammurabi's Laws (see chapter 4, n. 137).

Finally, I extend special gratitude to my wife, Dianne, who supported me through the long process of developing this study, listened to my incessant and evolving test lectures, and endured the various grunts and groans of the writing process. She has always been patient and accommodating. Since 1998, our four children have gone through and graduated from college, and I thank them, too, for being patient with a sometimes preoccupied father. Dianne and I are now happy to see this fifth "child" leave the nest.

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Abbreviations and Special Terminology

Abbreviations otherwise follow those found at the beginning of the volumes of the *Anchor Bible Dictionary*, supplemented by those in *The Assyrian Dictionary of the Oriental Institute of the University of Chicago*.

BZABR (= BZAR)	Beihefte zur <i>Zeitschrift für altorientalische und biblische Rechtsgeschichte</i>
CC	Covenant Code (20:23–23:19)
CCN	Covenant Code Narrative (see chapter 12)
CDA	Black, Jeremy, Andrew George, and Nicholas Postgate. <i>A Concise Dictionary of Akkadian</i> . Santag: Arbeiten und Untersuchungen zur Keilschriftkunde 5. Wiesbaden: Harrassowitz, 1999.
COS	<i>The Context of Scripture</i> . Edited by William W. Hallo and K. Lawson Younger Jr. 3 vols. Leiden: Brill, 2003.
Exhortatory Block <i>HALOT</i>	Cols. 47:59–48:94 of LH (see chapters 1 and 3) Koehler, Ludwig; Walter Baumgartner; Johann Jakob Stamm, eds. M. E. J. Richardson, trans. and ed. <i>The Hebrew and Aramaic Lexicon of the Old Testament</i> . Study Edition. Leiden: Brill, 2001.
HL	Holiness Legislation (see chapter 13, n. 19)
HtL	Hittite Laws
<i>JHebS</i>	<i>Journal of Hebrew Scriptures</i>

LE	Laws of Eshnunna
LH	Laws of Hammurabi
LLI	Laws of Lipit Ishtar
LU	Laws of Ur-Namma
MAL	Middle Assyrian Laws
NA	Neo-Assyrian
NBL	Neo-Babylonian laws
OB	Old Babylonian
OBC	Orientalia Biblica et Christiana
<i>OEANE</i>	<i>Oxford Encyclopedia of Archaeology in the Near East</i>
SAA	State Archives of Assyria
SAAS	State Archives of Assyria Studies
String I	Exodus 22:20–30 (see chapters 1 and 3)
String II	Exodus 23:9–19 (see chapters 1 and 3)
VTE	Vassal Treaties of Esarhaddon (see Parpola and Watanabe, <i>Neo-Assyrian Treaties</i>)
ZABR (= ZAR)	<i>Zeitschrift für altorientalische und biblische Rechtsgeschichte</i>

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1

Introduction: The Basic Thesis and Background

This study proposes a profoundly new understanding of the composition and nature of the Covenant Code (Exodus 20:23–23:19).¹ It contends that this law collection, the pinnacle of the revelation at Mount Sinai according to the story of Exodus 19–24, is directly, primarily, and throughout dependent upon the Laws of Hammurabi. The biblical text imitated the structure of this Akkadian text and drew upon its content to create the central casuistic laws of Exodus 21:2–22:19, as well as the outer sections of apodictic law in Exodus 20:23–26 (along with the introduction of 21:1) and 22:20–23:19.² This primary use of the Laws of Hammurabi was supplemented with the occasional use of material from other cuneiform law collections and from native Israelite-Judean sources and traditions. The time for this textual borrowing was most likely during the Neo-Assyrian period, specifically sometime between 740 and 640 BCE, when Mesopotamia exerted strong and relatively continuous political control and cultural sway over the kingdoms of Israel and Judah, and a time when the Laws of Hammurabi were actively copied in Mesopotamia as a literary-canonical text. The Covenant Code also appears to be a unified composition, given the influence of Hammurabi's laws throughout, the thematic integrity resulting from this, the unique scribal talents and interests necessary for the text's composition, and its temporal proximity to the basic laws of Deuteronomy, which depend on the Covenant Code's laws and date not much later, probably to the latter half of the seventh century. Moreover, because the Covenant Code is largely a creative rewriting of Mesopotamian sources, it is to be viewed as

an academic abstraction rather than a digest of laws practiced by Israelites and Judeans over the course of centuries. Its selective character and the manner in which it reshapes the political and theological landscape of the Laws of Hammurabi, in fact, make it appear to be preeminently an ideological document, a response to Assyrian political and cultural domination.

This model differs decidedly from current critical scholarly appraisals of the text.³ According to these, the Covenant Code's similarities with ancient Near Eastern law—perceived only imperfectly until now—are due to general or specific traditions, preserved orally and reflected in inherited legal practice, that reach back into the second millennium BCE. One model proposes that Mesopotamian customs became known in Syria-Canaan through the establishment of cuneiform scribal schools in this western region during the mid- to later second millennium. These were then handed on primarily in oral form into the first millennium, at which time the people of Israel took them over, practiced them, and encoded them in law. An alternate model proposes that the customs go back earlier to the beginning of the second millennium or even to the late third millennium, to a common stock of Amorite practices that eventually became independently encoded in the Mesopotamian law collections and the Covenant Code. Only a few scholars have allowed for direct or indirect literary influence from Mesopotamian law collections, and they usually limit this to a few laws, such as those about a goring ox. No one has ventured the idea that the apodictic laws have any connection to Hammurabi's text.

The arguments for the prevailing traditions explanation, as just described, have seemed persuasive. These include a judgment that the Covenant Code's basic casuistic laws (whatever a particular analysis may determine these to be) are old, from around 1000 BCE, give or take a century. Support for this date has been sought in the sociological and cultural picture imagined to be reflected in the basic casuistic laws. For example, the Covenant Code never speaks of a king. Hence the basic laws have been assumed to be premonarchic or at least built on legal traditions from that period. An early dating of the Covenant Code is also supported by a relatively early dating of the laws of Deuteronomy. If the latter date to the eighth century, for example, then the Covenant Code may be from the ninth or even tenth century BCE. In addition, several scholars believe that the Covenant Code was included as part of the Elohist—a few say the Yahwist—source of the Pentateuch. An early dating of these sources has required an early date for the Covenant Code. Furthermore, scholars have made connections between the Covenant Code and features in second-millennium cuneiform documents, such as slave customs reflected in Nuzi texts or the class of persons denoted by the term *ḥab/piru* in El-Amarna and other texts, to which the designation “Hebrew” in the Covenant Code has been related. The date of the Covenant Code, it is supposed, must be relatively close to the time of the second-millennium texts with these comparable elements.

This early dating of the Covenant Code precludes borrowing from contemporary Mesopotamian literature because Mesopotamian influence did not

extend to Israel and Judah until the mid-ninth-century BCE and not significantly so until the mid-eighth century. Cuneiform scribal schools in Syria-Canaan that flourished in the second millennium, evidenced in Akkadian texts found from various Canaanite cities⁴ and the El-Amarna tablets of the fourteenth century, ceased to exist around 1200 BCE with the urban collapse at the end of the Late Bronze Age.⁵ Hence the Covenant Code's similarities to cuneiform law, so a traditions argument would claim, cannot be due to the maintenance of *cuneiform* law texts from the second millennium into the first millennium in the west. If any written sources were influential, these would have presumably been written in Aramaic or Phoenician and would have been limited in scope, perhaps small excerpts of laws or scribal exercises on particular subjects. But since there is no evidence for such texts—certainly there is none for the transmission of the whole of the Laws of Hammurabi in these Northwest Semitic languages—the content of the Covenant Code must result mainly from oral tradition. In any case, most scholarship has also assumed that the laws of the Covenant Code reflect actual legal customs in Israel or Judah. Therefore, whatever relationship there is to Mesopotamian custom, it is only through a pedigree of actual practice. This rules out dependence on a text and even oral traditions transmitted as abstract matters of academic discussion among scribes or jurists.

In addition to these chronological considerations, previous scholarship following a traditions explanation has also emphasized that, despite the observable similarities with Near Eastern law texts, the laws of the Covenant Code are significantly different from their nonbiblical counterparts. These differences have been taken as an index of the cultural, geographical, and chronological distance between the texts. Moreover, the number of *exact* correspondences between the Covenant Code and any given Near Eastern text is actually quite small. These few correlations can presumably be explained by a nonliterary model. Approaches employing a traditions model have also emphasized that similar laws or legal topics are found in several wide-ranging Near Eastern or Mediterranean law collections. For example, the Covenant Code, the Laws of Hammurabi, the Laws of Eshnunna, and the Roman Twelve Tables all have burglary laws that speak of killing a burglar (see chapter 9). These cannot all be related by literary influence. They are either all the result of coincidence (independent genesis) or the result of broad but indefinable oral tradition. This explanation is then brought to bear on all other points of similarity between the Covenant Code and Near Eastern legal texts.

Additional arguments have been mustered in support of a traditions model. Critical scholarship has concluded that the Covenant Code contains several redactional strata that arose over the course of several centuries, from approximately 1000 to 500 BCE. That the Covenant Code has a complex literary history is supported in a general way by what scholarship has observed to be the nature of other biblical texts, by empirical evidence from variant ancient versions of other biblical texts,⁶ and from what we know about the composition of texts

from elsewhere in the ancient Near East.⁷ The problem for a theory of direct literary dependence is that several of the proposed compositional layers of the Covenant Code have correspondences with Near Eastern law. But it is unlikely that each stratum arose through dependence on Near Eastern legal texts. It is easier to believe that the various strata arose independent of foreign literature and out of a tradition that was only indirectly and loosely associated with Mesopotamian customs.

Related to this argument is the proposal in various works of scholarship, admittedly on the basis of meager data, of an evolutionary scheme for biblical law in general. For example, several scholars see a development from self-help customary law reflective of a simpler sociological situation to more elaborate regulations connected with village, town, and eventually state interests. The Covenant Code has been viewed as fitting into this developmental scheme. Its presumed early redactional layers reflect a relatively primitive stage of law, and the Covenant Code as a redacted whole reflects a more developed politico-judicial context. Therefore, the Covenant Code does not seem to be of foreign derivation but is a digest of growing local custom.

Further support for a traditions explanation for the laws of the Covenant Code is in the Bible's use of oral tradition in other respects, such as for religious and theological conceptions, various customs, narrative motifs, and literary forms and techniques. It has been reasonable to conclude, therefore, that similarities between the Covenant Code and Mesopotamian legal texts are due to similar broad oral tradition and not literary dependence.

Methodological considerations also point to the validity of a traditions model. First, the claim of literary dependence seems too simplistic. After all, it would be an extremely grand stroke of luck that we happen to have the source document for the Covenant Code, given the vast stretches of time, divergent geographies, and chance nature of archaeological discovery involved.⁸ Second, the claim that the Covenant Code depends on the Laws of Hammurabi looks like a relic of the Pan-Babylonianism of the early twentieth century.⁹ Scholarship has taught us since then that we must deal with the individual context and expression not only of the Mesopotamian material but also of the biblical material.¹⁰

This study proffers new evidence and arguments that lead us to question and reject a traditions explanation and its supporting arguments, as just summarized. The Covenant Code has many more similarities with the Laws of Hammurabi than have previously been observed. These are not merely matters of specific content; they are also matters of general structure and the common distribution of themes. The similarities are such that they cannot be explained by oral tradition. If one simply moves the date of the presumed earliest material Covenant Code a bit later, to the Neo-Assyrian period, then a window of opportunity opens for use of the Laws of Hammurabi as a source text. Indeed, many scholars in recent years have been moving to such a date for a significant portion of the casuistic laws, as well as the apodictic laws, based on different evidence and considerations.¹¹

The primary historical problem before us can be boiled down to this: are we to believe that legal traditions from several centuries and maybe even a millennium or more past have happened to come together in a *form* and with a *content* that matches the Laws of Hammurabi, precisely at a time when Israel and Judah were under Assyrian control and when the Laws of Hammurabi were part of the Great Books library of Akkadian scribes, but that this text had no influence on the Covenant Code? A more parsimonious and compelling explanation of the Covenant Code's origins recommends itself, and that is what this study presents.

The Evidence in Brief

The argument of this book requires detailed textual examination of the whole of the Covenant Code in connection with the Laws of Hammurabi and other sources. The thesis cannot be defended and the evidence cannot be understood and evaluated otherwise. To moderate this detail, I will present the essence of the evidence here so that a reader will have a framework for understanding the specifics to come. One need not worry that I am laying out my cards too early because this schematic presentation represents only the tip of the evidential iceberg. This précis will no doubt generate numerous questions. These will be answered in the body of the book.

Ever since the Laws of Hammurabi (henceforth LH) were discovered in excavations at Susa¹² in 1901–1902 and quickly published by Scheil in 1902,¹³ scholars recognized their similarity to the laws of the Covenant Code (henceforth CC).¹⁴ The past century of scholarship, however, has generally perceived correspondences with LH atomistically and only in the casuistic portion of the text (i.e., Exodus 21:2–22:19).¹⁵ The goring ox laws are the clearest and most famous example of the observed similarities (for detail, see chapter 8).¹⁶

Exodus 21:28–32

²⁸If an ox gores a man or woman and he dies, the ox shall be stoned, its flesh shall not be eaten; the owner of the ox is not liable.

²⁹If an ox is a habitual gorer, from previous experience, and its owner has been warned, but he did not restrain it, and it kills a man or woman, the ox shall be stoned and its owner shall be put to death. ³⁰If ransom is laid upon him, he shall pay the redemption price for his life, according to whatever is laid upon him.

Laws of Hammurabi 250–252

²⁵⁰If an ox gores a man while passing through the street and kills (him), that case has no claim.

²⁵¹If a man's ox is a habitual gorer, and his district has informed him that it is a habitual gorer, but he did not file its horns and did not control his ox, and that ox gores a man (lit. son of a man) and kills (him), he shall pay one-half mina (= thirty shekels) of silver.

³¹Or (if) it gores a son or daughter, it shall be done for him according to this law.

³²If the ox gores a male slave or a female slave, he shall pay thirty shekels of silver to his (the slave's) master and the ox shall be stoned.

²⁵²If it is the slave of a free person, he shall pay one-third mina (= twenty shekels) of silver.

Though CC here exhibits some notable differences, its laws are nonetheless remarkably similar to those in LH, having the same basic content, formulation, and sequence. On the basis of the similarities in these laws alone, Meir Malul, for example, concluded that there must be a literary connection between the two texts.¹⁷

But the similarities with LH are much broader than what are observable between individual laws here or there and are found throughout its two genres of casuistic and apodictic laws. The casuistic laws, with the style “if . . . then . . .,” occupy the central portion of the text (21:2–22:19). These laws are surrounded by bookends of apodictic laws, with the style “do this/don't do that” (20:23–26 and 22:20–23:19). CC's central casuistic laws have close associations with the central casuistic laws of LH (LH 1–282), and CC's outer apodictic laws have close thematic associations with the outer sections of LH, its prologue and epilogue, especially one particular section of the epilogue.

The casuistic laws of CC for their part display the same or nearly the same topical order as the laws in the last half of Hammurabi's collection.¹⁸ They correspond in fourteen points, as I count them. These are summarized in table 1.1. (The reader should later examine the table in the appendix to chapter 13, which lays out the correlations in more detail.) In only a few laws is the order inexact. These differences are explainable by the creativity that CC used in revising LH. Homicide, mentioned only in a passing way in LH 207 in a law on striking (cf. LH 206), was moved to the beginning of CC's assault laws. The topic of talion (i.e., “an eye for an eye . . .”) was moved from earlier in the striking laws of LH (LH 196–201) to provide penalties for the injury or death of a woman in a case of aggravated miscarriage. This replaced vicarious punishment prescribed by LH 210, a penal principle that CC rejected (see Exodus 21:31 in the goring ox law, cited previously). The other variation in CC's order, the breakup of the goring ox laws with a negligence law, is partly due to the shift in context from human victims to animals (a shift also visible in LH) and also to using a law from another cuneiform law source (similar to Eshnunna Law [= LE] 53) to supplement the basic goring ox law from LH.

As CC used the order of LH as a guide, it brought in laws from other places in LH outside the topical sequence, the chief examples of which are listed in table 1.2. CC also used a few laws based on other cuneiform collections, the main examples of which are listed in table 1.3. These were not necessarily derived from these known collections but may have come from an unknown source or sources

Table 1.1: The similar sequence between the casuistic laws

Casuistic Laws of CC	Casuistic Laws of LH
1. 21:2, 3–6 debt-slavery of males, including children of slave, master relations	117 son, father debt-servants; subsequent laws: 175 children of slave, 282 master relations
2. 21: 7, 8–11 debt-slavery of a daughter, including displeasure, “law about daughters,” taking second wife, and three means of support	117 daughter debt servant; subsequent laws: 148–149 displeasure and taking second wife, 154–156 laws about daughters, 178 three means of support
3. 21:12–14 death from striking, intent	192–193, 195 child rebellion 196–201 talion laws, injury to slave 206 men fighting, injury, cure 207 (based on 206) death from striking, intent
4. 21:15, 17 child rebellion	
5. 21:18–19 men fighting, injury, cure	
6. 21:20–21 killing one of lower class	
7. 21:22–23 causing a miscarriage	208 killing one of lower class (cf. 116) (cf. slaves in 196–205, 209–223)
8. 21:23–27 talion laws, injury to slave	209–214 causing a miscarriage
9. 21:28–32 goring ox	229–230 negligence (cf. 125) 250–252 goring ox (similar to LE 53)
10. 21:33–34 negligence	
21:35–36 goring ox	
11. 21:37; 22:2b–3 animal theft	253–265 animal theft
12. 22:6–8 deposit	265–266 “deposit” of animals (idiomatically related to deposit in 120, 124–125)
13. 22:9–12 injury and death of animals	266–267 injury and death of animals
14. 22:13–14 animal rental	268–271 animal rental (cf. 244–249)

Table 1.2: Main nonsequential correspondences with LH

master relations and ear mutilation	Exod 21:5–6	LH 282
kidnapping	Exod 21:16	LH 14
negligence	Exod 21:33–34	LH 125
burglary	Exod 22:1–2a	LH 21
grazing	Exod 22:4	LH 57–58
deposit	Exod 22:6–7	LH 120, 124–125
animal rental	Exod 22:13–14	LH 244, 249

Table 1.3: Main correspondences with cuneiform laws other than LH

talion in miscarriage	Exod 21:23–25	MAL A 50, 52
an ox goring an ox	Exod 21:35	LE 53
burglary	Exod 22:1–2a	LE 13 (cf. LH 21)
burning a field	Exod 22:5	HtL 105–106
seducing a virgin	Exod 22:15–16	MAL A 55–56
socery	Exod 22:18	MAL A 47

Table 1.4: Parallel string structure of the final apodictic laws of CC

Topic	String I (Exod 22:20–30)	String II (Exod 23:9–19)
1. general law about the poor	22:20–23: three classes—immigrant, widow, orphan—not to be oppressed; Egypt rationale	23:9: immigrant not to be oppressed; Egypt rationale
2. two relatively long laws benefiting the poor	(A) 22:24: interest not to be taken from poor (B) 22:25–26: garment pledge not to be retained.	(A) 23:10–11: poor eat from produce of seventh-year field (B) 23:12: poor rest on seventh day
3. two short laws about speaking about sovereigns	(A) 22:27a: God not to be cursed; (B) 22:27b: “chieftain” (= king) not to be cursed	(A) 23:13ba: names of other gods not to be recalled (B) 23:13bβ: name of these gods not to be heard on lips
4. cultic laws	22:28–30: miscellaneous cultic rules: offer <i>first produce</i> , dedicate <i>firstborn</i> humans, offer <i>firstborn</i> animals after remaining with <i>mother</i> a week, carrion not to be eaten because people are holy	22:17–19: three annual festivals to be observed where people appear before/“see” the deity; miscellaneous cultic rules: leaven with sacrificial blood not to be offered, festival offering not to remain till morning, <i>first fruits</i> to be offered, kid not to be boiled in <i>mother’s</i> milk

that had similar laws. The topics in the sequential template of the last half of LH provided collection points for the insertion or use of these various other laws. This interspersing of extraneous materials was part of CC’s creative reworking of its basic LH source material, to create a comprehensive yet brief composition.

The apodictic laws of CC show an equally tight set of correspondences with LH. My initial publications on the relationship of CC to LH outlined these correspondences in only a general way.¹⁹ The study at hand gives new evidence from the apodictic laws that may well exceed in its force the already strong evidence from the casuistic laws. The key to understanding the relationship of the apodictic laws to LH is to recognize that the final apodictic laws (22:20–23:19) exhibit a structure with two parallel passages or *strings*, as I call them for sake of easy reference and identification in the discussion that follows. Each string has four corresponding themes or elements. These strings are set out in table 1.4 (see the full texts in chapter 3).

These strings are set around and augment a chiasmic core of laws that prescribe proper judicial behavior in 23:1–8, as outlined in table 1.5 (see chapter 3 for the full text).²⁰ The whole of the final apodictic laws is thus a carefully calculated structure.

The chief comparative point to note is that these final apodictic laws and also those at the beginning of CC replicate in exact sequence the themes of what I

Table 1.5: Schematic outline of the chiastic core of the final apodictic laws

(a) 23:1: not raising a false report (שמע שוא) or following the wicked (רשע) to be a violent witness (apodictic law)
(b) 23:2–3: not perverting justice (הטה) or countenancing a poor person (דל) “in his case” (בריבו; apodictic law)
(c) 23:4: returning the ox or ass of an enemy (איבך; 2nd-person casuistic law starting with כִּי and ending with an infinitive absolute construction plus preposition and pronoun)
(c') 23:5: returning the ass of an adversary (שנאך; 2nd-person casuistic law starting with כִּי and ending with an infinitive absolute construction plus preposition and pronoun)
(b') 23:6: not perverting (הטה) judgment of poor person (אביון) “in his case” (בריבו; apodictic law)
(a') 23: 7: keeping away from a false matter (דבר שקר), not slaying the innocent and guiltless (נקי וצדיק; cf. “violence” in member a) since the wicked (רשע) will not be exonerated (apodictic law)
(x) 23:8: extra tag: not taking a bribe.

call the *exhortatory block* of the epilogue of LH (cols. 47:58–49:44). This correspondence is summarized in table 1.6 (see the full texts at the end of chapter 3). The replication of themes from the exhortatory block occurs thrice: (1) in the initial apodictic laws (20:23–26), (2) in string I of the final apodictic laws (22:20–30) continuing on into chiastic passage on judicial propriety (23:1–8); and in string II of the final apodictic laws (23:9–19). This threefold iteration accounts for *all* the major themes in the apodictic laws. Nothing is thematically extraneous, except the brief exhortation in 23:13a, which nonetheless is to be explained from the influence of Hammurabi’s exhortatory block (see later).

The key to understanding many of the correspondences in the apodictic laws is to realize that CC has replaced Hammurabi and Mesopotamian gods with Yahweh. The Israelite-Judean god is now the author and revealer of law. His cult symbol, the altar, has replaced Hammurabi’s temple statue. Just as the exhortatory block has Hammurabi’s name memorialized at a cult site (“May my name [*šumī*] be recalled [*lizzakir*] in the Esagil temple favorably forever”), CC has Yahweh’s name memorialized at a cult site (“In every place where I cause my name [שמי] to be recalled [אזכיר]”) and prohibits the memorializing of other gods (“you shall not mention/recall [לא תזכירן] the name [שם] of other gods”). CC extends the theme of name memorialization to prohibit the cursing of deity and the native “chieftain” (i.e., the king). The coming of a wronged man before Hammurabi’s statue and stela at the Esagil temple (“let a wronged man who has a case come before the statue of me, king of justice” *awīlum ḫablum ša awātam iraššū ana maḫar šalmīya šar mīšarim lillikma*) is replaced with the thrice-yearly visit of male pilgrims for the festivals (e.g., “three times

Table 1.6: Correlations between the apodictic laws and the exhortatory block

<i>Exhortatory Block of the Epilogue of LH</i> (LH cols. 47:59–49:17)	<i>Initial Apodictic Laws</i> (Exod 20:23–26)	<i>String I of Final Apodictic Laws & Chiastic Core</i> (Exod 22:20–23:8)	<i>String II of Final Apodictic Laws</i> (Exod 23:9–19)
<p>Three individuals (the “weak,” orphan girl, widow) not to be oppressed, to be treated justly. (col. 47:59–73)</p>		<p>Three individuals (immigrant, widow, orphan) not to be oppressed. (22:20–23)</p>	<p>Immigrant not to be oppressed. (23:9)</p>
		<p>(Two laws on poor follow: (A) no interest from poor (v. 24); (B) garment pledge not kept overnight (vv. 25–26).</p>	<p>(Two laws on poor follow: (A) poor eat from seventh-year produce (v. 10–11); (B) poor rest on seventh day (v. 12).</p>
<p>Hammurabi’s image set up in the Esagil temple. His law stela is set up before this image. (col. 47:75–78)</p>	<p>Images of (other) gods not to be made. Instead, an altar (symbol of the divine sovereign) is to be made. (20:23–24a)</p>		
<p>Hammurabi’s name (“my name” <i>šumī</i>) is to be recalled (<i>zakārum</i>) in the Esagil temple. No other king like Hammurabi. (col. 47:93–48:2)</p> <p>Wronged man to visit the temple for judicial clarification. He appears before Hammurabi’s statue and stela. His prayer/praise of Hammurabi to Marduk and Zarpanitu. King and gods are called “lords” (<i>bēlum/bēltum</i>). (col. 48:3–58)</p>	<p>Yahweh causes recall (זכר) of his name (“my name”; שמי) in cult place. (20:24bα)</p>	<p>God and the people’s chieftain (= king) are not to be cursed. (22:27)</p>	<p>Names (שם) of other gods not to be recalled. (23:13) (זכר)</p>
		<p>Sacrificial and cultic prescriptions (most of these have a connection with the sanctuary and altar and would be observed on festivals). (22:28–30) [Primarily a counterpart to the corresponding element in string II.]</p>	<p>Every male to appear before (emended: “see”) Yahweh at the sanctuary for pilgrimage festivals. Yahweh called “Lord” (אדן). Offerings to the deity. (23:14–19)</p>
			<p>[End of CC]</p>

End of prayer of praise says
 Hammurabi provided well-being
 (= blessing; *šīram ṭābam... išīn*)
 for the people. Summary statement
 “may he (the wronged man) pray/
 bless me” (*likrubam*). Gods that
 “enter (*erēbum*) the Esagil temple”
 (cf. 20:24b) provide good omens
 (*lidammiqū*). (col. 48:34–58).

Admonition to the future king to
 ensure justice. Laws not to be altered.
 Eradicate wicked. Chiasitic structure.
 (cols. 48:59–49:17)

Yahweh comes (בוא) to the cult
 place and blesses (ברך) the people.
 (20:24bβ)

Two laws on altar and its
 materials: (A) no hewn
 stone (v. 25); (B) no stairs
 (v. 26).

Laws ensuring justice. Justice not to be
 perverted. The wicked and innocent.
 Patent chiasitic structure. (23:1–8)

a year may every male among you appear before [emended: 'see'] the Lord, Yahweh" (שְׁלֹשׁ פַּעַמִּים בַּשָּׁנָה יֵרָאֶה [יֵרָאֶה] כָּל זָכוֹר [אֵת] פְּנֵי הָאֵדֹן יְהוָה). The deity of CC provides blessing to the people just as Hammurabi provided well-being to his people. He even comes (בוא) to the cult site like the gods who "enter" (*erēbum*) the Esagil temple, though Yahweh appears in theophany, not by ritual procession as implied by the Akkadian verb.

The admonition to a future king to follow Hammurabi's laws and example of justice is reformulated as an address to all the people to follow justice in 23:1–8. Hammurabi's admonition to the future king also contains an inverted structure. While this is imperfect and may not have been intended as a pure chiasmic structure, the structure is obvious even in a casual reading. This presumably served as the stimulus for the creation of the more balanced and thus intended chiasmic structure in Exodus 23:1–8.

The only element of the final apodictic laws that is unaccounted for in terms of the string structure and topical correspondence with the exhortatory block is the very brief general command in 23:13a: "Be observant with regard to all that I have said to you" (ובכל אשר אמרתי אליכם תשמרו). Though out of order with respect to the exhortatory block, this nevertheless corresponds with a general command to the future king in that block: "let him keep the words of justice that I have written on my stela" (*awât mīšarim ša ina narīya ašṭuru liššur*; col. 48:64–67) and "let him be obedient to the words that I inscribed on my stela" (*ana awâtim ša ina narīya ašṭuru liqūlma*; col. 48:78–79). Exodus 23:13a is placed where it is perhaps to signal the coming end of the collection and to emphasize the final topic of festivals and cult (23:14–19).

The placement of sections of apodictic law around the casuistic laws of 21:2–22:19 was done in imitation of the overall A-B-A structure of LH (prologue/casuistic laws/epilogue). The theme of cultic activity that pervades the prologue helped determine the cultic theme of the initial apodictic laws, as opposed to the final apodictic laws, which also include socioeconomic and judicial themes that are visible in the epilogue and especially the exhortatory block. An apparent desire to legislate and perhaps the composition of CC in a larger narrative that provided context allowed CC to replace praise of the king, as found in the prologue and epilogue, with law. Moreover, the primary motivation for CC's apodictic formulation in its outer A-sections was the injunctive style of the exhortatory block.

Hammurabi's prologue also influenced the transitional introduction to the casuistic laws in 21:1 ("These are the laws that you shall set before them" ואלה המשפטים אשר תשים לפניהם). The end of the prologue, just before the casuistic laws, reads: "I placed truth and justice in the mouth of the land" (*kittam u mīšaram ina pī mātim aškun*; col. 5:20–24). CC put its transitional introduction in the same position relative to the casuistic laws. CC's introduction also reflects the content of the transitional introduction into the epilogue in LH: "(These are) the just laws that Hammurabi, the capable king, established" (*dīnāt mīšarim ša Ḥammurabi šarrum lē'um ukinnūma*; col. 47:1–5). The use

of the epilogue otherwise presumably facilitated CC's use of the essence of this later transitional introduction in the formulation of 21:1.

In the broader context of similarities with LH, the correspondences between the CC's final apodictic laws and Hammurabi's exhortatory block continue the sequential correlation between the two collections. Both collections change genre at basically the same point and specifically at the end of the casuistic laws of LH. Their topical correspondences continue into the concluding sections (epilogue // final apodictic laws) to augment the fourteen correlations observed in table 1.1 with the four additional correlations in string I as outlined in table 1.6 (see also table 3.1 in chapter 3), for a total of eighteen sequential correlations.

The similarities just described are unique to CC and LH. No other known cuneiform law collection has as many and pervasive similarities with CC as does LH. And no other biblical collection has as many similarities to LH as does CC, in whatever order. *CC thus bears the unique fingerprint of LH.*

The beginning of this introduction noted several conclusions stemming from the observation of CC's textual dependence on LH. These can be outlined in more detail here. One is that the date of CC's composition is best located in the Neo-Assyrian period. This period attests the most copies of LH outside the Old Babylonian period, in which LH was first composed. The Neo-Assyrian period, specifically within the hundred-year period of 740–640 BCE, was a period of intensive cultural contacts between the Assyrian imperial power and the subjugated states of Israel and Judah. While we do not find full-blown Akkadian scribal schools in Syria-Canaan, such as existed back in the Middle and Late Bronze Ages, there is every reason to believe that some Israelites or Judeans would have been schooled in the language and texts of their Assyrian overlords out of political necessity.

The correspondences with LH and considerations of dating further indicate that CC is an essential unity. Many of the features that scholars have identified as evidence of redactional supplementation must be understood as original to the basic version of CC in view of the correspondences with LH and the concomitant systematic revisions of that source. In fact, in many cases deviations in style and context actually turn into evidence of the use of LH and other sources. In most cases, these deviations can be attributed to the process of combining different sources, combining materials from different places in a source, and creative revision and expansion. Some room is possible for viewing laws and phrases with second-person plural forms, scattered throughout the apodictic laws, as secondary. But if they are, they were composed within the same generation that the basic edition of CC was created on the basis of LH, following its pattern. Nonetheless there are other explanations for the second-person plural elements that must be considered that allow them to be viewed as part of the foundational formulation of the text.

The third corollary of CC's broad dependence on LH is that CC is largely an academic abstraction. CC's laws do not arise from court proceedings or

otherwise from everyday Israelite or Judean legal practice. Nevertheless, native perspectives have been incorporated in some places. These are more visible in the apodictic laws, which speak about unique Israelite/Judean customs and interests such as festivals, seventh-day rest, the altar, particular types of sacrifices, the immigrant, and similar topics. As we will see, the participle laws of 21:12, 15–17; 22:17–19 also reflect the use of a brief native law source.

A fourth ramification is that the purpose of CC may be political and ideological. CC replaces the political paradigm of a royal Mesopotamian lawgiver with that of Yahweh as lawgiver. CC also identifies the immigrant (גַּר) as a chief object of the law-giving deity's concern, a status that the text says the Israelites had while subject to Egyptian power. The concern about the immigrant and other impoverished statuses begins each of the two strings of the final apodictic laws. The casuistic laws begin with a similar concern, the debt-slave, specifically called a "Hebrew" slave, an adjective referring to national identity. This political reconfiguration in CC over against LH can be viewed as a way of asserting symbolic superiority in the face of actual political oppression. By replicating the essence of the chief exemplar of Mesopotamian law, but rearticulating the nature of sovereign power, CC turns LH against the foreign overlords of Israel and Judah. The ideological force of CC is underscored by its apparently having been created in connection with a larger narrative of enslavement and deliverance from Egypt (see chapter 12).

Earlier Explanations

As noted already, most scholars reject a model of literary dependence. Some even disparage this as outdated and unsophisticated.²¹ Hans Jochen Boecker, for example, set out methodological cautions in his introduction to biblical law. He cited Paul Koschaker's influential caution from 1935:²²

The days when opinion concluded from the substantial agreement of legal principles in two different codes to the derivation of the later from the earlier code, without further qualification . . . are over, or, perhaps more accurately, should be over. The use of the comparative method in the history of law has taught us that we must generally reckon on independent parallel development, that this gives the likely explanation for concurrences in different codes, and that direct influences are to be accepted only where they can be actually proved or at least made probable. . . . It would in any case be a rather primitive idea to believe that people import laws like foreign goods.²³

Boecker added in summary: "Today no one would claim a direct dependence of the BC [= CC] on Hammurabi's code."²⁴ After echoing Albrecht Alt's observation that there are too many discrepancies between CC and LH to make a claim of dependence,²⁵ Boecker cited W. Preiser: "A direct literary dependence

on Hammurabi's 'law' or on any other of the law collections from the near east... cannot be proved; in fact, given the enormous temporal and geographical distance, it is anything but probable."²⁶ Boecker then went on to advocate for the view that casuistic law in CC and the Bible derives from Canaanite oral tradition.²⁷

More recently, Ralf Rothenbusch and Eckart Otto have criticized arguments of literary dependence as simplistic and uninformed. After a review of arguments for literary dependence, Rothenbusch said:

One must understand these first attempts, against whose methodological inadequacy serious criticism has been raised, as "naive" understandings of a complex cultural transfer, which have completely disregarded the relevant socio-economic circumstances.²⁸

In specific reaction to John Van Seters's claim of a literary connection to LH and other cuneiform literature, though in the Neo-Babylonian period, Otto observed:²⁹

A better knowledge of cuneiform legal material could have shown Van Seters that the hypothesis of direct reception of the Codex Hammurabi (CH) by J is a far too simple solution for the complex legal transfers between cuneiform and biblical law. The closest parallel to Exod 21:35–36 is not CH §§250–252 but §53 of Codex Eshnunna (CE) [=LE]. That an exilic J could get in contact with the CE, which was written in the first half of the second millennium B.C.E. and had no tradition-history after the fall of the kingdom of Eshnunna, is, as the reviewer...³⁰ and others have tried to show, rather improbable.

These admonitions unquestionably have a foundation. The points of correspondence that earlier studies identified as evidence for literary dependence were sometimes striking but relatively limited in scope, and they were not systematically examined and explained.³¹ These studies also did not tell us how CC came by or produced its distinctive formulations if it did use cuneiform sources. A traditions model seemed more reasonable, especially in view of the several evidential considerations and assumptions reviewed at the beginning of this chapter.

To provide relief for the conclusions of the present study, the most recent explanations by the traditions school, by Eckart Otto, Raymond Westbrook, Ludger Schwienhorst-Schönberger, Ralf Rothenbusch, and Bernard Jackson, are worthy of brief review. Other recent scholarship may be consulted for a complete review of the literature on CC.³²

Otto argues that CC emerged incrementally and organically from real decisions of local courts in Israel's rural countryside.³³ The earliest laws existed as independent embryonic units that were free of influence from cuneiform tradition. For example, the original assault and deposit laws consisted respectively of 21:18–19, 22 and 22:6, 7a [plus some now missing text in this verse], 9a,

11, 12, 13, 14a. These and other individual units were expanded by scribes in Israelite towns. The assault laws, for example, were supplemented to include all of 21:18–32, and the deposit laws to include 22:6–13. Otto says that influence from Mesopotamian legal tradition is visible in CC at the later stage, mainly in redactional and organizational techniques, such as presenting a series of alternating cases and chiasmic arrangement. But he emphasizes that the content of CC's laws did not arise from Mesopotamian influence.³⁴ That the content of CC laws is native is demonstrated primarily by CC's numerous prescriptive differences with cuneiform texts.³⁵ Otto is in agreement on this point with other studies that claim that differences indicate that CC had an independent origin.³⁶ Traditions of Mesopotamian editorial techniques reached Israelite scribes indirectly through Canaanite tradition rooted in the second millennium.³⁷ Otto argues further that various redacted subcollections (e.g., 21:2–11; 21:12–17; 21:18–32; 21:33–22:14; 23:1–8) were eventually brought together and joined to form two larger collections: 21:2–22:26 (augmented with 20:24–26) and 22:28–23:12. These were finally combined, with additions, to produce CC more or less as we have it.³⁸

Westbrook does not view the similarities in content between CC and Near Eastern law collections as coincidental.³⁹ They are due to a common law tradition that spread throughout the ancient Near East and perhaps even to some extent into the Greco-Roman world.⁴⁰ However, this tradition consisted not so much of the laws themselves but of “standard problems” or “school problems” that were considered and answered independently by each society. This intellectual task and process produced similar legal formulations.⁴¹ The different societies often confronted similar problems by asking questions about variables in legal circumstances, hence leading to different solutions and differences in compared laws.⁴² Westbrook implies that the common law and tradition of standard problems reached Israel ultimately through the influence of second-millennium Akkadian scribal tradition in Canaanite cities⁴³ and may have been mediated by the Phoenicians.⁴⁴ Westbrook finds an analogy for the oral transmission of Near Eastern legal ideas or problems in the model of oral tradition and the creation of law in the Talmud.⁴⁵ As for the development of the text of CC, Westbrook has argued that the models of textual growth suggested by scholars such as Otto or Schwienhorst-Schönberger are inconsistent with the editorial evidence of cuneiform analogues. One must assume that the text is coherent and consistent. The perception of inconsistencies is due to our ignorance.⁴⁶

Schwienhorst-Schönberger's study, like Otto's, is concerned with charting CC's redactional history. The similarity of CC's content to Near Eastern law is due to tradition preserved in scribal schools originating in the west in the second millennium, when Mesopotamian legal texts and cuneiform legal traditions would have been known there.⁴⁷ This school tradition continued in some form into the second millennium and was taken up by the Israelites.⁴⁸ Rather than consisting of Westbrook's common problems or questions, this tradition

may have been rather specific and may have, in addition to its largely oral content, included some unknown mediating texts that influenced CC to some degree. Textual influence is most likely in the law about an ox goring an ox in Exod 21:35, which is very close to LE 53.⁴⁹ The laws about an ox goring a human may also be dependent on a text.⁵⁰ It should not be assumed, however, that CC is dependent on LE or LH directly in these cases. Schwienhorst-Schönberger contends that from this partly oral, partly written scholastic tradition, the basic casuistic law book of CC was first constructed,⁵¹ with some expansions.⁵² At its earliest stage, the text of CC was rather secular. A theological orientation was imposed on the text by a later “divine law redaction” (gottesrechtliche Redaktion),⁵³ characterized by the first-person voice of deity. Most of the second half of CC (22:17–23:9*) comes from the divine law redaction, as well as the frame of 20:24–21:11* and 23:10–19*. A number of additions were made, mainly to the apodictic sections of the text, when CC was incorporated by Deuteronomistic editors into the Sinai narrative.⁵⁴

Rothenbusch’s monograph is the most thoroughgoing attempt to date to describe and explain the similarities between CC and Near Eastern law.⁵⁵ For him, the correspondences are due to Mesopotamian influences on the west in the Middle Bronze and Late Bronze Ages. This tradition was maintained orally in the Phoenician sphere and transferred to Israel-Judah in the monarchic period, when CC was finally composed. He says that this did not involve written sources, even though there are remarkable similarities with LH and other cuneiform sources.⁵⁶ For example, with regard to Exodus 21:18–32, he says:

...in addition to the striking parallels in content, the overall complex correspondences of Exod 21:18–27 and LH 196–214 [the assault laws] make a tradition-historical [but not textual] connection between the two traditions very likely in my view. That is further verified in what follows, particularly in Exod 21:28–32 [the ox laws].⁵⁷

He also doubts that Exodus 21:35 relied on a source with a law similar to LE 53.⁵⁸ As for the history of the text, the original basic casuistic laws included 21:2–11, 18–22:16. These were created as an essential unity from the oral tradition just described.⁵⁹ Only a few passages are secondary.⁶⁰ Rothenbusch thinks the casuistic collection was written in a rather short period and that many of the stylistic or contextual tensions and evidences of development may actually be due to the redaction of older materials. The apodictic laws are additions,⁶¹ but the elements often identified as Deuteronomistic within these are actually proto-Deuteronomistic. So are elements of the associated narrative that have been considered Deuteronomistic.⁶² The final redaction of CC is similarly pre-Deuteronomistic.⁶³

Jackson has proposed a five-stage model of development for CC, similar in several respects to Otto’s model.⁶⁴ Basic laws originated first in oral form. These basic laws were like the short rules or principles found in biblical stories.⁶⁵ These early laws were mainly prosecuted by the wronged party himself

or herself without the need of judicial review. Hence they operated at a level of popular wisdom.⁶⁶ Next, small groups of casuistic laws on specific topics were created. A third stage brought together these small groups of laws into intermediate collections, and these were later brought together into the first and basic edition of CC, consisting of casuistic laws. Finally, the collection was expanded with the apodictic laws and incorporated into the narrative. According to Jackson's model, the laws grew up organically within an Israelite-Judean context. Nevertheless, he allows for some influence from Near Eastern law in the conversion from the oral to the written stage:

The paragraph of casuistic laws... represents an important step in the movement of the law from orality to literacy. Its form may well have been influenced by ancient Near Eastern exemplars, particularly the Laws of Hammurabi. It does not follow, however, that the content was equally influenced; moreover, the literary form of both the "intermediate collections" and the Covenant Code may, on this account, have been generated by internal considerations.⁶⁷

His judgment about the indigenous nature of the content agrees with Otto. But despite this, Jackson allows for some influence on content at certain places. With regard to the ox law in 21:35 (similar to LE 53), he says:

What may well have originated as a common customary practice was followed in both cultures by reduction to writing, and, whatever the source of the common custom, the biblical reduction to writing appears to have been influenced by its literary antecedent. True, this particular law has no parallel in Hammurabi, even though the latter collection does deal with the homicidal ox, and there appears to be no possibility that the Laws of Eshnunna were actually known to the authors of the *Mishpatim*, even though the Laws of Hammurabi might have been. However, the parallel is so close, in terms of both content and language, that the hypothesis of a literary intermediary, no longer available to us, appears inevitable.⁶⁸

In addition to the preceding recent main studies, a number of scholars have suggested an "Amorite hypothesis," though they have not developed this in detail.⁶⁹ This thesis views CC and second-millennium Mesopotamian collections as developing from a common tradition, perhaps Amorite, which fed into LH and CC. The reason for adopting this conclusion is that some of CC's laws are thought to be evolutionarily anterior to the corresponding laws in LH, hence CC's laws cannot come from LH.⁷⁰ It is also argued that the Middle and Late Bronze Ages were unlikely times for Mesopotamian legal traditions to become entrenched in the west.⁷¹ A few scholars adopt this thesis by crediting the patriarchal stories in Genesis with some basic historical value. Israel's legal heritage goes back to ancestors who early on had some sort of association with Mesopotamia culture.

Even though most scholarship follows a traditions explanation for the similarities that it has identified between CC and Near Eastern law, a few recent works have nonetheless kept the question of literary dependence alive, even though they have not necessarily advanced significantly new evidence for this conclusion.⁷² Finkelstein's monograph on the goring ox surmised that there might be a more substantial connection between CC and Near Eastern law. For him, "the appearance in the Covenant Code of much of the subject matter found in the Mesopotamian law corpora cannot plausibly be explained as coincidental" and "the specific wording of the biblical rules of the goring ox is so close to that of the cuneiform antecedents that any explanation of the resemblances other than one based on some kind of organic linkage is precluded."⁷³ He explicitly rejected oral tradition as an explanation for the goring ox laws:

It does not help to fall back upon the assumption of an oral tradition, for we would still have to account for a gap of hundreds of years. Moreover, the form which the goring-ox laws take in the Covenant Code is so close to its cuneiform analogues that it bespeaks the presence in Palestine of an almost canonical knowledge of the precise phraseology of the earlier Akkadian formulations. There is, in short, no certain way at present of explaining the verbal identity between sources that are perhaps as much as five hundred years and as many miles apart. But the fact of this identity is incontrovertible and compels us to postulate an organic linkage between them even if this linkage cannot be reconstructed.⁷⁴

In a discussion noting that the goring ox laws appear to be an academic formulation rather than a reflection of legal reality, Finkelstein said:

It is . . . the very unlikelihood of such an accidental occurrence [of similar goring ox laws in both LH and CC] that makes us concede that the biblical goring-ox laws must have been dependent upon their literary Mesopotamian prototypes; it would be too unreasonable to posit that such an unusual incident occurred also in early Israelite experience, and then became quite independently the source of the goring-ox laws of the Book of Exodus.⁷⁵

He left the exact source undefined: "the biblical rules derive their inspiration from these earlier [Mesopotamian] prototypes or from as yet undiscovered sources that, in turn, derived from Mesopotamian prototypes."⁷⁶

Meir Malul examined the issue of comparative methodology and its probative value for making conclusions for genetic connections between CC and LH by using the goring ox laws as a test case in a monograph that, interestingly, was published a year before and in the same series as Otto's study that emphasized the lack of connection between CC and cuneiform law.⁷⁷ Malul concluded:

By applying the clear and objective criteria discussed above, this study arrives at the unmistakable conclusion that the biblical laws of the goring

ox, contrary to the views held by some scholars, are closely dependent upon their Mesopotamian counterparts. Furthermore, it suggests that the biblical author or editor knew first-hand the Mesopotamian law and that he may have even had a copy (or copies?) of them in front of him when he composed or edited his biblical version.⁷⁸

For him, the source for CC's laws went back to Late Bronze cuneiform sources in Syria-Canaan. He was not any more precise than this. He faced the same problem as Finkelstein: explaining the similarities in view of the disappearance of cuneiform scribal schools in Syria-Canaan at the end of the Late Bronze Age, before the birth of Israel, and well before the drafting of CC.

Cornelis Houtman, assessing the approaches by Malul and Otto, judged Malul to be closer to the truth. He said of Otto's conclusions that

the Israelite stipulations originated independently of extra-biblical laws, and that Mesopotamian influence cannot be shown until the redaction of the bodies of law, are not convincing. The similarities are so specific that familiarity on the part of the writers of the covenant book with the legal traditions of the ancient Near East is virtually certain. The question whether the Israelite writers "possessed" the legal texts from the "Umwelt" in the form we know them, or whether they knew the legal traditions from "a common Near Eastern legal tradition and practice" ... assuming that these ever existed ... is here of lesser importance.⁷⁹

Houtman's analysis of CC, however, for the most part treats the laws as reflections of actual practice. He notes that "knowledge of the legal texts from Israel's 'Umwelt' can aid in understanding the laws of the covenant book. However, one has to keep in mind that the covenant book appears to bear the stamp of the local and societal situation of the writers/compilers."⁸⁰ This theoretical tension exists implicitly in several other studies that try to make sense of the laws as real practice yet influenced by Near Eastern tradition. The more beholden the laws are to academic tradition and sources, the less they would seem to reflect actual native Israelite or Judean law.

John Van Seters has attempted to solve the problem of CC's sources by situating the composition of CC in the Babylonian exile.⁸¹ Here, CC's author became acquainted with LH. Van Seters even went as far as to say that the author of CC may have been familiar with the stela text of the laws, an interesting though unverifiable proposition.⁸² But he did not significantly develop the evidence for CC's dependence and never explained in detail how the text in the Neo-Babylonian period was influential. This omission was partly because of his interest in proving another textual thesis, that CC was produced by the Yahwist in the exile and that CC also grew out of the laws of Deuteronomy and the Holiness Code. Van Seters's relative dating of CC to the other biblical law corpora, and hence his textual history, cannot be accepted. Evidence clearly shows that CC is earlier than Deuteronomy and the Holiness Code. These

other collections, in fact, depend on and develop CC.⁸³ If Deuteronomy's basic laws date to no later than the end of the seventh century, then CC must be preexilic.⁸⁴

Reaction has been split to my first published paper that laid out the basic thesis that this book expands. In his lengthy review of Van Seters's thesis, which included reference to my study, Bernard Levinson agreed that at least the casuistic laws of CC depend on LH in the Neo-Assyrian period.⁸⁵ He used this evidence against Van Seters to demonstrate that CC was, in fact, not exilic. Levinson bolstered the evidence that my earlier work presented for CC's use of LH in the Neo-Assyrian period. This is included at the appropriate points in the present book. Levinson, however, did not agree with my arguments about the dependence of the apodictic laws on LH. But then, when he wrote, I had not yet discovered the more persuasive evidence for the dependence of the apodictic laws, presented in depth in this study.

Bruce Wells, on the other hand, has demurred at the whole of my genetic argument. In a response to my initial publication, he sought to demonstrate that CC is too dissimilar to LH to be dependent upon it.⁸⁶ He proposed and employed a method for quantitatively evaluating the degree of similarity between laws to show that CC has fewer correspondences with LH than my study claims. He also argued that because CC could not have been dependent on other nonbiblical legal texts (apart from LH) to which it has similarities, because of the unavailability of those texts, one should not make the conclusion that CC was dependent on LH. Wells also critiqued the common sequence of laws that I identified between CC and LH (as outlined in table 1.1). He argued that the remaining smaller number of similarities that might be observed between CC and Near Eastern law texts, whether in content or order, are to be explained by "meta-traditions," that is, the general diffusion of common legal ideas across the ancient Near East.⁸⁷ I have already responded to Wells's arguments in a separate publication. Some of the methodological issues that he raises, however, I briefly address later in this chapter.⁸⁸

In a recent article reviewing the state of the study of biblical law, Westbrook has similarly critiqued my argument that CC's casuistic laws were dependent on LH.⁸⁹ He finds the conclusion simplistic, saying, "like all simple solutions it only works well if reality were as simple."⁹⁰ His primary specific objection is that many of the identified similarities are, in fact, not really similar and that CC has similarities to other law collections besides LH:

[Wright] can only achieve [his conclusions] by special pleading, forcing the laws into categories that make them a match, or seizing upon the most tangential resemblances as evidence of influence. Even then, there remain a hard core of laws that resist "Hammurabification" [i.e., attribution to LH], such as the case of the ox goring an ox (Exod 21:35), which is only found in CE [LE] (53), or the burning of a neighbor's field (Exod 22:5), which is found only in HL [HtL] (106).⁹¹

This observation seeks to shift the focus of evidential attention by downplaying CC's pervasive similarities to LH and emphasizing CC's more incidental (but significant) similarities to a variety of other cuneiform texts. This frees Westbrook to argue for the view, described previously, that similarities are due to common responses to legal problems that circulated through the ancient Near East.⁹²

A primary reason that recent scholarship has not been more willing to entertain the possibility of literary dependence of CC on LH has been its recognition of only part of the evidence of similarity between the texts. Only a few works have identified sequential similarities between the texts. The work that has seen the greatest number previously is Gregory Chirichigno's relatively recent study of debt-slavery.⁹³ He extended the observations made by Volker Wagner about the logic and organization of CC and how the collection reflects to some degree the order of LH.⁹⁴ Of my list in table 1.1, Chirichigno observed correspondences 1, 3, 4,⁹⁵ 5, 7, 8, and 9. He also noted that Exodus 21:2–11 contains laws related to marriage and family, the concern of LH 127–194.⁹⁶ He further compared the deposit and hire laws in Exodus 22:5–15, though as a block, with LH 228–277 (and with LH 120–126). This block covers correspondences 12–14 of my list. I made my observations about the sequential correlations between CC and LH prior to reading his work.⁹⁷ Thus his observations provide independent confirmation of many of my judgments. This counters Westbrook's assertion that special pleading is involved in the evidence that I perceive. But Chirichigno did not endeavor to give a thorough explanation for the similarities he observed. He only says, following Wagner, that a *Schultradition*⁹⁸ was probably responsible for maintaining these similar blocks and ordering of laws, perhaps from a common Amorite source.⁹⁹

Second to Chirichigno in the number of observed sequential similarities is Van Seters's recent study, noted previously. He identifies correspondences 4 (though just striking a parent), 5, 7, 8, and 10 listed in table 1.1.¹⁰⁰ He also recognizes that the second half of CC's casuistic laws (21:37–22:14) has a thematic connection to the first half of LH, which correlates in part with the conclusions of this study (see part II). In contrast to Chirichigno, he claims that sequential similarities are evidence of literary dependence on LH. But Van Seters presents the data very schematically, without detailed commentary. He also denies the patent correlation in the debt-slavery laws of 21:2–11 and LH 117.¹⁰¹ Thus Van Seters's analysis is of limited use and evidential force.

Neither Van Seters, Chirichigno, nor any other scholar has observed correlations with LH in CC's apodictic laws.¹⁰²

Similarities, Proof, and Compositional Logic

Part I of this study surveys the new primary evidence regarding sequential and topical correlations with LH that run through the entirety of CC. Chapter 2 is

devoted specifically to the casuistic laws, and chapter 3 to the apodictic laws. This presentation allows a reader to comprehend the basic evidence as a whole without the distraction of detailed commentary on issues peripheral to the primary textual correlations. Part II provides this commentary and in doing so augments the evidence for the dependence of CC on LH and other cuneiform sources.

The question may be raised whether the observed similarities in part I and later in part II indeed *prove* that CC is dependent on LH. Is not this an instance of the “similar-hence-dependent-fallacy” that has been criticized in earlier considerations of the comparative method?¹⁰³ Undeniably, similarity by itself does not definitively demonstrate the dependence of one text on another. As earlier studies have noted, similarities can be considered signs of genetic relationship only when evidence for an opportunity of cultural exchange exists.¹⁰⁴ To this end, chapter 4 in part I outlines the evidence for cultural influence in the Neo-Assyrian period. Unfortunately, we do not have a smoking gun—a copy or even a fragment of LH from Israel or Judah dating to the first millennium. Nor do we have during this period a scribe using Akkadian who can specifically be identified as an Israelite or Judean. But there is considerable circumstantial evidence indicating that some Israelite and Judean scribes would have received basic Akkadian scribal education in the Neo-Assyrian period on account of the necessities of international relations. Because LH was also actively copied as a scribal text during this time, it is a reasonable assumption that one or more Israelite or Judean scribes would have been familiar with the text in some detail.

Although similarity does not prove dependence from a purely theoretical point of view, similarity can be so overpowering that, from a practical point of view and within the context of cultural contact just characterized, it begins to function as evidence of dependence. As M. L. West remarked in conclusion to his study of western Asian influences on Greece, even though a route of transmission in the diffusion of common ideas may be hard to define, nonetheless “a corpse suffices to prove a death, even if the inquest is inconclusive.”¹⁰⁵ If this can be said about Hellenic and Near Eastern points of comparison, it all the more applies to CC and LH. For this reason, most scholars who work according to the traditions model postulate some sort of cultural or indirect genetic link between CC and Mesopotamian law. Few claim that correlations in content are *purely* coincidental. The argument of this study is that the similarities now identifiable are so extensive that a mere traditions theory is no longer viable. The mode of explanation must be advanced to the next level to explain the greater force of evidence: CC must have used literary sources. Two models are theoretically possible: CC either used a mediating text or texts, perhaps in a Northwest Semitic language (Aramaic or Phoenician), transmitted from the second millennium, which contained all the similarities found between CC and LH and other Near Eastern law collections, or CC used LH directly, along with a few miscellaneous and perhaps minor Akkadian legal texts, in the

Neo-Assyrian period. Chapter 4 argues that the most reasonable textual theory is the latter.

A difficulty in describing the opportunity for textual dependence is that CC contains substantial similarities to a few laws in cuneiform collections other than LH, including the Middle Assyrian Laws, the Laws of Eshnunna, and the Hittite Laws. Table 1.3 listed the primary examples. Correspondences with the Middle Assyrian Laws are less of a problem because this collection is attested, though marginally, in the Neo-Assyrian period. The Laws of Eshnunna and the Hittite Laws, however, are attested only in the second millennium. Otto and Wells use this fact to argue against a theory of textual dependence. The present study contends that the similarities between CC and LH are of such a nature that they allow for hypothesizing the existence, and CC's use, of minor or miscellaneous law collections in the Neo-Assyrian period that contained laws similar to those in these other collections with which CC has similarities. This speculation is thriftier than to suppose the existence and transmission of *all* of the laws that CC has in common with Near Eastern law collections in the west over several centuries.

Another objection will be that several of the similarities identified by this study are not as strong as other similarities.¹⁰⁶ This is true. Some of the individual points of comparison, in both the casuistic laws and in the apodictic laws, are less striking than others.¹⁰⁷ Moreover, some smaller points of comparison that can be made in consequence of a conclusion of literary dependence that is based on more substantial correlations may, in fact, be coincidental. If textual dependence were to be judged on the basis of any single point of similarity, especially a weak point of correlation, a literary connection to LH or Near Eastern law would have to be viewed with extreme skepticism. But the force of the comparative evidence lies not in any particular instance of comparison but in its collectivity. It is not that we have a number of individual points of similarity, but that the whole content and arrangement of CC largely correspond with LH.

An attempt to discount the evidence of this study might be made by arguing that there are too many differences in the individually compared laws and in the text as a whole to posit literary dependence.¹⁰⁸ But difference does not undermine essential similarity. Moreover, it is not necessarily a sign of chronological distance between two texts. Differences may arise through the intentional alteration of the source material, as Malul observed:

It should be emphasized that all scholars fully agree with Van Selms and others that these differences do indeed reflect different basic world views of the two laws systems. But if one assumes that these differences in particular, and biblical law in general, reflect the unique ideas and world views expressed in the Old Testament as a whole, then we thereby supply the underlying rationale for the existence of these differences; if such a rationale does exist, then the conclusion must be that we have here a later

adaptation of borrowed materials according to some ideological scheme of receiving sources. And this is what Yaron has said: different ideological views do not exclude the possibility that biblical law is indebted to its Mesopotamian counterpart.¹⁰⁹

A text that is quite different from a hypothetical source may actually be intimately familiar with it and dependent on it.

The ideological transformations of a received source of which Malul speaks are similar to the “hermeneutics of legal innovation” that Levinson has described as operative in Deuteronomy’s reformulation of laws from the Covenant Code.¹¹⁰ Few scholars would deny that the laws of CC and Deuteronomy are genetically related.¹¹¹ Levinson’s work, which builds on Michael Fishbane’s study and method of inner biblical exegesis,¹¹² shows that a dependent legal text or any text, for that matter, can and in fact should be expected to reconfigure its source as a function of ideological revision. In this way, differences may actually arise from an intimate familiarity with, and consequent reaction to, the source text.

Part II of this study accounts for the differences between the texts by studying the hermeneutics of innovation, what I call the *compositional logic*,¹¹³ involved in CC’s transformation of its sources. It shows that what Levinson sees going on between Deuteronomy and CC is already going on between CC and LH and other sources. It is a process that continues later in biblical literary history in the Holiness Legislation’s use of CC and Deuteronomy, and even beyond into post-Hebrew biblical texts such as the Temple Scroll. As in the case of Deuteronomy and the Holiness Legislation, one of the ideological considerations that lies at the heart of the transformations in CC is the desire to create law that solves problems in the source and thus to provide, relatively speaking and within the vision of the new text, a more coherent body of legislation. This way, CC attempts to assert cultural supremacy in the face of the reality of political oppression. Common to both Levinson’s approach and mine is a concern about how a text responds to and revises a prestige text.¹¹⁴ In both cases, the dependent law source builds on a text with cultural authority. It thereby gains an aura of authority from its source, even though it may hope to supplant or marginalize its source.

Describing the logic used in the composition of the laws of CC is obviously a matter of interpretation that involves some speculation. It takes as its start the two compared texts and supplies the conceptual and textual operations necessary to get from text A to text B. The reasonability of this endeavor’s getting near the textual-historical truth is seen in the overall plausibility of the reconstructions; the sense they make of particular terms, concepts, and structures of CC that otherwise have been points of dispute or ambiguity; the identification of similar compositional techniques (inversions in meaning and order, cross-referencing, systematization, generalization of specific content, or polemical response) in different laws; and the general consistency of the reconstructions

and compositional techniques with those operative in other biblical law texts (Deuteronomy and the Holiness Legislation).

Given the likelihood that dependent texts revise their sources, there is no way to calculate similarity and difference in a mathematical or statistical way to provide an empirical measure of dependence or lack thereof. Various methods that have been proposed for identifying and judging similarity and difference are helpful but, in the end, not definitive.¹¹⁵ Each instance of comparison has its own nuances and context to consider. Moreover, a determination of textual dependence, as noted already, grows out of an assessment of the totality of the evidence, the context in which it appears, and in view of what can be determined about the ideological transformation of the text.¹¹⁶ Ultimately, each reader has to work through the evidence and make a judgment based on her or his experience in adjudicating other cases of comparison between texts within the Bible, between the Bible and other Near Eastern texts, and even between texts from places and times other than the ancient Near East.¹¹⁷

PART I

PRIMARY EVIDENCE FOR DEPENDENCE: SEQUENTIAL CORRESPONDENCES AND DATE

In order to do first things first, this part of the study presents the new evidence of sequential correlations between CC and LH. Chapter 2 examines this evidence in the casuistic laws of the two collections, and chapter 3 examines it in CC's apodictic laws and Hammurabi's prologue and epilogue. The discussion, for the most part, remains an argument for dependence. Only occasionally is it necessary to assume that CC has modified or used its sources in order to explain the case for dependence. Description of CC's compositional logic, where dependence is presumed, is reserved for part II. The separation of these two tasks is required for the clarity of argument. Nevertheless, the evidence for the two law genres presented in chapters 2 and 3 is fleshed out and illuminated, respectively, in chapters 5–10 and chapters 11–12. These later chapters should answer all of the questions that arise in reading the schematic evidence presented in chapters 2 and 3, including questions about the differences between CC and its sources. Though the primary argument for dependence is entailed in chapters 2 and 3, the later chapters provide further evidence that CC has indeed used LH and related sources. Because the substance and detail of the laws is discussed in part II, most of the citation and discussion of the secondary literature on CC's laws is left until then.

Chapter 4 of part I follows up the primary evidential chapters with an examination of the date and opportunity for CC's use of LH and other cuneiform sources. It delineates the weaknesses in alternative theories for explaining the

similarities. It also explores evidence of Israelite/Judean scribal literacy in Akkadian in the Neo-Assyrian period, when this study argues CC was created, along with the attestation of LH in this period. It starts to address, too, the question of the unified composition of CC.

2

The Casuistic Laws

The middle section of the Covenant Code, nearly two chapters in length (21:2–22:19), consists of laws formulated mostly in casuistic form.¹ This matches the genre of the central body of laws in the Laws of Hammurabi. This general correlation has been noted by scholars ever since the discovery of LH at the beginning of the twentieth century. But what scholars have not recognized is that the laws or legal topics in the casuistic laws of CC and LH share almost the same sequence. These points of similarity, fourteen by my numbering, account for the majority of CC's casuistic laws. Several of the casuistic laws of CC that do not follow this basic order still have correspondences with LH. The remaining few casuistic laws have similarities to laws in other cuneiform collections. This evidence, coupled with the specific similarities between individual laws, is the principal evidence of CC's dependence on Akkadian sources and LH in particular.

This chapter outlines this evidence. Chapter 1 and table 1.1 already provided a summary of the sequential correlations. A reader can refer to back to this table to view the evidence schematically and synoptically.² The discussion of the fourteen points of correlation in this chapter follows the enumeration of cases in that table. Tables 1.2 and 1.3 in chapter 1 summarize, in addition, miscellaneous correspondences between LH and other collections that complement the primary data outlined in table 1.1. These cases are also briefly discussed in this chapter, mainly toward the end.

Because this chapter is a survey of the evidence, the full texts are not presented side by side for comparison. These can be found in part II at the

appropriate points of discussion. Page references are given after each topic heading in this chapter to allow a reader to consult these texts when desired. The discussion in the present chapter, however, cites enough of the texts to allow perception of the basic evidence without having to turn pages.³

The discussion here is brief and lightly documented in order to make the evidence of the sequential correlations clear. Detailed discussion is left for chapters 5 through 10, which will answer queries and objections that arise in the reading of this chapter. The later chapters also explain the techniques of composition that CC apparently used and that are mentioned only briefly in this chapter. These techniques include the notable and frequent feature of cross-referencing, where a theme in the sequential pattern of LH led CC to bring in related legal material from outside that sequence.

Before we go to the survey of the evidence in this chapter, I should note that the counting of fourteen topics of comparison in the casuistic laws is more to facilitate analysis than to make a precise statistical statement. A reader might want to combine topics 1 and 2 (debt-slavery of a male and a daughter) into a single category because they are parallel in their reflection of the sequence of LH. Another reader might also want to combine topics 5 and 6 (injury and homicide of graded social classes) because they are two aspects of one legal category. Yet another reader may wish to split the single topic 8 into two: talion and injury to a slave. Whether one counts twelve, thirteen, fourteen, or fifteen topics, the individual points of similarity remain.

Furthermore, the descriptions of the topics themselves, such as “child rebellion” or “crop destruction,” are only to facilitate comparison. They are not definitive or comprehensive legal categories, as modern jurisprudence or broader comparative legal analysis might choose for description. They certainly are not proposed to mask differences or assimilate categories that are incomparable. The following discussion fleshes out what is entailed evidentially by each topic, and it is this to which the reader’s attention should be primarily directed.

1. Temporary Debt-Slavery of a Male (21:2–6; texts on pp. 124, 133–134)

The basic laws for male and female debt-slavery in 21:2 and 7 correlate with LH 117. The subsequent laws in each passage of CC (vv. 3–6 and 8–11) correlate for the most part with various laws between LH 117 and 192, laws that mainly deal with family issues. Hence verses 2–6 and 7–11 are parallel in their reflection of the sequence of LH. Even so, I will treat them here as distinct instances (numbered 1 and 2) in this review of correspondences with LH.

The basic male debt-slave law in 21:2 corresponds with LH 117 in several respects. Both presume a case of indebtedness that is resolved by enslavement to a creditor. In both, the person entering into servitude is a member of the free class in society. The beginning of the two laws starts with description of the enslavement of the debt-slave: “when you buy a Hebrew slave” (כִּי תִקְנֶה עֶבֶד עִבְרִי);

“if an obligation seizes a man and he sells his wife, son, and daughter” (*šumma awīlam e’iltum iṣbassuma aššassu mārāšu u mārassu ana kaspim iddin*). Though CC refers to buying and LH to selling, LH refers to a buyer later in its apodosis: “they shall work in the house of their *buyer* or creditor for three years; in the fourth year their freedom shall be effected” (*šalaš šanātim bīt šāyimānīšunu u kāšišīšunu ippešū ina rebūtīm šattim andurāšunu iššakkan*). CC’s apodosis is similar to that of Hammurabi’s law in limiting the length of this enslavement and has a similar syntax: “he shall work for six years; in the seventh he shall go free without (further) obligation” (שש שנים יעבד ובשבעה יצא (להפשי חנם)). The first clause in the apodosis of each text states the length of servitude, with the numeral at the beginning and the verb, referring to work, at the end. The second clause specifies that in the next year, the enslaved person is to go free, with the numeral again at the beginning.

The verses following the basic law in verse 2 have correspondences with LH 117 and laws later in LH. Verse 3 mentions the possibility of a man coming into servitude with his wife. This case is partly similar to LH 117: “If... a man sells... his wife” (*šumma... aššassu... ana kaspim iddin*). Verse 4 deals with a creditor’s giving a slave wife to male debt-slave; resulting children are slaves and belong to the owner. This is the inverse of LH 175, according to which a male slave marries a *free* woman and the resulting children are not to be treated as slaves (for detail, see pp. 138–139).

Verses 5 and 6 provide another and even more remarkable case of inverse correlation. According to these verses, when a debt-servant says, “I love my master, my wife, and my children; I will not go free” (אהבתי את אדני את אשתי ואת בני לא אצא חפשי 21:5–6), his ear is to be bored, apparently a symbol of his new status as a permanent slave. This is the exact conceptual reverse of the very last law of the Akkadian collection, LH 282: “If a slave says to his master (note the similar citation of the slave’s words): ‘You are not my master,’... his owner shall cut off his ear” (*šumma wardum ana bēlīšu ul bēlī atta iqtabi... bēlīšu uzunšu inakkis*). CC’s requirement that the servant be brought “to the God” for ear piercing is also like other judicial acts performed before the deity in LH (see topics 12 and 13).

2. Debt-Slavery of a Daughter (21:7–11; texts on pp. 124, 141–143)

The law about a daughter sold as a slave wife in verse 7 also correlates with LH 117, as noted previously. Its protasis closely resembles the wording of the Akkadian law: “If a man sells his daughter as a slave woman” (וכי ימכר איש) compared with “If... a man sells his wife, son, and daughter” (*šumma... aššassu mārāšu u mārassu ana kaspim iddin*). Note that splicing together the protasis of verse 7 with the apodosis of verse 2 produces the basic outline of the law in LH 117: “if a man sells a family member, he shall work X years, with release in year X + 1.”

The rule about taking a second wife in verses 10 and 11 corresponds with LH 148–149, a law about taking a second wife when a disease has affected the first. The laws in the two collections both allow taking another wife but require maintenance of the first. The protases of both laws use similar language: “If he takes another (wife) for himself” (אם אחרת יקה לו); “If . . . he determines to take another (wife)” (*šumma . . . ana šanītim aḥāzim panišu ištakan*). Both laws use a verb for “taking” to refer to the marriage, and both use just an adjective meaning “another” to refer to the subsequent wife.

The maintenance of the first wife is described similarly: “he shall not withhold from her food, clothing, and habitation” (שארה כסותה וענתה לא יגרע);⁴ “he may not divorce his wife whom *la’bum*-disease seized; she shall stay in a dwelling he builds and he shall support her as long as she lives” (*aššassu ša la’bum iṣbatu ul izzibši ina bīt īpušu uššamma adi balṭat ittanaššīši*). Another law, LH 178, which deals with the support of an economically disadvantaged sister by her brothers, has some similarity to the biblical law in its listing of *three things* that are to be given to the woman (i.e., “they shall give to her food, oil, and clothing” *ipram piššatam u lubūšam inaddinūšimma*). This law uses a Gtn form of the verb *našūm* with the feminine suffix pronoun (i.e., *ittanaššīši*) to summarize the threefold means of support that the sister is to receive. The same verb form appears in LH 148 to describe the support the second wife is to receive. CC could have accessed the motif of threefold support in LH 178 through the common verb in the two Akkadian laws—a case of cross-referencing—to fill out its law.

Both Exodus 21:11 and LH 149 end with a condition under which the woman may leave, with a grant of some economic benefit: “if he does not do these three things she may leave without further obligation; no (redemption or debt) payment is due” (ואם שלש אלה לא יעשה לה ויצאה הנם אין כסף); “if that woman does not agree to dwell in her husband’s house, he shall restore the dowry that she brought . . . and she may leave” (*šumma sinništum šī ina bīt mutīša wašābam lā imtagar šeriktaša . . . ublam ušallamšimma ittallak*).

A general point to observe is that both debt-slavery law passages in CC (vv. 2–6, 7–11) are concerned with several of the topics in the family laws found between LH 117 and 192 (excluding the deposit laws in 120–126). As we have seen, the basic debt-slave laws begin with the motifs of LH 117 (i.e., vv. 2, 7), and the subsequent laws that follow each reflect the motifs of LH 148–149, 175, and 178.⁵ Thus the correspondences between CC and LH do not suddenly jump from LH 117 to 192, even though at LH 192, CC’s correspondences with LH become more extensive (see the following).

3. Homicide (21:12–14; texts on pp. 155–156)

CC’s densest correlations with the casuistic laws of LH begin with the homicide law in 21:12–14. Verse 12 sets down the basic law: “he who strikes a man

so that he dies shall be put to death” (מכה איש ומה מות יומת) Exod 21:12). Verses 13–14 continue with the matter of inadvertence and asylum at a cultic “place” and altar. CC’s law correlates with LH 207: “If he dies from his beating, he shall also swear (that he did not intentionally kill). If he (the victim) is a free person, he shall weigh out one-half mina (= thirty shekels) of silver” (*šumma ina maḥāṣīšu intūt itammāma šumma mār awīlim 1/2 mana kaspam išaqqa*). This law depends contextually on the preceding law (LH 206), which describes a case in which a man is only injured, and inadvertently so, in the fight. This law, as we will see, correlates with the injury laws of verses 18–19. The reason that CC’s homicide does not follow verses 18–19 can be explained by CC’s having shifted the topic to the beginning of its assault laws, a logical reordering of the text (see topics 5 and 6, later).

The homicide laws in CC and LH both attribute the victim’s death to striking, using the verbs הכה and *maḥāṣum*, both “to strike,” respectively. This correlation of verbs is found in most other cases involving striking, examined later. The homicide laws in the two collections also describe the result of striking as death, using the Semitic root *mwt* “to die.” Furthermore, as noted earlier, both laws are concerned about inadvertent homicide. LH 206, upon which LH 207 depends, defines the case as unintentional, when the assailant is to swear: “I did not strike him knowingly” (*ina idū lā amḥaṣu*). In LH 207, the individual makes the same affirmation. Exodus 21:13 speaks about a case of killing without intention (“he who did not plan it” ואשר לא צדה). Both laws also imply a legal defense and a procedure for adjudication. LH 206 presumably requires the oath of inadvertence to be sworn “before the god,” as explicitly required for other legal declarations and oaths (cf. LH 23, 120, 266; chapters 5 and 6 will show that CC understood this to mean at a sanctuary or temple). Exodus 21:14 implies a decision by authorities at the sanctuary.

The detachment of the homicide law from the sequence of LH (LH 206–208) can be seen as a factor in the creation of a full-blown and independent homicide law in CC, in contrast to the dependent formulation in LH 207 (see topic 8, later). A native participial source also appears to have influenced the divergent participial form of verse 12 (see chapter 6). The reformulation of the homicide law allowed the inclusion of other elements unique to CC, particularly the issue of cultic “place” (מקום) and altar, the second-person verb of the addressee, and the first-person reference to deity, all based on the altar law of 20:24–26.

4. Child Rebellion (21:15, 17; texts on p. 193)

The laws on child rebellion in Hammurabi’s collection (LH 192–193, 195) conclude the long series of laws pertaining to family matters (basically LH 117–191), of which the debt-slavery and marriage laws were part (see topics 1 and 2). Hammurabi’s child rebellion laws lead to the laws on striking and other injuries. In CC, the child rebellion laws come after the homicide law (vv.

12–14). When CC’s homicide law is seen as having been moved up from its later context in LH, CC’s child rebellion laws are effectively contiguous to the family legislation entailed in the debt-slave laws.

The child rebellion laws in both collections agree in their presentation of two types of cases, one in which a child physically assaults a parent and the other where a child verbally reviles or rejects a parent. In LH, verbal abuse comes first and specifically involves a son saying to a *girseqûm* (a male royal attendant) or a *sekretum* (a female functionary) who raised him: “you are not my father; you are not my mother” (*ul abī atta ul ummī atti*; LH 192). A companion law follows in which the son seeks out his birth parents’ household (LH 193), thereby repudiating or showing hatred (*zêrum*) toward his foster parents. Hammurabi’s law on striking is brief and mentions only one parent: “if a child strikes his father, they shall cut off his hand” (*šumma mārūm abāšu imtaḥaṣ rittašu inakkisū*; LH 195). The penalties in these laws correspond to the nature of the misdeed: cutting out the tongue for rejecting foster parents; plucking out the eye for seeking and identifying real parents; cutting off the hand for striking a father.

CC’s laws are in reverse order. The first speaks of striking (כהך) a father or mother (Exod 21:15). The second speaks of cursing (ללך) a father or mother (v. 17). The penalty in both cases is death. The cursing does not appear to involve a legal declaration that functions to emancipate the child from the parent, nor are the parents described as foster or adoptive. Nevertheless, CC’s law is similar in that the child verbally expresses his emotional antipathy toward his parents. Chapter 7 demonstrates that the participial form in Exodus 21:12, 15–17 is primarily due to CC’s using a participial law on cursing parents from a native particular source to stand in for LH 192–193. This style was extended to all the other nearby capital laws for consistency. Hence the divergent style in this part of CC is actually a function of CC’s use of sources.

On the kidnapping and wet nurse laws (respectively, in Exod 21:16 and LH 194), which disrupt the laws on child rebellion in both collections, see later in this chapter.

5. Striking in a Fight and Providing a Cure (21:18–19; texts on pp. 155–156)

After the child rebellion laws in CC and after the laws on talion and humiliating striking of LH 196–205, which come right after the child rebellion laws there, the two collections have laws about physical assault and injury (Exod 21:18–19; LH 206). We have already noted that LH 206 is the first law in a series of striking laws that include the homicide law of LH 207 (see topic 3). While CC has moved the homicide law from its location in Hammurabi’s series, it left the injury law in its original position, just before the laws on striking one of a lower class (LH 208 // Exod 21:20–21) and miscarriage (LH 209–214 // Exod

21:22–24) and, as noted, not far after the laws on the child rebellion (LH 192–193, 195 // Exod 21:15, 17). As for the laws that intervene between Hammurabi's child rebellion and injury laws, CC moved the talion laws from its source (LH 196–201) into the miscarriage laws (Exod 21:23–25; see topics 7 and 8), and it omitted the laws on humiliating striking (LH 202–205), a marginal topic for CC.

The protases of the injury laws in the two collections place the assault in the context of a fight: “When men fight and one strikes his fellow with a stone or with a fist” (וכי יריבן אנשים והכה איש את רעהו באבן או באגרה); “If a man strikes another man in a fight and injures him” (*šumma awīlum awīlam ina risbatim imtaḥašma simmam ištakanšu*). The verbs for striking are Hebrew הכה and Akkadian *maḥāšum*, the same as in the child rebellion and homicide laws. In both cases, the victim does not die. The apodoses of both laws include the similar requirement that the striker pay for the recovery of the individual: “he only need recompense him for his period of inactivity and provide for his cure” (רק (שבתו יתן ורפא ירפא); “he shall satisfy the physician” (*asām iḥpal*).⁶

6. Striking and Killing One of a Lower Class (21:20–21; texts on pp. 155–156, 170)

The laws on striking an individual in the two collections (Exod 21:18–19 and LH 206–207) are directly followed by laws about striking one of a lower class (Exod 21:20–21; LH 208). LH 208 presumes and extends the case of 207 in which a person is killed by a blow: “If the victim (killed by inadvertent striking) is a commoner, he (the assailant) shall weigh out one-third mina of silver” (*šumma mār muškēnim 1/3 mana kaspam išaqqal*). CC's law is discretely formulated from 21:18–19 and deals with a slave: “If a man strikes his male slave or female slave with a rod and he dies under his hand, he (the victim) is to be avenged; but if he lingers for a day or two, he (the master) shall not suffer vengeance, since he (the slave) is his (the master's) property” (וכי יכה איש את עבדו (או את אמתו בשבט ומת תחת ידו נקם ינקם אך אם יום או יומים יעמד לא יקם כי כספו הוא). CC's treatment of a slave rather than a commoner can still be attributed to the influence of LH, since it has a number of other socially graded laws that include slaves, just before and after LH 208 (i.e., 196–205, 209–214, 215–217, 218–220, and 221–223). The substitution of a slave for a commoner is also found in 21:27 over against LH 201 (see topic 8).

A logical gap appears in the conceptual flow of the laws in Exodus 21:18–19 and 20–21, which demonstrates their dependence on LH 206–208. Verses 18–19 deal with the *injury* of a *free person*, but verses 20–21 deal with the *death* of a *slave*. In contrast, LH 206–208 moves logically from *injury* of a *free person*, to *death* of a *free person*, to *death* of one of a *lesser class*.⁷ Exodus 21:18–21 lacks the middle case. The hiatus is explained by CC's having moved the case of homicide (LH 207) to the beginning of its striking laws (21:12–14). The

relocation of the homicide law also accounts for the independent formulation of the law in 21:20–21 as opposed to the dependent formulation of LH 208.

CC's slave homicide law also correlates with LH 116. According to this, when a son, who is in servitude to pay off his father's debt, dies from the beating (*maḥāšum*) of the creditor, the son of the creditor is to be put to death. As in CC, death is caused by beating, and the law implicitly allows beating the servant short of death. In the context of this study, the author of CC would have probably known this law because it immediately precedes and deals with the same topic as LH 117, to which CC's debt-slave laws correspond (see topics 1 and 2). The use of LH 116 about a debt-servant (*nipūtum*) in connection with attention to the socially graded laws that involve a permanent slave (*wardum*) in LH 196–223 explains the tension in the penalties of Exodus 21:20–21. The exemption from responsibility corresponds to chattel-slave phenomenology in LH, where an owner is presumably immune from penalty for killing his own slave, and liability to vengeance corresponds to debt-servitude phenomenology, where a creditor is answerable for causing the death of the servant. CC has apparently conflated legislation on the two types of subjugated individuals (see chapter 6).

7. Striking/Knocking a Pregnant Woman (21:22–25; texts on p. 177)

The next laws in the collections deal with striking a pregnant woman and causing a miscarriage and also the death of the mother (Exod 21:22–23; LH 209–214). Both texts begin with a case where the assault causes only miscarriage, with no injury to the woman: “When men struggle and they knock a pregnant woman and her fetus comes out... he shall pay...” (וכי ינצו אנשים ונגפו) ... ולדה... ונתן... Exod 21:22); “If an *awīlum* strikes an *awīlum*-woman and he causes her to miscarry her fetus, he shall weigh out ten shekels of silver” (*šumma awīlum mārat awīlim imḥašma ša libbīša uštaddīši 10 šiqil kaspam... išaqqal*; LH 209). LH describes the assault simply as a man striking (*maḥāšum*) the woman. CC has the assault in the context of two men fighting (probably on the basis of vv. 18–19) and knocking (נגף) the woman, though in the end, like LH, only one of the men is imagined to be responsible for the injury. Both laws prescribe a fine in this first case. LH requires ten shekels of silver; CC requires the offender to pay the amount exacted by the woman's husband.

These laws are each followed by a case where, in addition to the death of the fetus, the woman suffers. LH reads: “If that woman dies, they shall kill his daughter” (*šumma sinništum šī imtūt mārašsu idukkū*; LH 210). Instead of this vicarious punishment, CC has talion law: “If there is calamity, you shall pay life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, injury for injury” (וּאִם אִסּוּן יִהְיֶה וּנְתַתָּה נֶפֶשׁ תַּחַת נֶפֶשׁ)

עין תחת עין שן תחת שן יד תחת יד רגל תחת רגל כויה תחת כויה פצע תחת פצע חבורה תחת חבורה; vv. 23–25).⁸ CC appears to have rejected vicarious punishment and replaced it with a summary of Hammurabi's talion laws from LH 196–201. See topics 8 and 9. Hammurabi's miscarriage law in any case implies that the penalty must be equal to the crime. The Middle Assyrian Laws display the principle of talion in connection with miscarriage more prominently than Hammurabi's laws (MAL A50, 52; see p. 182). Laws similar to these may have guided CC to incorporate a summary of Hammurabi's talion laws into the miscarriage laws.

8. Talion Laws and Injuring a Slave (22:23b–27; texts on pp. 186–187)

The talion laws (“eye for an eye,” etc.) in CC appear at the end of the miscarriage laws (Exod 21:23–27), as just observed (topic 7). In LH, they appear somewhat earlier (LH 196–201), between the laws about children striking parents (LH 195) and humiliating striking (LH 202–205). Hammurabi's talion laws are nevertheless in the neighborhood of the miscarriage laws (LH 209–210).

The talion laws in the two collections are markedly similar. They both speak of injury to eyes, teeth, and bones (in CC, “arm” and “leg”) and a remedy through a payment equivalent to or retaliatory injury to the same body part. The talion list from CC was cited in the previous section on miscarriage (topic 7). This has an abbreviated form in contrast to the laws in LH, which are presented in full casuistic form: “If an *awīlum* blinds the eye of another *awīlum*, they shall blind his eye. . . . If he breaks the bone of an *awīlum*, they shall break his bone” (*Šumma awīlum īn mār awīlim uḥtappid īnšu uḥappadū. . . šumma eṣemti ašīlim ištebir eṣemtašu iṣebbirū*; LH 196–197); “If an *awīlum* knocks out the tooth of an *awīlum* of his own rank, they shall knock out his tooth” (*Šumma awīlum šinni awīlim meḥrīšu ittadi šinnašu inaddū*; LH 200). CC's abbreviation of the laws can be attributed to the freedom in formulation gained by relocating the talion laws from their location in LH to serve as the apodosis for the miscarriage laws, comparable to the relocation and reformulation of the homicide laws (see topic 3).

After both passages establish the principle of talion in regard to free people (the woman killed or injured in Exod 21:23–25 is presumed to be free), they go on to cases where the victim is of a lesser class, and both discuss the slave. In CC, this is stated as a full casuistic law: “When a man strikes the eye of his male slave or the eye of his female slave, and destroys it, he shall send him away free for his eye. If he knocks out the tooth of his male slave or female slave, he shall send him free for his tooth” (וכי יכה איש את עין עבדו או את עין אמתו) יפיל לחפשי ישלחנו תחת שנו; ושחתה לחפשי ישלחנו תחת עינו ואם שן עבדו או שן אמתו יפיל לחפשי ישלחנו תחת שנו; Exod 21:26–27). This legislation accords with the full casuistic form in LH: “If he blinds the eye of a commoner or breaks the bone of a commoner, he shall

weigh out one mina of silver. If he blinds the eye of the slave of an *awīlum* or breaks the bone of the slave of an *awīlum* he shall weigh out half of his price” (*šumma īn muškēnim ištebir 1 mana kaspam išaqqal; šumma īn warad awīlim uḥtappid ū lū eṣemti warad awīlim ištebir mišil šīmīšu išaqqal*; LH 198–199); “if he knocks out the tooth of a commoner, he shall weigh out one-third mina of silver” (*šumma šinni muškēnim ittadi 1/3 mana kaspam išaqqal*; LH 201). Both CC and LH here speak about injury to an eye or tooth, and the talion formulation (“body part for body part”) does not apply to subordinate classes.

9. A Goring Ox (21:28–32, 35–36; texts on pp. 206, 218, 221)

The goring ox laws in CC appear immediately after the talion and slave injury laws (Exod 21:28–32, 35–36). In Hammurabi’s laws, they appear (LH 250–252) after a large block of laws generally not paralleled in CC (LH 215–249; though see topic 10) but which thematically evolves toward the subject of oxen (note especially LH 224–225, 241–249).

Exodus 21:28–32 has the same basic laws as LH 250–252, in the same order and with similar language. The first law in both collections deals with an unanticipated case of goring: “If an ox gores a man or woman and he dies, the ox shall be stoned . . . ; the owner of the ox is not liable” (וכי יגה שור את איש או את) . . . ; *אשה ומת סקול יסקל השור . . . ובעל השור נקי* (Exod 21:28); “If an ox gores a man while passing through the street and kills (him), that case has no claim” (*šumma alpum sūqam ina alākīšu ikkipma uštamīt dīnum šū rugummām ul išu*; LH 250). The protases of these laws first speak of the ox’s goring a person, followed by the statement that the person is killed as a result. The apodoses end with the conclusion that there is no claim or liability.

The next laws in both collections are about a case of a habitually goring ox: “If an ox is a habitual gorer, from previous experience, and its owner has been warned, but he did not restrain it, and it kills a man or a woman, the ox shall be stoned and its owner shall be put to death” (ואם שור נגה הוא מתמל שלשם) ; והועד בבעליו ולא ישמרנו והמית איש או אשה השור יסקל וגם בעליו יומת (Exod 21:29); “If a man’s ox is a habitual gorer, and his district has informed him that it is a habitual gorer, but he did not file its horns and did not control his ox, and that ox gores one of the *awīlum*-class and kills (him), he shall pay thirty shekels of silver” (*šumma alap awīlim nakkāpīma kīma nakkāpū bābtašu ušēdīšumma qarnīšu lā ušarrim alapšu lā usanniqma alpum šū mār awīlim ikkipma uštamīt 1/2 mana kaspam inaddin*; LH 251). The laws have several features in the same order: the ox is designated as a habitual gorer (and both specifically use a *qattāl*-based nominal pattern for designating the goring ox: נִגְּהָ, *nakkāpūm*), the owner is warned about his animal, he does not restrain it, and it kills a person. Though CC first requires capital punishment, it allows monetary compensation in verse 30, as does LH.

CC attaches an amendment to the foregoing laws, stating that if the victim is a son or daughter, the rule follows the laws for adult victims (21:31). This correlates specifically with the designation of the victim of LH 251 as a *mār awīlim*, which is ambiguous, meaning either “a victim of the *awīlum*-class” or, literally, “a son of an *awīlum*.” CC’s rule about minors can also be seen to contrast with several rules in LH that prescribe the execution of the child of an offender if the victim is a child (LH 116, 210, 230; in LH 116, the victim is also described as a *mār awīlim*). We saw before that CC has correlations with two of these laws: 21:20–21 with LH 116 (topic 6) and 21:23 with LH 210 (topic 7). A possible correlation with LH 230 is discussed in topic 10. In none of its parallel cases does CC share a rule of vicarious punishment with LH. It appears, therefore, to have rejected this principle in every case where it appears in its source.

After dealing with free persons, CC and LH both take up a slave as the victim: “If the ox gores a male slave or a female slave, he shall pay thirty shekels of silver to the master and the ox shall be stoned” (אם עבד יגח השור או אמה כסף) Exod 21:32; “If it is the slave of an *awīlum*, he shall pay twenty shekels of silver” (*šumma warad awīlim 1/3 mana kaspam inaddin*; LH 252). According to the two collections, compensation is to be paid. Note that the thirty shekels in CC here is the same amount as compensation for a free person in LH 251.

The goring ox law also provides evidence that CC depends on cuneiform sources other than LH. The law about an ox goring another ox in Exodus 21:35 is essentially verbatim the law found in LE 53: “When a man’s ox gores an ox of his fellow and it dies, they shall sell the live ox and divide the silver; they shall also divide the dead (animal)” (וכי יגף שור איש את שור רעהו ומת ומכרו את השור) (החיי וחצו את כספו וגם את המת יחצון); “If an ox gores another ox and kills it, both ox owners shall divide the price of the live ox and the carcass of the dead ox” (*šumma alpum alpam ikkimma uštamūt šīm alpim balṭim u šīr alpim mītim bēl alpim kilallān izuzzū*).

10. Negligence (21:33–34; texts on pp. 213, 215, 217)

A law on negligence appears in the middle of the goring ox laws in CC (21:33–34). It instructs that one who digs a pit and does not cover it must compensate the owner of an ox or ass that falls into it. Though neither LH nor other known cuneiform collections have laws whose details are similar, LH does have several laws concerning negligence. A number of these appear in 229–240, in the vicinity of other laws that CC is presumably following at this point. For example, LH 229 says: “If a builder makes a house for a man, but does not fortify his work, and the house he made falls and kills the house owner, that builder shall be put to death” (*šumma itinum ana awīlim bītam īpušma šipiršu lā udaninma bīt īpušu imqutma bēl bītīm uštamūt itinumm šū iddāk*). The next law (LH

230) describes the victim as the child of the house owner, in which case the child of the builder is put to death.

In terms of distance, this law is not far from Hammurabi's goring ox law, and it prescribes vicarious punishment, something that CC prohibits in the middle of its goring ox law in verse 31, as noted in the discussion of topic 9. Verse 31 is only two verses away from the negligence law in verses 33–34. Of all the laws that consider vicarious punishment of a child in LH (otherwise, LH 116, 210; CC also has correlates with these laws; see topics 6, 7, and 9), LH 230 is the closest to the situation described in 21:31 in that it involves a case of negligence where a child is the victim. The concerns of LH 229–230 therefore cluster in Exodus 21:31, 33–34. Furthermore, both of the laws in Exodus 21:33–34 and LH 229–230 describe a case of “falling.” The falling is, of course, not the same in the two laws, but the principle of attraction operative in organization and creation of Near Eastern law may have allowed CC to generate its particular law.⁹ Furthermore, the technique of conceptual inversion, as found between LH 282 and 21:5–6 (see topic 1), may have led to creation of a law about an animal *falling in* as opposed to a house *falling down*.

CC's negligence law has similarities to LH 125 in the obligation of recompense. LH 125 deals with negligence in a case of deposit and speaks explicitly about “a house owner who is negligent” (*bēl bītīm ša īgūma*) and allows the deposited property to be stolen. Hammurabi's law says “the owner of the house... shall pay; he shall restore to the owner of the property” (*bēl bītīm... ušallamma ana bēl makkūrim irāb*). CC's law prescribes similarly “the owner of the pit shall pay; he shall return silver to its owner” (בעל הבור ישלם כסף) (ישׁיב לבעליו). The issue of negligence in LH 229–240, and especially 229–230, may have led CC by way of cross-referencing to the earlier law on negligence in the collection. Note that the nearby negligence laws of LH 236–237 specifically use the verb *egūm* “to be negligent,” also used in LH 125. Chapter 8 discusses in detail all of these and other generative possibilities for CC's negligence law.

11. Animal Theft (21:37 + 22:2b – 3; texts on pp. 231–232)

The next sequential parallel concerns the theft of animals (Exod 21:37 + 22:2b–3). (The burglary law in Exod 22:1–2a is contextually secondary; see later and chapter 9.) In CC, the animal theft law directly follows the goring ox laws. The case deals with a man stealing (גנב) and slaughtering or selling an ox or flock animal. He is to repay five or four animals for the animal stolen, depending on the species. If he does not have the means to pay (אם אין לו), he is to be sold (no doubt as a debt-slave). If the animal “is found in his possession alive” (אם המצא), he is to pay back two animals (שניים ישלם).

In LH, an animal theft law (LH 265) also appears after the goring ox laws, though after the intervention of a few laws that contemplate other cases of

agricultural theft or loss (LH 253–264). LH 253 describes a case where a man who takes care of a field steals (*šarāqum*) seed or fodder, which is then “found in his possession” (*ina qātīšu ittašbat*). This idiom is similar to that in Exodus 22:3. LH 254 describes a case of taking stored grain; the penalty requires that “he restore twofold” (*tašna... irīab*), similar to the twofold restoration prescribed at the end of Exodus 22:3. The next law (LH 255) deals with a case of a person’s hiring out another person’s cattle or stealing seed, with the result that he cannot produce crops. His penalty is to hand over a certain quantity of produce per unit of land. The law is supplemented (LH 256) with a clause about the inability to pay, as in Exodus 22:2b: “If he is not able to satisfy his obligation...” (*šumma piḥassu apālam lā ile’i*). The offender is dragged around the field rather than sold to pay off his debt. Finally in this series, after a few other laws dealing with agricultural theft (of plows, 259–260) and (unintentional) animal loss and diminishment (263–264), LH turns to animal theft with a case where a man alters a brand and sells an animal (265). His penalty is to pay tenfold to the cattle owner. The requirement of multiple restitution here is similar to the five- or fourfold repayment of Exodus 21:37.

For the laws on crop damage that follow (22:4–5), which do not follow the sequence of LH, see later in this chapter on miscellaneous correlations.

12. Deposit (22:6–8; texts on pp. 242–246)

After the law on crop damage, CC turns to the topic of deposit and the misappropriation of various property items in 22:6–8. According to this, a thief who steals silver (כסף) or goods (כלים) given to a person for safekeeping, described with the verb נתן “give” and the infinitive לשמר “to keep,” is to repay twofold. If the thief is not found, the custodian “shall approach the God, (to verify) whether or not he misappropriated the property of his fellow” (ונקרב בעל הבית) (אל האלהים אם לא שלח ידו במלאכת רעהו; v. 7). Then a general rule, which includes animals, follows: “in every case of misappropriation, whether concerning an ox, an ass, a flock animal, an article of clothing, or any other loss, where one claims, ‘This is it/he,’ the case of both parties shall come before the God; he whom God convicts shall pay twofold to the other” (על כל דבר פשע על שור על חמור) על שלמה על כל אבדה אשר יאמר כי הוא זה עד האלהים יבא דבר שניהם אשר ירשיען על שמהם ישלם שנים לרעהו; v. 8).

These verses correspond primarily with LH 120, 124–125 (the whole section of LH 120–126 is concerned with deposit). Law 124 says that a person who denies that silver (*kaspum*), gold, or anything else (*mimma šumšu*) was given to him in deposit, described with the verb *nadānum* “to give” and the adverbial of purpose *ana mašsarūtīm* “for keeping,” is to pay double, even though there are witnesses. Like Exodus 22:6, this mentions silver and a general term for a piece of property, giving in deposit, and a twofold penalty. Law 125 (discussed in topic 10) deals with a case in which property given in deposit was stolen,

similar to the case in Exodus 22:6. In this case, however, the bailee is assumed negligent and has to restore the property. According to LH 120, a loss occurs to grain given for silo storage or the house owner takes some of the grain or denies that grain was stored with him. The storage is described with the verb *šapākum* “to store” with the adverbial of purpose *ana našpakūtīm* “for silo storage,” a usage comparable to *ana maššarūtīm nadānum* “to give for safekeeping,” noted previously. LH 120 goes on to prescribe that the owner of the grain “shall make a declaration about his grain before the god, and the house owner shall double the grain that he received (in storage) and give (it) to the owner of the grain” (*maḥar ilim še’ašu ubârma bēl bītīm še’am ša ilqû uštašannāma ana bēl še’im inaddin*; see the declaration also in LH 126). This is similar to Exodus 22:6–8 in requiring double compensation and a declaration before the deity.

Even though the specific aforementioned deposit laws in LH are outside the shared sequence of topics otherwise observable between CC and LH, the topic is nonetheless part of the sequence. Law 265, which we noted corresponds to laws on animal theft (topic 11), and law 266, which deals with animals loss and which will also be relevant in the next sequential comparison (see topic 13), both entail the conceptual fundamentals of the laws of deposit. Law 265 begins: “If a shepherd to whom either cattle or flock animals are given for shepherding” (*šumma rē’ûm ša liātum û lû šēnum ana re’îm innadnūšum*). The phrasing “give for shepherding” (*ana re’îm nadānum*) is equivalent linguistically and conceptually to the phrases “give for safekeeping” (*ana maššarūtīm nadānum*) and “put up for silo storage” (*ana našpakūtīm šapākum*) found in the deposit laws of LH 120, 122–125, previously discussed. These phrases correspond to the Hebrew expression “to give for safekeeping” (נתן לשמר). LH 266 also speaks of a shepherd protesting his innocence “before the deity” when an animal is lost beyond his control, similar to the requirement of the oath in the CC passage. The correspondence with LH 265–266 is further seen in Exodus 22:8 as it returns to the topic of animals (“an ox, ass, flock animal”), forsaken momentarily in the treatment of silver and general goods in verses 6–7. LH 265–266 appear to have raised the issue of deposit. CC then developed a law using ideas from these laws, as well as the primary deposit laws in LH 120–126, through conceptual and idiomatic cross-referencing to those laws.

13. Death or Injury of Animals (22:9–12; texts on pp. 265–266, 271, 274–275)

Laws on the accidental death or injury of animals (Exod 22:9–12; LH 266–267) directly follow in both collections. These laws maintain the general topic of deposit but now specifically with regard to animals (CC specifically uses the phrase “give for safekeeping” נתן לשמר in v. 9, and LH 266 continues 265, which used the idiom “to give for shepherding” *ana re’îm nadānum*; see topic 12). Three elements in Exodus 22:9–10 and LH 266 correlate specifically and

unfold in the same sequence. First, the protases of the laws describe how an animal in custody may die: “If a man gives to his fellow an ass, herd animal, flock animal, or any animal for safekeeping and it dies (of itself), is injured or is carried away” (כי יתן איש אל רעהו חמור או שור או שה וכל בהמה לשמר ומת או) נשבר או נשבה (22:9); “If in an animal pen a sickness (lit., ‘a stroke of the god’) occurs or a lion makes a kill” (*šumma ina tarbašim lipit ilim ittabši ū lū nēšum iddūk*; LH 266). An animal’s dying of itself presumes sickness, and being carried away may be seen to have reference to predators. Thus both descriptions agree, except that CC also has the case of injury. Next, both laws prescribe a declaration of innocence or an oath: “an oath of Yahweh shall be between the two of them (i.e., custodian and owner), (to verify) whether or not he (the custodian) misappropriated the property of his fellow” (שבעת יהוה תהיה בין שניהם אם) לא שלח ידו במלאכת רעהו (Exod 22:10); “the shepherd shall declare his innocence before the god” (*re’ ūm maḥar ilim ubbamma*; LH 266). Though the details differ, both laws refer to the same basic process. Finally, both require the owner to accept or take something: “its (the animal’s) owner shall accept” (ולקח בעליו) (Exod 22:10); “the owner of the pen shall accept for him (the shepherd) the loss in the pen” (*miqitti tarbašim bēl tarbašim imaḥḥaršu*; LH 266).

In the sequential context, verses 9–10 parallel LH 266 (as we have seen), and verses 13–14 parallel LH 268 (as we will see later). Thus it makes sense to think that the intervening laws, specifically verse 11 and LH 267, are related. Although these laws describe different types of animal loss (theft versus disease), they share similar phrasing. Both state that the custodian must make restitution by using the Semitic root *šlm*. They both say, too, that this restoration is to be made to the animal’s owner (*ana bēlīšu*/לבעליו). Furthermore, both laws may involve negligence. This is explicit in LH 267 (“If a shepherd is negligent” *šumma re’ ūm īgūma*). It is implicit in verse 11 when read in contrast to verses 7 and 9, according to which theft of a deposited item or loss of an animal by force requires no restitution.

Verse 12 correlates topically with LH 266. It adds detail about the case where an entrusted animal is killed by predators, the topic of Hammurabi’s law (see earlier). If the shepherd can bring the carcass as evidence that predators killed it, he is blameless.

14. Animal Rental (22:13–14; texts on pp. 279–281)

The laws that immediately follow in both collections deal with the rental or borrowing of animals (Exod 22:13–14; LH 268–271). The laws in CC speak of a case where a person borrows (שאל) an animal from another and the animal is injured or it dies. If the owner is not with the animal, the borrower must make restitution; if the owner is with it, no restitution is required. The law then adds: “If it (the animal) was rented, he (the owner) shall (nonetheless) receive its rent payment” (אם שכיר הוא בא בשכרו) (v. 14b). LH 268–271 consider animal rental,

but in a different way, listing rental rates. For example, LH 268 says: “If a man rents an ox for threshing, its rent is two suts of grain” (*šumma awīlum alpam ana diāšim īgur 2 sūt še’um idūšu*). Although the two passages treat rental from different perspectives, CC specifically correlates with the interests of LH by reference to payment of rent in Exodus 22:14b.

Other laws in LH correlate more closely to the subject matter of Exodus 22:13–14. LH 244–249 are concerned with the death or injury of rented animals. The renter does not need to pay a penalty in the case of death by a predator or a sickness: “If a man rents an ox or donkey, and in the open country a lion kills it, [the loss belongs] to its owner” (*šumma awīlum alpam imēram īgurma ina šērim nēšum iddūkšu ana bēlīšuma*; LH 244); “If a man rents an ox, and a god strikes and kills it, the man who rented the ox shall swear a divine oath and shall not be held liable” (*šumma awīlum alpam īgurma ilum imḥassuma imtūt awīlum ša alpam īguru nīš ilim izakkarma ūtaššar*; LH 249). Payments are required if the renter kills or injures the animal by beating or carelessness (LH 245–248). In the case where the renter causes the animal’s death or serious injury, he only needs to restore a single animal of the same quality. CC’s laws are similar in that they require only the replacement of the animal, not multiple restitution as in cases of theft, as seen before. In short, it seems that we have here another case of cross-referencing. The sequential flow of topics in the latter part of Hammurabi’s laws (i.e., LH 268–271) raised the topic of animal rental for CC. These allowed CC to access the other laws on animal rental from LH 244–249.

Miscellaneous, Nonsequential Laws

CC’s casuistic legislation contains five distinct laws or legal topics not clearly related to the topical sequence of LH, some of which were noted in the earlier discussion: kidnapping (21:16), burglary (22:1–2a), two laws on crop damage (22:4–5), and seduction of a virgin (22:15–16). Some of these laws have similarities to laws elsewhere in LH, and some have correspondences with cuneiform collections other than LH. They are not unrelated, however, to the sequential pattern, once one allows for the operation of cross-referencing to supplement the primary spine of laws based on the topical structure of the last half of Hammurabi’s casuistic laws. In addition to these five laws, CC has a group of participial laws in 22:17–19, just before the final apodictic laws in 22:20–23:19. These participial laws are not related to LH but do relate to CC’s use of alternate sources for its composition.

Kidnapping (21:16; texts on p. 197)

CC penalizes kidnapping in Exodus 21:16: “He who steals a person and sells him or he is found in his possession, shall be put to death” (נגב איש ומכרו ונמצא)

בִּירוֹ מוֹת יוֹמָת). This is similar to LH 14: “If a man steals the young child of a man, he shall be put to death” (*šumma awīlum mār awīlim šeḫram išṭariq iddāk*). The penalty is the same as in CC. The biblical law appears awkwardly between the two verses on child rebellion (21:15, 17). This is an intentional ordering and based on Hammurabi’s collection. LH 194, which deals with a wet nurse caring for another child when earlier a child in her care died, similarly disrupts the child rebellion laws in 192–193 and 195. Though seemingly intrusive, the law is related to its context by its penalty, as is Exodus 21:16. Hammurabi’s law requires cutting off the woman’s breast, a corporal talion punishment similar to cutting out the child’s tongue, plucking out his eye, or cutting off his hand in LH 192–193, 195. Exodus 21:16, for its part, requires capital punishment, as do verses 15 and 17. Significant is the fact that the victim in LH 194 is apparently described with the term *šeḫrum*, “a young child” (logogram TUR); a *šeḫrum* is the victim in the kidnapping law of LH 14. It makes sense to believe that when CC contemplated LH 194, it substituted another law about a *šeḫrum* from elsewhere in LH but kept the same disruptive order in the laws. The participial form of 21:16 is due to assimilation to the participial form of the other capital laws in 21:12, 15, 17.

Burglary (22:1–2a; texts on p. 258)

These verses, which are concerned with house burglary, are out of place in their context because they interrupt the law on animal theft (see topic 11). The case is described as one of tunneling or penetration by digging: “If the thief is caught in an act of digging in” (אם במהחרת ימצא הגנב). The rest of the law deals with liability for killing the burglar, depending on whether it is night or day. A similar law is found in LH 21. It sets up the case as one of penetration: “If a man digs into a house” (*šumma awīlum bītam ipluṣ*). It then speaks of the death of the burglar by prescribing his execution on the spot. Another Akkadian burglary law, LE 13, has similarities to the biblical law. Though this law does not describe an act of penetration, it makes a distinction between apprehending the burglar by day or night. If the former, he pays a fine; if the latter, he may be put to death. This law also speaks of the burglar “being caught” (*našbutum*), which corresponds to the Hebrew term for “being found” (נמצא), a motif not in LH 21 (though in LH 22–23).

Chapter 6 explains how CC’s burglary law was created in connection with the deposit laws of 22:6–8. These laws, as we saw in the discussion of topic 12, correlate with the deposit laws of LH 120–126 via the idiom for entrusting property similar to that in LH 264–265 in the topical sequence. LH 125 in that block of deposit laws speaks of a thief “digging into” (with the root *plṣ*) a house to steal deposited property. This motif led CC to LH 21, which uses the same term, and hence to the topic of burglary. The burglary law was secondarily put into its present location in CC.

Crop damage (22:4–5; texts on pp. 237, 240–241)

After the end of the animal theft law in Exodus 22:3, CC presents two related laws (vv. 4–5), the first of which parallels laws in LH outside the sequential template and the second of which does not have a parallel in LH but in another cuneiform collection. Exodus 22:4 deals with a case of letting animals graze in another person's field, corresponding to LH 57–58. These describe two cases: (a) letting one's flock graze (*šūkulum*) in another person's field without an agreement and (b) releasing (*nadûm*) a flock into a field after the time for pasturing has passed. The penalties involve payment of grain for each unit of the field damaged. CC's law also appears to reflect the same two basic cases: (a) letting a field be grazed (הבעיר; v. 4aα) or (b) releasing (שלה) animals into another person's field (v. 4aβ). Both collections correlate in using a causative stem for grazing in the first case (*šūkulum* and הבעיר) and then words for letting loose in the second (*nadûm* and שלה).¹⁰

The next law in CC (v. 5) describes a case of letting a fire get out of control, with the result that another person's crop is damaged. This has no corresponding law in LH but does in HtL 105–106. This extends the topic of the previous law. It can be viewed as another example of cross-referencing, but here CC brings in an associated law from a collection other than LH (by no means was this source HtL itself).

Seducing an unbetrothed virgin (22:15–16; texts on pp. 130–131)

This law does not have a counterpart in LH, but it looks very similar to MAL A 55–56. MAL A 55 speaks of a “young woman who is not betrothed” (*batulta...ša lā ūtarrišūni*); CC speaks of “a young woman who is not betrothed” (בתולה אשר (לא ארשה)). MAL A 55 goes on to talk about a case of rape, where the culprit must pay threefold the bride-price for the woman. The law adds: “if her father is not willing he shall (nonetheless) receive the threefold amount of silver for the maiden and give his daughter to whomever he desires” (*šumma abu lā ḥadi kaspā šalšāte ša batulte imahḥar mārassu ana ša ḥadiūni iddan*). MAL A 56, which speaks of a case where the maiden gives herself willingly, requires that “the one who had intercourse with her pay the threefold amount of silver that is the price of the maiden; the father shall do with his daughter as he desires” (*šalšāte kaspe šim batulte nā'ikānu iddan abu māras[su] ki ḥadiūni epp[aš]*). The outcome of CC's law is similar. Speaking only of a case of seduction, it says that the man “shall acquire her as a wife by paying the bride price; if her father refuses to give her to him, he shall (still) weigh out silver as the bride price of maidens” (מהר ימהרנה לו לאשה אם מאן ימאן אביה לתתה לו כסף ישקל כמהר). (הבתולה). This law is ultimately related to the context of the main laws in CC that correlate with Hammurabi's topical sequence. It explains why the daughter of a debtor must marry her father's creditor in 21:7–11 (see chapter 5).

Participial laws in Exodus 22:17–19 (texts on pp. 199–202)

These laws have a form and a prescription of capital punishment similar to the participial laws in 21:12, 15–17. Exodus 22:19, which deals with sacrifice to other gods, has no parallel in LH or cuneiform sources. Verse 18, on bestiality, is only loosely similar to HtL 187–188, 199–200a. Verse 17, about a sorceress, has some similarity to MAL A 47, which prescribes death for men and women who practice sorcery (cf. LH 2). But the correlation is less precise than others that we have seen. These three laws can be correlated compositionally with the participial laws in Exodus 21 to form a hypothesis that CC used a native participial source. The laws generated on the basis of this source that had correspondences with LH were placed in Exodus 21 (see topics 3 and 4 and the law on kidnapping). Miscellaneous laws in the native participial source or stimulated by this source, which did not have correlations with LH, were placed in an appendix at the end of the casuistic laws, right after the seduction law in 22:15–16, also an appendix.

Conclusions

The foregoing survey has shown that every law or significant aspects of every law in the casuistic laws of CC, save for two of the miscellaneous participial laws of 22:17–19, has a counterpart in cuneiform law. The majority of the correspondences are with LH in particular. Within this set, fourteen of CC's laws or legal topics run in the same or nearly the same order as the laws in the last half of LH (again, see table 1.1 in chapter 1). The three cases where the order is not exact—homicide, talion, and negligence—are still close to the order of their counterparts in LH, and the divergent order in each case has a logical explanation as part of the creative reworking by CC's author. In addition, several other laws in CC correspond with those in LH, though not in sequential order: slave-master relations and boring/cutting off the ear of a slave (21:6 // LH 282), kidnapping (21:16 // LH 14), negligence (21:33–34 // LH 125), burglary (22:1–2a // LH 21), grazing a field (22:4 // LH 57–58), deposit (22:6 // LH 120, 124–125), and animal rental (22:13–14 // LH 244, 249). These can all be explained by CC's use of cross-referencing to other laws in order to bring in legislation to augment the topics and material provided by the sequential template. Cross-referencing can also be used to explain the presence of laws in CC that have close correlations with laws in other cuneiform laws collections: talion in miscarriage (21:23–25 // MAL A 50, 52), an ox goring an ox (21:35 // LE 53), burglary (22:1–2a // LE 13), burning a field (22:5 // HtL 105–106), seducing a virgin (22:15–16 // MAL A 55–56), and sorcery (22:18 // MAL A 47). CC used other sources to complement the basic sequential legislation provided by Hammurabi's text. These complex primary and auxiliary correlations

are summarized in the table in the appendix to chapter 13. What is remarkable is that even though CC departs at times from the topical sequence of the laws in LH, *it consistently returns to that sequence*.

In addition to the evidence about sequence, many of the individual laws in CC and LH, in or outside the common sequence, agree in their internal details. Note, for example, that the debt-slavery laws describe work for X years with release in year X + 1 (21:2 // LH 117); the laws on slave-master relations have a slave declaring his relationship to his master with subsequent marking or marring of his ear to reflect his submission or rebellion (21:5–6 // LH 282); the laws about marrying a second wife describe it as “taking another” and require one to provide for the support of the first in three ways (by implication if not explicitly; 21:10–11 // LH 148–149); the child rebellion laws describe both verbal and physical attacks (21:15, 17 // LH 192–193, 195); the laws about striking a person set the injury in the context of a fight and require the injurer to care for the victim’s recovery (21:18–19 // LH 206); the miscarriage laws treat two cases, causing a miscarriage alone and then death to the woman (21:22–23 // LH 209–210); talion laws mention eye, tooth, and bone injuries and deal with such injuries to slaves (21:24–27 // LH 196–201); the goring ox laws consider ad hoc goring first, then habitual goring, then the goring of a slave (21:28–32 // LH 250–251); animal theft laws mention finding a stolen object in the thief’s possession, an inability to pay the penalty, and twofold or more restoration (21:37 + 22:2b–3 // LH 253–265); grazing laws presumably deal with two cases, causing animals to graze and releasing animals in a field (22:4 // LH 57–58); deposit laws require double compensation and declarations before the deity (22:6–8 // LH 120; cf. 126); and the animal death and injury laws speak, in order, about how the animal died, a declaration of innocence, and the owner’s acceptance of the loss (22:9–10 // LH 266).

When one considers this general evidential picture, the effect is striking. It is a decidedly strong, if not conclusive, indication that CC is dependent directly and primarily on LH. This evidence stands in contrast to the lack of similar correlations between CC and other known and relatively substantial law collections, such as the Hittite Laws or the Middle Assyrian Laws. Moreover, though one finds some significant correlations between Deuteronomy and Middle Assyrian Laws (explained in chapter 4), one does not find the same sorts of correlations between Deuteronomy and LH. In other words, the similarities of CC with LH are not a function of chance correlations between lengthy legal texts. CC bears the image of LH and is most reasonably accounted for in terms of a parent-child relationship. The examination of correlations between CC’s apodictic laws and the prologue and epilogue of LH outlined in the next chapter will confirm this conclusion.

3

The Apodictic Laws

Even an attentive reading of the texts does not necessarily raise suspicion that CC's apodictic laws have any connection to Hammurabi's prologue and epilogue. CC's apodictic laws are, in style and content, quite different from the outer sections of LH. They are direct commands that, at the beginning of CC, prohibit divine images and instruct how altars are to be made (Exodus 20:23–26) and, at the end, direct behavior in regard to the poor, cultic matters, and justice (22:20–23:19). In contrast, Hammurabi's prologue and epilogue are essentially royal praise, extolling the achievements of the Old Babylonian king. The prologue describes the call of the monarch and a description of his great acts for the cities of his realm. The epilogue resumes a description of the benefits he achieved for the people, how his laws should be followed by a future king, and curses that fall upon one who does not follow his example.¹ Despite these differences, CC's apodictic laws manifest a number of salient and intricate correlations with Hammurabi's prologue and especially the epilogue that cannot be attributed to chance or the creativity of comparative analysis, especially in view of the accompanying correlations in the texts' casuistic laws, surveyed in the previous chapter. If there was any doubt that CC has relied upon LH, it is dispelled by the correlations found in the apodictic laws.

To demonstrate the correlations between the texts, this chapter first deals with the final apodictic laws and the epilogue, since the correspondences

between these portions of the texts continue the sequential correspondences visible in the casuistic laws and because study of the correspondences in these parts of the texts allow us to more easily understand the correspondences in connection with the initial apodictic laws. As in the preceding chapter about the correlations in the casuistic laws, this chapter says little about the compositional logic of CC, which presupposes dependence upon LH. The evidence for dependence must be presented first before I explain how the source text was transformed. This analysis must wait until chapters 11 and 12 in part II, where many of the details of interpretation of the apodictic laws are treated.² The present chapter refers only minimally to aspects of the logic involved in transforming the text to clarify how motifs in the two texts may be associated. However, if cross-referencing is the one compositional technique that makes intelligible several instances of CC's use of Hammurabi's casuistic laws, the replacement of Hammurabi with Yahweh is the one transformation that makes sense of many of the correlations that will be described between CC's apodictic laws and Hammurabi's prologue and epilogue. The reader is reminded of the summary of the evidence presented in chapter 1, which provides a general background for this chapter's analysis.

The "String" and Chiasmic Structures of the Final Apodictic Laws

Before we can compare the final apodictic laws and the epilogue, we must clarify the structure of the final apodictic laws (Exod 22:20–23:19). This part of CC looks like a legal miscellany, almost as confusing in its organization as Deuteronomy 21–25.³ Topics are repeated in an ostensibly random fashion. Laws on the immigrant, the cult, name-pronouncement, and cursing are scattered throughout the text. And the well-organized chiasmic block of laws on justice in 23:1–8 looks out of context, compared with the seemingly haphazard arrangement and context of the material before and after it.⁴

The problems in structure are completely and satisfactorily resolved when it is realized that the laws of the final apodictic laws have a cogent duplex structure. The last third of the final apodictic laws (23:9–19) replicates the topical sequence of the first third (22:20–30).⁵ I refer to these two passages as *string I* and *string II* for abbreviated reference. Table 1.4 in chapter 1 summarized the content of these two strings. Here are the texts of the two strings in full in translation (see the appendix to this chapter for the Hebrew text):

String I: Exodus 22:20–30

*General law about the poor with
Egypt rationale*

^{22:20}You shall not oppress an immigrant. You shall not repress him

String II: Exodus 23:9–19

*General law about the poor with
Egypt rationale*

^{23:9}You shall not repress an immigrant. You know the mind of the

because you were immigrants in the land of Egypt. ²¹You shall not afflict any widow or fatherless child. ²²If you do afflict him, when he cries out to me, I will heed his cry. ²³My anger will be aroused and I will slay you with the sword, and your wives will become widows and your children fatherless.

Two specific laws benefiting the poor

- (A) ^{22:24}If you lend silver to my people, the poor that are with you, you shall not act like a (harsh) creditor to him. You shall not exact interest from him.
 (B) ²⁵If you take the garment of your fellow as a pledge, when the sun sets you shall return it to him, ²⁶because it is his only covering, it is the clothing for his skin—in what will he sleep? If he cries out to me, I will give heed, because I am compassionate.

Two short laws about speaking of sovereigns

- (A) ^{22:27}You shall not curse God,
 (B) neither shall you denounce the chieftain among your people.

Cultic laws

^{22:28}You shall not delay the product of your vat or press. You shall give me your firstborn sons. ²⁹You shall do likewise with your ox and your flock animals. Seven days it shall remain with its mother. On the eighth day you shall give it to me. ³⁰You shall be holy people to me. Flesh found in the field, i.e., torn flesh, you shall not eat. You shall throw it to the dog.

immigrant, because you were immigrants in the land of Egypt.

Two specific laws benefiting the poor

- (A) ^{23:10}Six years you shall sow your land and gather its produce. ¹¹(In) the seventh, you shall let it drop and leave it. The poor of your people may eat (it). What they leave the wild animals may eat. You must do this also for your vineyard and orchard.
 (B) ¹²Six days you shall do your work. On the seventh day you shall cease so that your ox and ass may rest and so that the son of your slave woman and the immigrant may be refreshed.

Two short laws about speaking of sovereigns

- ^{23:13a}You shall be observant with respect to all that I have said to you.
 (A) ^{13b}The name of other gods you shall not mention;
 (B) it shall not be heard on your lips.

Cultic laws

^{23:14}You shall celebrate as pilgrimage festivals three occasions in the year: ¹⁵You shall observe the festival of unleavened bread; seven days you shall eat unleavened bread, as I commanded, at the festival time in the month of Aviv, because it was then that you left Egypt. They shall not appear before me [or: see me] empty handed—¹⁶(also) the feast of

harvest, the first fruits of your work that you sow in the field, and the feast of gathering at the end of the year, when you gather the product of your labors from the field. ¹⁷Three times in the year every male among you shall appear before [or: see] the Lord Yahweh. ¹⁸You shall not make offerings, the blood of my sacrifice, with leaven. The fat of my festal offering shall not remain over until morning. ¹⁹The choice of your first fruits of your land you shall bring to the house of Yahweh your God. You shall not boil a kid in its mother's milk.

The points of relationship between the strings are patent:

(a) Both strings start with a general prohibition against oppressing the “immigrant” (גר; 22:20–23 and 23:9).⁶ While using various verbs to describe oppression, both texts share the verb *repress* (לחץ).⁷ Both of these laws also refer to the Israelites' residence in Egypt as a rationale for the law. The main difference is that the law of string I (22:20–23) is longer by including a prohibition against oppressing the widow and orphan, using additional verbs referring to oppression, and including a theological rationale for the law. Nonetheless, 23:9 reflects the essence of 22:20–23.

(b) Each string next supplies *two laws* that provide specific benefit to the impoverished (22:24–26; 23:10–12). String I prohibits taking interest from the poor and keeping overnight clothing used as a pledge. String II prescribes leaving produce in the field in the seventh year and resting on the seventh day.⁸ The last parts of these latter laws make reference to how the laws assist the poor: “the poor of your people” (אביוני עמך) benefit from the produce of the seventh year (23:11), and “the son of your female slave and the immigrant” (בן אמתך והגר) recuperate by resting on the seventh day (23:12).⁹ That the seventh-year and seventh-day laws have to do with the poor is also evident in their being formulated with the six-plus-one pattern found in the debt-slavery law in 21:2: “six years he shall work, and in the seventh he shall go free” (שש שנים יעבד) (ובשבעת יצא לחפשי). As chapter 5 argues, the six years of debt-slavery in 21:2, as opposed to the three years in LH 117, is made to match the numerical norm of the seventh-day and seventh-year laws in 23:10–12.

(c) Each string next has *two short laws* prohibiting types of speech about sovereigns (22:27; 23:13b). String I prohibits cursing the deity and cursing the “chieftain among your people” (נשיא בעמך). The latter probably refers to the local king (see chapter 11). String II prohibits mentioning the name of other

gods and letting their names be heard on the lips. It is not quite clear how the two ways of speaking here are distinguished; does the former refer to a more formal expression in the cult and the latter to noncultic speech? In any case, the double laws on speech about sovereigns in the two strings are no doubt structurally intentional, especially since they echo the double laws about the poor that precede. (We will later see a double law pattern in 20:25–26.)

Just before its prohibition against mentioning the names of other gods, string II has an extraneous exhortation 23:13a: “You shall be observant with respect to all that I have said to you.” This may be compared with the phrase “because I am compassionate” at the end of laws about the poor in string I. Although both of these refer to the deity’s interest or expectation, I have not set them out as a separate point of correlation in the texts here because the rationale clause in 22:26 is conceptually and syntactically part of the laws that precede it and because the two phrases are topically quite distinct.

(d) The last sections of the strings deal with cultic matters (22:28–30; 23:14–19).¹⁰ They are primarily related in their reference to the offering of first products and first fruits (22:28; 23:17, 19), the cultic position or responsibility of males (“the firstborn of your sons,” 22:28; “every male among you,” 23:17), and the use of young sacrificial animals in connection with their mothers (22:29; 23:19). Both passages also refer to sacrifice in different ways (22:29; 23:18). The main difference is that string II includes a cogent block of laws about a single cultic topic, namely, festivals (23:14–17), whereas the cultic laws in string I are a miscellany. Chapter 11, which examines the compositional logic of the laws, shows how these various cultic laws are associated conceptually. To anticipate that discussion, the laws about sacrifices and offerings in 22:28–29 and 23:18–19 are related to the festival laws in their being brought and offered principally on the festivals. The rule about dietary holiness in 22:30 is also related to the topic of offerings and festivals in prescribing a state that is necessary for cultic activity. Chapter 11 also discusses how the festival laws relate topically to cyclical laws about the seventh year and day in 23:10–12 and thus provide coherence to string II. That chapter also explains the imbalance in the two strings, where the cultic laws of string II are longer than the cultic laws of string I, but where the laws about the poor in string I are longer than the laws about the poor in string II. (This imbalance is visible in the layout of the text, as shown earlier.)

The similarities described between the strings indicate that they were designed to imitate each other. One could ask if one string is original and the other an addition. Part of the answer to that question has to do with the relationship of the two passages to LH, to be described later in this chapter. We will see that each of the strings has correspondences with the epilogue of LH. Thus neither seems to be primary over the other. Both strings are generated by the use of LH at the same compositional level.

A further indication that the two strings are part of the original structure, within the context of CC itself, is in their relationship to the passage on justice

and judicial propriety in 23:1–8 that stands between them. This passage has a clear chiasmic structure:¹¹

- (a) ¹Do not promote a *false rumor* (שמע שוא). Do not conspire with an *evil person* (רשע) to be a witness that causes *violence*.
- (b) ²Do not follow the majority to do evil. Do not testify in a dispute to *perversely follow* (לנטה) the majority to pervert (justice) (להטת).³ *Do not show deference to the poor*¹² in his dispute (ודל לא תהדר בריבו).
- (c) ⁴When you encounter the ox or ass of your adversary wandering, return it to him (כי תפגע שור איבך או חמרו תעה השב תשיבנו לו).
- (c') ⁵When you see the ass of your foe suffering under its burden, you shall resist forsaking him—(but) you must leave [the ass] with him (כי תראה חמור שנאך רבץ תחת משאו וחדלת מעזב לו עזב תעזב עמו).¹³
- (b') ⁶Do not *pervert* (לא תטה) the case of your *deprived in his dispute* (אבינך בריבו).
- (a') ⁷Keep yourself away from a *lying word* (דבר שקר).¹⁴ Do not *kill the innocent and blameless* (ונקי וצדיק), for I will not exonerate an *evil person* (רשע).
- (x) ⁸Do not take a bribe, because a bribe blinds the clear-sighted and undermines the words of the innocent.

One can compare the schematic outline of this structure in table 1.5 in chapter 1. That table draws out and summarizes the main points of topical and stylistic similarities between the members and thus provides an analytic commentary.

In an earlier study, I examined the fallacies involved in positing chiasmic structures generally in biblical studies and specifically with regard to the Covenant Code. Of the various proposals for chiasmic structures in CC that I examined, the structure in 23:1–8 was the only one that I deemed legitimate, that is, intended by the author, according to my strict criteria.¹⁵ When I wrote that study, I was not cognizant of the string structure of CC. It now makes sense to correlate the two strings compositionally with the chiasmic form in 23:1–8. They were set around the central chiasmic structure as extensions of it. Chapter 11 explains that the two strings were themselves not chiasmically arranged but drafted parallel to each other, in order to emphasize different themes. To anticipate, the parallel structure allows string I to emphasize the topic of the poor at its beginning, and string II to emphasize the topic of the cult at its end, hence the imbalance between the strings, noted previously.

The Strings of the Final Apodictic Laws and the Epilogue of LH

Recognition of the two parallel strings in the final apodictic laws makes the correlations with the epilogue obvious and sensible. It turns out that each string of the final apodictic laws string replicates the sequence of elements in what I

call the *exhortatory block* of the epilogue. The structure of the whole epilogue can be outlined thus:¹⁶

- (a) Transitional introduction into the epilogue (col. 47:1–8)
- (b) Hammurabi's general beneficent acts for the people (nonjudicial) (col. 47:9–58)
- (c) Setting up of the law stela and the purpose for doing so (cols. 47:59–48:2)
- (d) Visit of the wronged man to the law stela at the Esagil temple (col. 48: 3–58)
- (e) Admonition to a future king to follow Hammurabi's model (col. 48: 59–94)
- (f) Description of an obedient king, with short blessing (cols. 48:95–49:17)
- (g) Description of a disobedient king, with a long list of curses (cols. 49:18–51:91)

The exhortatory block consists primarily of sections (c)–(e) together with (f), which parallels (e), and also the first part of (g), which parallels (e) and (f). While exhortations and admonitions—various injunctive forms (precatives and vetitives) as described later—appear most visibly in sections (d) and (e), a precative form appears already at the end of section (c)—that is, *šumī... lizzakir* “may my name be remembered”—and the phrase at the beginning of section (c), which sets out the purpose of Hammurabi's proclamation of law (“so that the strong not wrong the weak and to secure justice for the destitute girl and widow” *dannum enšam ana lā ḥabālim ekūtam almattam šutēšurim*; 47:59–62), conceptually implies a direct obligation, such as “the strong shall not oppress the weak; one should provide justice to the orphan girl and widow.”¹⁷

The comparison of CC with the exhortatory block requires some space to set out and must include the initial apodictic laws, which are also parallel to the exhortatory block (see further later). Therefore, the compared texts are placed in an appendix at the end of this chapter. The reader should refer to this to view the data as a whole and with a critical eye.¹⁸ The discussion that follows here contains brief, relevant citations of text to make the argument visible without requiring reference to the full texts. A summary of the correlations is in table 1.6 of chapter 1, which is helpful as an overview for the following discussion.

The sequential correlations between the final apodictic laws and the exhortatory block involve the following:

- (a) String I and the exhortatory block each mention *three* socially disadvantaged persons at the beginning of their passages. LH refers to the “weak” (*enšum*), the “destitute/orphan girl” (*ekūtum*), and the “widow” (*almattum*): “So that the strong not wrong the weak and to secure justice for the destitute girl and widow” (*dannum enšam ana lā ḥabālim ekūtam almattam šutēšurim*; col. 47:59–62). CC refers to the “immigrant” (גר), the “widow” (אלמנה), and the “fatherless child/orphan” (יתום): “You shall not oppress an immigrant; you shall not repress him, because you were immigrants in the land of Egypt. You shall

not afflict any widow or fatherless child” (וגר לא תונה ולא תלחצנו כי גרים הייתם) (בארץ מצרים כל אלמנה ויתום לא תענון; 22:20–21).¹⁹ CC also mentions the latter two in the punishment directed at one who abuses them in verse 23. CC truncates the prohibition in string II, as noted earlier, and mentions only the immigrant. The three individuals mentioned in LH and CC correlate closely. The “widow” in LH and string I are equivalent, and the respective terms are linguistic cognates. The types of poor children mentioned overlap conceptually. Both can refer to types of orphans, or at least destitute children.²⁰ The “weak” and immigrant are comparable in a general way. The “weak” in LH is powerless in a socioeconomic sense, as are the widow and destitute girl, and stands in contrast to the *dannum* “strong,” who could harm him, according to the context of the exhortatory block.²¹ The immigrant in CC is impoverished or disadvantaged, as shown by those with whom he is associated in 22:20–26 (the widow, the fatherless, a poor person who must take a subsistence loan, and a person who gives his garment for a pledge) and his being mentioned alongside the “son of your female slave” (בן אמתך) as a beneficiary of seventh-day rest (23:12).²²

Each text also features explicit or implicit prohibitions by use of a negative particle plus a verb of oppression: “do not oppress” (לא תונה) in string I, “do not repress” (לא תלחץ) in string II, and “so as not to oppress/wrong” (*ana lā ḥabālim*).²³ CC uses other verbs of oppression in string I: “do not repress him (לא תלחצנו),” “do not afflict (לא תענון).” What is interesting with regard to these verbs is their similar distribution. The “weak” and immigrant are each governed by one verb (הונה, *ḥabālum*), and the widow and orphans are governed as pairs by another verb (ענה, *šutēšurum*). The verb *šutēšurum* “provide justice to” is a positive expression to which “do not afflict” (לא תענון)—verb with negation—can be seen as generally synonymous. Strictly speaking, apodictic-related forms in the exhortatory block (i.e., precatives and vetitives) do not start until about twenty lines later in column 47:79. But it is easy to see how purpose clauses such as “so as to not wrong the weak” or “so as to provide justice for the destitute girl and widow”—especially from the point of view of conceptual grammar—could be realized as a direct prohibition: “do not wrong the weak” and “do not afflict any widow and fatherless.” See the discussion and summary of apodictic forms later. The inconsistency of second-person singular and plural forms in CC is addressed in chapter 12.

The double laws that benefit the poor that follow in each string (Exodus 22:24–26 and 23:10–12) do not correlate directly with material in the exhortatory block of LH. Nevertheless, they are consistent with the theme of the prohibitions that precede them in that they prescribe what must be done so that the poor are not oppressed. This difference is therefore not a contradiction. CC may be viewed as augmenting the initial bare prohibitions. Recall, too, from the prior discussion that these laws in string II are associated conceptually with the casuistic law about debt slavery in 21:2–11, which itself is tied to LH as a source. Thus the expansive laws about the poor coordinate, ultimately though indirectly, with LH as a source.

A minor, inconsequential correlation appears in the phrases “that the son of your slave woman and the immigrant may be refreshed” (וַיִּנְפֹּשׁ) in 23:12 and “may he calm his heart” (*libbašu linappišma*) in the passage about the visit of a wronged man to Hammurabi’s stela (col. 48:18–19; see later on this passage).²⁴ Both use a verb form derived from the Semitic root *npš*. It may not be an accident that CC’s immigrant in 22:20 and 23:9, who is equivalent to Hammurabi’s weak person (*enšum*) who might be wronged (*ḥabālum*) according to the beginning of the exhortatory block, experiences a type of satisfaction in 23:12, just as the “wronged man” (*awīlum ḥablum*), described with an adjective from the verb *ḥabālum* in LH, experiences satisfaction.²⁵ CC provides a terminological tie between its two passages. The law against oppressing the immigrant at the beginning of string II, the string in which the seventh-day refreshment clause is found, uses the root נפּשׁ in connection with the immigrant: “Do not repress the immigrant; you know the mind (נפּשׁ) of the immigrant because you were immigrants in Egypt” (23:9).²⁶

(b) The next correlation in the strings of the final apodictic laws and the exhortatory block is the reference to speaking about a sovereign. LH calls for the memorialization of Hammurabi’s name: “In the Esagil temple that I love may my name be recalled kindly forever” (*ina Esagil ša arammu šumī ina damiqtim ana dār lizzakir*; cols. 47:93–48:2). After the short call to observe all that the deity has commanded, Exodus 23:13b commands: “You shall not mention the name of other gods or let it be heard on your lips” (וּשְׁם אֱלֹהִים אֲחֵרִים לֹא (תִּזְכְּרוּ לֹא יִשְׁמַע עַל פִּיךָ). This uses the same Semitic root, *zkr*, for the verb *mention* or *remember* and also uses the Semitic noun *šm* “name.” We see later in this chapter that the initial apodictic laws (at 20:24) provide the closest and primary analogue to the phrase in LH. It replaces Hammurabi with Yahweh and turns the phrase into a statement about Yahweh’s announcing his own name. The prohibition in 23:13b is the other side of this coin; whereas Yahweh’s name may be proclaimed or memorialized in 20:24, the names of other gods may not be, according to 23:13.

The corresponding prohibition in 22:27 in string I, “Do not curse God and do not curse the chieftain among your people” (אֱלֹהִים לֹא תִקְלַל וְנָשִׂיא בְעַמְּךָ לֹא תֹאר), does not use the terminology of name memorialization of LH (*zkr* “remember,” *šm* “name”). Nevertheless, CC’s motif of cursing is an extension of that conception. This verse, like the passage about the memorialization of Hammurabi’s name in 20:24, has to do with speaking about sovereigns. Thus in 20:24 (see later), 22:27, and 23:13b, CC covers an entire spectrum of linguistic propriety with respect to sovereigns.

The brief command to obey the deity in 23:13a, which comes before the prohibition of mentioning the names of other gods in verse 13b, is another minor nonsequential correspondence (in addition to the verb *npš*, “be refreshed/calmed,” discussed before). This clause, “Be observant in regard to everything that I have said to you” (וּבְכֹל אֲשֶׁר אִמַּרְתִּי אֵלֵיכֶם תִּשְׁמְרוּ), is similar to the words of admonition found in the counsel to a future king about a column

further on in the exhortatory block (to be discussed later): “Let him keep the just commands that I have written on my stela” (*awât mīšarim ša ina narīya aššuru liššur*; col. 48:64–67); “let him give heed to the words that I have written on my stela” (*ana awâtīm ša ina narīya aššuru liqūlma*; col. 48:78–79). The phrasing is found twice more, formulated indicatively, at the beginning of the ensuing paragraphs that describe cases where the future king maintains or does not maintain Hammurabi’s laws: “If that man gives heed to the words that I have written on my stela” (*šumma awīlum šū ana awâtīya ša ina narīya aššuru iqūlma*; col. 49:2–5) and “If that man does not give heed to the words that I have written on my stela” (*šumma awīlum šū ana awâtīya ša ina narīya aššuru lā iqūlma*; col. 49:18–22). Thus the motif has conceptual importance in LH’s description. The idiom נשמר “to be observant with respect to” in CC’s passage is conceptually close to *qālum* (“maintain respect for, obey”), found in the three latter instances, and the root שמר is especially close in meaning to *našārum* (“to guard, keep”), found in the first instance. The syntax of CC’s phrasing is also similar to the wording of LH, with the conceptual object first and the verb of obedience at the end. Furthermore, CC refers to what the deity speaks as the object of observance. This is comparable to the *awātum* “words” of LH, to which heed must be given.

(c) The paragraph just after the call for the memorializing of Hammurabi’s name in the exhortatory block speaks of a wronged man going to Hammurabi’s statue and stela to seek clarification of his case: “Let a person that has been wronged, who has a case, come before the statue of me, the king of justice (i.e., Hammurabi)²⁷ and let him have my inscribed stela read²⁸ to him” (*awīlum ḫablum ša awātam iraššu ana maḥar šalmīya šar mīšarim lillikma narī šaṭram lištassīma*; col. 48:3–8).²⁹ This visit is cultic and devotional as well as judicial in nature, since Hammurabi’s monuments are set up in the Esagil temple complex, according the description provided earlier by the exhortatory block itself (cols. 47:59–48:2). The cultic and devotional nature of the visit is further seen in the prayer of praise that the visitor offers and that is described as the passage continues. He addresses Marduk and Zarpanitu and eulogizes Hammurabi for his submission to Marduk and provision of justice. The text then says, with Hammurabi as speaker: “May he (the visitor) say this (the foregoing prayer), and may he pray whole-heartedly before Marduk my lord and Zarpanitu my mistress” (*annītam liqbīma ina maḥar Marduk bēlīya Zarpānītum bēltīya ina libbīšu gamrim likrubam*; col. 48:39–47). The prayer is thus a prescribed act. Hammurabi caps the wronged man’s prayer with his own, mentioning the temple: “May the protective deity, the tutelary deity, the gods that enter the Esagil, and the bricks of the Esagil make the ominous utterances favorable day by day before Marduk my lord and Zarpanitu my mistress” (*šēdum lamassum ilū ēribūt Esagil libitti Esagil igirre ūmišam ina maḥar Marduk bēlīya Zarpānītum bēltīya lidammīqū*; col. 48:48–58).

The theme of festival pilgrimage in Exodus 23:14–19 in string II correlates with the wronged-man passage in the exhortatory block. In CC’s passage, the

verb חגג (v. 14) means “celebrate by making pilgrimage” and the noun חג means “pilgrimage festival” (vv. 15, 16). *Travel* to a sanctuary is implicit in this terminology. The first fruits law in 23:19 is explicit about the location of the festivals when it says that the produce is brought to “the house of Yahweh your God.” A primary terminological correlation with LH is found in the phrases “they shall not appear before me empty-handed” (ולא יראו פני ריקם) 23:15) and “every one of your males shall appear before the Lord, Yahweh” (וְיָרָאָה כָּל זָכוֹר אֶל פְּנֵי הָאֲדֹנָי יְהוָה; 23:17). The verbs in these passages should probably be emended to active verbs: “they shall not see my presence (לֹא יֵרְאוּ פְנֵי) empty-handed” and “every one of your males shall see the Lord (יֵרְאֶה... אֶת פְּנֵי הָאֲדֹנָי), Yahweh” (cf. 34:23; Deut 16:16).³⁰ But even with active verbs, CC’s phrases correspond conceptually and phenomenologically with the requirement “let him come before the statue of me, the king of justice” in Hammurabi’s text. In both texts, the person comes into the presence of the sovereign or his symbol. In any case, Hammurabi’s passage does speak about visualization in respect to the sovereign’s symbol: “May he hear my treasured words. May my stela reveal the case to him. May he see (*līmur*) his case” (col. 48:12–17).

Furthermore, the appellation “Lord” (הָאֲדֹנָי) is used only here in CC of the deity.³¹ The corresponding passage from the epilogue is replete with magisterial epithets. The goal of visitation is “the statue of me, the king of justice (*šar mīšarim*).” The praise of Hammurabi to be spoken by the pacified investigator also includes several examples of the term *lord* (*bēlum*): “Hammurabi, *the lord*, who is like a father and begetter to the people, submitted himself to the command of Marduk, *his lord*,... he made the heart of Marduk, *his lord*, glad...” (*Hammurabīmi bēlum ša kīma abim wālidim ana nišī ibaššū ana awāt Marduk bēlišu uštaktitma... libbi Marduk bēlišu uṭīb*; col. 48:20–38). The titles *bēlum* “lord” and *bēltum* “lady” also appear in the next paragraph that instructs the visitor to pray (see the cited text): “May he pray whole-heartedly before Marduk *my lord* and Zarpanitu *my lady*. May (the various deities) make favorable the ominous utterances day by day before Marduk *my lord* and Zarpanitu *my lady*” (*ina maḥar Marduk bēliya Zarpānītum bēltīya ina libbišu gamrim likrubam... igirrē ūmišam ina maḥar Marduk bēliya Zarpānītum bēltīya lidammīqū*; col. 48:41–58).

The correlation of judicial visitation to Hammurabi’s statue and stela with pilgrimage to Yahweh’s sanctuary becomes more cogent in chapter 11, which describes how CC has replaced the statue of Hammurabi in the Esagil temple with Yahweh’s altar in the sanctuary and has also replaced Hammurabi with Yahweh. When one allows for these creative transformations to the wronged-man passage, it is not far from the notion of a pilgrimage festival context. Chapter 9 also notes that the wronged-man passage has possibly been influential in describing travel or movement to a sanctuary for legal review in the casuistic laws of 21:6, 13; 22:7, 8.

The relationship of the wronged-man passage to the cultic laws in string I (22:28–30) is indirect, through the structure that CC has created. As noted in

the previous discussion on the strings in CC, and as chapter 11 describes in some detail, the laws about bringing offerings and sacrifice and the requirement of purity in 22:28–30, as well as the miscellaneous cultic laws in 23:18–19, are to be considered associated with festival performance. The cultic laws of string I are therefore associable ultimately with the festival motif, which, in turn, is connected to the wronged-man passage.

In terms of overall correspondence, the strings of the final apodictic laws mainly focus on passages of the exhortatory block that have the verb *ḥabālum* “to wrong.” The verb appears at the beginning of the exhortatory block in connection with oppression of the weak person. CC’s prohibitions against oppressing the underprivileged and associated laws about the poor (22:20–26; 23:9–12), as we have seen, correlate with this instance of *ḥabālum*. Later, CC’s festival laws (23:14–17) and in their orbit all the other cultic laws (22:28–30; 23:18–19) correlate with the passage about the wronged man, who is described with an adjective from the same verb (*awīlum ḥablum*). Therefore, even though the relatively brief laws about speaking about sovereigns (22:27; 23:13b) stand outside this thematic concern, one might identify the correlations of strings I and II with LH, just described, as “the *ḥabālum* thematic axis.”³² The identification of this axis becomes significant when later we identify another thematic axis in the initial apodictic laws. The laws about speaking of sovereigns in the strings of the final apodictic laws actually intersect with this other axis. (For a visualization of these thematic axes in anticipation, see figure 11.1 at the end of chapter 11.)

The Chiasmic Passage about Justice

Immediately after the passage about a wronged man visiting and praying at the Esagil temple, the exhortatory block continues with commands to a future king to observe and preserve Hammurabi’s legal decisions, eradicate the wicked, and provide well-being for the people (cols. 48:59–49:1). This is followed by a description of the king’s obedience and consequent blessing (col. 49:2–17) and then a description of the king’s possible disobedience (col. 49:18–44), accompanied by a lengthy catalog of curses (cols. 49:45–51:91). These descriptions of obedience and disobedience reiterate the vocabulary used for exhorting a king to obedience at the beginning of the future king passage.

The future-king passage correlates with the chiasmic block about proper judgment and justice in 23:1–8 (cited previously) that comes immediately after string I in CC. Although elsewhere in the epilogue the theme of justice appears in scattered fashion in descriptions of what Hammurabi achieved, it is in the future-king passage that we find a concentration of *prescriptions* about the pursuit of justice. The exhortations include the following (drawn from col. 48:62–94; probably only coincidentally a “decatalogue”):

May any king who appears in the land keep the just commands that I have written on my stela.

May he not alter the law of the land that I have set down. . . .

May he not remove my ordinances. . . .

May he respect the words that I have written on my stela.

May this stela reveal to him the way, behavior, the law of the land. . . .

May he secure justice for humankind.

May he set down their (the people's) law.

May he render their verdicts.

May he root up evil and wicked (persons) from his land.

May he promote the welfare of his people.

Exodus 23:1–8 shares this same general theme and seeks to ensure judicial propriety. This theme appears only here in the broad context of CC.

In addition to the correlation in general theme and prescriptive tenor, CC's laws on justice and judgment correlate with the exhortations of the future-king passage at various points. The future-king passage is mainly concerned that the king does not *alter* Hammurabi's stela and ordinances. This is reiterated with different verbs and nouns in the exhortatory and descriptive sections:

Exhortation:

May he not alter the law of the land that I have set down or the verdicts of the land that I have rendered (*dīn mātīm ša adīnu purussē mātīm ša aprusu ay unakkir*).

May he not remove my ordinances (*uṣuratīya ay ušassik*; col. 48:68–74).

Description of Obedience:

If . . . he does not remove my law (*šumma . . . dīnī lā ušassik*),

he does not overthrow my words (*awātīya lā uštepīl*),

he does not alter my ordinances (*uṣuratīya lā unakkir*; col. 49:6–10).

Description of Disobedience:

If . . . he erases the law that I set down (*šumma . . . dīn adīnu uptassis*),

he overthrows my words (*awātīya uštepīl*),

he alters my ordinances (*uṣuratīya uttakkir*; col. 49:27–32).

CC's repeated prohibitions about not perverting judgment are similar in content and emphasis: "Do not pervert the justice/judgment of your poor in his case" (לֹא תַטֵּא מִשְׁפֵּט אֲבִינֶךָ בְּרִיבִי) (23:6); "Do not side with the multitude to do evil and do not give testimony in a dispute to follow after the multitude to pervert <judgment>" (לֹא תִהְיֶה אַחֲרַי רַבִּים לְרַעַת וְלֹא תַעֲנֶה עַל רַב לְנִשְׁט אַחֲרַי רַבִּים לְהַטֵּת <מִשְׁפֵּט>) (v. 2).³³ The parallel chiasmic member in verse 6 suggests that we read, at least conceptually, the word משפט "judgment" after the C-infinitive in verse 2.³⁴ If any instance of the root נטה is secondary, it would be in the phrase "to follow after the many" (לְנִשְׁט אַחֲרַי רַבִּים). But such an excision may not be necessary, especially if נטה is a *Leitwurzel* that echoes LH.

In addition to the emphasis on the perversion of law or justice in both texts, the three subsections of the passage about the future king stress his adherence to the “words” (*awâtum*) written on the stela:

Exhortation:

Let him keep the *words* of justice that I have written on my stela (*awât mīšarim ša ina narīya ašṭuru liṣṣur*) . . . Let him give heed to the *words* that I have written on my stela (*ana awâtim ša ina narīya ašṭuru liqūlma*; col. 48:64–67, 78–79).

Description of Obedience:

If that man has given heed to my *words* that I wrote on my stela (*šumma awīlum šū ana awâtīya ša ina narīya ašṭuru iquḷma*) . . . (col. 49:2–5).

Description of Disobedience:

If that man does not give heed to the *words* that I wrote on my stela (*šumma awīlum šū ana awâtīya ša ina narīya ašṭuru lā iquḷma*) . . . (col. 49:18–22).

CC similarly focuses on the concept of “word” in its admonitions to avoid a “false rumor” (שמוע שוא) and especially the “lying word” (דבר שקר) in the outer (a-a’) members of CC’s chiasmic form. The Hebrew terms correlate by contrast specifically with *awât mīšarim* “words of justice” in the exhortation passage. Given that CC is creative in its use of LH and has a penchant for inversion of concepts from its sources, as we will see in detail in part II, it is not impossible that Hammurabi’s positive *awâtum* “words” stimulated this contrastive representation of negative judicial words. We should not forget that the lines from the future-king passage about heeding Hammurabi’s words, just cited, also correlate with the out-of-sequence command in 23:13a, “Be observant in regard to everything that I have said to you,” as noted previously. Thus Hammurabi’s lines about “words” may have been prominent in CC’s creative imagination.

The passage on justice in Exodus 23:1–8 also refers to the רשע “wicked” (twice, in 23:1 and 7) and the antonyms נקי “(an) innocent (person)” and צדיק “(a) blameless (person)” (both in v. 7). Only in the passage on the future king does the epilogue speak of evil persons, the *raggum* and *šēnum*: “May he root up evil and wicked (persons) from his land” (*ina mātišu raggam u šēnam lissuḥ*). This pair is mentioned otherwise only in the prologue, in a passage that anticipates the content of the exhortatory block.³⁵

In addition to the general and specific thematic correspondences, Exodus 23:1–8 and Hammurabi’s passage about the future king also correspond in their type of structure. As explained before, Exodus 23:1–8 exhibits a chiasmic structure that must be judged to have been intentionally crafted in view of its complexity and tightness, as well as in its extension by the two strings of the final apodictic laws. The exhortation to the future king and the description of the king’s obedience also contain a structure with reversed elements:

- (a) May he not *alter* the law of the land that I have set down or the verdicts of the land that I have rendered,
- (b) may he not *remove* my ordinances.
- (c) *If that man has understanding* and he is able to provide justice for his land, *let him give heed to the words that I have written on my stela.*
- (d) May this stela reveal to him the way, behavior, the law of the *land* that I have set down and the verdicts of the *land* that I have rendered. May he secure justice for *humankind*.
- (e) *May he set down their law.*
- (e') *May he render their verdicts.*
- (d') May he root up the evil and wicked from his *land*. May he promote the well-being of his *people*. I am Hammurabi, king of justice, on whom Shamash has bestowed truth.
- (c') My *words* are choice; my deeds are without equal. They are vanity to the *fool*, but to the *wise* they are objects of praise. *If that man gives heed to my words that I have written on my stela*
- (b') and he does not *remove* my law, he does not overthrow my words,
- (a') he does not *alter* my ordinances.

In this structure, the c-members correlate almost exactly in their clauses referring to the king's obedience and wisdom. The a- and b-members correlate in the reversal of their verbs, even though the associated nouns are not reversed and b' has an extra line, about overthrowing words. The two d-members are more loosely connected but refer to the "land," "humankind," and the "people." The d-members resolve themselves in the context mainly by identification of the central concise and very parallel e-members, which focus on the future king's positive obligations of rendering law and verdicts, as opposed to the negative formulations in the a- and b-members.

Because of the imprecision of some of the correlations between members in this structure and in view of my methodological hesitation about chiasmic analyses, I would not claim that this chiasmic structure was intended by the author of LH, at least as a pure chiasmic structure. Particularly problematic for construing this as an intentional structure is the c'-member, which contains the end of one section and the beginning of the next. But intentionality of the author does not matter. It is only necessary for our analysis that a *reader* might perceive such a structure. That the rudiments of a chiasmic structure in the future king passage is visible is confirmed by Avigdor Hurowitz's study of the epilogue, which observed some of the elements of this chiasmic form. His analysis provides independent confirmation of the perception of the form, inasmuch as I consulted his study only after my identification of the structure in LH.³⁶ Hence, even though there are infelicities present in the structure as just laid out, it is very possible that CC, which reflects an attentive reading of LH generally as part II shows, could have perceived elements of a reversing structure in this part of the

exhortatory block, and that it took this as a cue to create a more perfect chiastic structure in its work.

That this reversing structure was visible to CC's author is supported by the observation of thematic ties between the passage about the future king and Exodus 23:1–8. Terminology determinative for the chiastic structure of LH is structurally determinative in CC's passage, including various verbs describing the perversion of justice (*šussukum, nukkurum, šupēlum*; cf. הָפַק; CC's b-members) and words for "word" (*awâtum*; רַבַּד, שִׁמְעָה; CC's a-members). Further note that the command in 23:13a, "Be observant in regard to all that I have said to you," which in CC stands outside the topical sequence of the exhortatory block and appears thereby to have an emphatic tenor, correlates with the content of the c-members of the future-king passage, one of the more exact correspondences in Hammurabi's chiastic structure.

One of the differences in 23:1–8 and the admonitions to the future king is that the latter are concerned about the royal administration of justice, whereas CC's rules pertain to the everyday judicial system and those participating in it. Still, the epilogue passage implies the lower everyday judicial system by its use of language found in connection with that system. LH 5 deals with a case in which a judge reverses a decision that he has made. The protasis describes his activity thus: "If a judge sets down a law and renders a verdict" (*dīnam idīn purrusām iprus*). The same language is found in the future-king passage: "may he not alter the law of the land which I have set down (*dīn mātīm ša adīnu*) or the verdicts of the land which I have rendered (*purussē mātīm ša aprusu*)" (col. 48:68–72); "may this stela explain to him the way, behavior, the law of the land which I have set down (*dīn mātīm ša adīnu*), and the verdicts of the land that I rendered (*purussē mātīm ša aprusu*)" (col. 48:80–85). This language stands at the core of Hammurabi's chiastic structure: "May he set down their law; / may he render their verdicts (*dīnšina lidīn / purussāšina liprus*)" (col. 48:88–90).³⁷

Apodictic Formulation in the Final Apodictic Laws and the Exhortatory Block

As important as any of the foregoing topical correlations with the final apodictic laws is the fact that the exhortatory block is the only place in the epilogue or prologue that contains formulations in injunctive style, cognate to the style of the final apodictic laws.³⁸ The exhortations and admonitions in this section of the epilogue are formulated as third-person imperatives, specifically, as precatives (positive commands; col. 48:3–8, 9–11, 12–14, 15–16, 17, 18–19, 39–47, 59–67, 79, 80–85, 87, 88–90, 91–92, 93–94) and vetitives (prohibitions; col. 48:68–72, 73–74). The purpose clauses at the beginning of the exhortatory block (col. 47:59–78; e.g., "in order that the strong not wrong the weak and to secure justice for the destitute girl and widow"), though not technically apodictic, are related, inasmuch as they imply behavioral prescriptions,

as described previously. The apodictic forms of the final apodictic laws include second-person prohibitions with נָל “no(t)” (22:17, 20, 21, 24, 27, 28, 30; 23:1, 2, 3, 6, 8, 9, 13, 18, 19); second-person prohibitions with לֹא “no(t)” (23:1, 6); second-person positive commands (22:25, 28, 29, 30; 23:4, 5, 7, 10, 11, 12, 14, 15, 19); third-person prohibitions with נָל “no(t)” (23:15, 18); and third-person positive commands (22:18, 19; 23:10, [12], 17).³⁹ Thus, though the overall genre of the prologue and epilogue is distinct from that of CC’s sections of apodictic law, the exhortatory block specifically can be seen as providing the stylistic stimulus for CC’s formulation.

Themes Unsited to Casuistic Law

Another fact that deepens the perception of the correspondence of the final apodictic laws with the epilogue is that these parts of the respective texts contain topics and features that do not appear in and may be considered unsited to casuistic law. These include ethical prescriptions about the treatment of the poor,⁴⁰ cultic laws, and the portrayal of dynamic deities. The first two topics have already been surveyed in the study of the sequential correspondences earlier. The last feature—the portrayal of dynamic deities—warrants explanation here.⁴¹ In the casuistic laws, the gods appear limitedly, in juridical, ordeal, or event-causal contexts (Exod 21:6, 13; 22:7–8, 10; LH 9, 20, 23, 106, 120, 126, 131, 240, 249, 266, 281; for the divine river ordeal, see LH 2, 132). These gods are generally not named or described in any detail, and their actions, if described at all, are limited. However, as the two texts shift genres in their final sections, their respective gods become prominent and lively beings.

Within the exhortatory block of the epilogue, Anu and Enlil are said to have exalted Babylon (col. 47:63–66). The authority of Shamash is invoked to make Hammurabi’s justice prevail, and the authority of Marduk is invoked to protect Hammurabi’s ordinances (col. 47:84–92). The wronged man coming to Hammurabi’s statue and stela speaks of the king’s submission to Marduk, and the visitor prays to Marduk and Zarpanitu (col. 48:20–47). These and other gods are called upon to generate favorable omens (col. 48:48–58). The end of the passage about the future king says that Shamash granted Hammurabi truth; that is, the god was the source of the law (col. 48:95–98; cf. 47:84–88). The king who follows Hammurabi’s judgments is to be given a long reign by Shamash (col. 49:14–15).

In the final apodictic laws, Yahweh is also the source of law, a fact indicated by the first-person formulation that describes his revelation of the law (22:23, 24, 26, 28–30; 23:6, 13, 15, 18). He is to be visited and worshipped during the festivals (23:14–18). The people are to be holy to him (22:30). In addition, he is described as heeding the cry of the socially disadvantaged and coming to their aid, even cursing those who harm them: “If you do mistreat them (the widow and orphan), when they cry to me I (God) will heed their call. I will become angry

and slay you with the sword. Your wives will become widows and your children, orphans” (22:22–23); “when he (the person’s whose garment was retained as a pledge) calls to me, I will take heed, because I am gracious” (22:26).

The passages about Yahweh’s threat for oppressing the poor, just cited, do not correlate with the exhortatory block, but they do have some accord with the section on curses that will befall a king who does not observe Hammurabi’s model of justice (col. 49:45–51:91). This list contains pronouncements of annihilation similar to 22:22–23: “Let him (Enlil) pronounce with his revered mouth . . . the destruction of his city, the scattering of his people, the supplanting of his kingship, and the disappearance of his name and memory from the land” (*ḫalāq ālīšu naspuḫ nišīšu šarrūssu šupēlam šumšu u zikiršu ina mātim lā šubšām ina pīšu kabtim liqbi*; col. 49:73–80);⁴² “May the grievous word of Shamash quickly catch him; above may he uproot him from the living” (*awātum maruštum ša Šamaš arḫiṣ eliṣ balḫūtīm lissuḫšu*; col. 50:31–36). As in 22:22–23, 26, the divine emotions of anger and compassion are evident: “May she (Ishtar) curse his rule with her *angry heart and great enmity*” (*ina uzzātīša rabiātīm šarrūssu līrur*; col. 50:99–103). This contrasts with Ishtar’s being Hammurabi’s “beneficent protective spirit who *loves my rule*” (*lamassī damiqtum rā imat palēya*; col. 50:96–98).⁴³

A general contrast with the epilogue is CC’s singular deity over against the plurality of LH. In addition to mentioning various gods who have blessed Hammurabi and his people, and to whom Hammurabi has submitted himself (in the order encountered: Enlil, Marduk, Zababa, Ishtar, Ea, Anu, Shamash, Zarpanitu), the deities of the curse section include Anu, Enlil, Ninlil, Ea, Shamash, Sin, Adad, Zababa, Ishtar, Nergal, Nintu, Ninkarrak, and the great gods of heaven and earth. The final apodictic laws of CC contrast specifically with this delineation in its directive: “Do not mention the name of other gods; let them not be heard on your lips” (23:13).

Genre Shift and the Continuation of Sequential Correlations

The last sequential parallel in the casuistic laws of the two law collections is between Exodus 22:13–14 and LH 268–271, laws concerning animal rental. LH 268–271 is nearly at the end of the casuistic laws of LH. Fewer than a dozen paragraphs remain; LH 272–277 finishes the topic of rental, and LH 272–282 concludes with the purchase of slaves. It is remarkable that at about this same point, CC also shifts genres, though from casuistic to apodictic law. Only a few verses intervene between the animal rental laws in 22:13–14 and the start of the apodictic laws in 22:20. These consist of the casuistically formulated law on seducing an unbetrothed virgin (22:15–16) and three participially formulated laws on sorcery, bestiality, and sacrifice to other gods (vv. 17–19). Part II shows that all of these intervening verses are contextually (though not compositionally) supplemental. They come from sources other than LH and are footnotes

to the main body of the casuistic laws. The material that correlates with LH, therefore, jumps from 22:14 to 22:20.⁴⁴

Not only do the texts shift genre at approximately the same point but also their sequential correlations continue within their respective new genres, as indicated by the evidence considered earlier. This allows us to add four points of sequential correspondence, numbered 15 through 18 in table 3.1, to the fourteen sequential correspondences in the casuistic law that were delineated in table 1.1 of chapter 1. The correspondences between CC's final apodictic laws with the epilogue begin not far into the epilogue. The first lines of the epilogue (col. 47:1–8) are a transitional introduction, motifs of which correspond otherwise with CC's transitional introduction in 21:1 (see later in this chapter). The next section of the epilogue (col. 47:9–58; cited near the beginning of chapter 11) summarizes the general benefits that Hammurabi achieved for his people. The exhortatory block comes next, still in the first column of the five-columned epilogue (see the earlier outline of the epilogue). Hence the main correlations between CC and LH are from approximately the middle of Hammurabi's casuistic laws (debt-slavery in LH 117 and 21:2–11) through the middle of the epilogue (i.e., through the future-king passage in cols. 48:59–49:44). This can hardly be an accidental correlation.

The Initial Apodictic Laws and the Prologue and Epilogue

The apodictic laws at the beginning of CC (Exod 20:23–26), plus the contiguous introduction to the casuistic laws (21:1), are to be considered a unit. This has correlations with both the prologue and epilogue of LH. It corresponds

Table 3.1: Extension of table 1.1 (chapter 1) with correlations between the final apodictic laws of CC and the exhortatory block of the epilogue of LH

Final Apodictic Laws of CC		Epilogue of LH (exhortatory block)
String I & passage on justice	String II	
15. 22:20–26 poor to be protected (three individuals), not extorted	23:9–12 poor to be protected, given benefits	47:59–78 Poor to be protected (three individuals)
16. 22:27 God and chieftain not to be cursed	23:13b names of other gods not to be mentioned (שׁוֹר + זָכַר)	47:79–48:2 Hammurabi's name to be memorialized (<i>šumum + zakārum</i>)
17. 22:28–30 cultic rules (associable with festivals)	23:14–19 pilgrimage festivals and associated cultic rules	48:3–58 wronged man to visit Esagil temple to inspect case and pray
18. 23:1–8 justice		48:59–44 future king to pursue justice

with the prologue mainly in its being a block of material of a different genre that stands before a central body of casuistic laws. CC's general structure thus matches the overall A-B-A pattern of LH. The initial apodictic laws also correlate with the prologue topically in dealing with cultic matters, the major theme of the prologue. This unit also shares with the prologue an introduction at the end that provides a transition into the casuistic laws. Otherwise, the specific cultic topics of this opening passage—divine images and the altar—and its apodictic style correlate with the exhortatory block of the epilogue. We start our review with the correlations with the exhortatory block because its content is already in mind from the preceding analysis of the final apodictic laws.

Correlations between the Initial Apodictic Laws and the Exhortatory Block

The sequence of topics of the initial apodictic laws matches that of the exhortatory block of the epilogue but involves another set of topics except for the matter of name memorialization. These different thematic correlations thus enlarge the overall set of correspondences between CC and the exhortatory block. As we discuss the topical correlations for the initial apodictic laws, the reader is again directed to the full texts presented side by side at the end of this chapter in order to follow the primary data, as well as to the summary in table 1.6 of chapter 1. Three main correlations appear between the initial apodictic laws and the exhortatory block:

(a) CC's first law prohibits the construction of images: "Do not make with me gods of silver, and do not make gods of gold for yourselves" (לא תעשון) (20:23).⁴⁵ Soon after the lines that describe Hammurabi's benefits for the three socially disadvantaged persons, which correlate with the first laws in the strings of the final apodictic laws, the exhortatory block refers to the statue of Hammurabi. The king says: "for the purpose of setting down the law of the land, to render the verdicts of the land, and to secure justice for the wronged, I have written my treasured words on my stela and set (it) up before the image of me, the king of justice" (*dān mātim ana diānim purussê mātim ana parāsīm ḥablim šutēšurim awâtīya šūqurātīm ina narīya aššurma ina maḥar šalīmīya šar mīšarim ukīn*; 47:70–78). Both texts are therefore concerned about images or symbols of sovereign powers.

CC prohibits the creation of such images and prescribes a substitute. Immediately after its ban, it writes: "An altar of earth you shall make for me. You shall sacrifice on it your burnt offerings and your well being offerings, your flock animals and your cattle" (מזבח אדמה תעשה לי וזבחת עליו את עלתיך ואת) (שלמיד את צאנך ואת בקרך; v. 24). Chapter 11 describes the contextual coherence of verse 23 and verses 24–26 and how the latter verses form a contrast to the former. That chapter also describes the functional similarity of the statue and the altar. For example, both are foci of cultic activity and are symbols of the

sovereign. They are also targets of pilgrimage. This is explicit in the wronged-man passage of the exhortatory block and is implicit in the festival and sacrificial laws of CC, as discussed earlier.

(b) The initial apodictic laws next provide theological contextualization for the altar. This begins with an adverbial clause that reads: “in every place where I proclaim my name . . .” (בכל המקום אשר אזכיר את שמי); v. 24).⁴⁶ This correlates precisely with the phrase in the exhortatory block: “in the Esagil (temple) which I love may my name be remembered kindly forever” (*ina Esagil ša arammu šumī ina damiqtim ana dār lizzakir*; 47:93–48:2). Both phrases have a prepositional phrase referring to a cult place: “in every place” // “in the Esagil temple.” The “place” (מקום) in CC is a sanctuary, as is evident from the context. Both texts refer to the sovereign’s name by using the Semitic noun *šm* “name,” accompanied by the first-person suffix (“my”; -ī), referring to the sovereign. And both texts refer to the memorialization of the sovereign’s name by using the Semitic root *zkr* “remember, recall” (as a causative stem in CC, “mention, cause to be remembered, proclaim”).⁴⁷ We saw before that each of the two strings of the final apodictic laws also has a member that correlates with this phrase from Hammurabi’s exhortatory block (string I: 22:27; string II: 23:13b). CC’s three-fold reflection of this motif, each in a larger web of sequential correlations with the exhortatory block, surely exceeds coincidence.⁴⁸

(c) The clause about the declaration of Yahweh’s name in a cult place, in connection with the altar, is governed by a main clause that follows: “I will come to you and bless you” (אבוא אליך וברכתיך; 20:24bβ). This is similar to the end of the passage about the visit of a wronged man to the temple: “May the protective deity, the tutelary deity, the gods that enter the Esagil,⁴⁹ and the bricks of the Esagil make the ominous utterances favorable daily before Marduk my lord and Zarpanitu my mistress” (*šēdum lamassum ilū ēribūt Esagil libitti Esagil igirrē ūmišam ina maḥar Marduk bēlīya Zarpānītum bēlīya lidammiqū*; col. 48:48–58). Yahweh’s coming to the sanctuary is comparable to the “entering” (*erēbum*) into the Esagil temple. The verb *erēbum* is used in other texts of gods, specifically their images, entering temple or shrines (see chapter 11 for detail). The passage from the exhortatory block also hopes for a type of blessing from the deities, making the ominous utterances favorable, described with the verb *lidammiqū*.⁵⁰ Although this verb has a particular meaning in its context, more broadly it may mean “to do a favor, to treat kindly, to approve, to do good deeds,” with an object that receives this benefit.⁵¹ Thus its semantic field overlaps the Hebrew verb בָּרַךְ “bless” (more on this later).

The correspondence of the motifs of entering and making favorable with CC’s divine coming and blessing becomes more compelling on noticing that CC’s motifs in 20:23–24 happen to match the only passages in the exhortatory block—and the epilogue, for that matter—that mention the Esagil temple. Table 3.2 lists these points of comparison. The only other place in all of LH where the Esagil is mentioned is in the prologue in the brief description of Hammurabi’s service for the Esagil (col. 2:10–12).

Table 3.2: The Esagil correlations between the initial apodictic laws and the exhortatory block

A . . . in the <i>Esagil</i> , the temple whose foundations are firm like the heaven and the earth . . . I set up (the stela) before the image of me, the king of justice (col. 47:67–69, 76–78)	Do not make with me gods of silver and gods of gold do not make for yourselves; an altar of earth you shall make for me and you shall offer on it your burnt offerings and your well-being offerings, your flock animals and your cattle.
B in the <i>Esagil</i> , which I love may my name be recalled kindly forever (47:93–48:2)	<i>In every (cult) place where I cause my name to be recalled</i>
C may the protective deity, the tutelary deity, the gods that enter the <i>Esagil</i> , and the bricks of the <i>Esagil</i> make favorable the ominous utterances day by day before Marduk my lord and Zarpanitum my mistress (48:48–58)	<i>I will come to you (there) and I will bless you</i>
A . . . ina <i>Esagil</i> bītim ša kīma šamê u eršetim išdāšu kīnā . . . ina maḥar šalmīya šar mišarim ukīn (col. 47:67–69, 76–78)	לא תעשון אתי אלהי כסף ואלהי זהב לא תעשו לכם מזבח אדמה תעשה לי וזבחת עליו את עלתיך ואת שלמיך את צאנך ואת בקרך
B . . . ina <i>Esagil</i> ša arammu šumī ina damiqtim ana dār lizzakir (47:93–48:2)	בכל המקום אשר אזכיר את שמי
C šēdum lamassum ilū ēribūt <i>Esagil</i> libitti <i>Esagil</i> igirrê ūmišam ina maḥar Marduk bēlīya Zarpānītum bēltīya lidammīqū (48:48–58)	אבוא אליך וברכתיך

Both texts in the A-section in table 3.2 refer to images. As noted in the prior discussion, CC rejects making images and instead requires building an altar. The correlations with LH at this point are conceptual, not terminological. This changes in the B-section, where CC’s wording corresponds point by point. Both texts mention a cult place with an attached preposition (“in the *Esagil*”; “in any place”). The texts in this register also have a relative pronoun referring to the cult place, though the following contexts are different. Both texts next have the name memorialization clause, with Semitic *šm* and *zkr*. The texts in the C-section refer to the “entering” or “coming” of the gods. Note that CC’s goal of coming is conceptually the “place” (מקום) already mentioned. This is followed by the motif of the gods providing a favor or benefit. This whole set of

correspondences may be labeled “the Esagil axis,” in contrast to the *habālum*-axis in the two strings of the final apodictic laws, noted previously. As chapter 11 shows, attention to these two axes helps to explain how and why CC focused on different motifs within the same passage in the epilogue to create different sets of laws.

Besides the mention of the Esagil temple, the Akkadian texts of the B- and C-registers of table 3.2 are tied together by the common appearance of the root *dmq*: *ina damiqtim* “favorably” and *lidammīqū* “let them make favorable.” A creative reading of *ina damiqtim* could turn this from a simple adverb inwardly looking on the way Hammurabi’s name is to be revered, to an outward effect: “for favor/goodness” *toward others*. The Akkadian idiom *damiqtam epēšum*, for example, has this outward semantic orientation and means “to do a favor, a good deed,” *for someone else*.⁵² A similar sense for the noun is found in the curse of Ishtar later in the epilogue: “may she turn his (the disobedient king’s) goodness [i.e., the goodness shown to him—an objective genitive] into evils” (*damaqātīšu ana lemnētīm litēr*; col. 50:104–106).⁵³ Hence the notion of blessing might already inhere in the name memorialization passage of LH. This, along with an apparent focus on Esagil temple passages, may have led CC to focus on the Akkadian text cited in register C of table 3.2.

Although the *lidammīqū* passage can be seen as the primary correlate of the blessing notice in CC, the notion of blessing is found otherwise in the exhortatory block. Just before the passage about the gods entering and making oracles propitious, the wronged man is to praise Hammurabi thus: “And he (Hammurabi) established well-being for the people forever and secured justice for the land” (*šīram ṭābam ana nišī ana dār išīm u mātam uštēšer*; col. 48:34–35). The term *šīrum ṭābum*, though literally meaning physical well-being, “good flesh,” functions as a synecdoche for the welfare of individuals in their whole life circumstances. A cognate idiom, with the D verb *ṭubbum* accompanied by *šīram* as object plus construct modifier referring to the people or land, occurs four other times in the prologue and epilogue, establishing this as a significant theme of the text.⁵⁴ The Hebrew verb בָּרַךְ “bless” provides an apt conceptual equivalent to bringing *šīrum ṭābum* to the people.⁵⁵ The notion of blessing is also found in the future-king passage, in the short benediction pronounced on the obedient king: “May Shamash lengthen his (royal) scepter” (*šamaš ḥaṭṭašu lirrik*; 49:14–15). Even though they are antithetical, the much longer curses that befall a disobedient king, which are next listed in the epilogue, imply the motif of blessing. CC’s blessing may be in part a conceptual inversion of these curses. And finally, back in the wronged-man pericope, after citing the words of a prayer that he should offer for Hammurabi, in which the *šīrum ṭābum* idiom occurs, and just before the passage about the gods entering the Esagil and their providing favorable pronouncements for Hammurabi, the king says: “May he (the visitor) say this (the foregoing prayer) and may he *pray for me/bless me* before Marduk my lord and Zarpanitum my mistress with his whole heart” (*annītam liqbīma ina maḥar Marduk bēlīya Zarpānītum*

bēltīya ina libbīšu gamrim likrubam; col. 48:39–47). The exhortation that the man “pray for me” uses the verb *karābum*, “to pray for,” which also means “to bless” and which is phonologically similar to the Hebrew בָּרַךְ.⁵⁶ Of course, the direction of benefit is the reverse here: the visitor is doing the blessing, not a god or Hammurabi.

The final two verses of the initial apodictic laws, about the use of stone in building an altar and the prohibition of stairs (20:25–26), do not have immediately visible connections with LH. But they and their context are structurally comparable to the laws about the poor toward the beginning of the two strings of the final apodictic laws. Exodus 20:23–26 basically consists of initial laws or motifs based on the exhortatory block (vv. 23–24), followed by *two laws*, verses 25 and 26, that are related to but not based on the exhortatory block. Similarly, each of the strings starts with a law about the poor based on or associated with the exhortatory block (22:20–23; 23:9), followed by *two related laws* about the poor, which are not based on LH (22:24, 25–26 and 23:10–11, 12). Given CC’s concern about structure, in the chiasmic block of 23:1–8 and the strings set around it, as well as the overall A-B-A structure of CC, the structural feature of two supporting laws in the initial apodictic laws is probably not unintentional.

Apodictic Form in the Initial Apodictic Laws

In addition to the foregoing thematic correlations, the genre of the initial apodictic laws also matches the genre of the exhortatory block. The injunctive forms in the exhortatory block were summarized already in discussing the style of the final apodictic laws. The initial apodictic laws have second-person prohibitions with לֹא “no(t)” (20:23 [plural], 25, 26 [singular]) and a second-person positive command (20:24 [singular]). Thus the style of these first laws presents no problem to the thesis of dependence on LH. Even though, as we will shortly see, these laws do have a general correspondence with the prologue, which contains no apodictic formulation, their primary thematic correlation is with the exhortatory block.

Cultic Themes in the Initial Apodictic Laws and the Prologue

Although the specific sequence of motifs and style of the initial apodictic laws matches the exhortatory block of the epilogue, this first section of CC also coincides with the cultic emphasis of the prologue. Nearly 80 percent of the prologue is devoted to the great works that Hammurabi performed for various cities (1:50–4:63), and cultic matters are mentioned in connection with almost every

city listed. In these descriptions, the prologue lists nineteen temples or cultic buildings in almost as many cities.⁵⁷ (Several of the passages are cited later.)

Some of the particulars in our two texts coincide. The prologue shows a concern about maintaining the cult at multiple sanctuaries. Exodus 20:24 shows a similar concern when it speaks about building an altar “in every place (בכל המקום) where I cause my name to be proclaimed.”⁵⁸ Even though first fruits are to be brought to “the house of Yahweh your God” (23:19), an ostensible singularity, and though the text speaks about an “altar” in the singular (20:24–26; 21:14), CC must conceive of multiple sanctuaries, to tell from the multiple forms allowed for building an altar and the various judicial activities that are to take place at a sanctuary (21:6, 13–14; 22:7, 8).⁵⁹ Both festivals and judicial processes would be hindered if these occurred at just one location.

Although none of the paragraphs in the prologue deals explicitly with the construction of altars, several refer to the building, renovation, and maintenance of temples and their facilities. Primary examples include the following descriptions:

[Hammurabi] who restored⁶⁰ Eridu to its place, who carried out the purification rites of the Eabzu temple (*mutīr Eridu ana ašrīšu mubbib šuluḥ Eabzu*; col. 1:64–2:1).

... whose days were spent in service of the Esagil temple (*ša ūmīšu izzazzu ana Esagil*; col. 2:10–12),

... who established the foundations of Sippar, who dressed in green the raised temple⁶¹ of Aya (*mukīn išdī Sippar mušalbiš warqim gigunē Aya*; col. 2:24–28),

... who restored the Ebabbar temple for Shamash (*muddiš Ebabbar ana Šamaš*; col. 2:34–35),

... who revived Uruk... who raised the summit of the Eanna temple (*muballiṭ Uruk... mullī rēš Eanna*; col. 2:37–38, 42–43),

... who made radiance surround the Emeteursag temple... who cared for the Hursagkalamma temple (*muštashīr melemmī Emeteursag... pāqid bītīm Ḥursagkalamma*; col. 2:60–62, 66–67),

... who copiously provided everything for the <E>meslam temple (*murappiš mimma šumšu ana <E>meslam*; col. 3:4–6),

... who provided appropriate adornments in the Eudgalgal temple (*muštakkīn simātīm ina Eudgalgal*; col. 3:62–64),

... who established Ishtar in the Eulmash temple (*mukinni Ištar ina Eulmaš*; col. 4:48–49).

Several of the descriptions show a concern about performing rites and making offerings comparable to the making of offerings in Exodus 20:24, according to which the people are to “sacrifice your burnt offerings and well-being offerings, your flock animals and cattle” on the altar (וּזְבַחַת עָלַי אֵת עֹלֹתֶיךָ וְאֵת שְׁלֹמֶיךָ וְאֵת צְאֲנֶיךָ וְאֵת בְּקָרֶיךָ):

... the pious provider of the Ekur temple (*zāninum na’dum ša Ekur*; col. 1:60–62),

... who brings abundance to the Egishnugal temple (*bābil hegallim ana Egishnugal*; col. 2:20–21),

... who piles up plenty for Anu and Ishtar (*mukammer hišbim ana Anim u Ištar*; col. 2:44–47),

... who richly provides abundance for the Egalmah temple (*muṭaḥḥid nuḥšim bīt Egalmah*; col. 2:52–54),

... who organizes the great rites of Ishtar (*muštešbī paršī rabūtīm ša Ištar*; col. 2:63–65),

... who stacks up grain heaps for mighty Urash (*mugarrin karê ana Uraš gašrim*; col. 3:21–22),

... who abundantly provides pure feasts for Nintu (*mudešši mākalī ellūtīm ana Nintu*; col. 3:33–35),

... who maintains great food offerings for the Eninnu temple (*mukil nindabê rabūtīm ana Eninnu*; col. 3:43–46),

... who fixes permanently pure food offerings for Enki and Damkina, who magnified his kingship (*ana Enki u Damkina mušarbû šarrūtīšu dāriš išīmu zībī ellūtīm*; col. 4:17–22),

... who provides pure feasts for Ninazu (*šākin mākalī ellūtīm ana Ninazu*; col. 4:36–37),

... the king who made glorious the cult of Ishtar in Nineveh in the Emesmes temple (*šarrum ša ina Ninua ina Emesmes ušūpi’u mē Ištar*; col. 4:60–63)

The prologue also refers to images. In the enumeration of the cities, each god is associated with his/her city and is at least implicitly, if not explicitly, associated with the cult of that city. The gods are thus not just supernatural agencies, but characters who have a place in the cult, specifically in their images. This physical manifestation is indicated clearly in one of the temple descriptions. Hammurabi “establishes (*mukinni*) Ishtar in the Eulmash in the middle of Plaza-Akkad” (4:48–52). The D-stem of the verb *kānum* here refers concretely to setting up a divine image.⁶² This relates to the image prohibition in Exodus 20:23.

Deity in the Initial Apodictic Laws

The portrayal of the god in the initial apodictic laws is comparable to that in the final apodictic laws. His dynamic personality and singularity is emphasized in the initial divinely spoken command against making divine images and requirement to make an altar: “You shall not make *with me* gods of gold...” (לֹא תַעֲשֶׂהוּ אִתִּי אֱלֹהֵי כֶסֶף) (20:23); “Make *for me* an altar of earth.... In every place where *I proclaim my name, I will come to you and I will bless you*” (מִזְבַּח אֲדָמָה) (v. 24); “If you make an altar of stones *for me*...” (וְאִם מִזְבַּח אֲבָנִים תַּעֲשֶׂה לִּי) (v. 25). As chapter 11 shows, CC’s first-person language of deity is primarily a reflex of the first person of Hammurabi in the prologue and epilogue. Too, some of the first-person terminology in CC is quite similar to that of LH, as we have seen: “my name” (*šumī* / שְׁמִי) in 20:24 and LH 47:94; “my statue” (*šalmīya*) and “my altar” (מִזְבֵּחַי) in 20:24 and LH columns 47:76; 48:6.

Like the portrait of gods in the epilogue reviewed earlier, the gods in the prologue are active characters. The text opens with a mythological tale about how Anu, “king of the Annunaku gods,” and Enlil granted power to Marduk and exalted him among the Igigi gods (1:1–15). Anu and Enlil are said to have called Hammurabi “to go forth like Shamash over humankind” (1:27–49). The rest of the prologue then turns to describing Hammurabi’s beneficent acts for the various cities and cult places and mentions numerous gods by name in connection with their particular cities, as noted earlier.⁶³ The following gods, with their respective cities, are mentioned: Enlil (Nippur; col. 1:53); Marduk (Babylon; 2:8; 5:15); Sin (Ur; 2:14); Shamash (Sippar, Larsa; 2:23, 35); Aya (Sippar; 2:28); Anu (Uruk; 2:46); Ishtar (Uruk, Kish, Zabala, Akkad, Nineveh; 2:47, 65; 3:54; 4:47, 48, 63; 5:13); Zababa (Kish; 2:57); Erra (Kutu; 2:69); Tutu (Borsippa; 3:10); Urash (Dilbat; 3:22); Mama, Nintu (Kesh; 3:29, 35); Adad (Karkara; 3:57, 59); Enki (Malgium; 4:17); Damkina (Malgium; 4:18); Dagan (Mari, Tuttul; 4:27); Tishpak (Babylon; 4:35); Ninazu (Babylon; 4:37); the lamassu “protective spirit” of Ashur (4:56); and the great gods (4:66).

Thus the first and last sections of CC match the prologue and epilogue in how the deity is presented over against the central casuistic laws in the two collections, which say little about the gods except how they function in juridical or even-causal contexts. The only place in the casuistic laws where the personality of Yahweh intrudes is in the conceptual supplement to the homicide asylum law (21:13–14). But this is based on the altar laws in the initial apodictic laws.

Transitioning Introductions

Both the prologue and the initial apodictic laws have similar end notices that transition into the central casuistic laws. After the initial cultic laws, Exodus 21:1 reads: “And these are the laws which you shall place before them” (וְאֵלֶּה

המשפטים אשר תשים לפניהם).⁶⁴ From a literary-critical perspective, this introduction seems odd. Law-giving already began in 20:23; why a new introduction in 21:1? It makes one think that the two sections of law (in 20:23–26 and 21:1–22:16) may have been independent and later joined, or that one is original and the other added. The position of the introduction, however, matches a comparable notice at the end of the prologue. After finishing the list of Hammurabi’s great acts, LH says the following (col. 5:14–24):

When Marduk commanded me to provide justice for the people of the land, to instill proper behavior, I placed truth and justice in the mouth of the land, I increased the people’s well-being. At that time: (The laws follow.)
inūma Marduk ana šutēšur nišī mātim ūsim šūhuzim uwa’eranni kit-tam u mīšarim ina pī mātim aškun šīr nišī uḫib inūmišu

This and Exodus 21:1 have several common features:

(a) Both use a term for “setting down” or “placing” with respect to law (*sakānum*; שים).⁶⁵

(b) Both use a general term for justice or law (*mīšarum*, משפט).⁶⁶ The terms *mīšarum* and משפט are rough conceptual parallels in the epilogue and the final apodictic laws (epilogue 47:1–5, 84–88; 48:3–8, 59–67, 95–96; 49:11–15, 16–17; Exod 23:6). More will be said about this correspondence in a moment.

(c) In both cases, the law is set down with respect to the people. In the prologue, law is set down “in the mouth of the land” (*ina pī mātim*). The noun *mātum* refers to the people of the land. The idiom appears to mean that Hammurabi caused truth and justice to become the people’s expression or profession.⁶⁷ In CC, the laws are set “before them” (לפניהם), that is, before the people. In addition to having the people as the audience of the law, the two prepositional phrases are similar, both involving the face or a part thereof.⁶⁸

(d) In both introductions, the god commands the human figure to set down the law. This is expressly stated in the prologue. Note, by the way, that though the prologue is filled with multiple gods, this particular instance involves only one deity (Marduk)—it is effectively monotheistic. In CC, Yahweh is speaking (as opposed to Hammurabi). Therefore, there is no need for a reference to the deity in the third person saying that the god commanded Moses. Yahweh directly speaks to Moses to set down the law.

Though Exodus 21:1 correlates in position and theme with the transitional introduction at end of the prologue, it also has correlations, some even more precise, with the transitional introduction out of the casuistic laws into the epilogue (col. 47:1–8).⁶⁹

(These are) the just laws that Hammurabi, the capable king, established and has directed the land to follow sound custom and good conduct.

dīnāt mīšarim ša Ḥammurabi šarrum lē’ ūm ukinnūma mātam kīnam u rīdam damqam ušašbitu

The points of correlation with Exodus 21:1 include the following:

(a) The term *dīnāt mīšarim* “just laws” correlates more exactly with Hebrew משפטים “laws” than just the bare term *mīšarum* “justice” of the transitional introduction at the end of the prologue.⁷⁰

(b) This sentence includes a relative clause *ša Ḥammurabi...ukinnūma* “that Hammurabi set down,” which is similar to אשר תשים “which you shall place” in CC. The transitional introduction at the end of the prologue does not have a relative clause.

(c) This second transition also has a verb referring to the establishment of law, *ukinnūma* “he established,” similar to “you set down” תשים in CC.

(d) A pronominal predicative syntax is implied. Even though LH does not have a pronoun for “these,” the context with the preceding laws almost requires construing the sense this way. Hurowitz, Roth, and other translators insert this: “*These are* the just decisions/laws....”⁷¹ This matches the explicit formulation of CC: אלה המשפטים “These are the laws....”

(e) The next clause in the epilogue makes reference to the audience or beneficiaries of the lawgiving, namely, “the land.” This corresponds generally with “before them” in CC. This, in contrast to several of the foregoing points of comparison, is a less precise correlation with CC’s wording than is the phrase *ina pī mātīm* “in the mouth of the land” in the transitional introduction at the end of the prologue.

The correlations of the two transitional introductions of LH with 21:1 are summarized in table 3.3.

If CC used both of these transitions for crafting 21:1, it can help explain why there is no transitional introduction to the final apodictic laws. Data from

Table 3.3: Correlations between transitional introductions (read left to right)

אלה	המשפטים	אשר	(Moses implied)	תשים	לפניהם
	<i>kittam u mīšarim</i>			<i>ina pī mātīm</i>	<i>aškun</i>
	<i>dīnāt mīšarim</i>	<i>ša</i>	<i>Ḥammurabi</i> <i>šarrum lē' ūm</i>	<i>ukinnūma</i>	<i>mātam...</i>
These are	the laws	that	(Moses implied)	you shall place	before them
	truth and justice			in the mouth of the land	I set down
(These are)	the just laws	that	Hammurabi, the capable king,	established	the land...

the epilogue's transitional conclusion had already been used for the introduction in 21:1, and there was no need to repeat it. Moreover, since the final apodictic laws continue legal pronouncement, there is less of a need to insert a summary transition. Finally, the reason the introduction at the beginning of the epilogue appears to be influential in the first place is perhaps because the epilogue is more influential on the apodictic laws generally than is the prologue.

Conclusions

The primary evidence for the dependence of the apodictic sections of CC on LH is in their correlations with the exhortatory block of the epilogue. Three stretches of CC's text—(1) the initial apodictic laws (20:23–21:1), (2) the first string in the final apodictic laws (22:20–30) complemented by the central chiasmic section on justice (23:1–8), and (3) the second string in the final apodictic laws (23:9–19)—follow the sequence of topics and the style of this particular section of the epilogue. Table 1.6 in chapter 1 summarized this evidence and is worth reviewing at this point. As opposed to the casuistic laws, where the sequence of similarly ordered laws was not always exact, the sequence of correspondences is quite faithful in the three different passages of text in CC that depend on the exhortatory block. Only two minor elements deviate from the order: the general command in 23:13a, which nonetheless correlates with phrasing in the future-king passage, and the motif of refreshment or calming with the Semitic verb *npš* in 23:12, which has a correlation with the wronged-man passage.

Furthermore, the similarities of the texts at each point of correspondence are remarkably close. Both CC and the exhortatory block prohibit the oppression of three socioeconomically impoverished individuals, two of which match quite precisely (the widow and the poor girl/fatherless child). CC prohibits the primary object of cult prominence in LH and prescribes another that can be viewed to have similar symbolic significance. In each of its three passages parallel to the exhortatory block, CC also gives prescriptions about how to speak about sovereign power, as does the exhortatory block. Two of these passages in CC use language cognate with that of LH (*šm* “name”; *zkr* “remember”). The other passage extends the notion of speech about sovereigns to prohibit the cursing of the god and civil leader. CC and the exhortatory block both prescribe cultic visits that include appearances before the sovereign or his symbol. The two texts deal with the arrival of deities in the cult and the motif of blessing from the gods. And both texts prescribe the proper pursuit of justice. The motifs treated in the initial apodictic laws complement the motifs treated in the final apodictic laws, such that altogether *seven motifs* from the exhortatory block are represented: oppression of three underclasses, images, name memorialization,

visit to the cult place (with devotional motivation), the coming of the god, blessing, and the pursuit of justice.

All of the motifs that the introductory apodictic laws have in common with the exhortatory block just happen to be at the points in the exhortatory block where the Esagil temple is mentioned. This is complemented by a correlation in the final apodictic with instances in the exhortatory block where forms of the verb *ḥabālum* “to do wrong” appear. This is a remarkable coincidence in view of the other points of correspondence noted here. These two axes of thematic emphasis cross in the laws about speaking of sovereigns, a motif that appears in all three passages (see figure 11.1 in chapter 11).

The template of the exhortatory block accounts for *all* the main topics or themes of the apodictic laws. While CC’s apodictic laws go beyond the specific content of the exhortatory block in their scope (especially the double specific laws on benefiting the poor in the two strings of the final apodictic laws and the two laws on the construction of the altar in the initial apodictic laws), there are no extraneous topical sections or laws that cannot be accounted for by the general template or the content of the exhortatory block.

The sequential correspondences in the final apodictic laws take on added evidential power when it is seen that they continue the fourteen sequential correspondences seen between the casuistic laws. As noted previously, both texts shift genre at about the same place, and the common sequence of motifs continues into the new genre sections.

Other features point to the dependence of CC’s apodictic laws on LH. CC’s introduction to its casuistic laws, which seems misplaced, agrees with the content and placement of the introduction that transitions from the prologue to the casuistic laws in LH. At the same time, CC’s formulation also matches the wording of the transitional introduction from the casuistic laws into the epilogue. Furthermore, CC’s overall structure conforms to the A-B-A patterning of LH. Despite the genre difference between the A-sections of both texts, CC’s apodictic formulation coincides with the injunctive formulation of the exhortatory block. Moreover, the general themes of CC’s A-sections correlate with the prologue and epilogue. CC’s initial apodictic laws explore cultic themes, as does Hammurabi’s prologue. CC’s final apodictic laws deal with certain themes prominent in Hammurabi’s epilogue: aid to the poor and the pursuit of justice, in addition to cultic matters.

The evidence presented in this chapter, in connection with that of chapter 2 about the casuistic laws, leads decisively to the conclusion that the whole of CC depends upon LH as its primary source. The dependence is equally evident from beginning to end of the entire collection, from initial apodictic laws, through the casuistic laws, and into the final apodictic laws. The next chapter addresses the weaknesses of alternative theories that might be adduced to explain the similarities and then discusses when and how CC’s direct literary use of LH may have occurred.

Texts of the Exhortatory Block of LH and the Initial and Final Apodictic Laws of CC Compared (In the translation, bold text has been used to indicate thematic correlations between LH and CC)

Exhortatory Block of Epilogue of LH (cols. 47:59–48:94)	CC’s Initial Apodictic Laws (Exod 20:23–26 + 21:1)	String I of CC’s Final Apodictic Laws (Exod 22:20–30)	String II of CC’s Final Apodictic Laws (Exod 23:9–19)
<p>⁴⁷⁻⁵⁹⁻⁷⁸So that the strong not wrong (1) the weak and to secure justice for the (2) destitute girl and (3) widow, in Babylon, the city whose heights Anu and Enlil elevated, in the Esagil, the temple whose foundations are firm like the heaven and earth, for the purpose of setting down the law of the land, to render the verdicts of the land, and to secure justice for the wronged, I have written my treasured words on my stela and set (it) up before the image of me, the king of justice.</p> <p><i>[CC has two specific laws on the poor in the final apodictic laws that add detail to the general requirement of providing justice to the three classes of the poor.]</i></p> <p><i>[See wronged-man passage for “Let him calm/refresh his heart”]</i></p>	<p>²⁰⁻²³Do not make with me gods of silver, and gods of gold do not make for yourselves. ^{24a}An altar of earth you shall make for me. You shall offer on it your burnt offerings and well-being offerings, your flock animals and your cattle.</p>	<p>²²⁻²⁰ You shall not oppress (1) an immigrant. You shall not repress him because you were immigrants in the land of Egypt. ²¹You shall not afflict any (2) widow or (3) fatherless child. ²²If you do afflict him, when he cries out to me, I will heed his cry. ²³My anger will be enraged and I will slay you with the sword, and your wives will become widows and your children fatherless.</p> <p>(A) ²²⁻²⁴If you lend silver to my people, the poor that are with you, you shall not act like a (harsh) creditor to him. You shall not exact interest from him. (B) ²⁵If you take the garment of your fellow as a pledge, when the sun sets you shall return it to him, ²⁶because it is his only covering, it is the clothing for his skin—in what will he sleep? If he cries out to me, I will give heed, because I am compassionate.</p>	<p>²³⁻⁹ You shall not repress an immigrant. You know the mind of the immigrant, because you were immigrants in the land of Egypt.</p> <p>(A) ²³⁻¹⁰Six years you shall sow your land and gather its produce. ¹¹(In) the seventh, you shall let it drop and leave it. The poor of your people may eat (it). What they leave the wild animals may eat. You must do this also for your vineyard and orchard. (B) ¹²Six days you shall do your work. On the seventh day you shall cease so that your ox and ass may rest and so that the son of your slave woman and the immigrant may be refreshed/calmed.</p>

[See future-king passage for “let him give heed to the words that I have written on my stela” and “If that man gives heed to my words that I have written on my stela”]

^{47 79–48 2}I am king, foremost among kings. My words are exalted. My competence **has no rival**. By the command (word) of Shamash the great judge of heaven and earth may my justice appear in the land. By the word of Marduk my lord may my ordinances not have anyone who would remove them. **In the Esagil (temple)** which I love **may my name be recalled** kindly forever.

^{48 3–19}Let a wronged **man** who has a case (word) **come before the statue of me**, the king of justice. Let him have my inscribed stela read to him. Let him hear my precious words. Let my stela reveal to him the case (word). Let him see his judgment. Let him calm his heart.

^{48 20–38}(May he say): “**Hammurabi, the lord**, who is like a begetting father to the people, submitted himself to the command (word) of **Marduk his lord**.

[*Note the singularity of Yahweh in CC.*]

^{20 24ba}**In every (cult) place where I cause my name to be recalled**

(A) ^{22 27}**You shall not curse God,**
(B) **neither shall you denounce the chieftain among your people.**

^{22 28}You shall not delay [**giving at the “house of Yahweh”**] the product of your vat or press. You shall give me your firstborn sons. ²⁹Likewise you shall do with your ox and your flock animals. Seven days it shall remain with its mother. On the eighth day you shall give it to me. ³⁰You shall be holy people to me. Flesh found in the field, i.e., torn flesh, you shall not eat. You shall throw it to the dog.

^{23 13a}**You shall be observant with respect to all that I have said to you.**

(A) ^{13b}**The name of other gods you shall not recall;**
(B) **it shall not be heard on your lips.**

^{23 14}**You shall celebrate as pilgrimage festivals** three occasions in the year: ¹⁵You shall observe the festival of unleavened bread; seven days you shall eat unleavened bread, as I commanded, at the festival time in the month of Aviv, because it was then that you left Egypt. **They shall not appear before me** [or: see me] empty handed; ¹⁶the feast of harvest, the first fruits of your work that you sow in the field, and the feast of gathering at the end of the year, when you gather the product of your labors

(Continued)

(Continued)

Exhortatory Block of Epilogue of LH
(cols. 47:59–48:94)

CC's Initial Apodictic Laws (Exod
22:23–26 + 21:1)

String I of CC's Final Apodictic Laws
(Exod 22:20–30)

String II of CC's Final Apodictic Laws
(Exod 23:9–19)

He achieved the triumph of Marduk
above and below. He gladdened
the heart of **Marduk his lord**. He
obtained well-being for the people
forever, and he provided justice for
the land.”

^{48 39–58}May he say this, and **may he**
pray whole-heartedly before **Marduk**
my lord and Zarpanitu my mistress.

May the protective deity, the tutelary
deity, the **gods that enter the Esagil**,
and the bricks of the Esagil **make**
favorable the ominous utterances day
by day **before Marduk my lord and**
Zarpanitu my mistress.

(*In every cult place...*) ^{24bβ}**I will**
come to you and bless you.

[*CC here has two laws,*
structurally similar to the two laws
in 22 24–26 and 23 10–12]

(A) ²⁵If you make an **altar** of stones
for me, you shall not build them with
hewn stone. When you raise your
sword (metal tool) against it, you
profane it.

(B) ²⁶You shall not ascend **my altar**
on stairs, so that your nakedness not
be revealed on it.

from the field. ¹⁷**Three times in the year**
every male among you shall appear
before [or: see] the Lord Yahweh. ¹⁸You
shall not make offerings, the blood of
my sacrifice, with leaven. The fat of my
festal offering shall not remain over until
morning. ¹⁹The choice of your first fruits
of your land **you shall bring to the house**
of Yahweh your God. You shall not boil a
kid in its mother's milk.

[*On to the future king passage*
48 59–94; see next texts.]

[*On to 21 1, the texts after next.*]

[*On to 23 1–8, which lies between*
Strings I and II; see next texts.]

[*End of CC's laws*]

Continuation of the Exhortatory Block (Future King Passage col. 48:59–94)

In the future at any time, may any king who appears in the land keep the just **commands (words)** that I have written on my stela.

(a) **May he not alter the law** of the land that I have set down or the verdicts of the land that I have rendered,

(b) **may he not remove my ordinances.**

(c) If that man has understanding and he is able to provide justice for his land, let him give heed to the **words** that I have written on my stela

(d) May this stela reveal to him the way, behavior, the law of the land that I have set down and the verdicts of the land that I have rendered.

May he secure justice for humankind.

(e) May he set down their law.

(e') May he render their verdicts.

(d') May he root up **the evil and wicked** from his land. May he promote the well-being of his people. I am Hammurabi, king of justice, on whom Shamash has bestowed truth.

(c') My **words** are choice; my deeds are without equal. They are vanity to the fool, but to the wise they are objects of praise. If that man gives heed to my **words** that I have written on my stela

(b') and **he does not remove my law, he does not overthrow my words,**

(a') and **he does not alter my ordinances.**

May Shamash lengthen the scepter of that man as he did for me, the king of justice. May he shepherd his people in justice.

[The text continues with the description of a disobedient king, followed by curses.]

Continuation from String I of Final Apodictic Laws of CC (Exod 23:1–8)

(a) ¹Do not promote a **false rumor**. Do not conspire with an **evil person** to be a witness that causes violence.

(b) ²Do not follow the majority to do evil. Do not testify in a dispute to perversely follow the majority **to pervert (justice)**. ³Do not show deference to the poor in his dispute.

(c) ⁴When you encounter the ox or ass of your adversary wandering, return it to him.

(c') ⁵When you see the ass of your foe suffering under its burden, you shall resist forsaking him—but you must leave [the ass] with him.

(b') ⁶**Do not pervert the case** of your deprived in his dispute.

(a') ⁷Keep yourself away from a **lying word**. Do not kill the innocent and blameless, for I will not exonerate **an evil person**.

(x) ⁸Do not take a bribe, because a bribe blinds the clear-sighted and undermines the words of the innocent.

Transitional Introductions			
End of Prologue (col. 5:14–25) (into the casuistic laws)	Beginning of Epilogue (col. 47:1–8) (out of the casuistic laws)	End of Initial Apodictic Laws (Exod 21:1) (into the casuistic laws)	
When Marduk commanded me to provide justice for the people of the land, to instill proper behavior, I placed truth and justice in the mouth of the land , I increased the people's well-being. At that time: [<i>Casuistic laws follow</i>]	(These are) the just laws that Hammurabi , the capable king, established and has directed the land to follow sound custom and good conduct.	These are the laws which you shall place before them: [<i>Casuistic laws follow in 21 2ff.</i>]	
Exhortatory Block of Epilogue of LH (cols. 47:59–48:94)	CC's Initial Apodictic Laws (Exod 22:23–26 + 21:1)	String I of CC's Final Apodictic Laws (Exod 22:20–30)	String II of CC's Final Apodictic Laws (Exod 23:9–19)
^{47 59–78} <i>dannum enšam ana lā ḥabālim ekūtam almattam šutēšurim ina Bābilim ālim ša Anum u Enlil rēšišu ullū ina Esagil bītūm ša kīma šamē u eršetim išdāšu kīnā dīn mātīm ana diānīm purussē mātīm ana parāsim ḥablim šutēšurim awātīya šūqurātīm ina narīya ašturma ina maḥar ḫalmīya šar mīšarim ukīn</i>	^{20 23} לא תעשון אתי אלהי כסף ואלהי זהב לא תעשו לכם ²⁴ מזבח אדמה תעשה לי וזבחת עליו את עלתיך ואת שלמיך את צאנך ואת בקרך	^{22 20} וגר לא תונה ולא תלחצנו כי גרים הייתם בארץ מצרים ²¹ כל אלמנה ויתום לא תענון ²² אם ענה תענה אתו כי אם צעק יצעק אלי שמע אשמע צעקתו ²³ וחרה אפי והרגתי אתכם בחרב והיו נשיכם אלמנות ובניכם יתמים	^{23 9} וגר לא תלחץ ואתם ידעתם את נפש הגר כי גרים הייתם בארץ מצרים
[<i>CC has two specific laws on the poor in the final apodictic laws that add detail to the general requirement of providing justice to the three classes of the poor.</i>]		(א) ²⁴ אם כסף תלוה את עמי את העני עמך לא תהיה לו כנשה לא תשימון עליו נשך	(א) ¹⁰ ושש שנים תורע את ארצך ואספת את תבואתה ¹¹ והשביעת תשמטנה ונטשתה ואכלו אביני עמך

[See wronged-man passage for
libbašu linappišma]

[See future-king passage for ana awâtim ša ina
nariya ašturu liqūlma & šumma awīlum šū ana
awâtīya ša ina nariya ašturu iquľma]

^{47 79–48} 2šarrum ša in šarrī šūturu anāku awātūa
nasqā lē' ūtī šāninam ul išu ina qibūt šamaš
dayānim rabīm ša šamē u eršetim mīšarī ina
mātīm lištēpi ina awat Marduk bēlīya ušurātūa
mušassikam ay iršia ina Esagil ša arammu šumī
ina damiqtim ana dār lizzakir

^{48 3–19} awīlum ḥablum ša awatam irasšū ana
maḥar šalmīya šar mīšarim lillikma narī
šaṭram lištassīma awātīya šūqurātīm lišmēma
narī awatam likallimšu dīnšu līmur libbašu
linappišma

^{48 20–38} Hammurabīmi bēlum ša kīma abim
wālidim ana nišī ibaššū ana awat Marduk bēlīšu

^{20 24ba} בכל המקום אשר
אזכיר את שמי

(ב) אם חבל תחבל
שלמת רעך עד בא השמש
שת יבנו לו ⁶²כי הוא
כסותה לבדה הוא שמלתו
לערו במה ישכב והיה כי
יצעק אלי ושמעתי כי הנון
אני

(א) ^{22 27}אלהים לא תקלל
(ב) ונשיא בעמך לא תאר
^{22 28}מלאתך ודמעך לא
תאחר
בכור בניך תתן לי ²⁹כן
תעשה לשרך לצאנך
שבעת ימים יהיה עם אמו
ביום השמיני תתנו לי
³⁰ואנשי קדש

ויתרם תאכל חית השדה
כן תעשה לכרמך לזיתך
(ב) ¹²ששת ימים תעשה
מעשיך וביום השביעי
תשבתלמען ינוח שורך
וחמרך וינפש בן אמתך
והגר
^{13 23}ובכל אשר אמרת
אליכם תשמרו

(א) ושם אלהים אחרים
לא תזכירו
(ב) לא ישמע על פיך
^{14 23}שלש רגלים תחג לי
בשנה ¹⁵את חג המצות
תשמר שבעת ימים תאכל
מצות כאשר צויתך למועד
חדש האביב כי בו יצאת
ממצרים ולא יראו פני
ריקם ¹⁶וחג הקציר בכורי

(Continued)

(Continued)

Exhortatory Block of Epilogue of LH (cols.
47:59–48:94)

CC's Initial Apodictic Laws
(Exod 22:20–26 + 21:1)

String I of CC's Final Apodictic
Laws (Exod 22:23–30)

String II of CC's Final Apodictic
Laws (Exod 23:9–19)

uštakitma irnitti Marduk eliš u šapliš ikšud
libbi Marduk bēlīšu ušīb u šīram řābam ana nišī
ana dār išīm u mātam uštēšer
^{48 39–58}*annītam liqbīma ina mařar Marduk*
bēlīya Zarpānītum bēlīya ina libbīšu gamrim
likrubam šēdum lamassum ilū ēribūt Esagil
libitti Esagil igirrē ūmišam ina mařar Marduk
bēlīya Zarpānītum bēlīya lidammiqū

20 24bβ אבוא אליך

וברכתך

Two laws, similar to
22 24–26 and 23 10–12

(א) ואם מזבח אבנים

תעשה לי לא תבנה אתהן

גזית כי חרבך הנפת

עליה ותחללה

(ב) ולא תעלה במעלת

על מזבחי אשר לא תגלה

ערוךך עליו

תהיון לי ובשר בשדה
טרפה לא תאכלו לכלב
תשלוכו אתו

מעשיך אשר תזרע בשדה
וחג האסף בצאת השנה
באספך את מעשיך מן
השדה שלש פעמים בשנה
יראה כל זכורך אל פני
האדן יהוה¹⁷ לא תזבח על
תמץ דם זבחי ולא יליון
חלב חגי עד בקר¹⁹ ראשית
בכורי אדמתך תביא בית
יהוה אלהיך לא תבשל גדי
בחלב אמו

[On to the future-king passage 48 59–94;
see next texts.]

[On to 21 1, texts after
next.]

[On to 23 1–8, which lies between
Strings I and II; see next texts.]

[End of CC's laws]

^{48 59–94} *ana warkiāt ūmī ana matīma šarrum ša ina mātīm ibbaššū*

(a) *awāt mīšarim ša ina narīya ašūru liššur dīn mātīm ša adīnu purussē
mātīm ša aprusu ay unakkir*

(b) *ušurātīya ay ušassik*

(c) *šumma awīlum šū tašīmtam išūma māssu šutēšurim ile''i ana awātīm ša
ina narīya ašūru liqūlma*

(d) *kibsam rīdam dīn mātīm ša adīnu purussē mātīm ša aprusu narūm šū
likallimšūma šalmat qaqqadīšu lištēšer*

(e) *dīnšina lidīn*

(e') *purussāšina liprus*

(d') *ina mātīšu raggam u šēnam lissuḥ šīr nišīšu liṭīb Ḥammurabi šar
mīšarim ša Šamaš kīnātīm išrukūšum anāku*

(c') *awātūa nasqā epšētūa šāninam ul iṣā ela ana lā ḥassim rēqā ana
emqīm ana tanādātīm šūšā šumma awīlum šū ana awātīya ša ina narīya
ašūru iqūlma*

(b') *dīnī lā ušassik awātīya lā uštepīl*

(a') *ušurātīya lā unakkir*

awīlum šū kīma yāti šar mīšarim Šamaš ḥaṭṭašu lirrik nišīšu in mīšarim lirī

(א)³² לֹא תִשָּׂא שְׁמֵעַ שׁוֹא אֶל תִּשֶׁת יָדְךָ עִם רֹשַׁע לְהִיתָ עַד חֹמֶס

(ב)² לֹא תִהְיֶה אַחֲרָי רְבִים לְרַעַת וְלֹא תִעֲנֶה עַל רֵב לְנִטַּת אַחֲרָי רְבִים לְהִטָּת ³יִדּוּל לֹא תִהְדָּר
בְּרִיבּוֹ

(ג)⁴ כִּי תִפְגַּע שׁוֹר אִיבֶךָ אוֹ חֲמֹרוֹ תַעֲהֶה הַשֶּׁבֶת תִּשְׂבִּיבּוּ לוֹ

(ג')⁵ כִּי תִרְאֶה חֲמֹר שֶׁנֶּאֱדָר רִבֵּץ תַּחַת מִשְׁאוֹ וְחִדְלַת מִעֲזֹב לוֹ עֲזֹב תַעֲזֹב עִמּוֹ

(ב')⁶ לֹא תִטֶּה מִשְׁפַּט אֲבִינֶךָ בְּרִיבּוֹ

(א')⁷ מְדַבֵּר שֶׁקֶר תִּרְחַק וְנָקִי וְצַדִּיק אֶל תִּהְרַג כִּי לֹא אֲצַדִּיק רֹשַׁע

(ת)⁸ יִשְׁחַד לֹא תִקַּח כִּי הִשְׁחַד יַעֲזֹר פְּקָחִים וַיִּסְלַף דְּבָרֵי צַדִּיקִים

Transitional Introductions		
End of Prologue (col. 5:14–25)(into the casuistic laws)	Beginning of Epilogue (col. 47:1–8) (out of the casuistic laws)	End of Initial Apodictic Laws (Exod 21:1) (into the casuistic laws)
<i>inūma Marduk ana šutēšur nišī mātīm ūsim šūḥuzim uwa'’eranni kittam u mīšarim ina pī mātīm aškun šīr nišī uḫib inūmišu</i> [Casuistic laws follow]	<i>dīnāt mīšarim ša Ḥammurabi šarrum lē' ūm ukinnūma mātam kīnam u rīdam damqam ušašbitu</i>	ואלה המשפטים אשר תשים לפניהם [Casuistic laws follow in 21 2ff.]

4

Opportunity and Date for the Use of Hammurabi's and Other Cuneiform Laws

Chapters 2 and 3 have shown that, from beginning to the end, CC has correlations with LH, in its general A-B-A pattern, in the sequence of topics and laws over the course of both the apodictic and casuistic laws, and in the content and ordering of several of the individual casuistic laws. The correspondences in sequence account for almost every law or topic of CC. In the few remaining cases, CC has similarities with other laws in LH or with laws in other cuneiform law collections. This state of evidence can be satisfactorily explained only by a theory of textual dependence.

This chapter explores the question of when and how might this have occurred. It first addresses alternative explanations that could be considered to account for the similarities, from coincidence to a mediating Northwest Semitic text. These other options have grave difficulties that leave direct dependence on LH and other Akkadian texts the only viable theory. The chapter then identifies the Neo-Assyrian period as the time when this textual borrowing most likely occurred. This was a time when Israel and Judah had various political and cultural contacts with their Mesopotamian overlords and when, in Assyria, the Laws of Hammurabi were copied as a classic scribal text. This chapter also addresses the problem of the minimal attestation or lack of attestation in the Neo-Assyrian period of other cuneiform texts to which CC has similarities. The end of the chapter says something about the implications of the evidence of CC's dependence on cuneiform sources for its redactional development.

Alternative Explanations of the Similarities

Various theories other than direct textual dependence on an Akkadian text may be put forward in an attempt to explain the similarities between CC and cuneiform sources as outlined in the previous chapters. These include, on a spectrum of the degree of genetic relationship involved: coincidence, shared legal logic or common problems, oral tradition, oral transmission, and use of a mediating text (or texts) in a Northwest Semitic language.¹ Earlier scholarship has utilized several of these avenues to explain the smaller range of similarities it has observed between CC and cuneiform texts, mainly theories ranging from coincidence to oral tradition, but also occasionally a mediating-text theory for isolated points of strong similarity. Chapter 1 summarized several such specific models. The goal here is to consider the alternative explanations from a theoretical point of view as they might explain the new evidence presented in chapters 2 and 3.

To be quickly dismissed is an explanation by *coincidence*.² It is true that different societies may come to similar cultural expressions by independent genesis. But the similarities we have observed between CC and LH and other sources, because of their intricacy and scope, go far beyond the possibility of independent origins. Some scholars have attempted to stress the differences between CC and the Near Eastern sources to deny a genetic connection. But as chapter 1 has indicated and as part II demonstrates in depth, differences do not vitiate the probative value of the visible similarities. Differences may arise from the purposeful transformation of sources used. The unlikelihood of pure chance as a feasible explanation is evident in the fact that virtually all scholars, on the basis of identifying fewer correlations between the texts, adopt some sort of genetic model.

Within the range of views that recognize some type of hereditary relationship, the theories that similarities are due to shared *legal logic*³ or to occupation with *common legal problems*⁴ posit the least concrete tie. According to these views, what the authors of CC inherited were not the laws themselves but rather similar strategies for formulating law or similar general concerns and subject categories. Strategies for legal formulation could have included the feature of *attraction*,⁵ where a subordinate theme in one law becomes a primary theme in a next law, a process that creates a text with what might loosely be described as a flow-of-consciousness arrangement of topics. Another strategy might have been the writing of laws with *polarity with maximal variation*,⁶ where a pair of related laws displays a wide range of variables and thereby entails the range of legal possibilities in between. Armed with the same techniques, it is imaginable that legists working independently could formulate similar laws, with some of them even in the same sequence. Common problems and topics would have included several that we find shared between CC and Near Eastern law: the goring ox, miscarriage, talion, different types of theft and multiple

restitution, and mitigating factors in homicide, injury, and theft. A common syllabus of such topics might be thought to have led legists to compose collections with similar content.

These explanations, however, lack the ability to account for the detailed similarities in the laws and especially the overall similarity in sequence that the preceding chapters have identified between CC and LH and other cuneiform collections. Shared logic might produce two or three laws in common succession but not a whole collection. Moreover, working with common problems cannot begin to explain the common sequence in the laws. A more disqualifying point is that these explanations cannot account for the apodictic laws. Common techniques and topics could not have produced laws in CC that look so similar to the nonlegal prologue and epilogue.

Similar problems are entailed in a more concrete but still general theory of *oral tradition*, according to which relatively specific and perhaps independent legal units were transmitted, such as the group of laws on the goring ox or the group of laws on miscarriage.⁷ This theory might be able to account for a few of the laws of the casuistic genre, with their limited set of interests in criminal and civil matters. But it fails to account for the broad similarity in the order of the laws of the two collections. It further cannot account for the similarities between the apodictic laws and the nonlegal material of the prologue and epilogue of LH.

Part of the evidence for the orality of biblical legal tradition is thought to lie in the construction of lines of evolution between legal customs, described elsewhere in the Bible, to their expression in CC and in lines of evolution visible in the supposed redactional strata of CC itself.⁸ Furthermore, some biblical narratives portray characters as citing legal customs as if they are part of oral lore.⁹ Moreover, a few of CC's laws are remarkably similar to features or customs in Near Eastern transactional records (contracts, court records). Because these could not possibly have influenced CC directly, the similarities must be due to general diffusion, probably orally, of legal customs.¹⁰ Too, the range of cases in CC and the detail of their discussion suggest that a broader orality of law existed that filled in the gaps and allowed application more broadly.¹¹ We should not deny that some legal traditions were passed on orally and that actual legal practice in Israel and Judah was informed by such a tradition. But this does not mean that CC did not use LH and other Akkadian documents. Part II shows that local traditions functioned as a miscellaneous source of inspiration for CC. But they are not responsible for its totality.

If one wants to maintain an explanation by oral means, one has to go further to invoke a theory of *oral transmission*, where the essence of Hammurabi's entire text—prologue, casuistic laws, and epilogue—and perhaps some other miscellaneous texts to account for correspondences between CC and cuneiform texts other than LH, were memorized and transmitted for generations, to be used eventually in the creation of CC.¹² It is

difficult, however, to construct a reasonable scenario for this. A combination of several events and conditions would need to occur and obtain for this to work, including the following:

- Memorization of LH before 1200 BCE, since about this time cuneiform scribal schools and traditions in Syria and Canaan came to an end, and Akkadian was not longer read.¹³
- A suitable reason for the oralization of LH, not only its casuistic laws but also its prologue and epilogue.
- Translation of the text, either originally or secondarily along the way, into an intelligible Northwest Semitic language (Aramaic or Phoenician), inasmuch as Akkadian was no longer used and understood in the west after about 1200.
- Transmission and maintenance of this oral text for more than four centuries, from 1200 BCE to near the end of the eighth century, the time when current scholarship dates much or all of CC (see later).
- Transmission of the oral text over several ethnic or national boundaries, from Bronze Age urban scribes acquainted with Akkadian cultural texts, to undefined Northwest Semitic legal tradents (Arameans or Phoenicians), and eventually to Israelites or Judeans.
- Motivations in each of these distinct cultural spheres for learning and maintaining the oral text, strong enough despite a vacuum of Mesopotamian cultural influence from about 1200 to about 800 BCE.
- Institutional and practical contexts in each of these distinct cultural spheres that would encourage multiple recitations of the oral text in the lifetime of each tradent so as to retain it to pass it on from generation to generation.¹⁴

It might be thought that examples of oral tradition and transmission, such as those found in connection with the Tannaitic traditions that led to the Mishnah and other Rabbinic works,¹⁵ provide a model for the viability of the oral transmissions of LH. Any such analogy requires critical examination and clarification before it can be probative. Anecdotal, ideological, and traditional descriptions cannot provide a basis for analysis, especially those that have not been examined against current perspectives on oral theory. An example of the type of critical study required is Martin Jaffee's recent examination of oral tradition in Palestinian Judaism. He argues that the Tannaim did not memorize a fixed and extensive composition, but rather short bodies of tradition, which were realized differently in performance or teaching and which were not purely oral but interacted with an incipient textuality.¹⁶ This process did not maintain a preestablished fixed text but was creative and led to a product quite different from what existed at what might be considered the beginning stages of the tradition. Moreover, in this case, the traditions were developed and maintained within a single cultural context, something that cannot be claimed for the oral transmission of LH to the creators of CC.¹⁷

Evidence from the study of human memory in connection with oral tradition may be added to this critique of oral transmission. It is not that texts, even long texts, cannot be memorized. CC itself is short enough for easy commission to memory. With some effort, one could commit the whole of LH to memory, much like Shakespearean actors can memorize their repertoire. But accurate retention of such memorized texts requires recourse to a written model from time to time and cues from an authoritative source because memory is faulty.¹⁸ It is hard to imagine how LH would have been passed on intact, especially without the main features of oral traditions that ensure stability, such as sound patterns (e.g., rhyme, alliteration, assonance), meter, poetic structure, natural plot, and internal cues.¹⁹ Indeed, oral recitations, especially long compositions, are as creative as they are conservative.²⁰ Of course, inventiveness in oral rendition could be used to explain some of the differences between CC and LH. In this supposed game of Telephone from the second to the first millennium, LH could have evolved to become more like CC.²¹ But a number of formulations in CC look like they are in fact responding to a text, such as the laws on two different victims in the goring ox law, an adult (21:29) and a child (v. 31), which appears to render two interpretations of *mār awīlim* “son of a man/member of the *awīlum* class” in LH 251; the point-for-point inversion of the master rejection law of LH 282 to create the master fealty law of 21:5–6; the replacement of the apodosis of the miscarriage law of LH 210 with a summary of the talion law of LH 196–201 in 21:23–25; or the various manifestations of name memorialization language in CC (see chapters 3 and 11). Similar other cases are found in part II.

A feature that might be thought to be a mnemonic device in CC and thus evidence of oral transmission is the chiasmic and string structure in the final apodictic laws, along with the complementary structure of the initial apodictic laws.²² This structure, however, is inextricably tied to Israelite-Judean theological ideas. It arises in connection with the replacement of Hammurabi with Yahweh, as lawgiver, recipient of praise, and name memorialization, and the replacement of Hammurabi's statue with Yahweh's altar. These elements cannot be excised or undone in some way to create a pre-Israelite text with the same structure as CC. Nor do the cultural and theological transformations that operate to create the structure make sense in a pre-Israelite context. The content of the apodictic laws is primarily Israelite or Judean. Moreover, these laws do not otherwise contain evidence of pre-Israelite influence.²³ Their structure is therefore not indicative of the maintenance of an oral version of LH.

The foregoing critique of various oral theories means that the only viable theory is one of *literary dependence*. Two versions are imaginable: indirect or direct. A theory of *indirect textual dependence* would assume that, instead of being memorized, LH was translated or recast as a new composition into a Northwest Semitic language, again Aramaic or Phoenician, by 1200 BCE. This text was passed on over the centuries after the end of Akkadian scribal schools and eventually across cultural boundaries to Israel or Judah, as described

previously in imagining a theory of oral transmission, where it was used as the basis of CC. Some of the differences in CC over against LH may have arisen in the creation of this mediating text. A theory of indirect textual dependence could allow for several mediating texts over the centuries until CC was produced.²⁴

A main problem with this sort of theory is its speculative character.²⁵ There is no substantial evidence for it.²⁶ Moreover, in its own way, it is as conjectural, and perhaps significantly more so, than saying that a writer from Israel or Judah had access to LH and other cuneiform materials directly in the Neo-Assyrian period.²⁷ Furthermore, none of the differences in CC's casuistic laws vis-à-vis LH give evidence of intermediate cultural influence, if one imagines the mediating text to be a reformulation of LH into a unique Northwest Semitic expression and not just a translation of LH.²⁸ And as noted already, the apodictic laws, when not echoing motifs of the prologue or epilogue, contain ideas that are essentially Israelite or Judean.

A reason for seeking to maintain one of the foregoing theories is the assumption that CC's laws reflect real law that was practiced in the early history of Israel or Judah. The less direct CC's tie to cuneiform texts and Mesopotamian custom, the more one can see its prescriptions as actual local customs. But that CC's laws reflect real practice is not a demonstrated or undisputed fact.²⁹ Other laws collections in the Bible indicate that law texts may be programmatic and idealistic. This is true of the Holiness Legislation, whose utopianism is especially evident in its sabbatical year and jubilee legislation in Leviticus 25.³⁰ Likewise, the book of Ezekiel, the prophetic reflex of the Holiness school, encoded idealized prescriptions in its last nine chapters, a type of law collection (Ezekiel 40–48). The architecture of the temple relative to the geography of Jerusalem is one index of the abstraction in this legislation. CC may not substantially differ from these compositions in its speculative nature. CC's brevity and topical selectivity, even with the apodictic laws included, are a hint that it is something other than simply a report or digest of law practiced in villages and towns.³¹

The various traditions or textual theories explored here are particularly problematic in view of the general historical circumstances. They require one to believe that oral traditions or Northwest Semitic texts, or a combination thereof, were passed on from the second millennium over several centuries and eventually came together and evolved into a legal collection in Israel or Judah, a collection whose content and form just happen to match the content and structure of LH from beginning to end, at a time when this law text was widely copied in Assyria and when Assyria exerted political and cultural influence on Israel and Judah. The circumstances point to a theory of direct dependence on LH in this period. We turn now to explaining this historical and cultural context.

The Neo-Assyrian Date for the Covenant Code

One of the main reasons that scholars have not adopted a theory of direct textual dependence on LH is the difficulty of being able to define an opportunity

for this dependence in view of the traditional critical date for CC, as outlined at the beginning of chapter 1. Akkadian scribal schools ceased in the west about 1200 BCE, and between about 1200 and 850, the period in which most scholars had set the date for at least CC's basic casuistic laws, Mesopotamia exerted no significant political and cultural influence on Israel and Judah. The only way to have Mesopotamian influence in this period was for it to carry over in the west from the second millennium. The evidence of this study and of recent research on CC indicates that the date of CC needs to be reconsidered.

The latest date for CC is in the latter half of the seventh century BCE. This is the latest date for the basic laws of Deuteronomy, which depend on CC.³² Therefore, CC had to exist as an essential whole by this time. I say essential whole because some studies have argued that part or all of the apodictic laws are actually dependent on or otherwise postdate Deuteronomy. This conclusion is questioned later on in this study (chapter 12). Nevertheless, most scholarship that concludes that elements of CC straddle Deuteronomy chronologically still sees the bulk of the casuistic laws and a sizable number of apodictic laws as prior to Deuteronomy. To be sure, a few studies dispute these basic facts. Some do not accept the late-seventh-century date for Deuteronomy. A few others, most notably and recently Van Seters, argue that CC as a whole is actually dependent on and hence later than a late-seventh-century Deuteronomy.³³ This allows Van Seters to argue that CC borrowed from LH in the exilic period. In my view, the evidence, which need not be set out in this study, is clearly on the side of dating the basic laws of Deuteronomy to the later seventh century and CC's conceptual and chronological priority over Deuteronomy's laws.³⁴

The earliest date for CC is more problematic. If we lay aside for a moment the thesis that CC depends on LH, the work as an essential whole and even just the collectivity of the casuistic laws presume a level of sociological and political development in the author's world somewhat similar to that in the societies that produced the cuneiform collections, despite what some have claimed about the sociological perspective inherent in CC's laws. It is hard to imagine why and how a premonarchic or even incipient monarchic society would produce a collection resembling LH and other cuneiform collections. It is much easier to think that it would be produced by a society with an established tradition of monarchy—with an extended royal administration and bureaucracy, a flourishing cult supported by the monarchy, urban growth, concomitant economic development and stratification of society, specialist groups including scribes, and so forth—and with a developed national consciousness growing out of that tradition, even to the point where it could view itself as somewhat analogous to or in competition with Mesopotamian culture. Therefore, even though CC says nothing directly about the monarchy, it seems unlikely that it would have been produced before about 800 BCE, that is, well into the Israelite and Judean monarchic periods.

Other scholars, who do not argue that CC is dependent on LH, have recently argued for just this dating. Rothenbusch, for example, concludes that CC as an essential whole was produced around the time of Ahaz (c. 742–727), that it

served royal ideological purposes, and that conditions similar to those that led to the production of Mesopotamian collections prevailed in Judah and led to the production of the collection. Moreover, he believes that the social stratification exhibited in the casuistic laws is to be dated to the monarchy.³⁵ Crüsemann similarly argues that the slave laws point to social conditions in the monarchy and that the laws about the immigrant (22:20; 23:9) cannot be earlier than the fall of the Northern Kingdom in 722.³⁶ He concludes that “the Book of the Covenant was compiled in the last decades of the eighth or the beginning of the seventh century.”³⁷ Those who argue for a late-eighth-century date generally allow for the preexistence of some of the casuistic laws that, when taken out of their present context, do not require an eighth- or seventh-century date. But if these preexisting laws were fused together in a collection or collections, those entities would have been extremely embryonic.³⁸ In short, whatever the prehistory of the text, scholars now tend to agree that CC’s coming together into a work that we can start to call “the Covenant Code” occurred around the end of the eighth century.³⁹

The foregoing considerations give us a window for CC’s composition of about 740 to around 640 BCE. It is remarkable that this very time period is when Israel and Judah had extensive and continuous contacts with Mesopotamia, specifically with the Neo-Assyrian Empire.⁴⁰ It is reasonable to think that, in this context, a few Israelite or Judean scribes learned Akkadian and studied LH and perhaps other related legal texts as part of their education. This enabled one or more of these scribes to create CC.⁴¹

A review of the evidence indicates that some Israelites or Judeans probably had this capability.⁴² A revived Assyria began its westward expansion in the first half of the ninth century BCE under Ashurnasirpal II (883–859), who reached the Mediterranean.⁴³ Shalmaneser III (858–824) next extended campaigns into Palestine. He defeated Ahab⁴⁴ and received tribute from Jehu. The Black Obelisk even portrays Jehu prostrate at the Assyrian king’s feet.⁴⁵ A few decades later, Adad-nirari III (810–783) campaigned in Palestine and received tribute from Joash of Samaria.⁴⁶ More extensive contacts with Israel and then with Judah began under Tiglath-Pileser III (744–727) and lasted for more than a century. Tiglath-Pileser quelled a Syrian revolt, collected tribute from Menahem of Israel,⁴⁷ and later placed pro-Assyrian Hoshea on the throne.⁴⁸ He also received tribute from Jehoahaz (Ahaz) of Judah.⁴⁹ Shalmaneser V (726–722) conquered Samaria in 722/721,⁵⁰ and Sargon II (721–705) extinguished further rebellions in the west, including Samaria, that arose when Shalmaneser died. Sargon recaptured Samaria and deported a sizable part of the population to the Assyrian Empire.⁵¹ He also established some control over Judah.⁵² After a period of relative peace, Sennacherib (705–681) moved against western cities that began to rebel. He besieged about four dozen Judean towns, including Jerusalem, and succeeded in exacting tribute from Hezekiah.⁵³ By the reign of Esarhaddon (680–669), Assyrian domination in Syria-Palestine was at its height. A documented activity was his enlisting the help of various western

kings, including Manasseh of Judah, to provide materials for the Assyrian palace at Nineveh.⁵⁴

Although the Assyrian royal annals, just reviewed, portray the relations between Assyria and Israel-Judah mainly in narrow militaristic terms, the contacts presuppose more extensive cultural interactions between the parties.⁵⁵ The main reasons for Assyria's expansion were ideological and practical: to reestablish control in the regions occupied in the Middle Assyrian period and to gain access to goods in the west and secure transportation routes to bring these goods to the empire.⁵⁶ To do this, Assyria could not simply conquer and gather tribute but had to foster an enduring working relationship with conquered peoples and their leaders. This presumably would have included educating subject populations in Assyrian culture and ideology, as well as establishing a means for diplomatic communication, which would have been facilitated by training some individuals (no doubt associated with the local leadership institutions) as scribes in the requisite languages, including Akkadian.

The necessity and opportunity for some local officials to know or learn Akkadian is indicated by several other pieces of evidence. A variety of cuneiform inscriptions have been found or are otherwise attested in Israel, Judah, and their environs in this period.⁵⁷ Fragments of at least five Assyrian stelae have been discovered.⁵⁸ Four pertain to the campaigns of Sargon II. One stela was erected in Samaria, perhaps when Sargon rebuilt the city.⁵⁹ A fragment of a second comes from Ben-Shemen in the hills of Samaria.⁶⁰ Fragments of at least two distinct stelae were found at Ashdod.⁶¹ Another fragment comes from the time of Esarhaddon and was found at Qaqun, northwest of Samaria.⁶² In addition to the discovered fragments, the accounts of the Assyrian campaigns mention the erection of stelae in the west.⁶³ One account represents Shalmaneser III setting up a monument on Ba'lira'si, "a cape (jutting out into) the sea," that is, apparently the Carmel Range (the next lines of the text speak of receiving tribute from Tyre, Sidon, and Jehu).⁶⁴

In addition to the monumental inscriptions, a number of Akkadian tablets and other inscriptions have been found, including a tablet from Samaria giving an order to deliver animals as a tax,⁶⁵ a list of the distribution of bread rations from Tel Keisan (near Acco),⁶⁶ two administrative documents from Tel Hadid (near Gezer),⁶⁷ an administrative document dealing in part with fields from Khirbet Kusiya (north of Qaqun),⁶⁸ and what appears to be a *lamaštu* amulet from near Lachish.⁶⁹ Two Akkadian sale documents were also found at Gezer.⁷⁰ One (Gezer 3) shows the operation of Assyrian legal customs in the purchase of slaves (the witnesses have non-Hebrew names). The second (Gezer 4) is a contract for a piece of land (dated 649 BCE) and contains the Israelite name Natan-Yahu, the person selling the land.⁷¹ A bulla from Samaria has an inscription saying, presumably, "for A[ššur-iddi]n."⁷² Becking says this is "presumably the name of an Assyrian deportee to whom a royal(?) letter was written."⁷³ Some seals have been found from various locations in Israel and Judah.⁷⁴ One is a cylinder seal from Samaria belonging to servant named Nabu-zaqīp].⁷⁵ Becking

says that “this inscription makes clear that there was someone in Samerina [the Samarian province] who was able to teach cuneiform script to others. I assume that he was the one who made this seal for his servant.”⁷⁶ Though most of these cuneiform documents were the products or property of foreigners, according to Stern they are to be viewed “as important evidence for the intensity of Assyrian rule in the country: scores of scribes were required to read or write this peculiar script, which,” he adds, “was probably imposed on the locals.”⁷⁷ In regard to such an “imposition” upon the population, Cogan noted that “in the countryside of Judah, the intermingling of populations [during the Neo-Assyrian period] went much further, with foreigners settled to the immediate west and north of Judah in Assyrian provinces. In addition to Hebrew, Assyrian and eventually Aramaic became the languages of daily discourse.”⁷⁸

A number of persons listed as scribes (^{LÚ}A.BA = *tupšarru*) in various (Akkadian) Neo-Assyrian legal texts have Northwest Semitic names.⁷⁹ Oded lists the names of fourteen such individuals.⁸⁰ These scribes probably worked with cuneiform. Scholars in the west in other areas were familiar with Akkadian. Excavations at Hamath produced about twenty cuneiform texts dealing with various topics (administration, religion, medicine), dating from the end of the ninth century to the end of the eighth century.⁸¹ Dalley notes that Aramaic did not fully replace Akkadian at the end of the eighth century and gives as evidence the presence of a Neo-Assyrian scribal school in Husirina (Sultantepe) near Haran.⁸² Although the number of foreign scribes versed in Akkadian in the first millennium would have decreased as Aramaic became the lingua franca, Akkadian was not fully displaced as a language of administration, as the evidence just reviewed indicates. Foreigners would need to become adept in this language.⁸³ For some, this education may have progressed to a relatively advanced level.⁸⁴

The general context of international relations further indicates that education in Akkadian would be required for some foreigners. Diplomatic missions were sent from Israel and Judah. These embassies had various purposes. One was to celebrate affairs of state with the Assyrian kings. An inscription describing Sargon’s dedication of Dur-Sharruken says that “rulers of all countries (*malkī mātitān*), the governors of my land, overseers, officials, princes, nobles, and elders of Assyria” were present, from whom he received gifts.⁸⁵ Representatives from Judah and from the conquered land of Samaria may have attended, and Younger goes as far as to observe:

Half a dozen years after the 712 campaign (i.e., 706 BCE), Sargon completed his new capital, Dūr-Šarrukin, and required the kings of the west to attend its dedication. . . .⁸⁶ It is not improbable that Hezekiah, king of Judah, made the trek to visit this impressive new city. . . . But only a year later, Sargon was suddenly and unexpectedly killed on the battlefield while campaigning in Anatolia. His death rocked the ancient world.⁸⁷

Another reason for missions to Assyria was to deliver tribute and taxes. Sennacherib’s account of his campaign says that Hezekiah “sent his messenger

to bring (to Assyria) the tribute and to do obeisance.”⁸⁸ Earlier, an Assyrian official wrote to Sargon II about accounts received, saying “the emissaries from Egypt, Gaza, Judah, Moab and Ammon entered Calah on the 12th with their tribute.”⁸⁹ A few other Akkadian texts, not associated with diplomatic missions, show administrative interactions with the west: reports on a corn tax from Samaria,⁹⁰ travel “to the land of the house of O[mri],”⁹¹ and the delivery of bricks to Samaria and Megiddo.⁹²

That Israelite elites in Assyria attained or maintained a position of prestige and received the benefits of Assyrian society further suggests that some among them may have had access to cuneiform scribal education.⁹³ For example, the Nimrud Prism says that Sargon conscripted some Israelites as chariot soldiers:

I counted as spoil [2]7,280 (the Display Inscription says 27,290) people including [their] chariots and the gods who provided them aid. I formed a unit of 200 (the Display Inscription says 50) chariots from them as part of my royal army, and I resettled the rest of them in the midst of Assyria (*ina qirib Aššur*).⁹⁴ I repopulated Samaria more than before, and brought into it people from the countries which I had conquered.⁹⁵

The Horse Lists, from Fort Shalmaneser in Calah (Nimrud), Sargon's main capital, may provide commentary on the deported chariotry. These texts list various chariot units in the Assyrian army. One unit was headed by thirteen equestrian officers, some from Samaria.⁹⁶ Two of the names are Israelite (*ia-u-ga-a* [=Yahu-ga'a “Yhwh is exalted”] and *aḫi*(PAP)-*i-ú* [Aḫi-Yahu]).⁹⁷ The individual named Sama (*sa-ma-a*; Northwest Semitic root *šm'*), who may have been Israelite, appears to have been especially close to the royal family, if he can be identified with Sama in some other texts, which is likely because Sama is a rare name.⁹⁸ During the reign of Sargon, he borrowed silver from the temple of Ishtar and leased land for cultivation; during the reign of Sennacherib, he was a witness in several texts and is identified as a ^{LU}*murabbānu ša mār šarri* “(horse) trainer to the king's son.” Dalley says that “the evidence for his career is an indication of the important role played by Samaritans in Nimrud and Nineveh in the late 8th and early 7th centuries.”⁹⁹ If Sama was not Israelite (though still a west Semite), his position at least reflects on the high status of the Israelites within the military group.¹⁰⁰

Other evidence pertaining to the cultural training of Israelites in Assyria from Sargon's time includes his claim to have trained foreigners abroad in various disciplines:¹⁰¹

Peoples from the four (regions), with foreign languages and unusual speech, dwelling in mountains and flat land . . . who by the command of Ashur my lord, by the power of my staff, I took as spoil, I caused to reach consensus.¹⁰² Assyrians, skilled in all trades¹⁰³ I sent as overseers and supervisors to teach (them) correct behavior¹⁰⁴ and to serve the gods and the king.

Moreover, a number of Israelite names appear in Akkadian administrative documents from Nimrud/Calah and Nineveh after the conquest of Samaria.¹⁰⁵

The appearance of many of these as witnesses and especially as participants in legal procedures indicates possible familiarity with Akkadian in the Assyrian homeland.

Sennacherib also exiled elites and professionals from Judah. The account of his attack on the southern kingdom says that, besides himself taking “200,150 people, young and old, male and female, horse, mules, donkeys” and so forth, Hezekiah sent the Assyrian king (presumably at Nineveh) “his daughters, his palace women, his male and female singers” in addition to material riches.¹⁰⁶ The treatment of the Arab princess Tabua may throw light on how Hezekiah’s daughters and other nobles were treated.¹⁰⁷ Esarhaddon says that Sennacherib had taken her family captive and that she was “raised in the palace of my father (i.e., Sennacherib)” (*tarbūt ekalli abīya*). Esarhaddon later made her the queen of the Arabs and returned her to her homeland. Tabua no doubt received education in Assyrian cultural matters in Sennacherib’s palace. Other foreigners were probably given similar opportunities, and some may have even been trained as scribes.

The Bible contains clues about Israelite or Judean familiarity with Assyrian ways. Ahaz’s contacts with Tiglath-Pileser reveal that Judean messengers and even the king would travel abroad to meet with Assyrians. Ahaz sent messengers to Tiglath-Pileser (where is not clear, but presumably not Damascus) to obtain his aid against the Syro-Ephraimite coalition (2 Kings 16:7).¹⁰⁸ After Syria’s defeat, Ahaz went to Damascus to greet the Assyrian king (v. 10). According to the story, Ahaz adopted the altar design found in Damascus (vv. 10–16). Some have wondered if this altar was in fact of Assyrian design.¹⁰⁹ In any case, this shows a willingness to borrow from foreign culture and may imply a willingness to co-opt literary traditions, including law collections.

Another story, fantastic in many respects, recounts Yahweh’s sending lions among the resettled people in Samaria. This story may have a kernel of historical truth when it claims that the king of Assyria (who would be Sargon II) sent back a deported priest to teach the people Israelite religious customs (2 Kings 17:27–28). This is consistent with Assyria’s maintaining the status of deported elites and also using local leaders to rule as long as they were submissive to Assyria. It is also consistent politically with Esahaddon’s repair and return of Arabian deities back to the Arabs in connection with the installation of princess Tabua, mentioned previously. A deported priest would be an attractive candidate for the author of CC.

The story about the Rabshakeh’s confrontation of Jerusalem officials, to the extent that it is historical,¹¹⁰ gives a measure of the linguistic facility that diplomats had to have. He could speak to the Jerusalem locals in their own language, Hebrew, rather than using Aramaic, the expected diplomatic lingua franca (2 Kings 18:26–27). The Jerusalem officials, for their part, were quite comfortable using Aramaic. This may imply that some in the city were also learned in other diplomatically important languages, such as Akkadian. It has been

suggested that the Rabshakeh was “a former Aramaean or, better, Israelite exile who knew and could deal with the local scene.”¹¹¹

Merodach-baladan sent an embassy to Jerusalem (2 Kings 20:12–15), probably before Hezekiah’s revolt against Assyria. This is a sample of the contacts that could occur from time to time between Mesopotamia and Judah/Israel.

A few passages in Hosea refer to Israel’s sending diplomatic missions to Assyria. Hosea criticizes Ephraim, saying that it “is like a dove, silly and without sense, calling to Egypt, going to Assyria” (Hos 7:11) and that “like a lone wild ass they have gone to Assyria” (8:9; cf. 5:13; 12:2).¹¹²

A later piece of evidence is Deuteronomy 4:6–8: “What great nation has just prescriptions and laws (חֻקִּים וּמִשְׁפָּטִים צְדִיקִים) like all of this instruction that I am placing before you today?” Hurowitz has noted that this passage may indicate that Israel knew of cuneiform law collections.¹¹³ The authors of Deuteronomy may have been well aware of the strategy used to create CC, especially as it used Assyrian treaty in a similar way to create some of its laws (see later) and because in many respects CC can be analyzed as not just pre-Deuteronomic but proto-Deuteronomic, that is, part of the scribal tradition out of which Deuteronomy eventually emerged (see chapters 11–13).

A still later piece of evidence is from the book of Daniel. Although this work is problematic as historical evidence and its ostensible story line pertains to the Neo-Babylonian, not the Neo-Assyrian, period, it indicates that Judean foreigners were educated in Mesopotamian language and literature. The first chapter says (vv. 3–5):

And the king said to Ashpenaz, the chief of his eunuchs, to bring from the Israelites and from the royal line and from the elite young men who were wholly unblemished, good-looking, with wise sensibilities, learned, who could understand knowledge, and who had ability to serve in the palace of the king, and to teach them writing and the language of the Chaldeans (וּלְלַמְדָם סֵפֶר וְלִשׁוֹן כַּשְׁדִּיִּם). The king appointed for them a daily ration from the repast of the king and from the wine of his feasts—and to educate them for three years (וּלְגַדְלָם שָׁנִים שְׁלוֹשׁ) at the end of which they would serve before the king.

Gesche says that, while a native scribe may have gone to school from childhood to maturity, this passage is a clue as to the actual length of the scribal education of a foreigner in Babylonia.¹¹⁴ This description may not be purely fictional, and it may reflect educational practice that operated prior to the Neo-Babylonian period.

Other biblical evidence points to influence from Assyrian cultural ideas and texts. Deuteronomy used various sources in its composition, including a text similar to the Vassal Treaties of Esarhaddon (VTE).¹¹⁵ Its correlations with VTE are found primarily in the laws on loyalty to Yahweh in Deuteronomy 13:1–19 and 17:2–7 and in the curses of 28:20–44 but are also visible in the motifs of not altering the treaty/covenant document, loving the sovereign,

teaching obligations to children, and serving the sovereign alone (see the example cited in chapter 11, p. 293).¹¹⁶ These correlations point to a composition of these passages of Deuteronomy after the VTE were formulated in 672 (when Ashurbanipal succeeded to the throne) but before Assyria's influence in the west began to wane soon after 640.¹¹⁷ It is not clear if Deuteronomy used an Akkadian text or an Aramaic or even Hebrew version of its treaty source. But even if Deuteronomy used a translation, it nevertheless did to Assyrian treaty what CC did to LH. It replaced the Mesopotamian sovereign with Yahweh to formulate a text with an entirely different view of ultimate obligations and to presumably serve local ideological purposes. This supports the conclusion that CC does in fact come from the Neo-Assyrian period and depends on literature from the Neo-Assyrian cultural sphere.¹¹⁸ It would be a tremendous coincidence that CC—if derived from ancient oral traditions—ended up looking like it was a tendentious transformation of a prestigious document expressive of Mesopotamian political ideals (i.e., LH) in the very period when Deuteronomy clearly performed such an operation on another culturally and politically significant Mesopotamian text.

In addition to the evidence from Deuteronomy, several passages in First Isaiah (dated approximately to the end of the eighth century or shortly thereafter) reflect motifs and language in Neo-Assyrian royal inscriptions, as observed by Peter Machinist.¹¹⁹ He concludes that Isaiah and/or his disciples learned these motifs ultimately from Assyrian sources.¹²⁰ It is unclear to him, however, whether these motifs were learned in Assyria or in Judah, whether they were mediated orally or in texts, and, if through texts, whether these were in Akkadian or Aramaic.¹²¹ He favors a thesis of Aramaic textual influence in Judah. Although he does not absolutely exclude a local Akkadian hypothesis, he finds certain problems with it:

A priori, we should not exclude the possibility of Akkadian. In the latter eighth and seventh centuries B.C., when Isaiah and his circle were active, a kind of *oikumene* developed in the Assyrian empire, encouraged by the government's policy of rearranging populations and goods. One manifestation of this was a mixing of languages, including bilingualism in Akkadian and a native tongue. One may suppose such bilingualism especially for the local ruling elites, who would have deemed it useful in their dealings with the Assyrian authority, whether at home or on embassies to the Assyrian heartland. Even so, the evidence for it is stronger in the northern part of the Levant, i.e., in Syria, which was closer to and in contact over a longer time with Assyrian, than in Palestine in the south. In fact, from Judah proper nothing explicitly testifies to a real knowledge of Akkadian. There is another problem here as well. Granted that various local officials, Judaeans among them, had a knowledge of Akkadian for administrative purposes, how many would have had an ability in a literary dialect of Standard Babylonian, in which the official inscriptions

were composed, is unclear. Probably some locals understood bits of the textual and not simply the iconographic sections of the royal stelae and reliefs displayed for them, after all, in their own territories. But the low level of knowledge at hand may be inferred from the little evidence we have for any independent regional, i.e., non-Mesopotamian, composition of Akkadian texts in the Neo-Assyrian period, as against their prominence in the preceding centuries.¹²²

Machinist's findings about influence on Isaiah from the language of Neo-Assyrian royal inscriptions give support to the thesis that CC was influenced by Mesopotamian models in the Neo-Assyrian period, even though the Isaiah evidence is on a much smaller scale and the influence may have been mediated in some way. Yet Machinist's estimate that Judean scribes knew only administrative Akkadian, and not the Standard Babylonian of the royal inscriptions, might imply that these scribes may not have known LH and other similar texts from which to create CC.

Morrow has recently extended such skepticism in a review of Otto's study of Deuteronomy that argued for Deuteronomy's dependence on MAL A in seventh-century Judah. Morrow asks with disbelief "how could cuneiform literacy be acquired by a small Iron Age state on the periphery of the NA empire?"¹²³ But he allows room for some knowledge of Akkadian, as did Machinist:

...local officials in Judah could have had a rudimentary knowledge of Akkadian sufficient to understand the textual sections of royal stelae and reliefs that Assyrian authorities may have placed in their territory. I do not wish to contest such a conjecture, but I will underscore the *ad hoc* nature of such knowledge. We need not imagine a degree of cuneiform literacy in 8th–7th century Judah much different from the rudimentary knowledge acquired by many modern students. One can learn to read a particular selection of Akkadian texts and signs without acquiring the competence to fluently read other texts, let alone communicate in Akkadian.¹²⁴

In a more recent essay, Morrow has resisted my dating of CC for the reasons set out in his review of Otto. He says that Van Seters's claim that LH influenced CC in the exile makes better historical sense than a claim for the Neo-Assyrian period. At the same time, Morrow believes, against Van Seters, that altar law of Exod 20:24–26 and other parts of CC predate Deuteronomy. The present study creates a problem for this sort of solution because it demonstrates that the whole structure and much of the content of CC, including the altar law, depend on LH. This means that the influence of Hammurabi's text on CC generally must be pre-Deuteronomic and therefore pre-exilic.¹²⁵

Despite these hesitations, that Machinist and Morrow allow for basic abilities in Akkadian indicates that there was a means of training some local scribes in Akkadian. This opens the door for supposing that a select few may have had

a more advanced level of education. It is not necessary for this education to be available within Israel or Judah. Some westerners, given the broad intercultural interactions described above, could have received this in the Mesopotamian homeland.

Another set of data that needs to be reconsidered in the context of Neo-Assyrian influences is the similarity between Genesis 1–11, particularly the material identified as Yahwistic (J) in those chapters, and Mesopotamian texts and cultural motifs. The J creation and garden story in Genesis 2–3 shares a number of motifs with the Gilgamesh Epic, including the creation of humans from clay, a plant of life, a treacherous snake, becoming civilized and wise in association with a motif of sexual activity, as well as a general preoccupation with mortality.¹²⁶ In addition, the first chapters of Genesis emphasize a Mesopotamian homeland for human civilization. Genesis 6–9 also contain the J as well as P flood stories, which have long been recognized as indebted in some way to Mesopotamian models as manifested in Atrahasis and especially Gilgamesh. Further, the Tower of Babel story in Genesis 11:1–9 is a polemic involving the building of a ziggurat in Babylon set in primordial times.¹²⁷ Normally, these stories and motifs are thought to derive, just like previous explanations of CC's casuistic laws, from oral or even scribal tradition reaching back into the second millennium.¹²⁸ But now, in view of the tendency to date material ascribed to J to a later date than in the traditional documentary hypothesis, and in view of the Neo-Assyrian matrix for CC and certain materials in Deuteronomy, one can wonder whether the J materials also grow out of this context. This material potentially, then, supports CC's use of Mesopotamian sources in this period. (See further chapters 12 and 13 for more perspective on biblical narratives that reflect Mesopotamian motifs and the date of those narratives.)

To conclude this discussion, the various preceding points of evidence indicate that a hypothesis that CC was created in the Neo-Assyrian period under the influence of Akkadian texts is reasonable. Scribes in Israel or Judah had at least fundamental abilities in Akkadian, and it is not impossible that some others may have had the capacity to read texts such as LH and associated legal texts. The evidence of CC, especially after we complete the analysis of part II, is in fact substantial enough to force reassessment of the nature of Israelite and Judean scribal training and abilities in Akkadian in this period. To put the cart of the argument before the horse, CC becomes significant proof that some Israelite and/or Judean scribes had significant training in the traditional tongue and literature of their overlords.¹²⁹

The Attestation of the Laws of Hammurabi in the Neo-Assyrian Period

While the foregoing has described the broad linguistic, cultural, and literary context for the use of LH during the Neo-Assyrian period, suggesting that

some Israelite or Judean scribes may have received substantial scribal training in Akkadian and possibly in Assyria, it has not talked about the attestation of LH in that period. There is no evidence that LH circulated in Israel or Judah at this period, but the text was nonetheless well known in Assyria and actively copied as a scribal text there. It is possible that CC was drafted or at least conceived of there, perhaps in connection with scribal training acquired there.

Copies of LH are attested from the Old Babylonian (OB) period through the Late Babylonian period. The appendix to this chapter provides a description of the OB, Middle Babylonian, Middle Assyrian, and Neo-/Late Babylonian copies of LH. Here, however, we examine the text's attestation in the Neo-Assyrian (NA) period. It turns out that CC is richly attested at this time. It is second to the OB period in the number of LH texts discovered so far.¹³⁰ At least nineteen tablets, and possibly three more, dating to the NA period and containing sections of LH, have been discovered. The NA manuscripts that clearly belong to LH include: **D** (K 10778); **J+x** (K 4223 + K 9054 + K 11795 [= **x**] + K 13979 (+) Sm 1008a); **L** (K 10483); **N** (K 8905); **P** (AO 7757 + DT 81 + Rm 2.388 (+) Rm 277); **T** (K 10485); **b** (Sm 1642); **c** (Sm 26); **e** (K 11571 + 91-5-9,221); **f** (K 6516); **i** (K 1100 + K 10884); **j** (K 15046); **k** (K 17335); **l** (K 19559); **m** (K 19879); **n** (Sm 1640); **o** (Rm 369); **α** (K 19375); **ζ** (K 18470).¹³¹

Though these NA tablets are fragmentary, enough exists to estimate the original scope of many of them. Each tablet whose extent can be judged appears to be part of a series containing the entirety of LH, including the prologue and epilogue. The existing texts, which represent only a portion of the actual number of texts available in antiquity, belong to at least three, maybe five (possibly more), distinct copies of the series.¹³² While on a microscopic level there are variants, mostly in spelling and sometimes in words and phrases,¹³³ and while a history that sorts out families of texts can be proposed on the basis of variants and other aspects of text form,¹³⁴ the overall sequence and content of the laws in these tablets (and in tablets from other periods) are the same as found in the OB Louvre Stela.¹³⁵ This does not mean, however, that the tablets derive (through mediated copies) from the stela. Laessøe posits an OB source text "X," from which both the Stela and ultimately the NA tablets separately derive.¹³⁶ In any case, the NA tablets are a witness to the canonical status of LH in the Mesopotamian literary tradition of their time and show that it was part of the intellectual life of scribes.¹³⁷ Tablets similar to the known NA tablets, as well as tablets produced earlier, could have been available to the writer of CC.

The majority of the NA texts appear to belong to various versions of a five-tablet series that contained the whole of LH (see **c**, **D**, **J+x**, **L**, **N**, **T**, **l** and especially **P** and **e** [note the colophon of **e**]). The NA texts, to be described later, are listed according to this five-tablet series. Some texts are too fragmentary to securely fit into this classification (texts **b**, **j**, **k**, **m**, **n**, **α**, **ζ**, and perhaps **o**); they are nonetheless listed in the block of text to which they theoretically pertain. Two texts (**f** and **i**) have a range that is different and may belong to a series with

a different number of tablets—its text, at least, was divided differently. These divergent tablets are listed in the block closest to their content.¹³⁸

1. Tablets with First Part of Text (Prologue through c. Law 50; c. Stela Cols. I–XIV):

D: text attested: obv I (?) part of the prologue (= Stela II 12–19), obv II (?) prologue continued (= Stela III 34–50); original extent: presumably a 10-column tablet (5 per side), containing the prologue to c. law 48 (possibly somewhat further).

L: text attested: rev IV law 41 (= Stela XII 54–62), rev V laws 48–49 (= Stela XIV 7–19); original extent: a 10-column tablet, containing the prologue through c. law 49.

J (to which **x** is now joined): text attested: rev I laws 23–27 (= Stela IX 40–X 15), rev II laws 27, 30–32 (= Stela X 16–24, 66–XI 27; LH 28–29 would be in the space between Sm 1008a rev. right col. and K 4223 + rev II), rev III laws 32–33 (= Stela XI 37–45); original extent: presumably a 10-column tablet, containing much or all of the prologue through c. law 54.

N: text attested: rev IV laws 44–46 (= Stela XIII 32–49); rev V law 51 (= Stela XIV 55–66); original extent: a 10-column tablet, containing the prologue through c. law 51.

k: an unpublished fragment that contains part of the prologue (= Stela III 54–60); the fragment is superficial, giving no indication of the thickness of the tablet; extent cannot be judged, though the ductus and surface contour of the fragment are consistent with multicolumn tablets.

2. Tablets with Second Part of Text (c. Laws 51–125; c. Stela Cols. XV–XXVII):

P: text attested: obv I laws 53 (beginning of tablet)-54, 57–59 (= Stela XV 7–22, 60–XVI 5), obv II laws 61–62, 66–67 (= Stela XVI 31–44 and broken portion of Stela), obv III laws 67+a, 68+b (Stela broken), obv IV law 69+c (Stela broken), obv V the text is too broken, rev I law 75+e (Stela broken), rev II laws 103–104 (= Stela XXIV 13–26), rev III laws 107–108, 111–112 (= Stela XXV 9–16, 49–61), rev IV laws 113–115, 117–118 (XXVI 6–33, 65–72), rev V laws 120–121 (XXVII 13–26); original extent: clearly a 10-column tablet, containing LH 53 through c. 124.

I: text attested: obv I' laws 58–59 (= Stela XVI 1–5), obv II' law 66; original extent: presumably a 10-column tablet (the column juxtaposition of laws 58 and 66 is similar to **P**), containing a range similar to **P** (LH 53-c. 124).

T: text attested: rev I' law 76+e, rev II' law 104–105 (= Stela XXIV 38–49), rev III' law 112 (= Stela XXV 59–66); original extent: presumably a 10-column tablet (the column juxtaposition of laws 104 and 112 is similar to **P**), containing a range similar to **P** (LH 53-c. 124).¹³⁹

j: text attested: law 68+c?; extent cannot be judged.

3. Tablet with Perhaps Third Part of Text (? c. Laws 126–177; c. Stela Cols. XXVIII–XXXVII; *for the Division of a Series around LH 126, see OB Tablet t, in Appendix 2*):

m: a small unpublished fragment that contains part of LH 166 (= Stela XXXIV 62–69); the fragment is superficial, thus giving no indication of the thickness of the tablet or its extent, though the ductus and tablet surface are consistent with multicolumn tablets.

ζ; unpublished fragment, which Lambert says “contains parts of Hammurabi’s laws nos. 170, 172.”¹⁴⁰

4. Tablets with the Fourth Part of the Text (c. Laws 178–270; c. Stela Cols. XXXVIII–XLV):

c: text attested: rev IV laws 256–257 (= Stela XLIV 94–XLV 9); rev V laws 266–267 (= Stela XLV 75–83); original extent: a 10-column tablet, containing c. LH 178 to 267.

b: text attested: rev III? laws 249–250 (= Stela XLIV 38–45); original extent: hard to judge but is comparable to text **c**.

f: text attested: toward the beginning of the epilogue (= Stela XLVII 69–85); original extent: hard to judge; if this fragment is from rev V,¹⁴¹ then a previous 9 columns could have contained the beginning of the epilogue and laws as far back as LH 178. Another tablet would be necessary for the rest of the epilogue. If this is correct, text **f** overlaps the division attested between texts **c** and **e**.

5. Tablets with the Fifth Part of the Text (between c. 271 through the Epilogue; c. Stela Cols. XLVI–LI):

e: text attested: obv I laws 277–280 (= Stela XLVI 54–73), obv II first part of the epilogue (= Stela XLVII 16–32), obv III epilogue continued (= Stela XLVII 79–94), obv IV only the beginnings of some signs, rev III only the beginnings of some signs, rev IV epilogue continued (= Stela LI 11–35), rev V end of the epilogue+colophon (= Stela LI 71–91); original extent: a 10-column tablet, starting c. LH 273/274 to end of the epilogue. The colophon indicates that this is the fifth tablet in the series entitled *dīnāni* [*ša* LUGAL ¹]*Hammurabi* (cf. LB text **C**).

o: text attested: obv (col. ?) perhaps part of early epilogue (= Stela XLVII 73–75; this not legible or even discernible on the now very fragile fragment), rev right some of the middle of the epilogue (= Stela XLIX 25–38), rev-left more of the epilogue (= Stela L 9–19); original extent possibly a 10-column tablet with about 75 lines per column; the fragment appears to preserve the lower part of first two columns of the reverse; rev V would have finished the epilogue with room for a colophon; the obverse would have begun around XLIV 75 (LH

253); if the fragment comes from somewhat above the lower reverse corner, then the tablet may have had 8 columns with, on average, more than 75 lines per column; in this case, obv I would have begun around LH 261.

i: text attested: obv I near beginning of the epilogue (= Stela XLVII 94–XLVIII 16), obv II continuation of the epilogue (= Stela XLVIII 17–44), rev I middle of the epilogue (= Stela L 12–36); original extent: a 4-column text, containing only the epilogue.¹⁴² This tablet is anomalous not only in its scope but also in its number of columns, in its having longer lines than other NA tablets (containing at times up to four stela lines per tablet line), and in its modernized orthography (noted by von Soden). Compare OB text **A**, which contains only the prologue, in 4 columns, with lines containing up to 4 stela lines per line. **A** is still part of a series because it has a catch line that links it to the first law. This suggests that NA text **i** could still be part of a series, even though it contains only the epilogue.

n: an unpublished fragment that contains part of the epilogue (= Stela XLVIII 70–76); the fragment is superficial, giving no indication of the thickness of the tablet; extent cannot be judged, though the ductus and tablet surface are consistent with multicolumn tablets.

α: unpublished fragment that contains part of epilogue (= Stela XLVIII 79–87).¹⁴³

Other Law Collections Used

Although the whole of CC is primarily based on LH, a handful of casuistic laws have correlations with laws in other known law collections but not found in LH. The major examples include the laws on an ox goring an ox (21:35 // LE 53), burglarizing a house with a distinction between day and night (22:1–2a // LE 13), burning another person's field (22:5 // HtL 105–106), seducing a virgin (22:15–16 // MAL A 55–56), and possibly talion in miscarriage (22:23–25 // MAL A 50, 52). Part II identifies some other minor correlations with other non-Hammurabi laws.

While one can confidently conclude that CC used LH, one cannot claim with certainty that CC used any of these other known collections because of problems in their attestation. It is clear that CC could not have used the Hittite Laws. These were composed and copied in a geographically remote area (Hittite Anatolia), not transmitted as far as the record attests after the fall of the Hittite kingdom in about 1180 BCE, and in a language that would have not been accessible to the Israelite or Judean writer, even if copies were available.¹⁴⁴ The question of accessibility also surrounds LE. This is only known from copies of the text from about 1800 BCE,¹⁴⁵ though its Akkadian would have been understood by one who could read LH.

It is possible, however, that CC used MAL A. A fragment of MAL A, with some of the initial laws, was found in Nineveh in a Neo-Assyrian archive, though it has been identified as Middle Assyrian in origin.¹⁴⁶ Furthermore, the

main tablet of MAL A, though Middle Assyrian in date, was discovered in a Neo-Assyrian context in a gateway complex at Ashur.¹⁴⁷

Support for the existence and use of MAL A in the Neo-Assyrian period comes from the book of Deuteronomy. Deuteronomy has a number of similarities with MAL A. Otto has, in fact, argued that such correlations, in content and structure, demonstrate that Deuteronomy's laws depend upon MAL A.¹⁴⁸ The correlations between the two texts in content include laws about:

- A woman grabbing or injuring a man's testicle(s) in a fight, Deuteronomy 25:11–12 and MAL A 8.¹⁴⁹
- Forced intercourse with an unbetrothed maiden where the violator must marry the woman and make a payment to her father, Deuteronomy 22:28–29 and MAL A 55 (cf. Exod 22:15–16 and the discussion later).
- Levirate marriage, Deuteronomy 25:5–10 and MAL A 30, 43 (cf. MAL A 25–28, 31, 46).
- Rape occurring in a town, Deuteronomy 22:23–22 and MAL A 12 and 14 (see MAL A 55 for concern about the location of forced intercourse; cf. HtL 197).
- Adultery, Deuteronomy 22:22 and MAL A 13–16, 22–24.
- Flogging with forty lashes, Deuteronomy 25:1–3 and MAL A 18 (for flogging with a different number of lashes, see MAL A 7, 19, 21).

In addition, several phrases in the laws about sexual behavior in Deuteronomy 22 are similar to laws in MAL A:¹⁵⁰

- וְלֹנְעַר [ה] לֹא תַעֲשֶׂה דָבָר אִין לְנֹעֶר [ה] חַטָּא מוֹת; “do not do a thing to the woman; the woman is not liable to the death penalty” (Deut 22:26) and *mimma lā eppušū* “they shall not do anything (to a guilty party)” (MAL A 23) and *ša sinnilte hītu laššu* “there is no punishment for the woman” (MAL A 12).
- וְהַחֲזִיק בָּהּ הָאִישׁ “and the man seizes her” in the rape law of Deuteronomy 22:25 and *a'īlu iṣṣabassi* “and the man seized her” (MAL A 12).¹⁵¹
- וְשָׂם לָהּ עֲלִילַת דְּבָרִים “he places a charge against her” (Deut 22:14) and *ina eli tappā'īšu abata iškun* “he placed a word against his companion” (MAL A 19).

These various correspondences become more compelling in view of a particular compositional feature of Deuteronomy. The book appears to have used a source consisting of casuistic laws dealing mainly with the topic of family and sexual relations for several of the laws in chapters 21–25.¹⁵² Part of this source was identified by Otto. He noted that various laws from Deuteronomy 21, 22, and 24 formed a coherent assemblage dealing with these topics. His collections of laws are listed in column I of table 4.1.¹⁵³ Rofé observed a slightly larger group of family and related laws, listed in column II of the table.¹⁵⁴ My own study independently identified a still slightly larger but overlapping group of laws identified blindly on the preponderance of casuistic formulation in the third person rather than the topical content of the laws (column III).

Table 4.1: Third-person casuistic law in Deut 21–25 on family, women, and sexual matters

Topic	I. Otto	II. Rofé	III. Wright
unknown homicide			21:1–9 (possibly)
loved/unloved wives and inheritance of sons	21:15–17	21:15–17	21:15–17
rebellious son	21:18–21 ^{aa}	21:18–21	21:18–21
impaling on stake			21:22–23
new wife accused of not being a virgin	22:13–21a	22:13–21	22:13–21
adultery	22:22a	22:22	22: 22
rape in town or open country	22:23–24a, 25, 27	22:23–27	22:23–27
rape of a virgin	22:28–29	22:28–29	2:28–29
divorce and retaking first wife	24:1–4 ^{aa}	24:1–4	24:1–4
newlywed exempt from military service			24:5
kidnapping			24:7
flogging			25:1–3
levirate marriage	25:5–10	25:5–10	25:5–10
wife's grabbing genitals of husband's opponent		25:11–12	25:11–12

It cannot be a coincidence that when the third-person casuistic material of column III in table 4.1 is extracted from Deuteronomy 21–25 (and if one is allowed to omit the apparently extraneous passages on leprosy in 24:8–9 and Amalek in 25:17–19), the remaining apodictic laws display a rather coherent development and grouping of themes that complement the thematic development and groupings of chapters 12 through 20. This is set out in table 4.2.¹⁵⁵ This table is mainly concerned with displaying the data for chapters 21 through 25. There are some short laws that appear to be contextually extraneous in chapters 12 through 20. These are marked in italicized font.¹⁵⁶

The third-person casuistic material extracted from Deuteronomy 21–25 also happens to cohere thematically. Almost all of these laws deal with family, marriage, or sexual matters in some way (see table 4.1). It is therefore similar to the content of MAL A. In fact, all of the laws in Deuteronomy that correlate with MAL A (see previously) happen to be part of this extracted third-person corpus.

Although various hypotheses might be developed on the basis of these data, it is reasonable, in view of the larger context of CC's use of Akkadian sources and the date and formulation of CC and Deuteronomy, to think that a small corpus of casuistic law about family, marriage, sexual behavior, and miscellaneous matters was created in Israel-Judah on the basis of MAL A somewhere in the time period from the composition of CC to the formulation of the basic core of Deuteronomy, to be eventually incorporated into Deuteronomy. To be more specific, and hence also more speculative, this corpus may have been a

Table 4.2: Thematic outline of Deuteronomy with the third-person casuistic laws of chapters 20–25 excluded

centralization, cult, and loyalty	cultic centralization (12:1–13:1); loyalty to Yahweh (13:1–19); holiness and skin gashing (14:1–2); dietary laws and holiness (14:3–21)
calendar and cycles	tithes (14:22–29); seventh year (15:1–11); debt servitude (15:12–18); firstborn (15:23); festivals (16:1–17)
personnel and leadership	judges (16:18–20); <i>cultic posts</i> (16 21); <i>blemished animal</i> (17 1); appeals court (17:2–13); king (17:14–20); priests (18:1–8); divining and prophets (18:9–22)
killing	homicide and asylum (19:1–13); <i>boundary markers</i> (19 14); witnesses and talion (19:15–21); war (20:1–20); taking captive woman in war (21:10–14)
ethics (including mixing)	returning stray animal (22:1–4); cross-dressing (22:5); mother bird and young (22:6–7); parapet on new house (22:8); mixing of kinds of seeds, animals, cloth, tassels (22:9–12); incest with father's wife (23:1)
communal/cultic access	various people not to enter congregation (23:2–9); exclusion of impurity in war camp (23:10–15); taking in fugitive slave (23:16–17); cult prostitutes, bringing their fees to temple (23:18–19)
ethical-economic law	interest prohibition (23:20–21); paying vows (23:22–24); eating from neighbor's field (23:25–26); hand mill as pledge (24:6); garment pledges (24:10–13); paying wages same day (24:14–15); individual responsibility (24:16); care for immigrant, orphan, widow (24:17–18); leaving crops for poor (24:19–22); not muzzling ox in field (25:4); honest measures (25:13–16)

by-product of the creation of CC. Preoccupation with MAL A for a few laws in CC may have led CC's formulator(s) to draft a separate text with laws drawn from MAL A. This text need not have been a formal composition and may have been a loose collection of materials from MAL A, perhaps written on potsherds.¹⁵⁷ The laws of this assemblage may have revised the content of the laws taken from MAL A, as the laws of CC revise their source materials. (How CC revised its sources becomes clear in part II of this study.) Other material may have been included in this casuistic family law collection. Revisions and additions to what was taken from MAL A would explain some of the differences between the third-person casuistic corpus extracted from Deuteronomy 21–25 over against MAL A. The supposed corpus of family and related law based on MAL A was eventually used as a source by Deuteronomy and folded into the preexisting foundation of apodictic law in Deuteronomy 21–25, as identified in table 4.2. The laws were inserted at thematically appropriate points in the apodictic laws.¹⁵⁸ This interspersing, though logical from a redactional point of view, created the confusing sequence of laws in Deuteronomy 21–25. As

the laws based on MAL A were brought into Deuteronomy, Deuteronomy's redactors probably revised their wording, just as they had revised the wording of other sources used in Deuteronomy, including CC and Assyrian treaty. This introduced still further differences into the third-person casuistic laws over against their counterparts in MAL A.

This scenario provides a neat solution to why Exodus 22:15–16 and Deuteronomy 22:28–29 seem to both draw on MAL A 55–56, yet the laws appear in different Pentateuchal collections. CC used only the *seduction* law of MAL A 56 because of its contextual relationship to the slave-wife law of 21:7–11 (explained in chapter 5). The rape law of MAL A 55 was not included in CC because it was not relevant to the context. CC's author(s), however, did not leave the rape law unformulated. According to the hypothesis presented here, it was inscribed in the side-corpus of family law based on MAL A. From there, it found its way into Deuteronomy a few decades later. Thus Rofé was essentially correct when he hypothesized that both Exodus 22:15–16 and Deuteronomy 22:28–29 come from the same source.¹⁵⁹ The scenario proposed here defines what that source was and its relationship to the two collections.

This argument has a certain economy because it requires positing only one use of MAL A for influences in CC and Deuteronomy. Otherwise, one has to posit a somewhat more complicated process in which different scribes used MAL A at different times in the span of the late eighth through the seventh centuries. This argument also helps to make sense of why there are no significant influences from LH in Deuteronomy. Indeed, it is surprising that Deuteronomy would use a lesser law collection like MAL A and ignore the many laws from LH, including family law, not taken up in CC. If Deuteronomy itself is not directly using cuneiform law, but is dependent upon the rendering of cuneiform law in CC and the partner text containing family law based on MAL A, the imbalance in Deuteronomy makes some sense.¹⁶⁰

Morrow has critiqued Otto's thesis that Deuteronomy is somehow dependent on MAL A, arguing that "the MAL cannot have been considered terribly important. . . because there are no extant copies by NA scribes" and adding that "if the MAL were not being copied, they were not being transmitted, least of all to the peripheries of the NA empire," that is, to Judah.¹⁶¹ The argument of this study is not that these other texts were known in Judah (or Israel); knowledge of the laws may have come through scribal training in Assyria. Nevertheless, one might use Morrow's argument to say that even in Assyria, the text was not well known. The evidence just presented alleviates some of the skepticism that Morrow raises.

CC's similarities with laws from LE and HtL may be explained by the use of other minor sources that contained similar laws. That minor collections existed at this time is verified not only by the Neo-Assyrian attestation of the MAL A but also by the Neo-Babylonian Laws (the NBL), presumably from Sippar and dating to the early seventh century BCE. Though this tablet is from southern Mesopotamia, it is within the chronological window proposed for CC. It

appears to have drawn from other sources (note the phrase after NBL 7: “the law here is not complete and (therefore) not written”).¹⁶² This evidence indicates that there was a larger tradition of law collecting and transmission in this period that archaeology has not fully documented.¹⁶³

CC's correlations with laws in LE and HtL, which are attested only in the second millennium BCE, have been used to argue against CC's use of LH in the Neo-Assyrian period and in favor of a theory of oral transmission of CC's laws.¹⁶⁴ This argument runs the risk of self-contradiction when it freely assumes the existence of laws similar to various cuneiform collections in the oral and perhaps even to some extent the literary traditions of the west in the second millennium, when there is no specific empirical evidence for such. If one supposes that laws circulated orally in Syria-Canaan in the Middle and Late Bronze Age and were transmitted into the Iron Age, one should be able to assume the existence of miscellaneous legal traditions and sources in the Neo-Assyrian period in Mesopotamia, the homeland of these laws. The bottom line is that the source hypothesis offered by this study needs to speculate much less about sources or traditions than an oral theory. The latter must assume that *all* of what is found in CC that matches cuneiform law was circulating orally and then coincidentally came together in the same format as LH. The theory of this study, especially when MAL A is granted as a source available in the Neo-Assyrian period, needs to hypothesize about sources for only the laws about an ox goring an ox (21:35; LE 53), burning a field (22:5; HtL 105–106), and supplementary influences in the burglary law beyond LH (22:1–2a; LE 13).¹⁶⁵

Because we cannot say that CC used LE and HtL, this study will only speak of CC drawing on *sources that had laws similar* to those in the known collections.¹⁶⁶ Similar caution will be employed in discussing laws that CC has in common with MAL A, though, as we have seen, dependence on MAL A itself is possible.

Specific Possibilities for Dating

The foregoing discussion left open the specific dating of CC and its specific regional origin. It may be Israelite or Judean. Statistically, there is more chance—a wider chronological span—for a Judean matrix. Too, if Neo-Assyrian culture influenced the Judean text of First Isaiah and Judean Deuteronomy (the latter presumably southern, according to the seventh-century context outlined previously), then it makes sense to view CC as southern. Yet Morrow's skepticism about Judean cuneiform literacy, with his being more willing to acknowledge literacy in the Israelite kingdom, may be used to point to a northern origin. Of course, the lack of evidence for extensive Akkadian training in Judah may not be as significant as imagined in view of the political and cultural influence of Assyria on Judah generally and the possibility of scribal training in Assyria itself.

Considering CC as a document in dialogue with its Mesopotamian model and implicitly with Assyrian power, I see four possibilities for CC's composition, the third being the most viable, thus pointing to a date close to 700 BCE:

(1) The author may have been a Judean in the time of Ahaz (c. 742–727). This king was politically pro-Assyrian, received Assyrian help against his enemies, and borrowed foreign religious customs (noted previously). CC could have been written as a symbolic statement in opposition to this policy.

(2) CC may have been composed by an Israelite not long before the fall of Samaria (722/21) or even shortly after the deportation, suggested by the evidence of elites from Samaria living near the Assyrian capital and Sargon's return of a supervising priest to Samaria (see 2 Kings 17, discussed previously).

(3) The author, a Judean or transplanted Israelite, could have composed the work during the time of Hezekiah (c. 727–698). This may have occurred in the anti-Assyrian prelude to Sennacherib's campaign in 701. Anti-Assyrian sentiment set in the context of Assyrian political control might provide the perfect environment for adopting the suzerain's "constitution" yet transforming it so that it expressed the vassal's nationalistic perspective. Chapter 12 presents evidence that points to composition specifically at the end of or just after the reign of Sargon II (721–705). This would point to the later part of Hezekiah's reign.¹⁶⁷

(4) It may be possible to propose a date into the early seventh century during the apparently pro-Assyrian reign of Manasseh (c. 697–642). This would be closer to the date in the mid-seventh century of the establishment of Ashurbanipal's library at Nineveh, where a number of the Neo-Assyrian text copies were found. The author in this case would be Judean.¹⁶⁸ I would hesitate dating the text late in Manasseh's reign, however, because of the need to leave some breathing space—a couple of generations, perhaps—between the composition of CC and the dependent laws of Deuteronomy (later seventh century), according to evidence and considerations presented in chapter 12. In any case, we need not suppose that the composition of CC depends on the establishment of Ashurbanipal's library in the mid-seventh century. This library resulted from the recopying, as well as collection, of extant copies of texts. Thus, preexisting smaller temple and/or scribal libraries with copies of LH and a few other texts may have provided the starting point for CC.¹⁶⁹

The Unity of the Covenant Code

The hypothesis that the whole of CC depends on LH carries the implication that CC was produced by one author or a group of similarly minded collaborators in a relatively short period.¹⁷⁰ As noted in chapter 1, most scholarship argues or accepts the view that the work contains different compositional layers or additions, which have accrued over a rather long period of time and which are identifiable by stylistic or logical criteria.¹⁷¹ Yet the similar ordering between CC and LH logically requires that all the laws in that sequence derive from the

same use of LH. It is unlikely that several editors at different stages of composition would have inserted new material following the order of LH. In addition, it is also likely that the other laws of CC that correspond to LH, though outside the common sequence, were formulated at the same time. Part II shows how well this nonsequential material has been integrated into the material from the sequential outline provided by LH; it is not compositionally secondary. It is further reasonable to assume that the few laws in CC that have counterparts in other cuneiform collections were also composed at the same time that LH was used as a primary source; use of these other materials involves the same techniques of use of sources and textual revision found for the material drawn from LH.

Part II looks at the issue of redactional development in exploring the compositional logic behind the transformations of CC. It shows that the stylistic inconsistencies and apparent contradictions in the text are actually the result of combining laws and motifs from different places within LH or from different sources and the creative revision of those materials. In many cases, when one realizes that CC has been composed using sources, inconsistencies in CC that previously looked like evidence for redactional stratification become evidence for the dependence of CC on those sources.¹⁷² Chapter 13 reprises the general evidence for the unity of CC.

Conclusion

To this point, this study has looked at the broad picture of evidence to get a general sense of the relationship of CC to its cuneiform sources. It has determined that there is substantial and sufficient evidence that demonstrates that CC is directly dependent on LH and miscellaneous cuneiform sources and that this dependence took place in the Neo-Assyrian period sometime between 740 and 640 BCE and perhaps close to 700. This hypothesis is the most compelling explanation for the extensive similarities between CC and LH and other cuneiform sources now visible. Other explanations, as reviewed and critiqued here, have operated on a lesser body of data and, therefore, have not needed to be very concrete. But now the most widely accepted conjecture—that similarities are due to oral tradition, perhaps augmented by the use of incidental short texts with one or a few laws—is incapable of making sense of the pervasive similarities between CC and LH. Other theories, such as coincidence, oral transmission, or mediation through an unknown Northwest Semitic law collection, are similarly unable to explain the textual similarities.

Unfortunately, we do not have direct evidence—such as a tablet with Hammurabi's or other cuneiform laws from Israel or Judah dating to the Neo-Assyrian period, or an Akkadian scribe who is definitively identifiable as Israelite or Judean—that Israelite or Judean scribes knew LH and other Akkadian law texts in this period. Perhaps if we did, the question of CC's

dependence on Akkadian sources in the Neo-Assyrian period would have been decided already. Nevertheless, there is considerable indirect evidence that some Israelite and Judean scribes must have been literate in Akkadian at this time. Rather than rejecting the possibility that CC's author(s) could have known Akkadian, it seems that the similarities between CC and LH become evidence in this context that, indeed, some Israelite or Judean scribes had a fairly deep knowledge of Akkadian. We do not need to posit a large number of such scribes with such abilities. It takes only one, though if one scribe received such an education, perhaps a few others were similarly trained. Furthermore, this training need not have taken place in Israel or Judah; it could have been provided in the Assyrian homeland. The idea of creating CC could have been born there.

These conclusions about the sources and date of CC set the stage for part II of this study, which examines the manner in which CC transformed its sources to create its new legal text. This provides further evidence for CC's dependence on cuneiform sources. This examination shows that CC's engagement with its sources was not casual but intimate. This precludes a theory that CC was influenced by way of an Assyrian informant who conveyed the details of Hammurabi's and other texts to an Israelite or Judean writer, in summary form or by the oral performance or recitation of the texts in translation. The writer(s) of CC knew the Akkadian sources and considered and responded to the details of their wording. This dependence on Akkadian sources, of course, raises the question about the nature and purpose of CC.

Appendix: Old Babylonian, Middle Babylonian, Middle Assyrian, and Neo-/Late Babylonian Copies of LH

This appendix summarizes the textual attestation of tablets of LH in periods other than the Neo-Assyrian. The Latin sigla are from the lists in Borger, Roth, and Levinson; the Greek are mine.¹⁷³ Less detail is included about these texts because they are less central to the thesis of this study. However, these data put the Neo-Assyrian textual evidence in the larger historical context of the use and attestation of the text.

From the OB period itself (1950–1530 BCE) come the main Louvre Stela¹⁷⁴ and fragments of three or more similar monuments that originally had the complete text: **d, g, K, Q, R,**¹⁷⁵ **h, M, U.** In addition, the OB period attests the following clay tablets: **A** (original extent: just the prologue, though the tablet is connected to the laws as part of a series by the catchline *šumma LÚ awīlam ubbirma* “If a man accuses [another] man,” referring to LH 1; this text has some small but significant variants to the Stela);¹⁷⁶ **r** (original extent: LH 1 to c. 68+b; the colophon identifies the content as the *šimdat Ḥammurabi* “law(s) of Hammurabi,” which may indicate that the series to which this tablet belongs did not contain the prologue and the epilogue,¹⁷⁷ but this is not absolutely clear because the similar title *dīnāni ša Ḥammurabi* “laws of Hammurabi” is used of

the series that includes the prologue [LB text C, later]); **S** (original extent: from c. LH 68+b to 162; portions of all 12 columns of this tablet are preserved); **t** (original extent: it ends with LH 126 and begins before 106, though how much before is not clear; the colophon identifies this as a second tablet in a series; it also includes a catchline to LH 127, which begins the next tablet in the series);¹⁷⁸ **Y** (original extent, if a 10-column tablet, 5 cols. each side: somewhere between the ranges of LH 119–175 or 132–182); **p** (original extent: LH 194 or before to about 275 or after). The following OB texts appear to be short extracts: **O** (LH 45–47); **X** (LH 153–158); **q** (LH 273–277). Fragments **u**, **w**, **y** are unpublished, and their extent cannot be judged.¹⁷⁹

After the OB period, only clay tablets are found. For the MB period, the following texts are attested: **V** (possibly OB; original extent: LH 145–179; law 147 is omitted; this 10-column tablet is one of the most intact; the colophon identifies it as a fourth tablet in a series, with series name *inu Anum šīrum*, the first line of the prologue);¹⁸⁰ **a** (original extent: c. LH 170–241). Short extracts: **I** (only LH 7);¹⁸¹ N5489 (perhaps part of LH 1).¹⁸²

The following Middle Assyrian (1500–1000 BCE) texts are attested: **E** (original extent: prologue only); **F** (original extent: last third of the prologue through about LH 8; E. Weidner says this “dürfte also die zweite Tafel einer Serie gewesen sein, die das ganze Gesetzbuch in Abschrift bot”);¹⁸³ it would take 17 similar tablets to contain the entire Stela text); **G** (original extent: LH 1 to c. 13; the amount of text contained on the tablet would be similar to F); **H** (only part of LH 5 remains; too fragmentary to judge).

The following are Neo-Babylonian (1000–625 BCE), probably mostly Late-Babylonian (625 BCE and thereafter) texts.¹⁸⁴ I list the manuscripts first because this expands the lists in Borger and Roth. **B** (BM 34914), **C** (BE 35271), **W** (VAT 991), **Z** (VAT 1036), **s** (U 13622), **v** (BM 59739), **β** (BM 54795), **γ** (BM 57873), **δ** (BM 59776), **ε** (Sippar 3/2166, published by Fadhil), and one unpublished prologue text from Sippar mentioned by Fadhil.¹⁸⁵ The estimated scope of each of these texts is as follows: **B** (original extent: prologue only; Wiseman allows for it being part of a series; this has significant variations from Stela I 1–17);¹⁸⁶ **C** (original extent: prologue only, but the colophon calls the work *dīnā[ni] ša LUGA]L Ḫa[m]m[u]r[abi]* “the laws of Hammurabi,” which indicates it is the first of several tablets containing laws, not just the prologue;¹⁸⁷ cf. the colophon to NA text **e** [see previously]); **W** (original extent: from LH 147 to 172 or beyond, depending on the number of tablet columns); **Z** (original extent is not clear; only LH 171 attested); **s** (original extent: from c. LH 52–65 plus several into the missing portion of Stela, a total of about 3 columns of Stela text; for tablets with a similar amount of text in a series, see MA texts **F** and **G**); **v** (unpublished and otherwise undescribed; its extent cannot be judged); **β** (according to Leichty, this contains “CH § 53 (XV 7–20) 7–14”);¹⁸⁸ **γ** (according to Leichty, this contains “CH § 49f.”);¹⁸⁹ **δ** (contains end of LH 275 through 277 in the last column of the reverse; Sollberger estimates that this is a quarter of the text,¹⁹⁰ which means the tablet could not have contained the rest of LH

through law 282; therefore, this is either a scribal exercise or extract, or it is part of a series whose next tablet would have finished the laws and gone on to the epilogue; the fragment is apparently from the Late Babylonian period but written in OB lapidary script *on clay*);¹⁹¹ ε (original extent: prologue only; 8 columns, each with up to 40 short (i.e., stela-length) lines; its colophon gives the first lines of LH 1, indicating that this tablet is the first of a series; the colophon further indicates that the tablet was copied, directly or ultimately, from a stela version of the text, which Fadhil suggests may have existed in the Shamash temple at Sippar where the tablet was found).

PART II

THE COMPOSITIONAL LOGIC OF THE COVENANT CODE

This part of the study assumes that CC is dependent directly upon LH and other cuneiform sources. In essence, it provides a commentary on the whole of CC from this generative context. It basically seeks to show how CC “got here from there”—how it retooled its sources to create a new legal and, perhaps more important, ideological expression. Without doubt, LH for its part is an ideological document. Its casuistic laws are ensconced in a genre that exalts the king and exults in him. It will become clear that CC did not fail to take notice of this intent in its source and imitated it for its own political ends. Therefore, to read CC simply as repository of law is to misunderstand its goal. And this would also be to misunderstand its content. CC achieved its ideological aim, not through compiling its own native legal customs, but by drawing from the substance of its sources and revising them. Hence it is primarily an academic work, with a critical bent. It sought out problems—inconsistencies and conundrums—and solved them to provide, from its relative point of view, a more logical and reasonable body of legislation. This correlates with its revision of the socio-theological depiction of law giving, where it replaced Hammurabi as law composer with Yahweh as law revealer. CC used the symbols of its overlords to create an alternate and competitive reality to counter the effects of Assyrian imperialism.

The description of the compositional logic in this part of the work necessarily involves some speculation. We do not know the mind of CC’s author or authors, and despite the fact that we can operate on a more empirical basis,

having in front of us in most cases CC's source text, we do not know exactly what auxiliary sources, traditions, or considerations were influential. Part II is essentially an act of historical reconstruction, what historians do to create a narrative out of disconnected data. The reconstruction pursued here is really what is attempted in all scholarly analyses, be it an analysis of the differences between Deuteronomy and CC or even between one part of CC and another, where a later text or stratum is thought to grow out of an earlier one. Nevertheless, we will see certain regularities in the techniques presumably used in CC's reconfiguration of the sources. This indicates that we are probably on the right track in describing the processes involved in the creation of CC.

This being said, we should be aware that the necessarily complex analyses in the following chapters do not mean that CC actually performed the specific operations of textual reading and referencing described here to produce its text. CC was apparently quite familiar with LH and auxiliary sources. A law in CC that shows influence from multiple Akkadian laws and displays the technique of cross-referencing from one part of LH to another or to another source may have been created by an ability to call upon other legal motifs and laws through an intimate familiarity with the sources. It may not have been necessary for CC to manipulate and inspect tablets or other texts for every influential motif. The detailed analysis that follows, therefore, does not seek to definitively describe the creative process; rather, it seeks to uncover the single or multiple influences in the various laws. When a law or series of laws has close correlations with LH or another source, we can imagine that CC has actually referenced its source. When a law or series of laws has loose associations in isolated motifs, we can imagine that CC has drawn upon its general knowledge of its sources without necessarily turning to them.

Chapters 5 through 10 deal first with the casuistic laws. These chapters basically take the text in order, section by section, as is evident in the titles of the chapters. Chapters 11 and 12 treat the apodictic laws. These chapters, in contrast to those on the casuistic laws, approach the apodictic laws by themes because their topical arrangement, as chapter 3 has shown, is cyclical rather than linear. The discussions in all of chapters 5 through 12, in addition to describing the meaning of the laws, pay attention to questions of possible redactional development and the academic nature of CC formulations and bring existing critical scholarship into dialogue with the conclusions of this study.

A perspective to bear in mind as the following chapters proceed is that even though this part of the study begins with the casuistic laws and devotes several chapters to analyzing them, they do not have primacy over the apodictic laws. Chapters 11 and 12 demonstrate that the apodictic laws express the ideological concerns of the composition more directly than the casuistic laws and therefore should be viewed as conceptually primary. To focus solely on the casuistic laws as the essence or heart of CC is an analytic misstep.

5

Debt-Slavery and the Seduction of a Maiden (Exodus 21:2–11; 22:15–16)

The Covenant Code's casuistic laws begin with an extensive series of laws on the topic of debt-slavery (Exodus 21:2–11). They divide into two parts, verses 2–6 on a male debt-slave and verses 7–11 on a female, specifically, a daughter debt-slave. The two parts are nearly equal and symmetrical. Both sections begin with the conditional conjunction **כִּי** "if" (vv. 2, 7) and are followed with four subcases marked with the subordinate conjunction **אִם** "if" (vv. 3a, 3b, 4, 5; 8, 9, 10, 11). Furthermore, the law about the daughter is structurally and even conceptually the inverse of that of the male. The law about the male begins with a case that allows him to go free and ends with one that requires his permanent servitude; the law about the daughter begins with a case where she is permanently enslaved and ends with one where she goes free.¹

This, however, accounts for only part of the creative character of these laws. As much as the structure, their content is equally a product of compositional imagination. As this chapter shows, CC took LH 117 as the foundation for each of the main subdivisions of verses 2–11. But seeing a number of latent questions in that source law, it added rules derived mainly from other unrelated laws in LH and, in one case, learned from a law similar to one found in MAL A. CC thereby created a novel series of laws on debt-slavery that is more comprehensive than what is found in Hammurabi's legislation. This revision and the placement of the slave laws reflect a goal that goes beyond a desire merely to write law.

The Basic Laws (21:2, 7)

The initial verses of the two subsections of the debt-slave law (21:2 and 7) are legislatively parallel, each setting down similar yet alternate cases.² These two verses are based on LH 117:³

Exodus 21:2, 7

²If you acquire a Hebrew slave, he shall work for six years. In the seventh he shall go free, without further obligation.

...

⁷If a man sells his daughter as a slave-woman, she shall not go free as male slaves go free.

...

כִּי תִקְנֶה עֶבֶד עֲבָדִי שֵׁשׁ שָׁנִים יַעֲבֹד וּבִשְׁבַעַת יָצָא
לְחַפְשֵׁי חֲנָם

...

וְכִי יִמְכַר אִישׁ אֶת בְּתוּלָתוֹ לֹא תֵצֵא כְּצֵאת
הָעֲבָדִים

...

LH 117

If an obligation has come due for a man, and he sells his wife, son, or daughter, or he gives any (of them) (alternatively: he surrenders himself)⁴ for dependent debt-servitude, they shall work in the house of their buyer or creditor for three years. In the fourth year their freedom shall be effected.

šumma awīlam e’iltum iṣbassūma

aššassu mārāšu ū mārassu ana

kaspim iddin ū lū ana kiššātim ittandin

šalaš šanātīm bīt šāyimānīšunu u

kāšīšīšunu ippešū ina rebūtīm šattim

andurāršunu iššakkan

CC keeps the essential formulation of the protasis from LH 117 for verse 7: “If a man sells his daughter” (וְכִי יִמְכַר אִישׁ אֶת בְּתוּלָתוֹ) vis-à-vis “If...he (a man) sells his daughter” (*šumma...mārassu ana kaspim iddin*). It made a significant alteration, however, in verse 2 by converting an idiom meaning “to sell” (*ana kaspim nadānum*; literally, “to give for silver”)⁵ with a third-person verb to a second-person form of the verb “to buy” (קָנָה).⁶ CC’s revision in verse 2 sought to provide a bridge to the preceding altar laws in 20:24–26 (on the originality of the altar laws, see later in this chapter and chapters 11–12).⁷ These laws have a second-person singular formulation directed at the national community.⁸ Use of a second-person verb in 21:2 continues this audience of address. Furthermore, the use of a verb of acquisition in 21:2 instead of selling allowed the law to be addressed to the economically able and thus the presumed majority in society, rather than to the weak and minority members of society. To begin the law with “if you sell yourself” might send the wrong political message, especially at the beginning of the casuistic laws. As we will see, CC is concerned about political messages. The revised formulation of 21:2, addressed to the whole community, further acts as a heading to all of the casuistic laws in 21:2–22:16 and orients them to this audience, even though those laws, for the most part, have the third-person style of cuneiform case law. The occasional use of the second person in CC’s casuistic laws is

generally for emphasis and is consistent with the communal orientation of the introductory second person in 21:2.⁹

Even though LH 117 does not use the verb *to buy* in its protasis, the Akkadian law still provided a stimulus for this verb in 21:2. The apodosis in Hammurabi's law speaks about a "buyer" (*šāyimānum*) in whose house the debt-servant works. Thus LH presumes an act of buying that complements the sale—the actions are two sides of the same transactional coin. CC has chosen to front the concept of buying in 21:2 so that it could orient the law to its audience, as described before.¹⁰

Other laws in LH may have influenced CC's verb choice. The protases of LH 278–280 describe the acquisition of a slave in terms similar to CC's wording: "If a man buys a male slave or female slave" (*šumma awīlum wardam amtam išām/ištām*; LH 280 is cited in full later). Though these laws appear at the end of the collection, far from LH 117, they were probably known to CC, given other influences from the group of slave laws in LH 278–282. As we will see later, LH 282 lies squarely behind verses 5–6. Moreover, LH 280–281 may have also provided further contextual material for some of the details in verses 5–6. Given CC's knowledge of these concluding slave laws, one can imagine that the noun *šāyimānum* "buyer" in LH 117, the same root at the verb *šānum* "to buy" in LH 278–280, provided a conceptual cross-reference to and justification for using the basic idiom "if a man buys a slave" from LH 278–280, though with conversion of the verb to second person. That CC could use the chattel-slave laws of LH 278–282, along with the debt-servant legislation of LH 117, in the same prescription is due to CC's conflation of laws about the two types of enslaved persons elsewhere in its legislation (discussed later and in chapter 6).¹¹

Some have suggested that the protasis in 21:2 originally had a third-person verb ("If a man sells himself . . ." כִּי יִמְכַר אִישׁ or "If a man acquires" כִּי יִקְנֶה אִישׁ)¹² and that this was later changed to a second-person formulation with the presumed addition of the altar laws in 20:24–26.¹³ The evidence of the present study demonstrates that this textual development is unlikely. The altar laws were part of the original formulation of CC. These laws depend on the injunctive style and sequence of themes in the exhortatory block of the epilogue of LH and also reflect the emphasis on cultic matters found in the prologue, as described in chapter 3. It is reasonable to assume that everything in CC that depends on LH for its structure, themes, or wording derives from the same basic compositional act (see chapters 4 and 11). Therefore, both the altar and debt-slave laws must have arisen together.

The change of verb from *sell* in LH to *buy* in CC's verse 2 brought with it the designation of the acquired person as a "Hebrew slave" (עֶבֶד עִבְרִי).¹⁴ The use of the term *slave* (עֶבֶד) is partly the result of CC's conflation of chattel-slaves and debt-servants in LH (see chapter 6). CC uses the term to refer to both types of subjected individuals. Our immediate concern is the adjective "Hebrew." A number of scholars have argued that this is to be connected with the term

ḥab/piru found in various cuneiform texts from the second millennium BCE.¹⁵ In these texts, the term refers to persons of a socially marginal group. Persons so designated at Nuzi, for example, could enter into service contracts to gain economic security in a way similar to the arrangements described in 21:2–6. Connecting the adjective “Hebrew” with *ḥab/piru* would allow seeing the biblical term in CC as a reference to impoverished foreigners on the margins of Israelite/Judean society, a specific class of impoverished or marginal people within Israelite/Judean society, or the poor within Israelite and Judean society in general, depending how the comparative evidence is applied. A socio-economic interpretation along these lines is actually very attractive for the thesis of this study. The “Hebrew,” defined in one of these ways, would complement the various classes of the poor mentioned in the final apodictic laws, including the immigrant, widow, and orphan (22:20–21; 23:3, 6, 9, 11, 12).

It is doubtful, however, that the Hebrew gentile adjective is anything other than a description of the native nationality of the slave.¹⁶ Its use has become necessary with the shift of the verb from *sell* to *buy*. The term עֶבֶר in CC, left undefined, could refer to a debt-slave or a chattel-slave (see later). If the adjective were omitted, the law would require the release of any slave, including chattel-slaves.¹⁷ The adjective limits release to slaves of the same ethnic group as the native buyer, meaning that these are temporary debt-slaves. The adjective also means that the legislation allows otherwise for the permanent holding of chattel-slaves, presumably of foreign origin. This is consistent with the source law, LH 117, where the debtor and creditor are presumably from the same national group. This argument demonstrates further that the adjective cannot be considered a later addition, as thought by some.¹⁸

The case about the daughter in verses 7–11 supports this understanding. The father and the daughter whom he sells presumably belong to the same social group to whom CC’s laws are generally addressed, namely, the people of Israel. The parallelism between the cases of verses 7–11 and 2–6—note especially the phrase “she shall not go free as male slaves do” (v. 7) that draws a correspondence between the two laws—indicates that the ethnicity and social status of the male slave must be the same as the father and daughter in verses 7–11. This points to a meaning “Israelite” for the adjective “Hebrew” in v. 2. The reason why v. 7 does not include the adjective “Hebrew” for the daughter is because her ethnicity is clear by the description that she is sold (מָכַר) by her father. If the wording were like v. 2, then we would expect the gentile adjective (e.g., “If you acquire a *Hebrew* female slave . . .”)

The date of CC also leads one away from a *ḥab/piru* hypothesis. The connection with this term has been facilitated by the assumption that CC is early.¹⁹ This study sees CC as significantly later, perhaps only a generation prior to Deuteronomy, which itself dates to the seventh century BCE. Deuteronomy appears to use the adjective in a nationalistic sense in its debt-slave law, which is based on CC: “If your brother—a male or female Hebrew—sells himself to

you...” (... העבריה או העברי לך אחיך העברי 15:12). Deuteronomy presumably maintains the meaning of the term in CC.

That עברי in CC is an ethnic reference is indicated further by usage elsewhere in the Bible, where the term refers to members of the Israelite and Judean national group and their ancestors.²⁰ Although some appearances of the term seem to denote people living on the margins of society or of a lesser class (e.g., Gen 14:13; 39:14; 41:12),²¹ the context of many of these cases shows that it marks ethnicity, not a socioeconomic status. It applies to the people of Israel and Judah but also includes the earliest traditional ancestors, including Abraham. CC may have chosen the term for its archaizing force, much like the term *chieftain* (נשיא) for the king in 22:27. This suits the pseudonymous intent of CC, to portray the law collection as a revelation spoken by Yahweh to Moses early in Israel’s history.

Though CC alters the protasis of verse 2, as observed previously, its apodosis in verse 2aβb follows the same basic formulation as LH 117, which says that the individual works for X years with freedom granted in the next (read left to right):

six years	he shall work	in the seventh	he shall go free, without further obligation
שש שנים	יעבד	ובשבעת	יצא להפשי חנם
three years in the house of their buyer or creditor	they shall work.	in the fourth year	their freedom shall be effected
šalaš šanātīm bīt šāyimānīšunu u kāšišīšunu	ippešū	ina rebūtīm šattim	andurāršunu iššakkan

Of particular note is that verse 7a, the protasis of the daughter law, along with verse 2aβb, the apodosis of the male debt-slave law, *represents the entire core formulation of LH 117*: “if a man sells [family member], he shall work X years and receive freedom in year X + 1.” This is similar to other correlations between CC and LH, such as in the goring ox law, which preserves core legislation and wording from LH, but embellishes it and thereby transforms its sense.

The major change in the apodosis of verse 2 is lengthening the period of servitude to six years—double the period found in LH—with a grant of freedom in the seventh.²² This change was probably made to accord with the numerical pattern of the laws about seventh-year produce and seventh-day rest in the final apodictic laws (23:10–11, 12).²³ One might even go as far as to say that this reconfiguration is partly a function of making Yahweh the author of the laws,

imposing divine sacral time on the periodicity of debt-slavery.²⁴ The syntax of those laws closely follows that of the debt-slave law in 21:2, and hence that of LH 117:

- 21:2b Six years he shall work; in the seventh he shall go free without further obligation.
- שש שנים יעבד ובשבעת יצא לחפשי חנם
- 23:10–11 Six years you shall sow your land and gather its produce; the seventh you shall let it drop and leave it.
- ושש שנים תזרע את ארצך ואספת את תבואתה והשביעת תשמטנה ונטשתה
- 23:12 Six days you shall do your work; on the seventh day you shall rest.
- ששת ימים תעשה מעשיך וביום השביעי תשבת

The major difference between the formulation of 21:2 over against 23:10 and 12 is that 21:2 has a protasis that sets up the condition for the apodosis. The laws of 23:10 and 12 are apodictic regulations—effectively apodoses without preconditions set up by protases and with second-person formulation. This similarity is an indication that the two styles are not as incommensurate as is generally argued. In any case, there is a reciprocal relation between 21:2 and 23:10–12: the seventh-year and seventh-day laws influenced the time limit for debt servitude, but the syntax of the debt-servitude law, based on LH 117, influenced the syntax of the seventh-year and -day laws. In view of this, one may wonder if the language and syntax (though not the custom) of the Sabbath laws in the Bible (as in the Decalogue: “six days you shall work . . . but the seventh is a Sabbath for Yahweh”) ultimately go back via CC to the syntax of Hammurabi’s debt-servant legislation. If not, one has to imagine that native idiom here intersects with Hammurabi’s prescription for the duration of debt-servitude.²⁵ For the connections between the debt-slave and seventh-year and -day laws in regard to the theme of poverty, see later in this chapter on the position of 21:2–11 in the casuistic laws and chapter 11.²⁶

LH 117 contains some details about the economic situation behind servitude not found in Exodus 21:2–11. It says that a financial obligation (*e’iltum*) has come due for a man (literally, it “seized” him)²⁷ and that a man sells his family member to a buyer or gives them (or surrenders himself) for *kiššātum* to a person called a *kāšišum*. The case described by selling to a buyer may be a simple case of distraint (*nipūtum*), as presented in LH 116.²⁸ A case of *kiššātum* may be similar but involve a more severe type of servitude, a servant-master relationship instead of a simple debtor-creditor relationship.²⁹ CC lacks such detail. Nevertheless it is reasonable to think that CC presumes a case of indebtedness, the assumption of the analysis to this point.³⁰ When CC takes over and revises the legislative detail of LH 117, it does not introduce data that point to a different economic dynamic.

The laws about the poor in the first string of the final apodictic laws (22:20–26) may provide commentary on the situation in 21:2–11, especially when they are recognized as arising from the same compositional process.³¹ They prohibit

acting “like a creditor” (כַּנְשֵׁה) when making what can be understood as a subsistence loan to the poor (22:24a). This is glossed by the prohibition not to exact interest (v. 24b). Debt-slavery in 21:2–11 can be viewed as arising from default on such loans. Indeed, the poor listed in 22:20–26—the immigrant, widow, orphan, one who must take a subsistence loan, and one who has nothing to give as a pledge save a garment—are individuals one catastrophic event short of falling into debt-slavery. Thus the laws about the poor in string I (22:20–26) are conceptually connected to the laws about debt-slavery in 21:2–11, as are the laws about the poor in string II (i.e., 23:10–12). The significance of placing laws on the poor at the beginning of the strings and at the beginning of the casuistic laws is discussed later in this chapter.³²

Exodus 21:2 shows a number of other minor variations with respect to LH 117, two of which require comment here. The phrase describing the grant of freedom in the two clauses is different. CC says that the person “in the seventh (year) goes free (יֵצֵא לְחֶפְשִׁי).” Along with the argument that the adjective “Hebrew” is to be defined by *ḥab/piru*, some have thought that the term חֶפְשִׁי “free” refers to a particular class of persons, who have a particular status or economic obligations, suggested by the term *ḥupšu* in second-millennium cuneiform documents from Mesopotamia, Syria, and the Amarna texts.³³ But this sociological interpretation does not fit other cases of the Hebrew adjective where it apparently means simply “free.” The adjective indicates separation or independence in Isaiah 58:6; Psalm 88:6; and Job 3:19; 35:5.³⁴ Furthermore, the sociological interpretation does not fit the verb and noun from the same root found in Leviticus 19:20, which refers to an act or state comparable to redemption. This releases the slave-woman (described as a שִׁפְחוֹה) from servitude. As in the case of the adjective עֲבָרִי “Hebrew,” the distance of CC from the second millennium also makes an interpretation of חֶפְשִׁי based on the sociological picture of that earlier period less likely. If a cuneiform text should guide the interpretation, it should be the phrase “their freedom shall be effected” (*andurāšunu iššakkan*) in LH 117. Being חֶפְשִׁי is like obtaining *andurārum*. The use of Hebrew דָּרֹר in Jeremiah 34:8, 15, 17, the cognate of *andurārum*, along with חֶפְשִׁי there (vv. 9–11, 14, 16), shows the comparability of the terms, apart from an argument for CC’s dependence on LH 117.

Though the meaning of CC’s description of freedom is similar to that in LH, its specific formulation may heighten the agency of the debtor.³⁵ The release described passively in the Akkadian can be understood to come about by the action or decision of the creditor or an undescribed process. In CC, the debtor is the subject of the verb of separation. It looks as though he can merely walk away. Moreover, the agency of the slave in CC in the release clause can also be read to contrast with the agency of the creditor introduced in the protasis: “you,” the creditor, “acquire,” but “he,” the slave, “goes free.”³⁶

CC adds the phrase “without further obligation” (חֲנֹם) at the end of its basic law in verse 2. This does not contradict LH. CC may have added this to emphasize the finite obligation in contrast to the added possibility of permanent

slavery that is raised in the next verses. There is no continuing economic obligation that might give the creditor reason for keeping the debt-slave in custody. Permanent servitude must be wholly the Hebrew's choice made on an entirely different basis—that is, love of his master and family (see vv. 4–6).³⁷

The Daughter Debt-Slave and Seduction Laws (21:7–11; 22:15–16)

Although the apodosis of the male slave law in 21:2 follows the syntax and prescriptive essence of LH 117, as noted before, the apodosis of the female slave law in verse 7, “she shall not go free as males slaves do,” has no counterpart in LH.³⁸ This stricture, along with the isolation of a law regarding a daughter alone, rises from a problem inherent in LH 117. Though the Akkadian law does not define the status of a daughter who is sold to pay off a debt, only a daughter under the full control of her father would qualify as a candidate. This would chiefly be, from a default perspective, an unbetrothed daughter, though a divorced or widowed daughter who has returned to live with her father might also be a candidate. In contrast, a betrothed daughter and, obviously, a married daughter could not be surrendered by their father as they are attached legally to other men.³⁹ But if an unbetrothed daughter entered into servitude, especially for a period as long as six years, as CC has written the prescription for the male in verse 2, her creditor would probably take advantage of her sexually.⁴⁰

CC presumably recognized this problem and imposed a solution based on MAL A 55–56 (or at least laws similar to these from an unknown collection; for MAL A as a possible source for CC, see chapter 4).⁴¹

⁵⁵[If a] man seizes a maiden by force and rapes her—a maiden [who lives in the house of h]er father [. . .] who is not asked for,⁴² whose [wom]b(?) is not opened, who is not married, and against whose father's house a claim does not exist—whether in the middle of the city, in the open country, at night in the street, in a grain-store, or in a city festival—the father of the maiden shall take the wife of the one who had intercourse with the maiden and give her for raping. She shall not return to her husband. He takes her. The father shall give his daughter who had intercourse to the one who had intercourse with her in marriage-like dependent protection. If he does not have a wife, the man who had intercourse shall give to her father threefold the silver that is the price of the maiden. The one who had intercourse with her shall marry her. He shall not constrain/reject (?) her. If her father is not willing, he shall receive the threefold amount of silver for the maiden and give his daughter to whomever he desires.

⁵⁶If the maiden gives herself to the man, the man shall swear (to this effect). They shall not approach his wife. The one who had intercourse

shall pay the threefold amount of silver that is the price of the maiden. The father shall do with his daughter as he desires.

⁵⁵[šumma a'ī]lu batulta [ša ina bēt a]bīša [usbu]tūni [...] ša lā ūtarrišūni [puš]qa(?) lā patteatūni lā aḫazātūni u rugummānā ana bēt abīša lā iršīūni a'īlu lū ina libbi āle lū ina šēre lū ina mūše ina rebēte lū ina bēt qarīte lū ina isinni āle a'īlu kī da'āne batulta iṣbatma umanzi'ši abu ša batulte aššat nā'ikāna ša batulte ilaqe ana manzu'e iddanši ana mutīša lā utārši ilaqqēši abu mārassu nīkta ana nā'ikāniša kī aḫuzzete iddanši šumma aššassu laššu šalšāte kaspe šīm batulte nā'ikānu ana abīša iddan nā'ikāniša iḫḫassi lā isammakši šumma abu lā ḫadi kaspa šalšāte ša batulte imahḫar mārassu ana ša ḫadiūni iddan

⁵⁶šumma batulta ramanša ana a'īle tattidīn a'īlu itamma ana aššītīšu lā iqarribū šalšāte kaspe šīm batulte nā'ikānu iddan abu mārass[šu] kī ḫadiūni epp[aš]

According to these laws, a man who has forced or persuaded an unbetrothed virgin to have sex with him must marry her.⁴³ Employing the logic of such legislation, CC telescoped the affair and prescribed directly that the creditor (or his son) is to marry the daughter.⁴⁴

That MAL A 55–56 or similar laws were a consideration for CC is evident in its inclusion of a version of the law in 22:15–16:⁴⁵

^{22:15}If a man seduces a maiden who is not betrothed, and he lies with her, he shall acquire her as a wife by paying the bride price. ¹⁶If her father refuses to give her to him, he shall (still) weigh out silver as the bride price of maidens.

יוכי יפתה איש בתולה אשר לא ארשה ושכב עמה מהר ימהרנה לו לאשה¹⁶ אם מאן ימאן אביה לתתה לו כסף ישקל כמהר הבתולת

CC placed its seduction law near the end of its casuistic law not merely because it deals with compensation for damaged property, the theme of the immediately preceding verses (21:37–22:14).⁴⁶ It is placed there because it comes from a source other than LH and is therefore given a subsidiary location in the collection. CC includes only the case of seduction (= MAL A 56) because the creditor's sexual conquest of the woman would probably be through persuasion and not overt force. CC reduced the penalty, probably because turning the wife of the rapist over to the victim's husband for raping was a form of vicarious punishment, which CC otherwise rejects.⁴⁷ It also rejected a threefold payment, since this is a replacement for a case where the assailant does not have a wife to be given for raping. Moreover, that CC is concerned to provide the basis for its law about an unbetrothed daughter given in debt-slavery in appending 22:15–16 explains why CC does not include other laws about illicit sexual intercourse, such as adultery and rape.⁴⁸ The derivation of 22:15–16 from an apparent cuneiform source, its providing a justification for 21:7–11, and the logic explaining

its placement outside the main template provided by LH demonstrate together that it is original to CC's basic composition.⁴⁹ That is, its subsidiary position with respect to the primacy of the template provided by LH ties it to the compositional act that involves the use of LH.⁵⁰ In other words, it is not an addition, only a footnote.

MAL A 55–56 can apply analogically to the woman of 21:7–11 because she has a status of a *slave wife*.⁵¹ Her relationship to the creditor is not stated or even implied in the basic law of verse 7, probably because the following verses allow her to marry either the creditor (vv. 8, 10–11) or his son (v. 9). That she is a wife to one or the other of these males becomes visible only in the ensuing verses, which speak of the creditor designating the woman for himself or for his son (vv. 8–9, to be explained later) and of the creditor taking another woman in marriage, implying that the creditor has a similar relationship to the first woman (vv. 10–11). Yet the woman, though a wife, is in a state of servitude.⁵² This is indicated by her being *sold* and the description of her status by virtue of this transaction “as a slave woman” (אִמָּה; v. 7).⁵³ The law also speaks about her going free or not going free: when she enters the relationship, she is not to be freed as male slaves (v. 7b); if her husband/creditor does not support her, she may leave, described with the verb for the release of slaves used in verses 2–6 and 26–27 (v. 11). These are concerns only if she is a slave. In addition, her creditor is called her master (אֲדָנָי; v. 8), the same term used of the master of the male slave in verses 2–6. The main evidence that others adduce for thinking that the woman is a free wife is the rule in verse 9 that she is to be treated “according to the rule for daughters” when given to the creditor’s son. But, as we see later, this does not mean that she is free; it is a prohibition against the father-in-law’s incest with the daughter-in-law. When married to the son, the woman is still a slave, a reason that the creditor might think he could still have sex with her.⁵⁴ Further, CC has conflated chattel- and debt-slave legislation and categories in its other slave laws (primarily visible in 21:20–21, 26–27). These laws refer to a male slave and female slave together (עֶבֶד and אִמָּה). It is reasonable that these two terms include the male debt-slave of verses 2–6 and the female debt-slave of verses 7–11. If, for example, the creditor-husband were to hit his debtor’s daughter taken as a wife and put out her eye or knock out her tooth, the law of 21:26–27 would apply, and she would be released—an automatic divorce, as it were.

The sale of a daughter as a slave wife in 21:7 is handled differently from the procedure in 22:15–16. The surrender of the daughter in 21:7 is initiated by the father as opposed to arising from seduction. Therefore, the possibility of the father’s refusal does not apply in verse 7. Furthermore, verse 7 does not require the payment of a bride-price as does 22:15–16. Remission or partial remission of the debt would probably have been considered the payment of this sum. Perhaps CC thought that the loan amount to be amortized was greater than the bride-price, and that the woman’s work and bearing of children as a “slave woman” (אִמָּה) would balance the accounts. Verse 8 hints at this by requiring a

redemption payment if the daughter turns out to be displeasing to the creditor. That is, when the bride-price is subtracted from the debt amount, the debtor is still in debt and must still pay to get his daughter out of servitude. Verses 10–11 indicate that this redemption payment is due even after the creditor has sexually used her. These verses say that if the creditor-husband does not support her, she goes free “without (payment of) silver.” This implies the alternative, that if the creditor does properly support the woman—and, again, after he has used her sexually—a monetary payment would be due, were she redeemed. A financial obligation still exists even after consummation.

The Supplementary Male Debt-Slave Laws (21:3–6)

After creating the basic laws in 21:2 and 7 on the basis of LH 117, CC supplemented each (in vv. 3–6 and 8–11) with material from other places in LH. In the male slave law, verses 3–6 were created by a combination of materials and considerations from LH 117, 119, 175, and 282:

Exodus 21:3–6

^{3a}If he came in by himself, he shall go free by himself. ^{3b}If he is the husband of a woman, she shall go free with him.

⁴If his master gives him a woman and she bears him sons or daughters, the woman and her children shall belong to her master, and he (the male debt-slave) shall go free by himself.

⁵If the servant should say, “I love my master, my wife, and my children; I will not leave,” ⁶his master shall bring him to the God, and bring him to the door or the doorpost. His master shall pierce his ear with an awl, and he shall thus work for him indefinitely.

LH 117, 119, 175, 282

¹¹⁷ If an obligation has come due for a man, and he sells his wife, son, or daughter, or he gives any (of them) (or: he surrenders himself) for dependent debt-servitude. . . .

¹¹⁹ If an obligation has seized a man and he sells his slave-woman who has borne him children, the owner of the slave-woman shall weigh out the silver that the merchant weighed out and effect the release of his slave-woman.

¹⁷⁵ If a palace-slave or a slave of a commoner marries a woman of the *awilum*-class and she bears (him) children, the owner of the slave has no claim of slavery on the children of the woman of the *awilum*-class.

²⁸² If a slave should to his master say, “You are not my master,” he shall prove that he is his slave and his owner shall cut off his ear.

אם בגפו יבא בגפו יצא²³ אם בעל אשה הוא
ויצאה אשתו עמו

¹¹⁷*šumma awīlam e'iltum iṣbassūma
aššassu mārāšu ū mārassu ana
kaspim iddin ū lū ana kiššātīm
ittandin...*

אם אדניו יתן לו אשה וילדה לו בנים או בנות
האשה וילדיה תהיה לאדניה והוא יצא בגפו

¹¹⁹*šumma awīlam e'iltum iṣbassūma
amassu ša mārī uldūšum ana kaspim
ittadin kasap tamkārūm išqulu bēl
amtim išaqqalma amassu ipaṭtar
¹⁷⁵šumma lū warad ekallim ū lū
warad muškēnim mārat awīlim
īḥuzma mārī ittalad bēl wardim ana
mārī mārat awīlim ana wardūtīm ul
iraggum*

ואם אמר יאמר העבד אהבתי את אדני את
אשתי ואת בני לא אצא חפשי⁶ והגישו אדניו
אל האלהים והגישו אל הדלת או אל המזוזה
ורצע אדניו את אזנו במרצע ועבדו לעלם

²⁸²*šumma wardum ana bēlīšu ul bēlī
atta iqtabi kīma warassu ukānšūma
bēlīšu uzunšu inakkis*

We will move in reverse order in considering these laws, as the most captivating modification of material from LH is found in verses 5–6. These verses share four points of similarity with LH 282, in essentially the same order:⁵⁵ (a) The protases begin with the introduction of the slave's speech. Although the verb in the Akkadian is at the end of the clause, after the slave's declaration, the prepositional phrase of address to the master (“to his masters” *ana bēlīšu*) is still initial. (b) Next come citations of the slave's legal declaration, which refers to “my master” and describes the slave's relationship to him.⁵⁶ (c) After this, the texts refer to a judicial process, bringing the slave to the God to define his slave status or otherwise prove his slave status. (d) Finally, the slave's ear is mutilated—pierced or cut off—symbolizing the relationship of the slave to the master.⁵⁷ The similarity of the two laws is patent. CC has conceptually inverted the text, replacing rejection with love and fealty.

That LH 282, which deals with a *chattel-slave* (Akkadian *wardum*), could be brought to bear on a debt-slave is reasonable, given CC's general conflation of debt-slave and chattel-slave legislation from LH (again, see chapter 6). That LH 282 was influential is further suggested by other possible influences from the final block of slave laws in Hammurabi's text (LH 278–282). This chapter noted earlier that the phrase “if a man buys a slave” found in LH 278–280 may have provided a model for the verb *buy* (קנה) in verse 2. The requirement of verse 6 that “his master shall bring him to the God (האלהים), and bring him to the door or the doorpost” may have also been fueled by the next law, LH 281:

²⁸¹If they (male or female slaves purchased according to LH 280) are natives of another land, the buyer shall declare *before the god* how much silver he weighed out (for them). The owner of the male-slave or

female-slave shall give to the merchant (= the buyer) the silver that he weighed out (for them) and shall effect the release of his male-slave or female-slave.

šumma mārū mātim šanītim šāyīmānum ina maḥar ilim kasap išqulu iqabbīma bēl wardim ū lū amtim kasap išqulu ana tamkārīm inaddinma lū warassu lū amassu ipaṭṭar.

According to this law, judicial processes determining the ownership of slaves occur “before the god” (*ina maḥar ilim*). Both CC’s and Hammurabi’s descriptions use a nonspecific designation for the deity.

This last point of correlation is connected with the description of other judicial declarations in CC and LH and ultimately pertains to the locale of the ear-piercing rite described in verse 6. LH contains a number of laws that require deposition of legal facts “before the deity” (*maḥar ilim*, with or without the preposition *ina*): witness testimony (LH 9), a description of lost or stolen property (LH 23, 120, 240), proof of misappropriation or lying about misappropriated property (LH 106, 126), and disavowal of responsibility for loss of an animal (LH 266). CC’s deposit laws also require similar depositions, which are performed upon going to and in connection with “the God” (האלהים). When a thief is not found, a custodian is to “approach the God (האלהים) (to determine) whether or not he misappropriated the property of his fellow” (22:7). This is followed by a general law that in any case of property dispute, “the claim of both of them [the disputants] shall come to the God (האלהים). He whom God (אלהים) convicts shall pay twofold to his fellow” (v. 8). In the next law, a shepherd and a man whose animals had died, been injured, or taken away by predators share in “an oath by Yahweh . . . (to determine) whether or not he misappropriated the property of his fellow” (v. 10; on the appearance of “Yahweh,” see later). Chapter 9 shows that CC’s legal declarations in the deposit laws are influenced by the similar requirements in Hammurabi’s deposit laws (LH 120, 126, in connection with LH 266 and 23). This provides context for supposing that the procedure “before the god” in LH 281 has influenced the requirement to bring the slave “to the God” in Exodus 21:6.

But neither Hammurabi’s *maḥar ilim* laws nor CC’s corresponding ה[ה]אלהים laws indicate where the legal declarations occur. CC’s laws generally include verbs of movement to or toward “the God” (21:6; 22:7, 8, 10), indicating that it is in some *other* place, but the prescriptions do not indicate expressly where this is. Hammurabi’s laws are even more cryptic. They do not even have verbs of motion but say only that the performances are “before the god.” Evidence apart from of LH indicates that (*ina*) *maḥar ilim*, however, can mean at a shrine or temple.⁵⁸ LE 37 contains a law about making a legal declaration concerning theft of property in a case of deposit. It reads:

^{LE 37}If a man’s house has been looted, and the property of the house owner is lost along with the property of the depositor who gave (property) to

him (i.e., the house owner), the house owner shall swear to him an oath at the gate of (the god) Tishpak: “My property was indeed lost with your property. I have not committed maliciousness or dishonesty.” He says (thus) to him. He no longer (therefore) has any (claim) against him. (See pp. 248–249 for the Akkadian.)

Here the oath by which the custodian declares his innocence occurs at Tishpak’s shrine. It also uniquely refers to a deity by name, which reminds one of the mention of “Yahweh” in Exod 22:10. It cannot be argued, given present evidence, that CC knew LE 37 in particular (see chapter 4), but it may have known of other similar descriptions of judicial performances taking place at a sanctuary or temple in Akkadian documents or learned about these from discussions with scribal teachers.

The wronged-man passage of the exhortatory block of the epilogue may have also had an influence on the prescription of judicial procedures at a sanctuary in CC. This passage counsels a person in need of judicial aid to come to Hammurabi’s statue and stela at the Esagil temple to have his case explained: “May a wronged man who has a case come (*lillik*) before the statue of me the king of justice. Let him have my inscribed stele read to him. Let him hear my treasured words. Let my stele reveal to him his case. May he examine his case. May he calm his heart.” This does not describe the adjudication of a case or a formal legal process, but it reflects the notion that the shrine or temple, particularly where sovereign’s cult symbol is located, is the place for resolving legal difficulties. CC as a reader of LH could see this as commentary on the *mahar ilim* laws in LH, defining where these occurred. A specific point of influence from the wronged-man passage may be in the verbs of motion in CC’s various laws about sanctuary adjudication: 22:7 (“the owner of the house shall approach [וּנְקִרְבַּת] the God”), verse 8 (“the word of the two of them shall come [יבא] to the God”), 21:6 (“his master shall bring him [וְהִגִּישׁוּן] to the God and he shall bring [וְהִגִּישׁוּן] him to the door or doorpost”).

The asylum law provides another case where judicial actions are performed at the sanctuary. It prescribes: “I will appoint a place whither he may flee (יָנוּס)” (21:13). The “place” here is the sanctuary, and like the other passages, the verse describes travel to the sanctuary. This develops an abbreviated rule in LH 207 that requires an oath of inadvertence (cf. LH 206) but says nothing specific about the place where this oath is made. CC tells us where and in what context such a determination of intent occurs. According to its rule, a deliberate killer is to be taken from the altar and executed, while an inadvertent killer would pay indemnification to the victim’s kin according to the talion law of 21:23b and then go free (for this argument, see chapter 6). Understood thus, the asylum law is really just another case of a procedure performed in connection with “the God.” It confirms the interpretation that the other judicial performances in CC in connection with “the God” occurred at the sanctuary.⁵⁹

LE 37, cited previously, also helps clarify whether the two phrases in verse 6a are the result of redactional development. This half verse describes two

locales to which the slave is brought: “(v. 6aα) his master shall bring him to the God, (v. 6aβ) and he shall bring him to the door or the doorpost.” It has been argued that the second clause is a post-Deuteronomic addition that seeks to secularize the law by moving it out of the sanctuary.⁶⁰ But as we have seen, LE 37 places the judicial oath not only at a sanctuary but also specifically at the “the gate (*bāb*) of Tishpak.”⁶¹ CC corresponds in mentioning both the god and a door or passageway. The redundancy in CC’s formulation may stem from its use of two different sources. Laws from LH, and perhaps LH 281 in particular, which requires judicial performances “before the god” for slaves, influenced the first clause in verse 6aα. Then another law, with a judicial description as in LE 37 and that mentioned a doorway, motivated the addition of the second clause in verse 6aβ. Alternatively, the mention of the doorway may have arisen independently of a source to explain the mechanics of how the slave’s ear is pierced at the sanctuary.

One trigger for the use of LH 282 and the judicial procedure “before the god” in LH 281 to formulate verses 5–6 may have been the idiomatic connections between LH 117 and LH 280. This law, cited here, sets up the context for LH 281, cited previously:

²⁸⁰If a man purchases a male-slave or female-slave of a man in a foreign land, when he is traveling about in the land the owner of the male-slave or female-slave recognizes his male-slave or his female-slave, if the male-slave or female-slave are natives of the land, their freedom shall be effected without (payment of) silver.

šumma awīlum ina māt nukurtim wardam amtam ša awīlim ištām inūma ina libbū mātīm ittalkamma bēl wardim ū lū amtīm lū warassu ū lū amassu ūteddī šumma wardum u amtum šunu mārū mātīm balum kaspimma andurāršunu iššakkan.

This law uses the phrase “their freedom shall be effected” (*andurāršunu iššakkan*), found in LH 117. The expression in LH 117 could have carried the attention of CC’s author to the final slave laws, which then allowed the creative adaptation of LH 282 in verses 5–6 and the use of other motifs in the final slave laws at various places in verses 2 and 6.

The concluding slave laws of LH may have also influenced motifs in the female slave law (vv. 7–11). The clause describing release in LH 280, “their freedom shall be effected without payment of silver” (*balum kaspimma andurāršunu iššakkan*), is similar to the phrase “she shall go out without obligation, there is no silver (due)” (ויצאה חנם אין כסף) in verse 11. The idiom “to buy...in a foreign land” (*ina māt nukurtim... šāmum*) in LH 280 is similar to the phrasing “sell...to a foreign people” (לעם נכרי... מכר) in verse 8. And the final clause in LH 281, “he shall effect the release (by redemption) of his male slave or female slave,” is similar to the requirement of allowing redemption of a female slave in verse 8 when she displeases her husband/owner. The verb for release used here is *paṭārum*, also used in LH 119, to be discussed later.

A last issue for discussion in connection with verses 5–6 is the final phrase “he shall serve him indefinitely” (וַעֲבָדוּ לְעֹלָם). This language may come from native, and ultimately, Canaanite tradition. This phrase in CC, which uses a verb and an adverbial phrase, is rendered with the noun phrase עֶבֶד עוֹלָם “perpetual slave” in Deuteronomy 15:17.⁶² This wording, Deuteronomy’s phrase in particular, has a parallel in the Ugaritic Kirita text: “Message from King Pabil: Take silver and yellow gold, a *yd* of its place, and perpetual slaves (*‘bd ‘lm*), charioteers(?), chariot-horses from (?) stables, (and) children of female-slaves (*bn amt*).”⁶³ Note that CC has not only used terminology akin to the Ugaritic *‘bd ‘lm* but also in its seventh-day law (23:12) used the term “son of a female servant” (בֶּן אַמָּה), also found the Ugaritic passage (*bn amt*).⁶⁴ Both of the terms in the Kirita text refer to chattel-slaves, not debt-slaves—it does not make sense that Pabil offers Kirita debt-slaves that happened to have become permanent slaves or that the children of female slaves are soon to be released. This means that CC’s law in 21:6 in effect converts a temporary male debt-slave into a chattel-slave, at least for the lifetime of that particular debt-slave. This makes sense, too, in terms of the connected legislation that presumes that his wife and children are chattel-slaves (vv. 4–5). By becoming a permanent slave, he joins them in their status.

With an account of verses 5–6 complete, we move to verse 4, which says that a slave-wife given to a temporary debt-slave and the children they have together do not go free when the male debt-slave goes free, thus providing the motivation for the male debt-slave to stay permanently. LH 118–119 may have been a factor in the formulation of this rule. These paragraphs continue the basic law of LH 117 and speak of slaves instead of family members as candidates for debt-servitude to pay off their owner’s debt. According to LH 118 (cited in the main texts of the next section of this chapter), the buyer of these slaves may extend the period of service beyond the limit of three years set down for a debtor’s wife and children in LH 117. The buyer in LH 118 may even sell the slaves to another person, making it impossible for the original debtor-owner to reclaim or redeem them. However, LH 119 (cited already before and, in another context, later) sets down an exception. A slave woman who has borne the debtor children is to be redeemed by the debtor. Implicitly, she is not to be sold to another. Although not exactly the same as the situation in verse 4, LH 118–119 raise the question of the permanence of family relations when the wife of the debtor is a slave. This could have provided CC with the motif upon which to build its law.

But LH 175, cited previously, is actually closer to the situation imagined in verse 4 and may have been a primary influence, when one allows for conceptual inversion, as found in the case of verses 5–6 and LH 282.⁶⁵ That LH 175 could have been influential in principle is supported by CC’s knowledge and use of the nearby law, LH 178, for the description of the three means of support of a debt-slave wife in verses 10–11, discussed in the next section of this chapter. In terms of specific comparison, verse 4 is like LH 175 except that the

statuses of the male and female are reversed. In LH 175, the man is a slave and the woman is free; in such a case, the children inherit the mother's free status.⁶⁶ In verse 4, the male slave is theoretically free or freeable, whereas the wife is a chattel-slave. The children in this case also inherit the mother's status and accordingly remain the property of the creditor-master.

Conceptual inversion, as found in verses 4 and 5–6, is seen in a few other places in CC. The law about an animal falling into a pit (21:33–34) appears to be a convex-concave mirror image of the falling of a house (LH 229–230; see chapter 8). The replacement of Hammurabi and his statue with Yahweh and his altar in the apodictic laws, stimulated by themes from the prologue and epilogue and especially the exhortatory block in the epilogue, is a type of conceptual inversion. These various cases of inversion can be tied to a principle that lies behind the generation of laws in Near Eastern casuistic law collections. New legal formulations were created by considering alternative variables for an existing case. This is not far in principle from Westbrook's notion that Near Eastern law was created by a consideration of basic problems that led to similar but distinct formulations (see chapter 1). Conceptual inversion is an extension of this consideration of variables. We might even associate inversions with examples of "maximal variation," a feature that Eichler described, where laws at the extreme ends of a spectrum of variability are counterpoised in a collection (see chapter 4, nn. 3, 6).

A minor observation about verse 4 is that the phrase at the end, "he shall go free by himself," is not paralleled in LH 175, which presumably serves as the basis for the main body of verse 4. It might be thought that this last phrase is an addition, redundantly copied from the end of verse 3. Although it may recycle the language of that verse, it is necessary to the text. It is added to CC's conceptual inversion of LH 175 to fit the context of debt-slave release. It sets up a situation that verses 5–6 will solve by allowing the man to stay with his wife and children.

We may now turn to verse 3. This is a bridge between verse 2 and verses 4–6. Verse 3a appears to be a free creation that links verse 2 to what follows. It makes explicit a situation possible in the context of verse 2, that the debt-slave came in alone. It also provides a contrastive background for verse 3b, which adds the new datum of an accompanying wife. Verse 3b, which speaks of a wife accompanying her husband, may depend on the mention of a wife in LH 117. The wife in verse 3b presumably works to pay off the debt alongside her husband. This is indicated by her changing her place of residence, an implication of verse 3b, and the statement that "she goes out" (ויצאה) with her husband, implying that she was a slave. CC's limitation of a wife's debt-slavery to coslaveship with her husband may reflect CC's interest in limiting or controlling the creditor's sexual access to the women listed in LH 117. Having the wife serve only with her husband theoretically reduces the chance that the creditor will have intercourse with her. Thus CC enables a creditor's inevitable sexual contact with a debtor's unbetrothed daughter by prescribing marriage but limits

his access to the debtor's wife by allowing her servitude only under the protective presence of her husband. This is not a contradiction. CC's interest is not in limiting sexual activity but in making sure that it operates according to existing social norms.

This understanding of verse 3 raises the question of whether CC intended verses 2–6 to apply equally to women who were independent debt-holders, not under the control of fathers or husbands, for example, certain widows or divorcees or perhaps older unmarried women.⁶⁷ CC may not have considered this special case. But if a woman of such a status were a candidate for debt-slavery, the concerns about sexual access and abuse behind the composition of verses 2–11 suggest that she would become the wife of her creditor, according to verses 7–11 and analogically following 22:15–16, rather than a temporary debt-slave as in verses 2–6. If so, Deuteronomy 15:12–18 significantly departs from the intent of CC in applying the legislation of the male in verses 2–6 to an independent female debt-holder.

The identity of the male in verses 2–6 is not clear. Is he the father or son of LH 117?⁶⁸ This is not easily decided because the Akkadian law is not entirely clear itself. The verb *ittandin* has two interpretations. It may be a Gtn preterite with a distributive sense, to be translated “if (the father) gives any (of his family members) for dependent debt-servitude (*ana kiššātim*).”⁶⁹ This means that the father is *not* a candidate for slavery. Alternatively, it may be an N perfect, translated “(the father) surrenders himself for dependent debt-servitude.”⁷⁰ Hence in addition to selling his family members, the father himself may enter servitude. If this matter is a point of debate for modern grammarians, it may have been so for readers of the text in antiquity. Even if we decide that the Gtn is the correct understanding, CC may have read the verb as an N-stem, or at least entertained the two interpretive possibilities. This may explain why CC writes its law so that it comprehends the slavery of the head of a household or his son. The wording of verse 3b allows for the former, a mature individual with a wife: “If he is the husband of a woman, she shall go free with him.” The wording of verse 3a presumes a younger individual who has not yet acquired a wife: “If he came in by himself, he shall go free by himself.” Verses 4–6, which describe the slave's marriage to a female slave provided by the creditor, also assume this younger individual. In view of these later verses, the basic rule of verse 2 would therefore include both a father and a son.⁷¹ CC also displays a dual rendering of an ambiguous phrase in the ox laws. It provides two laws about a habitual goring ox, one for an adult victim and one for a child victim (21:29, 31), both possible interpretations of *mār awīlim* in LH 251 (see chapter 8).

Two general matters concerning verses 2–6 remain for discussion. Given CC's concerns about sexual exploitation of debt-slaves, discussed earlier, we may ask whether CC was concerned about the creditor's sexual exploitation of a male debt-slave.⁷² CC does not seem to be concerned with direct sexual abuse of the slave by the creditor. It does not legislate safeguards, nor does the larger context of CC indicate an interest in homosexual relations. It is reasonable to

suppose that if it were to write a law on the matter, it would be a prohibition. But CC does say something about the sexual utilization of an unmarried male debt-slave. It allows the creditor to give him a slave wife, to produce children that belong as chattel-slaves to the creditor and expand his labor force (Exod 21:4–6). Thus all of Exodus 21:2–11 is very much concerned with the sexual and reproductive use of debt-slaves. In two cases, when the slave is a single male or the debtor's daughter, it facilitates marriages that provide the creditor with new slave labor. At the same time, it prevents the creditor from benefiting from the procreative powers and sexuality of a slave's wife who accompanies him into slavery.

Finally, we can note that verses 4–6 should be viewed as part of the original text of the male slave law because they, especially verses 5–6, reflect dependence on LH, as does the basic law in verse 2. Moreover, verse 3 must also be original because it reflects the motif of a wife as a slave, as found in LH 117, and otherwise creates a necessary link between verses 2 and 4–6.⁷³ The conceptual shifts and redundancies in the passage, such as the repetition in verse 6a, can be seen as resulting from the creative combination of laws and motifs from different places in LH.

The Supplementary Female Debt-Slave Laws (21:8–11)

Like the male debt-slave law, the daughter debt-slave law is based on LH 117 in verse 7, with subcases based on other parts of LH, including the family law section of LH 127–191:

Exodus 21:8–11

⁸If she is displeasing in the view of her master who has designated her for himself, he shall let her be redeemed. He shall not have power to sell her to a foreign people because he betrayed her.

⁹If he designates her for his son, he shall treat her according to the law pertaining to daughters.

LH 148, 154–156, 148–149, 178

¹⁴⁸If a man marries a woman and *la'bum*-disease then seizes her . . . [see below for the rest of the law]

¹¹⁸ If he gives a male slave or female slave (or: if a male slave or female slave is given) for dependent debt-servitude, the merchant (= buyer) may extend (the period of service); he may sell (them); (the slave) need not be reclaimed.

¹¹⁹If an obligation has seized a man and he sells his slave-woman who has borne him children, the owner of the slave-woman shall weigh out the silver that the merchant weighed out and effect the release of his slave-woman.

¹⁵⁴If a man knows (sexually) his daughter, they shall make that man leave the city.

¹⁵⁵If a man chooses a bride for his son and his son knows her, but afterwards he (the father) lies in her lap and they catch him, they shall bind that man and throw him into the water.

¹⁵⁶If a man chooses a bride for his son and his son does not know her, and he (the father) lies in her lap, he shall weigh out one-half mina (= thirty shekels) of silver and whatever she brought from the house of her father he shall restore to her. A husband of her choosing may marry her.

¹⁰If he takes another (woman), he shall not withhold her (the first wife's) food, clothing, and habitation.

¹¹If he does not do these three things for her, she may leave without further obligation; no (redemption or debt) silver is (due).

¹⁴⁸If a man takes (i.e., marries) a woman and *la'bum*-disease then seizes her, and he decides to take a second (woman), he may marry (her), but he may not divorce (lit.: forsake) his wife whom *la'bum*-disease seized. She shall stay in a dwelling that he builds and he shall support her as long as she lives. ¹⁴⁹If that woman does not consent to dwell in her husband's house, he shall replace the dowry that she brought from her father's house, and she may leave.

¹⁷⁸If an *ugbabtum*, *naditum*, or *sekretum*, whose father gives her a dowry and writes for her a document, but in the document that he wrote for her he did not write for her to dispose of her property as she wishes and has not allowed her to parcel it out to the extent that she desires, after her father dies, her brothers shall take her field and orchard and give her an allowance of food, oil, and clothing according to the value of her inheritance and (thus) satisfy her desire. If her brothers do not give her an allowance of food, oil, and clothing according to the value of her inheritance and do not satisfy her desire, she may give her field or orchard to any cultivator she desires, and her cultivator shall support her. She shall eat of the field, orchard, or what that her father gave her as long as she lives. She shall not sell (them). She shall not pay off obligations to another (from them). Her inheritance belongs to her brothers.

אם רעה בעיני אדניה אשר⁸
לא (לו) יעדה והפדה לעם
נכרי לא ימשל למכרה בבגדו
בה

¹⁴⁸*šumma awīlum aššatam iḥuzma la'bum iṣšabassi...*

¹¹⁸*šumma ĪR (wardam/wardum) ū lū GEMÉ (amtam/amtum) ana kiššātīm ittandin tamkārum ušetteq ana kaspim inaddin ul ibbaqqar*

¹¹⁹*šumma awīlam e'iltum iṣbassūma amassu ša mārī uldūšum ana kaspim ittadin kasap tamkārum iṣqulu bēl amtīm išaqqalma amassu ipaṭṭar*

¹⁵⁴*šumma awīlum mārassu iltamad awīlam šuāti ālam ušeṣṣūšu*

9 ואם לבנו ייעדנה כמשפט
הבנות יעשה לה

10 אם אחרת יקה לו שארה
כסותה וענתה לא יגרע
11 ואם שלש אלה לא יעשה
לה ויצאה חנם אין כסף

155 *šumma awīlum ana mārīšu kallatam iḫīrma*
mārušu ilmassi šū warkānumma ina sūnīša itatīlma
iššabtūšu awīlam šuāti ikassūšuma ana mē inaddūšu
156 *šumma awīlum ana mārīšu kallatam iḫīrma*
mārušu lā ilmassima šū ina sūnīša ittatīl 1/2 mana
kaspam išaqqalšimma u mimma ša ištu bīt abīša
ublam ušallamšimma mutu libbīša iḫḫassi
148 *šumma awīlum aššatam iḫuzma la'bum iššabassi*
ana šanītim aḫāzīm panīšu ištakan iḫḫaz aššassu
ša la'bum išbatu ul izzibši ina bīt tīpušu uššamma
adi balḫat ittanaššīši
149 *šumma sinništum šī ina bīt mutīša wašābam*
lā imtagar šeriktaša ša ištu bīt abīša ublam
ušallamšimma ittallak
178 *šumma ugbabtum nadītum ū lū sekretum ša*
abūša šeriktam išrukūšim ḫuppam išturušim
ina ḫuppm ša išturūšim warkassa ēma elīša
ṭābu nadānamma lā išturšimma mala libbīša lā
ušaṃṣīši warka abum ana šīmtim ittalku eqelša u
kirāša aḫḫūša ileqqūma kīma emūq zittīša ipram
piššatam u lubūšam inaddinūšimma libbaša uṭabbū
šumma aḫḫūša kīma emūq zittīša ipram piššatam u
lubūšam lā ittadnūšimma libbaša lā uṭṭibbū eqelša
u kirāša ana errēšim ša elīša ṭābu inaddinma
errēssa ittanaššīši eqlam kirām u mimma ša abūša
iddinūšim adi balḫat ikkal ana kaspim ul inaddin
šaniam ul uppal aplūssa ša aḫḫīšama

The primary correlation is between verses 10–11 and LH 148–149. The protases of the first laws in verse 10 and LH 148 begin with the mention of acquiring a second wife. Both use only feminine adjectives to refer to the woman (אחרת “another,” *šanītum* “a second/another”). Both use verbs of “taking” to refer to the marriage (לקח, *aḫāzum*). The apodoses of the first laws go on to prescribe support for the preexisting wife. And the second laws, in verse 11 and LH 149, refer to a situation in which the woman may leave the husband.⁷⁴

Despite obvious differences, the correspondence of the laws is clear. CC has taken a law that pertains to the marriage of free persons and adapted it to fit the situation of a slave-wife. This is not a case of complete conceptual inversion, like that between verses 5–6 and LH 282, but it is related in that it introduces a variable into the legal context of the source law to produce a different law. The variable is the status of the woman. One could well imagine LH to have included a law just after LH 149 based on a difference in the woman’s social status: “If that woman is a slave (*amtum*). . . .” Such a sequence would be similar to other actual laws in LH that portray alternatives based on gradations of

social status.⁷⁵ CC has written the alternate case, about a slave (or type of slave), without reiterating the primary law upon which it depends.

Verse 10 does not mention the reason that the creditor took a second wife, as opposed to LH 148, which says that the husband takes a second wife because his first contracted *la'bum* disease, apparently a skin disease not entirely dissimilar to the group of afflictions comprehended under the biblical Hebrew term צרעה “scale disease.”⁷⁶ But CC has not altogether ignored this question. It has pushed the grounds for the second marriage back to verse 8: “If she is displeasing in the eyes of her master who has designated her for himself. . . .”⁷⁷

Realizing that the displeasure clause in verse 8 correlates with LH 148 helps with the interpretation of לא יעדה in that verse, which the traditional reading takes to mean “he designated *for himself*.”⁷⁸ The spelling לא normally should be taken as a negative particle, which would yield: “if she is displeasing in the eyes of her master who has *not* (yet) designated her. . . .”⁷⁹ But source and context suggest that לא should be understood as לו “for himself.” As a reflection of LH 148, one expects verse 8 to presume a marriage relationship. Moreover, verse 8 describes the creditor as having “broken faith with her” (בבגדו בה). This is not simply the cancelation of the contract prior to his taking her as a wife.⁸⁰ The root בגד elsewhere in the Bible indicates a serious breach of an intimate relation against customary norms and is used of unfaithfulness in marriage.⁸¹ The object of the preposition בה “against/with her” characterizes this as a personal affront to the woman, not her father or the contract relationship formed with the creditor. In fact, the agreement with the debtor-father is technically not broken at all. For example, if the woman cannot be redeemed, she presumably remains with the creditor the rest of her life, as long as she receives support. To send her home would contradict the requirement of redemption for her release set down in verse 8. Moreover, if the action indicated by בגד referred to an event that occurred prior to consummation and even prior to the creditor’s designating the woman for anyone, even his son, it would occur temporally very close to the father’s selling the daughter. He and his family probably would not be in any better position financially to redeem her. The redemption clause in verse 8 presumes that she has been in the custody of the creditor for some time, which suggests that her relationship to a male has been determined and consummated.⁸² In addition to these considerations, taking לא as לו “to him” constitutes a fitting legal parallel to verse 9, which uses the verb יעד with the ל preposition with reference to the son.⁸³ Finally, verses 10–11, apart from any consideration of LH, also presume that the creditor has consummated a marriage with the woman. If verse 8 is to be read “he has not designated her,” that is, for anyone, we are left with the question of how she ended up as the creditor’s wife in those last verses.

CC does not give a specific reason for the husband’s displeasure. It appears to have generalized its source law. This tendency is found in a number of other laws in CC over against their sources. The displeasure in CC may therefore arise from other difficulties, such as (presumed) infertility or personal incompatibility.⁸⁴ Infertility might be of particular concern to CC, given its concern

otherwise about the procreation of slaves. As noted earlier, one of the reasons that a creditor would take a debtor's daughter as a wife would be to supply himself similarly with offspring to provide labor.

Verses 10–11 describe an alternative to verse 8. They assume that the woman has not been redeemed as allowed by verse 8. She necessarily remains with her creditor-husband because he is forbidden to sell her to a “foreign people” (עַם נֹכְרִי; v. 8). This must refer to any people other than those who would redeem her, including Israelites other than her family or clan.⁸⁵ The intent of the law is to prevent her from being sold, with the result that she becomes a chattel-slave and cannot at some point be redeemed. The possibility of redemption remains open anytime after the creditor-husband's display of discontent, even after many years. Verses 10–11 provide another way out of the marriage: the creditor-husband's lack of support.

The two mechanisms for the woman's release in CC—redemption and release when her husband fails to support her—appear to be playing off the vague formulation of LH 148–149. These laws do not clearly indicate why the woman leaves her husband: is it because she is no longer loved by her husband because of *la'bum*-disease, or is it because he did not support her? CC makes both conditions of release. The possibility of redemption is premised on the creditor's displeasure (v. 8), and the release without need of payment is premised on a lack of support (v. 11).

CC changes the economic details of the laws from Hammurabi to fit the case of a slave-wife. Instead of having her leave of her own accord and take her dowry with her as in LH 149, a redemption price must be paid (v. 8). The presumption is that the displeasure is not entirely the fault of the creditor. The language “if she is unacceptable in the eyes of her master” is neutral or tends toward casting blame on the woman. Moreover, even though the creditor has had sexual use of the woman and the bride-price that he would pay has presumably been deducted from the loan amount, some debt apparently still remains (see the discussion earlier). Only when he does not provide support is the creditor penalized, and he loses his loan amount. In this case, the woman goes free “without silver,” that is, without need for paying redemption money (v. 11). His financial loss here is akin to restoring the dowry to the wife in LH 149.

The prior discussion of the male debt-slave laws suggested that LH 118–119, which deal with selling slaves into debt-slavery, may have influenced the formulation of verse 4, the law about a creditor giving a wife to a male debt-slave. These cuneiform laws also appear to have influenced verse 8. They continue the rule of LH 117 and allow one to sell a male or female slave (*wardum* or *amtum*) to pay off an obligation. LH 118 allows one who bought this slave from the debtor to sell the slave to people other than the debtor. LH 119, however, implicitly outlaws this in a case where a slave-woman sold to pay off a debt has borne children to the debtor. She is to be redeemed (*paṭārum*) by her owner. It would seem that this law requires the buyer to keep the slave woman in his possession until redemption. This is similar to the rule of verse 8, which requires the creditor to retain possession of the woman so that she can be redeemed.

CC goes beyond LH 148 to specify the type of support that the woman is to receive by listing three modes of sustenance. The Akkadian law says that “she shall stay in a dwelling that he (the husband) builds and he shall support her (*ittanaššīši*) as long as she lives.”⁸⁶ CC explains: “he shall not withhold her (the first wife’s) food, clothing, and habitation.” The meaning of the last term in the Hebrew list (עֲנָה) is disputed. It is traditionally understood as meaning “cohabitation” or “conjugal rights.”⁸⁷ But one may take the noun as a defectively spelled feminine noun from the root עוּן III,⁸⁸ which has the meaning of “to dwell.” Two nouns, מֵעוֹן “dwelling, habitation” and מְעוֹנָה “den, lair,” are formed from the root, and it may also appear twice as a verb if certain forms are emended or reinterpreted.⁸⁹ Thus עֲנָה in verse 10 may mean “her habitation/dwelling.”⁹⁰ The source analysis of CC supports this solution, inasmuch as LH 148 prescribes specifically that the husband must provide housing for the first wife.

CC’s list of three items of support is not an invention. It has presumably been guided by the threefold list of support in LH 178 (see the previous citation). This law speaks specifically of a daughter who is an *ugbatum*, *naditum*, or *sekretum* and who had not been given power by her now dead father to give her land holdings to another. She is therefore to receive support from her brothers. They take her field and orchard and in return provide her with “food, oil, and clothing” (*iprum piššatum u lubūšum*).⁹¹ Two of these items—food and clothing—appear in CC’s list. CC has replaced “oil” with “housing,” based on LH 148. A similar alteration of a threefold list is found at the beginning of the final apodictic laws (22:20). CC’s listing of immigrant, widow, and orphan derive from the weak person, widow, and orphan girl of LH. CC has replaced the “weak person” with the “immigrant,” which is more suitable to CC’s ideological context.

LH 178 was able to provide a model for the list of items of support in verse 10 because it uses the same verb that LH 148 uses to summarize the sustenance that the woman is to receive. The end of LH 178 says that if the brothers fail to support their sister, she can give her field or orchard to a cultivator, and “he shall support her” (*ittanaššīši*). The cultivator’s support is obviously to be similar to what the brothers give; therefore, the verb *ittanaššīši* encapsulates the threefold list earlier in the law. LH 148 uses this same verb to describe the support that the woman is to receive from her husband: “he shall support her as long as she lives” (*adi baḥtat ittanaššīši*). The verb of LH 148 provided a mechanism for cross-referencing to LH 178, which then served as a model for CC’s threefold list.

Given the influence of LH 178 described to this point, it is possible that this law was also influential in the formulation of the protasis of verse 11. The biblical law here begins “If he does not do these three things for her” (וְאִם שְׁלֹשׁ אֵלֶּה לֹא יַעֲשֶׂה לָּהּ). The middle of LH 178, after stating that the brothers must provide their sister with “food, oil, and clothing,” introduces a subcase with a new protasis: “if her brothers do not give her an allowance of food, oil, and clothing

according to the the value of her inheritance, and do not satisfy her desire” (*šumma aḥḥūša kīma emūq zittiša ipram piššatam u lubūšam lā ittadnūšimma libbaša lā uṭṭibbū*). The biblical protasis is essentially the same. CC can be understood as having reduced the explicit and redundant repetition of the three-fold means of support to “these three things.” This analysis confirms that the “three things” of CC’s law refers to the three items of support, and not to the three laws in verses 8, 9, and 10 (i.e., letting the woman be redeemed, treating her like a daughter, and giving her support if he takes another wife), as some have argued.⁹²

LH 178 does not provide a model for the apodosis in verse 11. Unlike this law, CC does not prescribe alternate means of supports but sets the woman free. This is similar to the rule in LH 149 that says that “she shall leave” (*ittallak*). Neither verse 11 nor LH 149 tells us where the woman goes. This does not mean that she is left on her own. A law near LH 149 says that a woman who obtains a divorce from an abusive husband takes her dowry and “goes away to the house of her father” (*ana bīt abīša ittallak*; LH 142).⁹³ LH 149 uses the same verb of departure and therefore probably implies the same ultimate goal. CC’s verse must assume the same.

Little has been said to this point about verse 9 because it breaks up the continuity of verses 8 and 10–11, the main case. This verse is concerned with a case where the creditor gives the woman to his son as a wife. It appears right after verse 8, partly because determining whom the woman will marry, in terms of her personal biography, happens before the creditor’s taking a second wife in verses 10–11, should he designate the debtor’s daughter for himself. The location of verse 9 is further explained by an apparent attempt to create a structure that mirrors the law about the male debt-slave, as noted at the beginning of this chapter.

Verse 9 depends on another law from LH in the vicinity of LH 148–149. Five laws later, Hammurabi’s collection includes rules about sexual intercourse between a father and his daughter or daughter-in-law (LH 154–156, cited previously).⁹⁴ If the woman is his daughter, the father is exiled (LH 154). If the woman is his daughter-in-law with whom his son had already had intercourse, the father is tied up and thrown into the water (LH 155). If his son had not yet had intercourse with his bride-to-be, his father pays her thirty shekels of silver, gives back whatever she had brought in, and allows her to marry someone else (LH 156). Verse 9 and LH 155–156 correlate in having protases that refer to selection of the wife by the father for the son. CC’s wording is actually quite similar: “if he designates her for his son” (ראם לבנו יעדנה); “if a man chooses a bride for his son” (*šumma awīlum ana mārīšu kallatam iḥīrma*). Hebrew יעד “designate” is a suitable translation of Akkadian *ḥārum*, which CAD translates as “to pick and take as mate (for oneself or for someone else).”⁹⁵ This definition fits both cases of יעד in the CC’s passage: that in verse 8, where the creditor designates the woman as his own wife, and that in verse 9, where he designates the woman for his son.⁹⁶

When verse 9 is seen to correlate with LH 154–156, the meaning of its apodosis, “he shall do for her according to the law pertaining to daughters” (כמשפט לה, *הבנות יעשה לה*), becomes clear. This rule is generally interpreted to mean that the father is to treat his daughter-in-law as a free woman—she is, in effect, freed from slavery.⁹⁷ The problem with this is that it grants the woman a status that she does not have when married to the creditor himself. If we take CC’s operative phrase concretely, meaning “*the law* pertaining to daughters” (משפט *הבנות*), it makes sense as a reference to a specific rule such as LH 154, which penalizes intercourse with one’s daughter.⁹⁸ In other words, CC’s rule can be understood to prohibit daughter-in-law incest, the concern of LH 155–156, by invoking reference to a general rule against daughter incest such as in LH 154. This concrete use of משפט to refer to a particular law, and not general *custom*, appears in 21:31: “or (if) it goes a son or a daughter, *it shall be done for him according to this law*” (או, בן יגה או בת יגה כמשפט הזה יעשה לו), referring back to verses 28–30. Verse 31 uses the verb עשה “to do” with the ל preposition, the same usage found in verse 9. This means “apply (a legal rule) to (a person).” The particularizing meaning of משפט is also found in 21:1: “These are *the laws* that you shall place before them” (ואלה המשפטים אשר תשים לפניהם). The plural noun in this phrase correlates with *dīnāt mīšarim* “just laws,” referring to the individual casuistic laws in LH (see chapter 3).

A ban against incest in verse 9 is particularly pertinent because the creditor might think that he still has sexual access to the woman because he was the one who made the loan to her family and because the woman is presumably still a slave when married to the son—nothing in the context indicates that she has been freed.⁹⁹ CC’s concern in this rule is consistent with its goal in other parts of the slave laws: it seeks to control the sexual use of a slave. CC assumed that the creditor would have sex with the debtor’s daughter; therefore, it prescribed that the woman be married to the creditor (vv. 7–8, 10–11). But if the creditor gives the woman in marriage to his son, then the father’s sexual access is denied.

A final issue to consider is the compositional relationship of verses 7–11 to verses 2–6. Some believe that the entire daughter law is secondary.¹⁰⁰ This must be rejected because both verses 2–6 and 7–11 are fully based on Hammurabi’s laws. Moreover, their individual compositional character is similar: their foundational laws were created from LH 117, with their extended laws built from laws later in LH, especially from the section of family laws between LH 127–191.¹⁰¹ Common source and method of composition point to unitary composition.

Gender Inclusiveness in the Covenant Code

The female debt-slavery law raises the question about how CC treats males and females in its laws over against LH. In a few cases, CC mentions a female

Table 5.1: Males and females in the laws of CC and LH

Topic	CC	LH
debt-servitude	male and female cases (21:2–6, 7–11)	wife, son, daughter (117)
*child rebellion—striking	father and mother (21:15)	father (195)
child rebellion—cursing	father and mother (21:17)	father and mother (192–193)
*killing lower class	male and female slave (21:20)	male commoner (208), son (116)
*injury to slave’s eye/tooth	male and female slaves (21:26–27)	male slave (199; cf. only male victims in 196–201)
*goring ox	male and female victims (21:28–29), son and daughter (21:31), male and female slave (21:32)	male victim (250–251), son (251, when read literally), male slave (252)

*LH has only a male whereas CC includes a female

along with a male in its laws where LH has only a male. Table 5.1 lists all cases of gender inclusiveness in CC compared with their source laws in LH. In the four laws marked with an asterisk under “Topic” in the table, LH has only a male whereas CC includes a female. In the two other laws, LH has females along with males. Other data from the two collections put the data in the table into context. Various slave laws in LH (which CC does not replicate as primary laws in its composition) include both male and female slaves (LH 7, 15–17, gap ¶ s, 118, 278–281).¹⁰² In CC, laws that apply equally to males and females, other than those listed in the table, do not mention females explicitly.¹⁰³ Women alone appear specifically in laws that affect only women (daughter debt-slavery 21:7–11; miscarriage, 21:22–25; seduction, 22:15–16).

It is reasonable to suppose that the various laws in LH where males and females are mentioned together had some influence on the more pervasive inclusionary formulation in CC.¹⁰⁴ The mention of males and females in LH 117, which is used as the basis for the first casuistic laws in CC, together with the mention of males and females in other slave laws of LH, may have set the pattern for mentioning male and female slaves in the other passages of CC.¹⁰⁵ We should note, however, that the father and mother of 21:17 were probably already part of the law on parent cursing in the participial source that CC used. This led to CC’s including both parents in the parent-striking law (21:15, over against LH 195, which has only a “father”; see chapter 7 as well as chapter 6). Therefore, CC also had a native model for gender inclusivity.

Why Begin the Casuistic Laws with Debt-Slavery?

It has been a puzzle why CC begins its casuistic laws with debt-slavery. The source thesis of this study makes the question more acute: if CC really relies on

LH, why did it begin with the middle of the Akkadian collection, at LH 117, and not with the beginning of the collection, or at least with a topic, such as homicide (as found in the Hittite Laws), that seems more conceptually primary from a legislative point of view? Does not this strange feature, in fact, prove that CC is independent of LH? No. CC begins its casuistic laws with debt-slavery because poverty is a primary theme in the overall work.¹⁰⁶

As explained in chapter 3 and explored in more detail in chapter 11, the final apodictic laws emphasize this theme. The two strings of these laws begin with prohibitions against oppressing the poor. String I prescribes: “Do not oppress the immigrant; do not repress him, because you were immigrants in Egypt. Do not afflict any widow or orphan. If you do afflict him, when he cries to me I will heed his cry. My anger will be incited and I will slay you with the sword, so that your wives become widows and your children, orphans” (22:20–21); string II: “Do not repress the immigrant; you know the heart of the immigrant, because you were immigrants in the land of Egypt” (23:9). The primacy of this theme in these laws derives from its initial and thus emphatic position in the exhortatory block of the epilogue, upon which they depend: “so that the strong *not wrong the weak and to secure justice for the destitute girl and widow*, . . . I (Hammurabi) have written my treasured words on my stele and set (it) up before the image of me, the king of justice” (47:59–78). This theme also appears near the beginning of the prologue: “at that time, Anu and Enlil, to provide well-being for the people, called me by name, Hammurabi, the dutiful prince, the one who fears the gods, to make justice appear in the land, to destroy the wicked and evil, *so that the strong not wrong the weak*, to rise like Shamash over humanity and to enlighten the land” (1:27–49). Thus the motif is prominent in CC’s source text.

The strings of CC’s final apodictic laws further reveal their interest in care for the poor by each prescribing two laws that affect the poor right after the initial prohibitions against oppression. String I prohibits charging interest from the poor and keeping a pledge overnight (22:24–26); string II urges observance of the seventh year and seventh day, which, respectively, provide the poor with food and rest. The central chiastic core of the final apodictic laws also emphasizes judicial respect for the poor (23:3, 6, the b-members of the chiastic structure; see chapter 3). In addition, the laws about ethical treatment of animals, too, can be viewed as reflecting indirectly concern about those living on the margins (22: 29, 30; 23:4–5 [the c-members of the chiastic structure], 11, 12, 19; see chapter 11).

CC’s preoccupation with poverty is as ideological as it is ethical. In the prologue and epilogue of LH, the motif of Hammurabi’s sustaining and protecting the poor seeks to aggrandize the king and operates in connection with other motifs that demonstrate his supremacy. CC maintains a similar thrust in its laws. It replaces Hammurabi in the prologue and epilogue, especially the exhortatory block, with Yahweh. This creates a new political dynamic: the god is now king and is the advocate and protector of the poor. Moreover, CC alters the list of the marginal to include the “immigrant” (גַּר), which takes the place

of the “weak person” in the exhortatory block. CC makes a point of stating that the Israelites once had this status in Egypt. Thus the list of the poor in CC has a political dimension. The implicit message is that Yahweh is the king of Israel who has provided justice for the weak, including the Israelites under foreign domination. This is a cipher for Israel or Judah under Assyrian domination. CC takes a primary royal propagandistic motif, the king’s care for the poor, and makes it operate against its Mesopotamian overlords.

In view of this, it may not be an accident that CC’s debt-slave laws use the nationalistic adjective “Hebrew.” A second-person formulation with the verb *to buy* requires the use of this adjective, as noted earlier in this chapter. Although we must still reject defining “Hebrew” by the second millennium BCE term *ḥap/biru*, we can still see a conceptual correlation between the “Hebrew” at the very beginning of the debt-slave law in 21:2 and the “immigrant” in Egypt at the very beginning of the two strings of the final apodictic laws (22:20; 23:9). The persons do not have an identical status—we are not to assume that every “Hebrew” was poor. Nevertheless, the two parts of the text evoke nationalistic consciousness.

A number of earlier scholars suggested that ethical or nationalistic explanations lie behind the placement of the debt-slave laws at the beginning of the central casuistic laws of CC.¹⁰⁷ They were not far wrong. The difficulty of previous claims was in ascribing to this too much of a theological or moralistic motivation. Now we have an empirical foundation for CC’s interest in the theme of poverty. We see, too, that it is not simply a reflection of religious or ethical interests. It is an expression of Realpolitik. Even though CC is involved in the theological depiction and interpretation, it is driven by an interest in defining power relations between different national groups.

These considerations require the rejection of two theories found in some studies that have examined the redactional development of CC. One is that the debt-slave laws in 21:2–11 are an addition to a more delimited body of casuistic laws.¹⁰⁸ The source analysis of CC indicates that these laws are original to the basic composition of CC, along with all of the other materials derived from or inspired by LH.

The second theory is that the slave laws were originally located just before the deposit laws of 22:6–8.¹⁰⁹ This conclusion is actually consistent with the source analysis of this book because it uses the order of LH for justification. In LH, the debt servitude laws (114–119) directly precede the deposit laws (120–126). But the primary motivation for this theory was not that CC was dependent on LH, but that the position of the slave laws at the beginning of a law collection did not make sense. If the slave laws can be moved to a position later on in CC, then the casuistic laws would begin, more logically, with homicide (21:12) or at least assault (21:18–27). The present study shows, however, that the intent of CC is not simply to legislate. It begins its casuistic laws with a topic that makes sense with respect to the larger ideological message of the text. Chapter 9 provides another explanation of how the deposit laws relate to the general sequence of LH that CC follows.

Conclusion

CC's primary goal in its debt-slave laws was to unpack the implications of the concise law about debt-servitude in LH 117. The primary problem for CC was the issue of the creditor's likely sexual exploitation of a debtor's daughter given to pay off a debt. CC concluded, using MAL A 55–56 or an unknown source with similar laws, that the woman must marry her father's creditor. It included a version of this law as a supporting footnote in 22:15–16 and extracted the case of the daughter from LH 117 for separate treatment in verses 7–11. It left the case of the enslavement of a male (father or son) or a wife for verses 2–6. But even here, CC was concerned about sexual access and apparently protected a debtor's wife from the creditor's advances by allowing her to serve as a debt-slave only concurrently with her husband (v. 3). Part of the reason for defining a creditor's access to women may have come from a desire to describe the conditions under which a creditor might produce children from a slave woman. His marriage to a debtor's daughter in verses 7–11 would provide him with offspring to work in his household. This concern is also manifested in the law about giving a slave wife to a male debt-slave, whose children would belong to the creditor (vv. 4–6). To create this particular law, CC used LH 175 (on the status of children of a slave and a free person) and 282 (a slave's rejecting his master with ear excision). This justified the creditor's ownership of the children but also provided a mechanism whereby the debt-slave father could remain with his children. The law about the daughter in verses 7–11 treated some of the questions surrounding the marriage of the woman. If she were married off to the creditor's son, does the creditor have sexual access to the woman? Using LH 154–156 as a guide, laws penalizing incest with a daughter and daughter-in-law, CC ruled in the negative (v. 9). If she were married to the creditor himself, what would happen if the relationship fell apart? CC used LH 148–149 (on taking a second wife), in connection with LH 178 (with a threefold maintenance clause) and 118–119 (laws about redeeming slaves), to legislate that the creditor must allow the woman to be redeemed, support her, or let her go free without payment of the remaining debt (vv. 10–11).

This use of LH and other cuneiform law indicates that laws of Exodus 21:2–11 are an academic construct. They do not transcribe or encode native Israelite or Judean practice. CC has nonetheless given its laws a native stamp or contextualization. They define the male debt-slave as a “Hebrew.” They require that to make him into a permanent slave, he be brought to “the God,” which metonymically refers to an Israelite or Judean sanctuary. Moreover, CC uses native terminology for permanent chattel-slaves, evident in the wording that this converted debt-slave “serve him (the master) permanently.” And the motif of six years of service with release in the seventh was made to cohere numerically with the custom of rest on the seventh day and leaving food in the field in the seventh year, if the latter was not an invention of CC. Nonetheless, the body

and substance of the debt-slave laws—the motifs of primary concern and even many points of legal formulation—come from cuneiform sources.

This creation of new law by revising LH and other cuneiform legislation presumably had an implicit ideological goal beyond creating law. The placement of debt-slave legislation at the beginning of the casuistic laws is a manifestation of the collection's larger concern about poverty. This concern is not merely ethical but political within the larger context of CC, as chapter 11 makes clear. CC's political interest in this law may be partly manifest in the explicit description of the debt-slave as a "Hebrew." The ideological interest of CC is also visible in another way in the logical coherence of the debt-slave laws over against their source. CC can be seen as responding to questions implicit in its source. The detail of its legislation and the literary craft involved belie an intent to write laws that are *better* than those of its sources. This is not an ethical judgment. Some of CC's rules, in fact, seem repressive when set against LH: a debtor's daughter is to marry her father's creditor, and the male slave has to work six instead of three years.¹¹⁰ CC's improvements are, in terms of legal coherence and sense, primarily in answering questions about sexual access to and use of slaves. CC's intent to improve upon sources is comparable to the changes that Deuteronomy 15:12–18 made to CC's debt-slave law, or that the Holiness Legislation (Leviticus 25) made to both CC's and Deuteronomy's debt-slave laws.¹¹¹ Although Deuteronomy's modifications have often been viewed as ethical improvements, their limitation of debt-slavery to debt holders themselves and apparently not their dependents may arise more purely from legal logic than from a desire to alleviate oppression. After all, Deuteronomy did not reject debt-slavery in principle. Moreover, the Holiness Legislation, while it looks like it is partly motivated by ethical concerns—for example, in refusing to call Israelite debt-slaves "slaves" (אמתות/עבדים)—it is moved by cold, abstract principle in extending servitude ideally to the fifty-year jubilee period, thus effectively enslaving a majority of insolvent debt holders for life.¹¹²

6

Homicide, Injury, Miscarriage, and Talion (Exodus 21:12–14, 18–27)

After using LH 117 for the basis of the slave laws in Exodus 21:2–11 and drawing material from the family laws in LH 118–191 (specifically 118–119, 148–149, 175, 178) and elsewhere (LH 278–282), CC begins to employ the sequence of Hammurabi's laws in a more straightforward fashion for the rest of its casuistic laws. Within 21:12–22:14, many of CC's casuistic laws correspond with a number of laws within the block of LH 192–271. Exodus 21:12–27 forms a particularly coherent unit that correlates with the parent-child, striking, and assault laws in LH 192–214. It contains laws on homicide (vv. 12–14), attacks by children on parents along with kidnapping (vv. 15–17), injury of a free person (vv. 18–19), homicide of a slave (vv. 20–21), aggravated miscarriage (vv. 22–23, to which is attached a talion law vv. 23b–25), and permanent injury to a slave (vv. 26–27). This series follows the order of laws in LH with two major exceptions, the laws on homicide and talion.

CC's alteration of the sequence is part of a coherent reworking of Hammurabi's assault laws that identifies problems in the source text and provides solutions. CC apparently found difficulties with the system of penalties in LH 192–214 in connection with the issue of intent. It refigured how this feature operates across the various laws in order to describe a presumably more consistent and reasonable scheme of punishments. This chapter describes the logic and ideological rationale of these changes in CC's homicide and assault laws (the laws on child rebellion are discussed in the next chapter). As it does

so, it clarifies a number of questions that have occupied scholars: What is the nature of homicide asylum? What is the relationship of payments for injuries (vv. 18–19) to the talion laws? Why the apparent tension in the slave homicide laws where one is not liable for the death of a slave only as long as the slave does not die immediately from a beating? What type of slave is covered in the slave homicide laws? What is meant by the term $\eta\sigma\alpha$ in the miscarriage law? Is talion punishment to be taken literally? How does this relate to the miscarriage law and to the larger context of homicide and injury? Finally, how are divergences in style—particularly the laws formulated in participial form in verses 12, 15–17 and the unusual talion list in verses 23b–25—to be explained?

The Position of the Homicide Law (21:12–14)

Our starting point is to observe the correlation of CC's primary homicide and battery laws with those of LH 206–208:¹

Exod 21:18–21

¹⁸When men fight and one strikes his fellow with a stone or with a fist (?), and he (the latter) does not die but takes to his bed—¹⁹if he gets up and walks about outside on his staff, then the striker is absolved, but he must recompense him for his period of inactivity and provide for his cure.

[¹²He who strikes a man so that he dies shall be put to death, ¹³and he who did not plan it, but the God directed (the victim) to his hand, I will appoint a place for you to which he may flee. ¹⁴But if a person plots against his fellow to kill him by deceit, you shall take him from my altar to be put to death.]

²⁰If a man strikes his male slave or female slave with a rod and he (or she) dies under his hand (i.e., then and there), he (the victim) is to be avenged. ²¹But if he lingers for a day or two, he (the assailant) shall not

LH 206–208

²⁰⁶If an *awilum* strikes another *awilum* in a fight and injures him, that *awilum* shall swear (saying), “I did not strike him with intent,” and he shall pay the physician.

²⁰⁷If he dies from his being struck, he shall also swear (as in previous paragraph). If (the victim) is an *awilum*, he shall weigh out one-half mina (= thirty shekels) of silver.

²⁰⁸If (the victim who dies when struck) is a commoner, he (the assailant *awilum*) shall weigh out one-third mina (= twenty shekels) of silver.

suffer vengeance, since he is his (the master's) silver (i.e., property).

18 וכי יריבן אנשים והכה איש את רעהו באבן או באגרף ולא ימות ונפל למשכב 19 אם יקום והתהלך בחוץ על משענתו ונקה המכה רק שבתו יתן ורפא ירפא [12] מכה איש ומת מות יומת 13 וואשר לא צדה והאלהים אנה לידו ושמתו לך מקום אשר ינוס שמה 14 וכי יזד איש על רעהו להרגו בערמה מעם מזבחי תקחנו למות] 20 וכי יכה איש את עבדו או את אמתו בשבט ומת תחת ידו נקם ינקם 21 אך אם יום או יומים יעמד לא יקם כי כספו הוא

206 *šumma awīlum awīlam ina risbatim imtaḥašma simmam ištakanšu awīlum šū ina idû lā amḥašu itamma u asām ippal*

207 *šumma ina maḥāšīšu imtūt itammāma šumma mār awīlim 1/2 mana kaspam išaqqal*

208 *šumma mār muškēnim 1/3 mana kaspam išaqqal*

The series in LH 206–208 appears in the context of a succession of laws on striking and injury, most of which describe an assault with the verb *maḥāšum* “to strike.” These include LH 195 (a son striking a father), LH 196–201 (talion laws about blinding an eye, breaking a bone, knocking out a tooth—these use verbs more specific to the injuries), LH 202–205 (striking as an insult), and LH 209–214 (striking that causes a miscarriage). Within this larger context, LH 206–208 form a discrete unit. It begins with a case of striking that causes injury, followed by striking that causes death, and ends with striking that causes the death of one of a lower status, a commoner.

Verses 18–19 correlate with LH 206, and verses 20–21 with LH 208. The correlation of the first laws is clear. The initial and final phrases in CC's law are similar enough to be called a translation: “When men fight and one strikes his fellow² . . . he shall provide for his cure” (וכי יריבן אנשים והכה איש את רעהו . . . ורפא) (ירפא) compared with “If a man strikes a man in a fight . . . he shall pay the physician” (*šumma awīlum awīlam ina risbatim imḥašma . . . u asām ippal*).³ The correlation between verses 20–21 and LH 208 is reasonable once one allows for CC's having replaced Hammurabi's commoner with another individual of a lower class, a slave. LH in this area of the text regularly has socially graded laws that include slaves (see later).

As the biblical text is currently constituted, a logical gap exists between the laws of verses 18–19 and verses 20–21. The laws move from a case of *injury* of a *free* person to a case of *homicide* of a *slave*. One expects a mediating or linking case of *homicide* of a *free* person to appear between these laws, similar to LH 207, which stands between LH 206 (injury of a free person) and 208 (homicide of a commoner). The fissure in CC was created by its shift of the law of homicide to the beginning of the various assault laws. This is not to say that at one time CC's homicide law was actually located between verses 18–19 and 20–21. There is no necessity for this hypothesis, given CC's willingness to reformulate its source text. The rearrangement of the topics from LH occurred in the original composition process.⁴

Correlations in the Homicide Laws

A number of scholars argue that the homicide law is composite and that part or all of it is secondary to the context of CC, for good reason.⁵ The main law in verse 12 is formulated participially (“He who strikes a man and he dies shall be put to death” מִכָּה אִישׁ וּמָת מוֹת יוֹמָת), not casuistically.⁶ Verses 13–14, though casuistic in essence, have conditional conjunctions that deviate from the general casuistic form of CC and from the basic participial law (described later). These verses also appear to go beyond the unqualified scope of verse 12 in introducing the issue of inadvertence. Verse 12 seems to punish *any* killing of a human being.⁷ Verses 13–14 also contain first-person reference to deity and second-person reference to the audience, a style inconsistent with the majority of casuistic laws of CC and different from verse 12. Motifs of verses 13–14, moreover, presuppose the altar law of 20:24–26. If the altar law is an addition, as many believe (see chapter 11), then verses 13–14 must be an addition.

The sequential correlations with LH 206–208, as noted before, and specific correlations between verses 12–14 and LH 207 indicate that, in contrast to the prevailing view, the homicide law in all its stylistic complexity is original to the text. (See the compared texts, earlier.) Verse 12 reflects the basic elements of LH 207. The laws begin by mentioning striking, followed by G-stem verbal forms of the root *mwt*: מִכָּה אִישׁ וּמָת “he who strikes a man and he dies” // *šumma ina maḥāšīšu imtūt* “if when striking him he dies.” This is significant because CC could have used other formulations for its law in verse 12, such as a C-stem of the *mwt*: מִמִּית אִישׁ וּמָת מוֹת יוֹמָת “one who kills a man shall be put to death.”⁸ Or it could have used a different verb root, such as שָׁפַךְ דָּם אִדָּם מוֹת יוֹמָת “he who sheds the blood of a man shall be put to death.”⁹ Alternatively, CC could have used the participle מִכָּה without stating the explicit result; that is, מִכָּה אִישׁ מוֹת יוֹמָת “he who strikes a man (fatally) shall be put to death.”¹⁰ As we will see later, CC’s deviant participial form is partly the result of stylistic freedom gained by giving the law a new position in the sequence of laws but primarily from the influence of a native participial source. CC retained the basic ideas of LH 207 but transformed the style.

Although verse 12 and LH 207 share language at the beginning of their laws, CC has changed the context from inadvertent to intentional homicide.¹¹ That LH 207 is concerned only about unintended homicide is obvious in the requirement that the killer “swear” (*itammāma*). This refers back to the oath of LH 206, which more fully says: “that man shall swear (*itamma*), ‘I did not strike him with intent.’” Thus in verse 12 CC has moved back a step conceptually from LH 207 to legislate the foundational case. Its penalty “he shall be put to death” accords with the new context of intentional homicide.

Surprisingly, LH nowhere includes a general rule about intentional homicide of a free person. It is nonetheless clear from the context of LH that it

would require capital punishment in such a case.¹² LH 210 prescribes that if a man strikes a pregnant woman (lit., “a daughter of a man”), presumably intentionally, and she dies, his own daughter is to be put to death. This suggests that a simpler case of a person intentionally killing another person would require the death of the assailant. This is confirmed by the laws about a collapsing house in LH 229–230, which involve negligence, a lesser modality of intentionality. Even in such a case, if the house falls and kills the householder, the builder is to be executed; if it kills the householder’s son, the builder’s son is executed. Other laws in Hammurabi’s collection indicate that intentional homicide was a capital crime: a mere false charge of homicide is a capital crime (LH 1), a creditor’s negligent beating and killing of a son of a debtor seized to pay a debt requires execution of the creditor’s son (LH 116), and a woman who has her husband killed is impaled (LH 153). CC’s requirement of capital punishment for deliberate homicide thus properly reflects the intent of LH in this matter.¹³

After its basic law in verse 12, CC goes on to the issue of inadvertence in verses 13–14. LH 206, upon which LH 207 depends for its description of inadvertence, describes this with language referring to the mental state of the striker: *ina idû lā amḥaṣu* “without knowing I struck him.” CC also describes the lack of intention with wording that relates to mental state. Verse 14 uses the verb זיד/זוד “act brazenly, deliberately” in connection with the adverbial בערמה “craftily, with planning.”¹⁴ The verb צדה in v. 13 is a less clear in meaning since it is infrequently attested, but other passages show that it refers to a mental activity of planning.¹⁵ It does not necessarily mean something as concrete as “lie in wait.”

Another point where verses 13–14 and LH 207 coincide is in the motif of temple adjudication. This is explicit in verses 13–14. The deity will appoint a “place” where the killer may flee, and this is the place of the deity’s altar, that is, a sanctuary.¹⁶ This chapter later argues that CC did not see the sanctuary as a place of indefinite asylum. Asylum was only a temporary measure until the killer’s intent could be determined and the victim’s family received satisfaction, either through the execution of the killer, if the killing was intentional, or through indemnification, if the killing was inadvertent. LH 207 does not speak overtly about adjudication at a temple or shrine, but it is implied in the requirement of swearing an oath of inadvertence (also LH 206). The place of other judicial declarations in LH, described to occur “before the god” (*ina mahar ilim*; LH 9, 23, 106, 120, 126, 240, 266, 281), was presumably a shrine or temple, as discussed in chapters 5 and 9.¹⁷ CC seemingly wondered about the place of the oath in LH 206–207 and, concluding that it was at a shrine or temple, portrayed this in terms of asylum. It agreed with Hammurabi’s law, as it understood it, that inadvertence would be determined by procedures at a sanctuary.

It may be asked whether asylum is an invention of CC based purely on its reading of LH or whether it reflects actual Israelite/Judean practice. Given that 21:13–14 are based on the altar law, which reflects native customs in one way or another (see chapter 11), asylum may be a native custom associated with such sanctuaries and altars. The stories about altar asylum in the first chapters of 1

Kings may support this. Joab flees to the altar for killing Abner and Amasa and is even executed there (2:28–34). Adonijah flees to the altar for political refuge when Solomon comes to power (1:50–53).¹⁸ Though these cases involve political conflict, they still relate to the rule in Exodus 21:13–14.¹⁹ CC may have taken up this native motif to clarify one of the mechanisms of temple adjudication suggested by but not described in Hammurabi’s laws.²⁰ Similarly, Amos 9:1–4 appears to reflect asylum practice. It inverts the motif by portraying Yahweh as an avenger who prevents the people’s access to the altar to obtain safety. If this passage is original to Amos, it may predate CC and suggests that CC has indeed taken up local custom to inform its homicide law.²¹

A Native Participial Source

As noted, CC’s relocation of the homicide laws facilitated its reformulation of those laws. This is comparable to the reformulation of the talion laws in 21:23b–25. These laws were shifted from their original location in Hammurabi’s collection (LH 196–201), from just after the child rebellion laws (192–193, 195 // 21:15, 17) to just after the miscarriage laws (209–214 // 22:22–23a). This, together with their being appended as a replacement apodosis to the second miscarriage law, allowed CC to dispense with casuistic formulation and to restructure them as a summary list (see later, on the miscarriage laws).

But while the talion laws in CC are a digest of the more fully formed casuistic laws in LH, CC’s homicide laws are not. Despite its streamlined formulation, the participial law in verse 12 has a protasis (“he who strikes and man and he dies”) and apodosis (“he shall be put to death”). It thus stands as a complete rule.²² Moreover, though deviant in their casuistic form, verses 13–14 are likewise syntactically complete laws. They also contain stylistic elements that are not found in casuistic law. Some other influence must explain the divergent formulation of the homicide laws beyond simply being cut loose from the context of verses 18–21 and LH 206–208.

A primary influence on the reformulation of the homicide law appears to have been another source that listed a number of capital crimes with protases in participial form.²³ This source determined the basic form, though not necessarily the exact content, of verse 12. Use of this source and its forms, in turn, fueled the divergent formulation of the appended law in verses 13–14.

The main reason for supposing that CC has used a participial source is that CC displays two series of laws formulated participially with death penalties attached: 21:12, 15–17 (laws about homicide, child rebellion, and kidnapping) and 22:17–19 (laws about a sorceress, bestiality, and sacrifice to other gods). Table 6.1 compares the forms of these various laws. Each law basically begins with a participle that describes the illicit action. The participle may be followed by the party affected by the illicit action. In some cases, a result is described, extending or adding specification to the case. This is described with a perfect

Table 6.1: Participial laws in CC (read columns right to left)

Penalty	Result	Affected Party	Participle	Prefix	Verse
shall be put to death	so that he dies	a person	one who strikes		21:12
shall be put to death		his father or mother	one who strikes	and	21:15
shall be put to death	and sells him or he is found in his possession	a person	one who steals	and	21:16
shall be put to death		his father or mother	one who curses	and	21:17
you shall not allow to live (or: [she] shall not live)			a sorceress		22:17
shall be put to death		with an animal	one who lies	any	22:18
shall be exterminated . . .		to gods	one who sacrifices		22:19

(sufficing) verb form with *waw*-consecutive. The apodosis (penalty) at the end prescribes capital punishment, with verbs in imperfect (prefixing) form. In five cases, this is described by the formula מות יומת “he shall be put to death.” The other two cases use wording that is roughly synonymous.²⁴ The law about the sorceress may have originally had a G-stem verb “she shall not live” (תִּקְהֶה) rather than the D-stem of the MT. The verb יחרם (C-passive) “he shall be exterminated,” the penalty for sacrificing to other gods, fits a case of religious treachery.²⁵

The prior extracted list of participial laws in CC is similar to the list of curses in Deuteronomy 27. In the citation here, the liturgical response of the people is omitted:²⁶

¹⁵Cursed is the man who makes (אשר יעשה) an image or idol, an abomination to Yahweh, the work of a craftsman hands, and puts it in a secret place. . . .

¹⁶Cursed is the one who curses ([מקלה] [מקלל]) his father and his mother. . . .

¹⁷Cursed is the one who moves (מטיג) the boundary marker of his neighbor. . . .

¹⁸Cursed is the one who makes the blind to stumble (משגה) on the road. . . .

¹⁹Cursed is the one who perverts (מטה) the judgment of the immigrant, orphan, or widow. . . .

²⁰Cursed is the one who lies (שכב) with the wife of his father, because he has uncovered the skirt of his father. . . .

²¹Cursed is one who lies (שכב) with a beast. . . .

²²Cursed is the one who lies (שכב) with his sister, the daughter of his father or the daughter of his mother. . . .

²³Cursed is the one who lies (שכב) with his daughter-in-law. . . .

²⁴Cursed is the one who strikes (מכה) his fellow in secret. . . .

²⁵Cursed is the one who takes (ליקח) a bribe, to strike the life of innocent blood. . . .

²⁶Cursed is one who does not maintain (אשר לא יקים) the words of this teaching. . . .

The illicit action in this list is formulated for the most part with participles like the laws in Exodus 21:12, 15–17; 22:17–19. Several of the cases are similar to the topics of CC’s participial laws: illicit worship (v. 15; cf. Exod 21:19), cursing parents (v. 16; cf. Exod 21:17), bestiality (v. 21; cf. Exod 21:18), and homicide (v. 24; cf. Exod 21:12). The main difference is that the conceptual apodoses consist of the predicate adjective ארוּר “is cursed” instead of a verb describing a capital sentence. This predicate adjective is placed at the beginning of the phrase (e.g., v. 16, ארוּר אביו ואמו [=מקלל]). Though it is specifically unsaid, transgressions of the norms in Deuteronomy’s list would no doubt be considered worthy of death. CC’s law may have been influential on the list of curses in Deuteronomy 27 (vv. 16 [cursing parents], 21 [bestiality]; maybe v. 24 [striking a fellow]; note also the mention of the immigrant, orphan, and widow in v. 19 found in Exod 22:20–21, and the taking of bribes in v. 25, found in Exod 23:8; see chapter 12). But it does not seem that Deuteronomy’s list builds primarily on CC’s participial laws. The list in Deuteronomy may reflect a separate tradition of describing actionable cases in participial form, to which the presumed participial source used by CC is related.²⁷

Other biblical laws use a participle to describe the agent of a forbidden action, followed by the formula מות יומת “he shall be put to death.”²⁸ Although these are not concentrated in a list, they show that this type of formulation was a standard way of indicating a crime accompanied by capital punishment. The closest we come to a collection of this type of law is the group in Leviticus 20 that uses the formula מות יומת (ו) “(t)he(y) shall be put to death.” This is prescribed for the evils of Molech worship (v. 2), parent cursing (v. 9—roughly similar in form to Exod 21:17), adultery (v. 10; see previously), incest with one’s mother (v. 11), incest with one’s daughter-in-law (v. 12), male homosexuality (v. 13), male bestiality (v. 15), female bestiality (v. 16), and necromancy (v. 27).²⁹ Although a participle is not used in the protases, a conceptual equivalent is

employed: “a man/woman” (אִישׁ\אִשָּׁה) + “who” (אֲשֶׁר) + prefixing verb describing the act (e.g., “curses” יִקְלֵל).

This confluence of evidence makes it reasonable to suppose that the participial laws in CC derive from or pattern themselves on a preexistent short list of participial laws accompanied by a decree of capital punishment. This would have been a native source, not a cuneiform or otherwise foreign source, to tell from the attestation of the form in the Bible broadly.

Unfortunately, it is difficult to specify what CC’s participial source looked like—what its contents were and the specific form of the laws. We cannot simply extract the participial laws from CC to reconstitute that list. Nor can we reconstruct it on assumptions of similar forms, metrical consistency, or the lowest common denominator or intersection of sets. Just as CC has recast material from LH and other cuneiform sources, so it has probably recast material from the participial source. CC may also have omitted elements of the participial source, just as it has omitted a significant portion of LH. We can no more restore this source than we can restore Hammurabi’s legislation on the basis of CC. The participial source was perhaps a small collection of a half dozen to a dozen laws. Each was formulated with a participle and a death penalty with an infinitive absolute construction, probably several with *מִוֹת יוֹמָת*.³⁰ Because the source was presumably short with laws in similar formulation, it could have been oral rather than written.³¹ Given the fact that this presumed source took precedence over the form of LH in the formulation of the homicide law, it is reasonable to suppose that this source did contain a law about homicide. Other short lists of laws include homicide laws (Deut 27:24; Exod 20:13 // Deut 5:17). We would also expect homicide to appear in a list of capital crimes. But if a homicide law appeared in the participial source, we cannot say that it looked just like what we find in Exodus 21:12. The prior discussion of correlations with LH 207 noted that verse 12 could have theoretically been written differently. The homicide law in the participial source may have displayed some of the variations suggested there. It may have had a verb other than *הִכָּה* “strike” (cf. Gen 9:4), and it may have lacked the statement *וַיָּמָת* “and he (the victim) died” (cf. Lev 24:21; Deut 27:24).³²

If the participial source had a law on homicide, this may also have appeared at the beginning of that source. If so, this may have been a factor in CC’s moving the homicide law from the middle of LH 206–208 to the beginning of its assault laws. Whatever its exact original formulation, the homicide law of the participial source imposed the capital penalty for homicide and hence dealt with, or could be understood as dealing with, intentional homicide. CC may have used this law because LH lacked express legislation on this modality of killing. After setting down this primary case, CC added verses 13–14, which raise the issue of inadvertence, reflecting the concern of LH 207.

Chapter 7 discusses whether other participial laws in CC were original to the participial source. To anticipate that discussion, the source may have contained a parent cursing law like 21:17. This law was used as a replacement for

LH 192–193. The next chapter argues that this was primarily responsible for bringing in the participial laws as a source for CC.

The Deviant Formulation of Verses 13–14

As noted previously, verses 13–14 should be viewed as part of the basic configuration of CC because of their correlation with LH 207 in the motifs of intentionality and sanctuary adjudication (implied in LH). But how is their deviant formulation to be explained, especially their strange casuistic form, the qualification they introduce over against the categorical proscription of homicide in verse 12, and their use of the first person of deity and second person of audience, which deviate from the standard content of CC's casuistic law otherwise?

Verses 13 and 14 each begin with divergent casuistic conjunctions. Verse 13 uses אשר, which most understand as a conditional conjunction “if.”³³ This usage is clearly seen in various biblical passages (cf. Lev 4:22; Deut 18:22). Verse 14 uses the more normal conditional conjunction כי “if.” But this is out of context in CC because this conjunction is used to introduce primary or initial cases.³⁴ Subsidiary, secondary, or limiting cases are introduced generally by another conditional conjunction, אם “if.”³⁵

Why does CC disregard normal casuistic style in verses 13–14 if the verses come from the same hand that imposes the כי/אם patterning elsewhere? It is not altogether certain that אשר is a conjunction. It may be a pronoun coordinated with the participle in verse 12: מכה “he who strikes . . .” balanced by ואשר לא צדה “but he who did not plot . . .”³⁶ This is a way of formulating a negative correlate of a participial phrase, as found in Deuteronomy 27:26, already referenced: ארוּר אִשֶׁר לֹא יִקְיִם אֶת דְּבַרֵי הַתּוֹרָה הַזֹּאת “cursed is *the one who does not* maintain the words of this teaching . . .” אשר in Exodus 21:13 operates similarly.³⁷ An objection that אשר must be a conjunction because of the presumed parallel structure of verse 14 does not hold. Verse 13 is still conceptually a conditional construction, even when אשר is taken as a pronoun. The verse parallels and builds on the implicit conditional construction in the participial law of verse 12: “he who strikes (= if a man strikes) . . . shall be put to death” // “he who did not plot (= if one does not plot) . . . I will appoint a place for him to flee.”

Further support for taking אשר as a pronoun is found in Deuteronomy 19. This develops the homicide law of CC and has a similar distribution of the terms אשר and כי, as recently recognized by Jeffrey Stackert.³⁸ The term אשר is found thrice in verses 4–5 as a pronoun:

This is the ruling pertaining to the killer *who* may flee there and live (אִשֶׁר אִשֶׁר יִכֶּה אֶת רֵעֵהוּ) (*who* strikes his fellow without knowledge (יָנוּס שְׂמֵה וְחֵי אִשֶׁר יִכֶּה אֶת רֵעֵהוּ) and he had not hated him in the past—*who* (for example) goes with his fellow (וַיֵּאֱשֶׁר יִבֵּא אֶת רֵעֵהוּ) into the forest to chop wood and his hand wields the axe to cut the wood and the head slips off from the shaft and hits his fellow and he dies, he may flee to one of these cities and live.

Pronominal אשר in this passage is associated with the case of inadvertence, as in Exodus 21:13. Later in Deuteronomy 19, the conjunction כי begins the section on intentional homicide (v. 11):

But *if* a man has hated his fellow (וכי יהיה איש שנא לרעהו), lies in wait for him, rises against him, and strikes him fatally so that he dies, and then flees to one of these cities, the elders of his city (of asylum) shall extradite him from there and deliver him into the power of the blood avenger so that he may be put to death.

This corresponds with CC's second law, in Exodus 21:14. Even though radically changing the sense of CC's homicide law, Deuteronomy 19 thus appears to maintain the basic function of the framework terms of Exodus 21:13 and 14.

The use of אשר as a pronoun in verse 13 is not unlike its use in 22:8 within CC: "He whom God convicts shall pay twofold to his fellow" (אשר ירשיען אלהים) (ישלם שנים לרעהו). The term is used as an independent pronoun, though here it is an object of its contiguous verb rather than subject.³⁹

If אשר in verse 13 is a pronoun, then the first conditional conjunction in the homicide law is in verse 14. As the first, CC may have chosen to use כי and not אם.⁴⁰ In fact, the use of אם would have appeared equally anomalous. Neither conjunction truly fits after the participial and negative pronominal clauses in verses 12–13. Moreover, כי fits quite well conceptually because verse 14 correlates with the primary law in verse 12, where the killer is guilty and is to be put to death.

In addition to these considerations, freedom from a textual model may have facilitated CC's abnormal casuistic formulation. Although LH 207 could suggest themes for verses 13–14, it did not provide a guide that could be followed in detail. Two other aberrant conjunctions in CC can be explained similarly. The rule about children as victims of a goring ox (21:31) and the rule about a habitually goring ox goring another ox (21:36) are introduced with the simple disjunctive conjunction או "or," not the expected אם "if." Neither of these laws has a direct parallel in CC's cuneiform sources; each is an invention based on motifs in other laws. Verse 31 is based on a literal reading of the phrase *mār awīlim*, "son of a man" in LH 251, whose ambiguity otherwise generated the case of an adult victim in verses 29–30. Verse 36 is based on verse 29 (which is based on LH 251) and extends the law of verse 35 (which is based on a law like LE 53; see chapter 8).

The tension that one senses between the unqualified rule in verse 12 and the qualification verses 13–14 is partly due to the use of sources. The participial source behind verse 12 presumably did not refer explicitly to inadvertent homicide, just as the compact homicide rules in Genesis 9:6, Deuteronomy 27:24, or the Decalogue (Exod 20:13 // Deut 5:17) do not explicitly refer to inadvertent homicide. The material about inadvertence in verses 13–14, based conceptually on LH 207, was appended to this traditional formulation. Thus, if there is a contradiction, it lies at the level of the sources used by CC, not in the redactional

development of CC. But the tension between verses 12 and 13–14 may not be as great as one might think. The nature of Near Eastern law and casuistic law in particular is to add qualifications to what appear to be categorical statements. Verses 13–14 retrospectively provide the detail for the general rule in verse 12, much like the specific mention of the condition of daytime in the second burglary law of 22:2a clarifies that the case of 22:1 deals with burglary at night (see chapter 9).⁴¹

The issue of sanctuary adjudication in the determination of inadvertency, as suggested by LH 206–207, opened the door for CC to bring motifs from the altar law of 20:24–26 into verses 13–14.⁴² These motifs include the first person of deity who speaks,⁴³ the second person of audience,⁴⁴ the use of the term *place* (מקום) referring to a sanctuary locale,⁴⁵ and the altar at this place.⁴⁶ Thus the altar laws can themselves be considered an additional source—an innercompositional source—for the homicide asylum law. The argument of this book is that both the altar laws and the homicide laws, including verses 13–14, are part of the original formulation of CC. But one part of the text has to have been written or conceived of before the other. In the case before us, the altar laws appear to have been created first, based on the exhortatory block of LH, the part of Hammurabi’s text that is conceptually primary for the creation of CC overall (see chapters 11–12). Verses 13–14 of the homicide law were subsequently created under the influence of LH 207 and also the altar laws of 20:24–26. The reason CC brought in motifs from the altar law at this particular point, and not in other laws that speak of judicial processes at the sanctuary (21:6; 22:7–8, 10), is the need to describe a specific mechanism—*asylum at the altar*—to forestall premature execution of the killer.

The influence of the altar law also helps explain the unusual conditional style of verses 13–14. That law interfered with CC’s possible formulation of the homicide law in a purer casuistic form. The conceptually and legislatively operative elements of verses 13 and 14 are in the apodoses of these verses: “. . . I will appoint a place for you to which he may flee” and “. . . you shall take him from my altar to be put to death.” These are the parts of the verses that specifically reflect altar law motifs. CC drew the motif of inadvertence from LH 207 but had its eye concentrated more particularly on the altar laws for the formulation of verses 13–14.

Injury (21:18–19)

After the homicide laws, CC maintained the participial form for the child rebellion and kidnapping laws of verses 15–17. The content and form of these laws are discussed in chapter 7. In anticipation, it should be observed here that this unit was influenced by the casuistic laws of LH 192–195 on parents and children, with the kidnapping law of LH 14 taking the place of the disruptive wet-nurse law of LH 194. A parent cursing law, presumably part of the participial

source, served to “translate” the parent denunciation laws in LH 192–193. This led to formulating all of the capital laws in this area of the text in the participial form, even if they were not part of the original participial source, and, as noted before, moving homicide to the beginning of the capital laws.

When CC got back to content based on the injury-homicide series of LH 206–208 in verses 18–19, CC resumed standard casuistic formulation based on LH (see the compared texts near the beginning of this chapter). The main reason for resuming this form was mainly because the case in verses 18–19 was not a capital crime. Another inducement for returning to casuistic formulation was probably because LH 206–208 were a primary focus in the creation of the laws in this area of the text. CC must have had this Akkadian pericope in mind before composing the homicide law and the other participial laws of verses 15–17 and may have therefore anticipated from the start more normal casuistic formulation for the injury laws of verses 18–19.⁴⁷

The main correlations between the injury law of verses 18–19 and its source, LH 206, were noted toward the beginning of this chapter. Perhaps the most visible difference is CC’s omission of the requirement of an oath declaring that the injury was not intentional. CC appears to change the modality of Hammurabi’s law. Instead of a law describing minimal liability as in LH, that is, the least that one pays even if the injury was *unintended*, CC apparently prescribes a case of maximal liability, that is, the most that one pays even if the injury was *intended*.

A hint that CC’s law includes intentional injury is its inclusion of a “stone” in verse 18 as a weapon, in addition to an אגרה, which may mean “fist.”⁴⁸ A hand may be used in cases of inadvertence, as indicated by verse 13, which says “God directed (him) to *his hand*” (והאלהים אנה לידו),⁴⁹ as well as the use of the verb *strike* (הכה) in verse 12, which may not be limited to a hand but nonetheless primarily refers to such. The verb *mahāšum* “to strike” in LH 206 implies a hand (compare LH 195, 202–205). CC’s inclusion of a stone, in addition to the mention of a hand, indicates a measure of greater aggression, perhaps an offensive stance rather than a mere defensive one. The homicide law in Numbers brings instruments into a consideration of intent, though this is not by itself a decisive criterion (Num 35:16–18, 22–23; cf. Deut 19:5). Another signal that CC’s law includes intentional striking is the severity of the wound inflicted. CC’s statement that the victim “takes to his bed” (ונפל למשכב) exceeds the simple description of LH, where the assailant merely “puts a wound on him” (*simmam ištakanšu*), which does not indicate incapacitation. CC also adds the phrase “and he does not die” (ולא ימות). This is partly to provide contrast with verses 12–14, where the victim does die from striking. It describes an alternate case, much like “and he dies” (*imtūt*) in LH 207 serves to describe an alternate case to LH 206. Yet the phrase “he does not die” in verse 18 also indicates the possible severity of the injury, especially in conjunction with the phrase “and he takes to his bed.” The injury may be one just short of death. These various

data do not definitively demonstrate that CC includes intentional injury. But at the same time, there is no evidence in the law that it refers only to inadvertent striking. As an alternative to the case of homicide in verses 12–14, which treats both modalities in separate verses, verses 18–19 appear to include both intent and inadvertence at the same time.⁵⁰

One of the motivations for CC's including the modality of intention in verses 18–19 perhaps comes from a contemplation and a rejection of the laws about defamatory striking (LH 202–205) that immediately precede Hammurabi's series on unintentional injury and homicide.⁵¹ These deal with the noninjurious but deliberate striking of an *awilum* or a commoner by another person of equal or lesser status. The wider the gap in status, the more severe the penalty. A commoner who strikes a commoner pays merely ten shekels of silver. An *awilum* who strikes another of equal status pays sixty shekels. An *awilum* who strikes another of a higher status receives sixty lashes in public. And a slave who strikes an *awilum* loses an ear. Including intentional battery in 21:18–19 meant that a penalty for striking another could be no more severe than what these verses prescribe. In fact, CC may be viewed as capping damages when it prescribes “he *only* pays for his period of inactivity (literally, sitting) and provides for his cure” (אם יקום והתהלך בהויץ על משענתו) (LH: “אם יקום והתהלך בהויץ על משענתו”) (v. 19b).⁵² By including intentional injury in its law, CC was able to make a notable change to LH 206. It added the requirement to pay lost wages in addition to medical expenses. Hammurabi's law requires only payment of the physician.

The limitation of the penalty in verse 19b must also be understood in the context of the description of the victim's recuperation in verse 19a, which has no counterpart in LH: “if he rises and walks about outside on his staff” (אם יקום והתהלך בהויץ על משענתו).⁵³ The “rising” of the victim here contrasts with his “sitting” (שבת) later in the verse. As soon as he gets up and moves about, “the striker is not liable” (וּבִקְהָהּ הַמִּכָּה).⁵⁴ As case law, verse 19 gives only one example of how the victim's recuperation might proceed. It does not mean that he must, in fact, walk about outside with a staff. It means that when the victim shows signs of recovery, even if it is not a full recovery, the assailant is no longer liable for homicide, even if the victim were to die after turning this corner.⁵⁵ A similar denouement is considered in the following slave law (v. 21; see later).

When understood thus, CC's law both limits and increases penalties in the case of injury vis-à-vis LH. It reduces any excessive penalty for injuries resulting from intentional striking and raises the penalty (i.e., paying lost wages) for unintentional striking. This combination of leniency and stringency is comparable to the slave homicide and injury laws in verses 20–21 and 26–27. CC has conflated laws for debt- and chattel-slaves in these verses. Hence, when the slave killed or injured is a chattel-slave, the penalties are more severe than what LH prescribes for its chattel-slaves. When the slave is a debt-slave, the penalties are less severe than what LH prescribes for its debt-servants in LH.

CC's changes in the penalties for intentional and unintentional injury in LH are ultimately to be coordinated with changes made in the talion law (vv. 23b–25, discussed later). We will see that CC's talion laws are concerned with unintentional injuries as opposed to those in LH (LH 196–201), which are concerned with intentional injuries. CC has, in essence, exchanged the places where intention is featured in the injury laws in respect to LH. CC made a further change to Hammurabi's talion laws by changing penalties that require bodily mutilation in LH into monetary compensation equivalent to the injury. Thus CC's injury and talion rules prescribe compensation. The main difference between them, in addition to the varying modalities of intent, is that the talion rules include permanent injuries, whereas the injury law of verses 18–19 is presumably concerned with transient injuries. The description of the person's recuperation in verse 19a—walking on a staff—is a sign of being on the road to full recovery.⁵⁶ This is not necessarily an indication of imperfect recuperation. The intent of this datum and the phrase in which it appears is only to indicate the point when the liability for possible homicide ends and when the period of lost wages ends.⁵⁷ The payments that CC's injury and talion laws require are thus comparable; they are both *disability payments*. In the injury law, the payment is for temporary disability, for the time of the victim's inactivity. In the talion laws, the payment is for permanent disability. In both cases, the text has left the amounts unspecified, similar to what it has done in the first miscarriage law (v. 22), the goring ox law for victims who are free persons (v. 30), and the seduction law (22:15–16). The only specific amount that CC sets down is thirty shekels for a gored slave (21:32).

Where did CC come by its notion of paying for lost wages in verse 19? This has a conceptual parallel in HtL 10:⁵⁸

If someone injures (*hunikzi*) a person and makes him ill (*istarnikzi*),⁵⁹ he shall provide for his cure (*saktaizzi*). In his place he shall give a person. He (the provided person) shall work at his estate while he (the victim) is recovering. When he recovers, he (the assailant) shall pay six shekels of silver and he likewise will give payment to the physician (^{L1}A.ZU-*ya kuššan apašpat pai*).

This law requires compensation for lost labor in providing a person to work the victim's estate. One can note further than this law is similar to CC's in stating that the victim is incapacitated in some way (“makes him ill” // “take to his bed”) and that the person recovers (“when he recovers” // “when he gets up and walks about outside”). The Hittite law is also similar to CC in not making the issue of intention explicit.⁶⁰ While the Hittite Laws cannot be considered a source for CC (as noted in chapter 4), it is possible that there was another Akkadian source that contained some of the motifs found in common in CC and HtL 10 over against LH 206. At the same time, the motifs in CC similar to the Hittite law could have been generated independently by CC's revision of LH 206.

Killing a Slave (21:20–21)

As noted at the beginning of this chapter, the law on killing a slave in verses 20–21 correlates with Hammurabi’s law about killing a commoner in LH 208 (see the compared texts near the beginning of this chapter).⁶¹ CC has changed the social status to fit the simpler sociology of its text. The alteration may have sought to make the law accord with CC’s own social world or to make it appear archaic. That CC conflates debt- and chattel-slaves in this law (see later) allows thinking that its slave laws are somewhat artificial. This supports viewing the sociological simplification as an act of archaizing, to make the law collection appear as a revelation in Israel’s past. Archaizing is visible also in the use of the terms *Hebrew* (21:2) and *chieftain* (22:27).

Writing a law about a slave instead of a commoner is based on Hammurabi’s text. Laws in the immediate vicinity of LH 206–208 are socially graded and include slaves: LH 196–201 (talion), 202–205 (defamatory striking), 206–208 (injury/homicide), 209–214 (miscarriage), 215–217 (successful surgery), 218–220 (unsuccessful surgery), 221–223 (successful bonesetting). Laws elsewhere in LH also manifest similar social gradations (LH 8, 116, 117–119, 139–140, 229–231, 250–252). These various laws demonstrated for CC that a case of a slave could equally come after a case involving a free person. In other laws, CC follows LH in drafting socially graded laws that include slaves: the talion laws in verses 23b–27, which imitate LH 196–201, and the goring ox laws in verses 28–32, which imitate LH 250–252. Note that the slave laws that are part of the talion series in CC also replaced a commoner with a slave (v. 27 // LH 201; discussed later).⁶²

Specific influences from the series to which LH 208 belongs are visible in verses 20–21, despite CC’s change of the victim’s social status. The introductory conditional clause in verse 20, “if a man strikes” (וְכִי יַכֶּה אִישׁ), is based on the beginning of LH 206, “if a man strikes...” (*šumma awīlum... imtaḥašma*). LH 208 assumes this condition from LH 206. The full statement of the condition in verse 20 is necessary because it introduces a new context—a master beating a slave, perhaps to get him or her to work—in contrast to LH 208, which just continues as a subcase of the simpler battery and homicide laws of LH 206–207.⁶³ In addition, the notice that “and he (the slave) dies” (וּמָת) can be seen as coming from LH 207, “if he dies from his beating” (*šumma ina maḥāšīšu imtūt*). CC had to provide this datum because it moved the homicide law, which has this datum (cf. v. 12 and LH 207) and conceptually belongs between verses 18–19 and 20–21, to the beginning of the assault laws, as noted previously.

But CC’s law is otherwise significantly different from LH 208 and the series to which it belongs, even when one takes into account the change from commoner to slave. The biblical law actually consists of two laws, not one, unlike LH 208.⁶⁴ The stimulus for these laws and for several of the differences within them comes from the inclusion of motifs from the debt-servitude law of LH 115–116,⁶⁵ laws that CC presumably knew because it used the debt-servitude

laws that immediately follow (LH 117–119) to create its basic debt-slavery law in verses 2–11 (see chapter 5):

Exodus 21:20–21

²⁰ If a man strikes his male slave or female slave with a rod and he (or she) dies under his hand (i.e., then and there), he (the victim) is to be avenged.

²¹ But if he lingers for a day or two, he (the assailant) shall not suffer vengeance, since he is his (the master's) silver (i.e., property).

²⁰ וכי יכה איש את עבדו או את אמתו בשבט
ומת תחת ידו נקם נקם

²¹ אך אם יום או יומים יעמד לא יקם כי
כספו הוא

LH 115–116

¹¹⁵ If a man is owed grain or silver by another man and he (the creditor) takes from the debtor the one to serve as a debt-servant into debt-servitude, and then the debt-servant dies by natural causes in the house of the creditor, that case has no claim.

¹¹⁶ If the debt-servant dies from beating or from mistreatment in the house of his/her creditor, the owner of the debt-servant (= the debtor) shall bring proof against his merchant. If (the debt-servant was) the man's son, they shall kill his son. If (the one in bondage was) the man's slave, he shall weigh out one-third mina (= twenty shekels) of silver. He shall forfeit as much as he gave as a loan.

¹¹⁵ *šumma awīlum eli awīlum še'am u kaspam išūma nipūssu ippēma nipūtum ina bīt nēpīša ina šīmātīša imtūt dīnum šū rugummām ul tšu*

¹¹⁶ *šumma nipūtum ina bīt nēpīša ina mahāšim ū lū ina uššušim imtūt bēl nipūtīm tamkāršu ukānma šumma mār awīlim mārašu idukkū šumma warad awīlim 1/3 mana kaspam išaqqal u ina mimma šumšu mala iddinu tēlli*

CC's laws are in the reverse order of Hammurabi's, as Schwienhorst-Schönberger has observed.⁶⁶ Verse 20 correlates with LH 116, where a holder of an enslaved person strikes and kills that person. The two laws correlate in the use of the verbs *הכה* and *mahāšum*, a correlation found between other striking laws in CC and LH.⁶⁷ The contexts of both laws portray the beating as mistreatment. Both require a severe penalty, "vengeance" (to be explained later) in CC or vicarious capital punishment in LH, if the victim is a man's son (cf. LH 117). LH 116 probably mentions only the case of a son because it is more likely that a father would surrender his son before he would surrender himself to pay off a debt (cf. LH 117).⁶⁸ Verse 21 correlates with LH 115 in absolving the slaveholder. In CC, "he (the owner) will not suffer vengeance" (לא יקם); in LH "that case has no claim" (*dīnum šū rugummām ul tšu*), the same outcome as in a case of ad hoc ox goring (LH 250; cf. 21:28).⁶⁹ Although verse 21 represents

the death as occurring ultimately from a beating, it correlates legally with the natural death of LH 115 because death is not immediate and therefore causation may be questioned. The reversal of the order of the laws has allowed CC to recontextualize the natural death of LH 115.⁷⁰

The reversal of the laws' order is comparable to the reversal of the order of child rebellion laws (21:15 // LH 195; 21:17 // LH 192–193) and the homicide and injury laws (21:12–14 // LH 207; vv. 18–19 LH 206). These reversals all have a contextual rationale. Striking a parent (21:15) comes before cursing because it is related to the context of homicide (vv. 12–14). Homicide comes before injury (vv. 12–14) because it is proper to put it at the beginning of a list of assault laws. Liability for the death of a slave comes before exemption for liability (v. 20) because it is generated primarily from the context of LH 208 and relates to verses 18–19 (which come from LH 206).

The Conflation of Slave Types

The use of laws on phenomenologically distinct classes of subjugated persons is responsible for the tension found between verses 20 and 21, where a homicidal master is exempt from vengeance if his victim lives at least a day.⁷¹ The leniency in the law, in verse 21, is due to the use of legal perspectives pertaining to chattel-slaves. These perspectives come into the law through substituting the commoner in LH 208 with slaves from the socially graded laws in the environment of LH 208. The slaves in these nearby laws are chattel-slaves, designated by the terms *wardum* “male (chattel) slave” and *amtum* “female (chattel) slave.” They are the owner's property and may be treated with harshness, even lethal harshness. LH never describes or punishes injury or death caused by an owner to his or her own chattel-slave. It legislates only about injury and death caused by an outside agent (e.g., LH 199, 213–214, 217, 219, 220, 223).⁷² In such cases, the owner is economically compensated by the person who caused the injury or death. According to the implication of Hammurabi's system, if an owner injured or killed his own slave, it would be his or her own loss.⁷³ This is why verse 21 does not require vengeance against the owner if the death of the slave is not immediate. CC encodes the economic principle operative in a case of chattel-slavery as found in LH when it adds the rationale: “because he (the slave) is his (the owner's) silver” (כִּי כֶסֶף הוּא).⁷⁴

This principle would lead one to expect that the owner should not be liable even if a chattel-slave died immediately from the beating. The stricture of verse 20 comes from the inclusion of the law about a debt-slave in LH 115–116 who is not called a *wardum* or *amtum*, but a *nipûtum*. In contrast to legislation about chattel-slaves, this Akkadian law describes and punishes a person's deadly abuse of his own debt-servant. CC accordingly prescribes vengeance when an owner beats and kills his slave the same day. A significant difference, however, is that LH places no time limit on the death of the debt-servant. Presumably, if the victim died a week later and the causation between beating and death was clear, the creditor would be punished.

This source analysis helps answer the question, Do verses 20–21 have in mind chattel-slaves or debt-slaves? The answer is yes.⁷⁵ CC apparently includes both types of slave in the same law. By combining the legislation, it ameliorates the condition of chattel-slaves by providing a sanction against a beating that would lead to immediate death. An owner cannot brazenly kill a slave. But it lessens the protection of debt-slaves by allowing them to be beaten harshly, even to death, as long as they do not immediately succumb.

The blending of chattel- and debt-slave perspectives is visible in CC's other slave laws. The slave injury laws in verses 26–27 primarily develop from the talion laws of LH 196–201. The slaves spoken of in these Akkadian laws are chattel-slaves. But CC has made some significant changes. The agent of the injury is not external, but the owner of the slave. Furthermore, instead of prescribing monetary payments, CC requires that the owner “send him away free for his eye/tooth” (להפשי ישלחנו תחת עינו\שנו). This is similar to the language of the debt-slave law in 21:2: “in the seventh (year) he shall go free without further obligation” (ובשבעת יצא להפשי חנם). If the biblical victim was merely a chattel-slave, the punishment would not make sense because, as noted before, this would be damage to the owner's own property. The blind or toothless slave would just continue to work for the owner, though with some disability. But the penalty makes perfect sense if CC's law includes debt-slaves. Permanent injury to a debt-slave by a creditor terminates the debtor's obligation. He or his indentured surrogate goes free.⁷⁶ The principle at the end of LH 116 that speaks about killing a debt-servant applies here: “he (the creditor) shall forfeit whatever he gave (as a loan).”

The law of 21:26–27 might be thought to apply only to debt-slaves. Unlike verses 20–21, it does not contain internal friction that would make one think that chattel-slaves are included. However, the source analysis presented later indicates that verses 26–27 develop out of chattel-slave legislation in LH, as just noted. Moreover, the verses speak of slaves the same way as verses 20–21. Thus one can reasonably conclude that both chattel- and debt-slaves are included in verses 26–27.

It is less clear if the slaves in verse 32 of the ox law include both chattel- and debt-slaves. When an ox fatally gores a male or female slave, the owner is to pay thirty shekels to the slave owner. This closely follows LH 252, which speaks of a chattel-slave (see chapter 8). This is the only slave law in CC where the party responsible for killing a slave is an external agent, not the owner. It thus fits the phenomenology of chattel-slavery in LH. There are two differences in CC's law, however, that make us hesitate to conclude that CC speaks of only chattel-slaves here. First, CC has increased the penalty from twenty to thirty shekels, the same amount that LH 251 requires in a case where the victim is a *free* person. This increase therefore fits a case of a debt-slave because such a person is potentially free or comes from the free class of society. Second, verse 32 speaks of both a male and female slave (an אמה and עבד), as do the other slave laws in verses 20–21 and 26–27. This makes one suspect that same types of

slaves are intended in verse 32. One difficulty in this interpretation is that one would expect the law to prescribe compensation to the family of a debt-slave if this type of slave is included. The law probably presumes, however, that the debt is canceled; this is the family's compensation. Because the creditor is not responsible for the death, he is indemnified for his financial loss by the thirty shekels.⁷⁷

In contrast to verses 20–21, 26–27, and 32, the primary legislation on debt-slaves in verses 2–11 speaks only of debt-slaves, even though the same terms for slaves (עֶבֶד and אִמָּה) are used there as in the laws later in the chapter. That only debt-slaves are intended here is evident in the limiting adjective *Hebrew* (v. 2), meaning the slaves are from the free national group. The daughter and her father who sells her (v. 7) are, by default, also of the free national class. But even though these verses speak only of debt-slavery, CC has used laws on both debt-servitude (LH 117, as well as 118–119) and chattel-slavery (from LH 282 and even 278–282) to build its legislation, as described in detail in chapter 5.

In summary, CC treats debt-slaves in 21:2–11 and debt-slaves and chattel-slaves together in verses 20–21, 26–27, and 32.⁷⁸ Chattel-slaves alone are referred to only in passing. The wife given to the Hebrew debt-slave in 21:4 and who bears him children is presumably a chattel-slave, the permanent property of the debt-slave's master/creditor. A female chattel-slave and her offspring are echoed in the term בֶּן אִמָּה "son of a slave woman," who, according to the final apodictic laws, receives refreshment from seventh-day rest (23:12).

Why did CC conflate slave legislation from LH in its law? A number of factors may have been involved, independently or mutually. Part of the stimulus may have been native terminology. The terms עֶבֶד and אִמָּה apparently referred to both chattel- and debt-slaves in Israelite/Judean parlance. The Bible elsewhere, and in passages independent of the context of CC, mainly uses these terms of chattel-slaves. Because the terms could refer to both, CC brought together legislation in LH that phenomenologically related to both types of dependent persons. Moreover, it may be that in CC's society, debt-slaves were effectively treated as chattel-slaves, permanently enslaved and even harshly treated. The failure of the people to implement Deuteronomy's version of the debt-slave law (cf. Deut 15:12–18), according to Jeremiah 34, points to this. CC's rulings, though they impose stricture on the treatment of debt-slaves with respect to Hammurabi's legislation, may actually provide relief for them in the context of Israelite and Judean society. In this interpretive framework, prescribing sanctions for the same-day killing of a debt-slave in Exodus 21:20 may actually be an improvement over native custom. Similarly, CC's lengthening of Hammurabi's time limit for debt-slavery from three to six years (LH 117 and v. 2) may actually be a limitation of service customarily lasting a lifetime or much longer than six years. The jubilee legislation in Leviticus 25, which prescribes, on average, a much longer period of enslavement for debt, may be a more realistic reflection of native custom. Thus Mesopotamian cultural and legal values may have been used to ameliorate this harshness.

CC's archaizing tendency may also be responsible for the merging of legislation. It attempted to portray an imagined earlier sociology where these two types of slaves were indistinguishable. As archaic practice and law, it represents an ideal, which is attractive not necessarily in its ethical force, but in its phenomenological simplicity.

It is also possible that ideological concerns played a role. The strings of CC's final apodictic laws each begin with a prohibition against oppressing the immigrant, followed by a rationale that the Israelites were once immigrants in Egypt (22:20; 23:9). Deuteronomy rearticulates the rationale in these verses to read "that you were a *slave* in Egypt."⁷⁹ This is consistent with the perspective in CC. As slaves in Egypt, the Israelites were chattel-slaves, not debt-slaves. For this reason, CC may have infused chattel-slave laws and perspectives from LH with motifs of leniency from Hammurabi's debt-servant legislation.

Finally, the conflation of the two types may come from a combination of CC's concern about socioeconomic marginality (discussed in chapter 11) with a need to write a short law collection. Blending the two types is a way of covering a range of law about dependent individuals without having to provide separate legislation about the two types.⁸⁰

Vengeance and Vicarious Punishment

One of the difficulties in understanding verses 20–21, which bears on their correlation with LH 115–116, is the verb נָקַם . Attestations of the root in the Bible indicate that it refers to taking vengeance and specifically to taking capital vengeance.⁸¹ Thus one cannot argue, as some have, that it merely means paying a fine, as in the law where a slave is gored by an ox (21:32).⁸² One interpretation that is attractive in view of CC's dependence on LH is that the verb includes the possibility of vicarious capital punishment, as prescribed by LH 116.⁸³ If the slave is the son of a debtor, the creditor's son should be put to death. This interpretation is supported by the use of נָקַם in the Bible in some cases to refer to collective punishment, including persons other than or in addition to the offender.⁸⁴ Given the uncertainties in interpreting CC, this understanding is not impossible. If it can be proved independently of LH 116, then it reinforces the evidence for CC's dependence on these particular Akkadian laws.

But CC appears to reject vicarious punishment.⁸⁵ This is most clearly seen in the law about an ox that gores and kills a person after its owner has been warned to control it. CC saw an ambiguity in the source law, LH 251. The victim in this case is described as *mār awīlim*, which can be understood as "a person of the *awīlum* class" or, literally, "a son of an *awīlum*." CC therefore wrote verses 29–30, which assume the first interpretation, with an adult as the victim. Then it added verse 31 reflecting the alternative interpretation: "or if it gores a

son or if it gores a daughter, it shall be done for him according to this (the foregoing) law.” That is, the owner of the ox is to suffer the punishment, not his child. CC also avoids mention of vicarious punishment in its miscarriage law (vv. 22–25). Instead of copying the apodosis of LH 210 (“if that [pregnant] woman dies, *they shall kill his [the assailant’s] daughter*”), CC inserted the talion law (vv. 23b–25, “you shall pay life for life, eye for eye...”; see the discussion later). Thus in three cases, including verses 20–21, where CC could have explicitly written a vicarious punishment law, it has avoided it.

It is possible to argue that CC has rejected vicarious punishment in the ox and miscarriage laws because the victim is a free person but allows it in the slave-homicide because the victim is a slave. A difficulty with this is seeing vicarious punishment as a lesser form of punishment that would correspond with the lesser status of the slave. Because vicarious punishment affects persons beyond the immediately responsible party, it seems to be a more severe form of punishment. In any case, LH views it as form of measure-for-measure punishment. Thus it is not qualitatively much different from a more economically stated capital penalty.

Another problem with interpreting נָקַם as entailing vicarious punishment is that CC’s law says nothing about the victim being a child or other dependent family member, in contrast to LH 116. Without this context, the law seems to be uninterested in this punitive option.⁸⁶ Moreover, the interpretation does not make sense when it is recognized that the slave killed could be equally a chattel-slave, as explained in the preceding section of this chapter. Who is to be punished vicariously in such a case?

So why did CC use the verb נָקַם ? One possibility is that the verb’s lack of clear specificity allows for variable punishment, similar to the case of the goring ox whose owner has been warned but who does not control the animal (21:29–30). In that law, CC first and ideally requires capital punishment (“the owner of the ox shall also be put to death”). But it adds the alternative of paying a fine (v. 30), called a “ransom,” paid presumably to the victim’s family. The reason for CC’s allowing compensation in this case is the presence of the mitigating factors of negligence and the indirect cause of the homicide. Exodus 21:20–21 similarly features mitigating factors. The victim is a slave, and beating is allowed as an inducement to work. The verb נָקַם therefore brings to mind primarily capital vengeance, but because it stops short of literally calling for the death of the assailant, allows for compensation if the determining parties so desire.⁸⁷

Another reason for the use of נָקַם may have to do with the law’s inclusion of both chattel-slaves and debt-slaves, as demonstrated earlier. The term may indicate variability of punishment depending on the specific status of the slave. If he or she is a debt-slave—that is, a Hebrew national—then capital punishment would be exacted; if a chattel-slave of foreign origin, then a less severe penalty might be exacted.⁸⁸ Like the explanation in the preceding paragraph,

the root נָקַד refers to the stringent penalty but also allows for the lesser. Another way of looking at this is that in a real social context, the debt-slave would have kin to prosecute his or her murder. A foreign chattel-slave, however, might not.⁸⁹ CC uses נָקַד to cover whatever penalty might be required in a particular case, without specifying it in detail.

Before we turn to the miscarriage laws, we should observe that, as indicated in several places in the discussion so far, CC's slave homicide law is concerned with intentionality.⁹⁰ It thus complements the laws on homicide (vv. 12–14) and injury (vv. 18–19), as well the laws on miscarriage and talion (vv. 22–25), which manifest this concern. Like the injury law in verse 18, verse 20 mentions an instrument used to cause death (i.e., “with a rod” בַּשֶּׁבֶט). This parallel is one of contrast. The law presumes that a slave owner has a right to strike a slave, even with a rod, to get him or her to work. The law locates the marker of intent elsewhere, in the time of death. If the slave dies the same day, the owner may be seeking to kill him or her. If the slave does not die immediately, the homicide was not intended.⁹¹ The concern about intentionality is generated from the source texts. LH 208 is part of the series of laws that deals explicitly with unintentional injury and homicide. This correlates specifically with the presumed lack of intentionality behind the slave's death in verse 21 (the slave's death must be assumed in this verse for the absolution clause to make sense). The concern about intentional homicide comes from LH 116: “if the debt servant dies from beating or from mistreatment (*ina maḥāšim ū lū ina uššušim imtūt*)....” The infinitival clause *ina uššušim* refers to causing physical distress and implies intent to do harm.⁹² CC's wording, “if a man strikes... with a rod and he dies under his hand” ($\text{וְכִי יִכֶּה אִישׁ... בַּשֶּׁבֶט וּמַת תַּחַת יָדוֹ}$), similarly indicates an intent to do harm.

Miscarriage (21:22–23)

Immediately after the common sequence of laws about injuring a person and providing therapy (Exod 21:18–19 // LH 206) and about killing one of a lower class (vv. 20–21 // LH 208), LH and CC set down laws about aggravated miscarriage (vv. 22–23 // LH 209–210).⁹³ Thus all of verses 18–23 correlates closely with LH. Because of the contiguity of Hammurabi's laws on injury/homicide (LH 206–208) and miscarriage (LH 209–210), one would suspect that the latter were as much a focus of CC's attention in crafting its system of punishments for homicide and injury as were the former. This suspicion is verified when one realizes that the talion laws, which are attached to the miscarriage law in verses 23b–25, fill in a substantial legislative gap left in the homicide laws in verses 12–14. CC waits until its talion law to finish writing its homicide legislation.

CC's miscarriage law contains two cases. These correspond to the two cases in its source, LH 209–210:⁹⁴

Exodus 21:22–25

²²When men struggle and they knock a pregnant woman and her fetus comes out but there is no calamity, he shall be fined as the husband of the woman exacts from him, and he shall pay *biptlīm*.

²³If there is calamity, you shall pay life for life, ²⁴eye for eye, tooth for tooth, arm for arm, leg for leg, ²⁵burn for burn, injury for injury, wound for wound.

²²וכי ינצו אנשים ונגפו אשה הרה ויצאו ילדיה ולא יהיה אסון ענוש יענש כאשר ישית עליו בעל האשה ונתן בפללים

²³ואם אסון יהיה ונתתה נפש תחת נפש ²⁴עין תחת עין שן תחת שן יד תחת יד רגל תחת רגל ²⁵כויה תחת כויה פצע תחת פצע חבורה תחת חבורה

LH 209–210

²⁰⁹If an *awīlum* strikes an *awīlum*-woman (literally: daughter of an *awīlum*) and he causes her to miscarry her fetus, he shall weight out ten shekels of silver for her fetus.

²¹⁰If that woman dies, they shall kill his daughter.

(LH 211–212, 213–214 treat the aggravated miscarriage of a commoner and slave woman.)

²⁰⁹*šumma awīlum mārat awīlim imḥašma ša libbīša uštaddīši 10 šiqil kaspam ana ša libbīša išaqqal*

²¹⁰*šumma sinništum šī imtūt mārašsu idukkū*

The first laws in both passages consider a case where the child is born dead, and the second laws, a case where the mother also dies or, according to the talion extension in CC, suffers injury. This correlation puts to bed the argument that in a supposed earlier formulation that lacked verses 24–25, CC's two laws were concerned only about the status of the child, with verse 22 treating premature birth (but not death of the child) and verse 23 dealing with miscarriage.⁹⁵ CC could have certainly changed the intent of its Akkadian source to create a law of this type. But there is no clear indication that CC seeks to modify the two basic conditions of Hammurabi's laws. In any case, the talion law in verses 23b–25 has to be considered part of the original text, as shown later. Its presence constrains the interpretation of the miscarriage laws and forces one to understand verse 23a as referring to the woman's death.⁹⁶

A wild card in the interpretation of CC is the term אסון in verses 22 and 23. It may be understood so that the biblical law means something quite different from Hammurabi's. For example, Westbrook has argued that the term means "a case of a perpetrator unknown." The phrase "and there is no אסון" in verse 22 is conceptually a double negative: "it is not a case in which the perpetrator is unknown"; that is, the perpetrator *is* known. Therefore, he pays the fine of verse 22b. The second law describes a case where the perpetrator is not known or determinable. In this case, the community—that is, the "you" of "you shall give" ונתתה in verse 23—provides the remedy. It is actually this problematic second-person verb that leads Westbrook in his search for a new meaning for אסון.⁹⁷ We see, later, that the verb does not refer to community resolution; rather, it introduces a general law of wider applicability than just miscarriage.

The word אסון is attested elsewhere only in Genesis, but that attestation provides a sufficient guide for interpretation. There it refers to the misfortune that might befall Benjamin, Joseph's brother (Gen 42:4, 38; 44:29). Jacob's description of what happened to Joseph—being torn by a beast—is the sort of incident included under this term (44:28).⁹⁸ The meaning of אסון must accordingly be something like “calamitous or unexpected death.”⁹⁹ Thus verse 23 of the miscarriage law, which says that “there is אסון,” means that the mother has suffered an unfortunate and unexpected death. This makes sense especially in the context, where the death is unintended (see later).

A problem for this interpretation of אסון is the list of injuries in verses 24–25. These seem to broaden the meaning of the term to a range of bodily suffering that includes all of the injuries in that list.¹⁰⁰ This makes verses 24–25 appear to be a secondary addition, which seems not to have understood the sense of אסון. The source hypothesis of this study provides a solution. The contradiction comes from CC's using different laws for constructing verses 22–23 and 24–25. The body of the miscarriage law is based on LH 209–210, which speak of the death of the woman (not her injury). CC has carried over this meaning in its use of the term אסון. The talion list in verses 24–25 is based primarily on the talion laws in LH 196–201 and partly on the injury motif of LH 206 (see later). This led to the listing of injuries that exceeds the context of the basic miscarriage law. CC apparently felt that introducing this contradiction was tolerable, because its apodosis in verses 23b–25, while giving a judgment pertaining to the death of the pregnant woman in verse 23a, also introduced a general law of broader applicability (see later).¹⁰¹

Another terminological problem, related to the meaning of אסון, is the meaning of ויצאו ילדיה, literally “her children come out,” in verse 22. The foregoing considerations indicate that this must refer to a miscarriage. As for the awkward wording, some argue that the original text was a singular, like the Samaritan ויצא וילדה “her child comes out,” and that the sequence of letters was wrongly divided, yielding a plural verb, which in turn led to a “correction” in the writing of the noun.¹⁰² Others take the MT as the original reading but say that it allows for a case of multiple pregnancy. Some say it refers to the woman's losing her ability to bear children.¹⁰³ Schwienhorst-Schönberger makes the appealing argument that the plural is a way of referring to the fetus.¹⁰⁴

Though CC follows the basic pattern of LH in the two cases of its miscarriage law, it changes the modality of intention. LH 209–210 presume that the striking is intentional.¹⁰⁵ When the pregnant woman dies, the assailant's daughter is to be killed. This is explicable only if the attack were deliberate. If it were inadvertent, LH would require only payment of a fine of thirty shekels of silver after taking an oath of innocence, as prescribed by LH 207. LH 209–210, moreover, describe the striking as direct, with no hint of hesitation or accident. The case is similar to the descriptions of injury in the talion laws of LH 196–201 and the laws on humiliating striking in LH 202–205. The former laws entail intentional injury in view of their grievous penalties; otherwise, LH 207 would apply. The latter clearly entail intentional striking.

CC's talion law, in contrast, involves inadvertence.¹⁰⁶ The term אֶסֶן points to a lack of intent if it means "unexpected/unfortunate death," as argued previously.¹⁰⁷ A more decisive datum is contextualizing the assault in a fight.¹⁰⁸ CC brings this in from LH 207, which it duplicated also in verse 18.¹⁰⁹ But in contrast to verse 18, where an injury occurs to one of the pugilistic parties, the assault on the woman in verse 22 is an unintended outcome. The men fight and happen to "knock" (נָגַהּ) her.¹¹⁰ She is not portrayed as a party in the fight, like the woman in Deuteronomy who grabs the testicles of a man fighting with her husband (Deut 25:11–12; cf. MAL A 8).¹¹¹ CC describes the fighting with the verb נָצַה, as opposed to רִיב in verse 18. The verb נָצַה is probably used because it more particularly describes a physical struggle, as opposed to רִיב, which can refer to a verbal dispute as well.¹¹² The verb נָצַה further means that the men are already striking one another; the contest is more advanced than that in verse 18.¹¹³ The introduction of the motif of fighting in verse 22 can help explain the inconsistency when that verse speaks of two men fighting yet of only one being punished. This is the result of CC's attention to two different sources: the two men fighting from LH 207 (and v. 18) and the single assailant in LH 209. The inconsistency is an artifact of the imperfect blending of sources.¹¹⁴

Before turning to the penalties for aggravated miscarriage in CC, we should observe that CC replicates only LH 209–210. It does not go on to treat a victim of a lower social status, as found in LH 211–212 (a female commoner) and LH 213–214 (a female slave). It might be thought that CC would include at least a slave woman, since it includes slaves in socially graded laws in verses 20–21, 26–27, and 32. CC may have intended its law to cover all classes of women by not giving specific amounts for damages, in contrast to LH 209–214. A lesser amount would be paid for the fetus of a slave woman and her injury or death. But CC may not even be thinking about slaves in verses 22–23 because in verse 22 the penalty is imposed (and received) by the woman's *husband*. If the victim were a slave woman, the penalty would presumably be imposed and received by her owner, like the case of a slave gored by an ox (v. 32). CC did not include a slave woman perhaps because replacing the apodosis of LH 210 with the talion laws from LH 196–201 (see later) distracted attention from continuing with legislation built on LH 211–214.¹¹⁵

Penalties for Aggravated Miscarriage and Talion (21:22b, 23b–25)

CC changes the penalties of Hammurabi's miscarriage laws. In the first law, CC does not specify the amount to be paid, in contrast to LH 209, which demands ten shekels of silver. The responsible party is fined the amount that the woman's husband "determines." This is described with the verbs נִעֲנַשׁ "be punished" and הִשִּׁית "exact, impose." The root עִנַּשׁ is used of monetary fines elsewhere in the Bible.¹¹⁶ The second verb is the same used for the variable amount exacted in the goring ox law, verse 30 (see later). This penalty is motivated in part by the

change of the modality of intention in the law. It may also be further motivated by the logical consideration that a fixed amount may not fit all cases.

The assailant must also pay בפללים, whatever that means. It is tempting to see this as a reference to the stage of pregnancy, a concern of HtL 17: “If someone makes a free woman miscarry, if it is the tenth month (i.e., full term) he shall give ten shekels of silver; if it is the fifth month, he shall give five shekels of silver. . . .” (HtL 18 prescribes five shekels for full-term miscarriage of a slave.) One could follow Speiser in concluding that the term specifically means “according to the assessment,” which reflects variable rates.¹¹⁷

Other possibilities for interpretation arise from a comparison of the requirement in verse 22 with the parallel requirement in the goring ox law in verse 30: “he shall be fined as the husband of the woman imposes on him he shall pay *bipililim*” (ענוש יענש כאשר ישיית עליו בעל האשה ונתן בפללים) (v. 22) and “if a ransom is imposed on him he shall pay a redemption price for his life according to whatever is imposed upon him” (אם כפר יושת עליו ונתן פדיו נפשו ככל אשר) (ויושת עליו; v. 30). In both passages, the clause about the imposition of a fine or ransom, which has the verb השיית, comes first, followed by the payment phrase with the verb ונתן “he shall give,” which states something about the nature of the payment. Since in the ox law, the animal owner pays a “redemption price for his life”—this is the sense of the construct relation of the nouns in the Hebrew—perhaps the preposition ב- on פללים means “in exchange for.” This pushes us to see a correspondence between פללים and the plural ילדיה “her children” in verse 22a. I am not, however, suggesting by this that we should emend the noun to נפלים “aborted fetus(es).”¹¹⁸ Alternatively, the obscure בפללים may refer to the idea entailed in the phrase יושת עליו ככל אשר “according to whatever is imposed upon him” and hence mean something like “according to the assessed penalty.”

Ultimately, I am forced to leave the meaning of the problematic term open. An alternative interpretation of the term, “by mediation” or “by (the determination of) mediators,” is still viable.¹¹⁹

The most substantial change that CC makes to the miscarriage law is replacing the apodosis in LH 210 with a summary of the nearby talion law:¹²⁰

Exodus 22:23b–25

^{23b} . . . you shall give (= pay)

life for life,

²⁴eye for eye,

tooth for tooth,

arm for arm,

leg for leg,

²⁵burn for burn,

injury for injury,

wound for wound.

LH 196–201

¹⁹⁶If an *awilum* blinds the eye of a member of the *awilum* class, they shall blind his eye.

¹⁹⁷If he breaks the bone of an *awilum*, they shall break his bone.

¹⁹⁸If he blinds the eye of a commoner or breaks the bone of a commoner, he shall weigh out one mina (sixty shekels) of silver.

¹⁹⁹If he blinds the eye of an *awilum*'s slave or breaks the bone of an *awilum*'s slave, he shall weigh out half of his value.

²⁰⁰If an *awīlum* knocks out the tooth of an *awīlum* of the same rank, they shall knock out his tooth.

²⁰¹If he knocks out the tooth of a commoner, he shall weigh out one third mina (twenty shekels) of silver.

ונתתה . . . ²³	¹⁹⁶ <i>šumma awīlum īn mār awīlim uḥtappid īn šu</i>
נפש תחת נפש	<i>uḥappadū</i>
עין תחת עין ²⁴	¹⁹⁷ <i>šumma ešemti awīlim ištebir ešemtašu</i>
שן תחת שן	<i>išebbirū</i>
יד תחת יד	¹⁹⁸ <i>šumma īn muškēnim uḥtappid ū lū ešemti</i>
רגל תחת רגל	<i>muškēnim ištebir 1 mana kaspam išaqqal</i>
כזיה תחת כזיה ²⁵	¹⁹⁹ <i>šumma īn warad awīlim uḥtappid ū lū ešemti</i>
פצע תחת פצע	<i>warad awīlim ištebir mišil šīmīšu išaqqal</i>
חבורה תחת חבורה	²⁰⁰ <i>šumma awīlum šinni awīlim meḥrīšu ittadi</i>
	<i>šinnašu inaddū</i>
	²⁰¹ <i>šumma šinni muškēnim itaddi 1/3 mana kas-</i>
	<i>pam išaqqal</i>

Hammurabi's talion laws appear in two sets: injuries to eyes and bones in LH 196–199 and injuries to teeth in LH 200–201. The eye/bone laws are graded according to the status of the victim. Injuries to the eye/bone of an *awīlum* are treated in separate laws. Injuries to the eyes/bones of lesser statuses are treated together in one law for commoners and another for slaves. The tooth laws are socially graded but include only the *awīlum* and the commoner. The laws about an eye/bone (LH 196–199) and tooth (LH 200–201) are delineated separately because the fine in the case of the commoner differs.

The body parts in the talion dyads in verse 24 have correspondences in LH. An “eye” is found in LH 196, 198, 199; a “tooth” is found in LH 200–201. An “arm” and “leg” can be seen as referring primarily to fractures (not amputations) and thus correspond with LH 197, 198, 199. The other dyads in CC's law derive from other laws. The equation “life for life” in verse 23b is an expansion of the cases in LH 196–201 and may echo, though only loosely, the verdict in the miscarriage law in LH 210, which requires a form of capital punishment. CC has reformulated this requirement to fit the talion wording. The “burn,” “injury,” and “wound” in verse 25 may derive from laws near Hammurabi's miscarriage laws.¹²¹ LH 206, which, as we have seen, guided the formulation of verses 18–19, talks about the striker inflicting a *simnum* “wound” on his opponent.¹²² These biblical verses have a connection with the talion law of verses 23b–25 in that both prescribe disability payments: paying for the person's idleness in verse 19 is similar to talion payment (see later). The laws just after Hammurabi's miscarriage laws also speak of a *simnum* (LH 215–220), specifically a “serious wound/incision” (*simnum kabtum*), that a physician makes on a patient.¹²³ The terms פצע “injury” and חבורה “wound” in verse 25 are apt

translations of *simum*. The term כויה “burn” can be viewed as a logical extension of the phenomenology.¹²⁴

The organization of the injuries in CC is partly guided by their severity and location on the body, from the most serious case of homicide (“life”), to “hard tissue” injuries (eye, tooth, bones—listed from head to foot),¹²⁵ to “soft tissue” and general injuries (burn, injury, wound). But legal source has also influenced the organization: “life” (relating to the death of the woman) in verse 23b derives from the miscarriage law itself in LH 210; the “eye,” “tooth,” “arm,” and “leg” in verse 24 are derived from the talion laws in LH 196–201; and the miscellaneous “injury,” “wound,” and “burn” in verse 25 are derived or developed from *simum* in LH 206 (and 215–220).

One of the reasons for substituting talion for the apodosis of LH 210 is that CC did not countenance vicarious punishment, as discussed earlier on verses 20–21. Another reason for substituting the penalty of LH 210 with talion was the change of the modality of intention.¹²⁶ Now that the assault is unintended, CC could not prescribe capital punishment, vicarious or otherwise. CC can require only *payment* of compensation, in silver or in kind.¹²⁷ The verb that governs CC’s talion list is “you shall give” ונתתה in verse 23b. In other passages in CC, the verb נתן “to give” means “to pay”:¹²⁸ one who incapacitates another “gives (i.e., pays) for his period of inactivity” (v. 19); in the first miscarriage law, the assailant “gives (i.e., pays)” the amount exacted by the husband (v. 22); and the owner of an ox that fatally gores “gives (i.e., pays) a ransom for his life according to what is exacted from him” (v. 30) or, for a slave, “gives (i.e., pays) thirty shekels of silver” (v. 32). This usage of נתן parallels the use of Akkadian *nadānum* “give,” which means “pay” in various laws.¹²⁹ “Giving life for life” means paying the equivalent of the life lost; “giving an eye for an eye” and so on down the talion list means paying the equivalent for the injury or loss of body part.

CC’s replacement of the penalty of LH 210 with a revision of LH 196–201 may have been facilitated by miscarriage laws in other cuneiform sources that feature the principle of talion. MAL A 50 (see n. 97) prescribes that “for her fetus he (the assailant) shall provide recompense of life” (*kīmū ša libbīša napšāte umalla*).¹³⁰ The same idiom is found in MAL A 52 about causing a prostitute to miscarry. A subcase of MAL A 50 also says that if the pregnant woman’s husband has no son, “they shall kill the striker for the fetus” (*kīmū ša libbīša māḥiṣāna idukkū*). CC’s idiom “and you shall pay life for life” (נפש תחת נפש) approximates the language and sense of these Akkadian idioms. The prostitute law (MAL A 52) also says that “they shall inflict on him blows like blows (*miḥṣī kī miḥṣī*),” that is, the blows with which he assaulted the woman. The wording “blows like blows” is similar to CC’s “X תחת X” formula and especially חבורה תחת חבורה “injury for injury, wound for wound.”¹³¹ But CC does not have to depend on such laws, even though it may have used MAL A. Some have noted that the principle of talion is implicit in LH 210 in the vicarious punishment of an assailant’s daughter for the victim.¹³²

Although CC's idiom "X תחת X" is similar to the MAL idioms just noted, its specific wording is not necessarily generated from an Akkadian source. The formula is attested in other parts of the Bible in a distribution that suggests it reflects native idiom that existed prior to the composition of CC, though in these other passages the formula is not part of developed talion list. The phrase "life for life" נפש תחת נפש can be found outside the Pentateuch,¹³³ and the idiom of repaying/returning "evil for good" רעה תחת טובה and comparable formulations, similar to the "X תחת X" formula, also appear broadly.¹³⁴ All of these cannot be said to derive from the wording or influence of CC. CC has apparently filtered the talion laws of LH 196–201, perhaps with whatever stimulus there may be from cuneiform laws that connect miscarriage and talion, such as MAL A 50 and 52, through native idiom.¹³⁵

CC's replacement apodosis for LH 210 is a clever invention that does double duty. It is at once the penalty for the death or injury of a pregnant woman and also a general law that prescribes compensation payment for any case of inadvertent homicide or permanent physical injury. Several features indicate that this is a general law.¹³⁶ It begins with the exceptional second-person formulation "you shall pay. . . ." This divergence from the normal third-person formulation puts emphasis on the ruling.¹³⁷ The "you" directs the law to the community. This does not mean that the community or its representative body pays for the death of the woman, as in Westbrook's analysis.¹³⁸ The "you" is the audience of the legal collection, the same as that indicated by second-person forms in the apodictic laws and in incidental occurrences in the casuistic laws. The broadened reference points to the general application of the law. The apodosis in verses 23b–25 acts almost like an independent apodictic law, similar to the formulation of the initial and final apodictic laws. The main difference of the wording in verse 23 from apodictic law is the *waw*-consecutive form ונתתה "you shall pay," used because of the casuistic-consecutive context (cf. vv. 6, 8, 19, 30, 35). Another indication that this is a general law is the scope of injuries covered. A burn (כריה), especially, is not an injury expected to occur to a pregnant woman as a result of men fighting and knocking her.¹³⁹ Furthermore, the long list seems overwrought in view of the sparse description of injuries in other laws. But the detail makes sense if the rule has application beyond miscarriage.

This is not the only instance of a general rule in CC. Another appears in the middle of the property laws in the second half of CC's casuistic laws (22:8; see chapter 9).

In any case of a wrong, whether concerning an ox, ass, flock animal, garment, or anything lost, about which one might say "This is it/he"—the claim of both of them shall come to the God. He whom God convicts shall pay twofold to his fellow.

This has a formulation different from the talion law, but like the list, it has a connection to a particular preceding law (deposit of property, 22:6–7) and builds upon it to state a principle of broad application. Conceptually, this law for resolving

property disputes is as important to the various property laws as a universal principle as the talion law is to the various assault laws. These two strategically placed general rules may stem from CC's intent to summarize its lengthier source.

As a broad rule, the talion law fills a conspicuous gap left in the homicide laws of verses 12–14 over against LH 207. The Akkadian law requires payment of thirty shekels of silver in the case of unpremeditated homicide as compensation. Verses 12–14, when read by themselves, require capital punishment in the case of intentional homicide but no penalty whatsoever in the case of involuntary homicide. These verses actually stand in tension with verses 18–19, as the latter require some compensation (for lost wages) in the case of transitory injuries, whether intended or not. The talion law in verses 23b resolves this apparent contradiction in requiring payment for a life inadvertently lost.

The comprehensive law of verses 23b–25 also complements the injury law in verses 18–19, as noted earlier in this chapter. These earlier verses speak mainly of temporary injury, caused inadvertently or intentionally. The assailant needs to pay for recuperation and for lost wages. The talion law includes permanent injury, especially in the dyads about an eye and tooth, though it also can entail temporary inadvertent injury in the other dyads. Moreover, though it describes these injuries as unplanned, logic tells us that talion payment would also apply to premeditated injury. Thus the payments in verses 18–19 and 23b–25 cover a wide range of injury types and the full range of intentionality. Their primary point of complementarity is in prescribing disability payments.¹⁴⁰ Paying lost wages in verses 18–19 is for temporary disability, and the talion payment in verses 24–25 extends to permanent disability.¹⁴¹ The two laws do not describe these payments the same way because their sources within LH are different (LH 206 versus 196–201). But if one law has been modified more to fit the other, it is the talion law. The severity of literal bodily mutilation as prescribed by Hammurabi's talion laws has been replaced with a monetary payment.¹⁴² CC, however, has increased Hammurabi's penalties in one respect. It requires a disability payment for *inadvertent* injury as opposed to LH 206. This may be partly to create consistency with LH 207, which requires indemnification for inadvertent homicide. CC's systematic changes compared with LH, for the cases of injury and homicide in 21:12–25, are summarized in table 6.2.¹⁴³

CC's indemnification for inadvertent homicide clarifies the nature of asylum described in verses 13–14. A killer fleeing to the sanctuary according to verse 13 would no doubt be judged there. If judged to have calculated his deed, the murderer would be taken from the altar and given to the victim's kin to be put to death (v. 14). In such a case, there would be no added indemnification, as suggested by the case of the goring ox in verses 29–30, which prescribes either capital punishment or a payment, not both. Alternatively, if judged to have killed without forethought, the assailant would pay the life-for-life recompense required by verse 23b. The goal underlying these two alternatives is to achieve satisfaction for the victim's family. Execution would satisfy their instinct for reprisal and revenge. Payment of talion within the context of a judicial review that found the killing an

Table 6.2: Systems of punishment for intentional and inadvertent injury and homicide

Source	Modality	Injury	Homicide
LH	intentional	physical talion (LH 196–197, 200) (payment for recuperation, implied from LH 206)	[capital punishment (cf. LH 116, 210)]
	inadvertent	payment for recuperation (LH 206)	30 shekels (LH 207)
CC	intentional	payment of lost wages or talion payment (the latter by implication), depending on permanence of injury; payment for recuperation (21:18–20, 24–25)	capital punishment (21:12–14)
	inadvertent	payment of lost wages or talion payment, depending on permanence of injury; payment for recuperation (21:18–19, 24–25)	talion payment (“life for life” 21:23b)

accident would also assuage their wrath. In the latter case, when the inadvertent killer paid or made arrangements to pay the talion penalty, he would not need to stay at the sanctuary. Asylum would thus be temporary, lasting only as long as it took to try his case. The story of Adonijah indicates how such proceedings would occur (1 Kings 1:50–53).¹⁴⁴ He fled to the altar until his case was decided. After this, he could leave and be safe, as long as he acted according to the agreement made by the parties involved.¹⁴⁵ The situation would be similar to LH 207, where the individual swears, presumably at a shrine, that he did not kill intentionally and pays thirty shekels. LH does not conceive of the individual taking up residence at the temple. CC apparently has the same view. Later biblical law turned CC’s sanctuary judgment into permanent asylum, partly because it did not see that verse 23b complements verses 12–14. Permanent asylum is hinted at in Deuteronomy 19:4, 12.¹⁴⁶ The Holiness Legislation requires this explicitly, allowing release only when the high priest dies (Num 35:25–28). This metaphysical mechanism is a reflection of a preoccupation with bloodguilt and impurity, not visible in CC.¹⁴⁷

CC’s broad legislation about homicide reveals an even more nuanced system of penalties that vary according the degree of intentionality and the directness of the assault. As we have seen (1) *intentional-direct* homicide, described in the main law in verses 12 and 14 and also in the law about killing in verse 20, requires capital punishment. The next most serious category of (2) *negligent-indirect* homicide is found in the goring ox law about an ox owner who fails to control his lethal animal after being warned (vv. 29–30). His penalty is death, though the family may accept a ransom payment. This is a type of indemnification comparable to the “life for life” payment of verse 23b. A less severe case is (3) *inadvertent-direct* homicide, described in verses 13 and 23b. Talion payment is obligatory here. The case where an ox, whose owner has been warned, kills a

slave falls to this level of gravity, since only a payment (thirty shekels, the same amount for a free person in LH 251 and 207) is made, to the slave owner. Recall that if this is a debt-slave, the debt against the victim's family is probably canceled. Thus the victim's kin is indirectly compensated. Finally, the least severe case is (4) *inadvertent-indirect* homicide, found in the law about ad hoc goring in verse 28. This requires no indemnification, though the ox is stoned (as it is in a case where the owner has been warned, v. 29). This system is tied to the resystematization of penalties in the goring ox laws, described in chapter 8.¹⁴⁸

This assessment of the talion, injury, and homicide laws does not support the idea that CC had a greater reverence for life than LH. Its penalties are really quite similar to those found explicitly or implicitly in Hammurabi's laws. The motivating factor appears to be in providing suitable compensation for injury and homicide, intentional or unintentional. It goes beyond LH in requiring indemnification for inadvertent injuries. Where it does seem to make ethical improvements, from our point of view, is in rejecting physical talion and excessive fines for intentional injuries (LH 196–201, 202–205). The assailant now pays only the same amount as one who injures by mistake. It also rejects vicarious punishment. Only the responsible party is subject to capital punishment. But these changes are not motivated by an ethical agenda, but by cold legal logic.¹⁴⁹

Slave Injury (21:26–27)

After the general talion law, CC takes up talion-related rules pertaining to slaves in Exodus 21:26–27.¹⁵⁰ These follow the content and pattern of Hammurabi's talion laws, which include social gradations and include slaves.¹⁵¹ The citation here reproduces the full list of the talion laws in LH so that the gradations can be seen in context alongside the biblical text:¹⁵²

Exodus 21:26–27

²⁶If a man strikes the eye of his male slave or the eye of his female slave and destroys it, he shall send him away free for his eye.

LH 196–201

¹⁹⁶If an *awilum* blinds the eye of a member of the *awilum* class, they shall blind his eye.

¹⁹⁷If he breaks the bone of an *awilum*, they shall break his bone.

¹⁹⁸If he blinds the eye of a commoner or breaks the bone of a commoner, he shall weigh out one mina (sixty shekels) of silver.

¹⁹⁹If he blinds the eye of an *awilum's* slave or breaks the bone of an *awilum's* slave, he shall weigh out half of his value.

²⁷And if he knocks out the tooth of his male slave or the tooth of his female slave, he shall send him away free for his tooth.

²⁰⁰If an *awīlum* knocks out the tooth of an *awīlum* of the same rank, they shall knock out his tooth.

²⁰¹If he knocks out the tooth of a commoner, he shall weigh out one third mina (twenty shekels) of silver.

¹⁹⁶*šumma awīlum īn mār awīlim uḥtappid īnšu uḥappadū*

¹⁹⁷*šumma eṣemti awīlim ištebir eṣemtašu išebbirū*

¹⁹⁸*šumma īn muškēnim uḥtappid ū lū eṣemti muškēnim ištebir 1 mana kas-pam išaqqal*

²⁶וכי יכה איש את עין עבדו או את עין אמתו ושחתה לחפשי ישלחנו תחת עינו

¹⁹⁹*šumma īn warad awīlim uḥtappid ū lū eṣemti warad awīlim ištebir mišil šīmīšu išaqqal*

²⁰⁰*šumma awīlum šinni awīlim meḥrīšu ittadi šinnašu inaddū*

²⁷ואם שן עבדו או שן אמתו יפיל לחפשי ישלחנו תחת שנו

²⁰¹*šumma šinni muškēnim itaddi 1/3 mana kas-pam išaqqal*

Verses 26–27 describe one of the injuries in each of the talion blocks of LH (196–199 and 200–201), the “eye” from LH 199 concerning the eye of a slave and the “tooth” from LH 201. The latter law includes only a commoner, not a slave. CC has replaced a commoner with the slave here, just as it did in verses 20–21, which depend on LH 208 (see earlier in this chapter). CC thus retains a sociological gradation but simplifies its complexity.¹⁵³

Verses 26–27 closely follow the wording of their source in their protases: “if a man strikes the eye of his slave...and destroys it” (וכי יכה איש את עין) ושחתה (עבדו... ושחתה) versus “if he blinds the eye of a man’s slave” (*šumma īn warad awīlim uḥtappid*), and “if he knocks out the tooth of his slave...” (ואם שן) (עבדו...) versus “if he knocks out the tooth of a commoner” (*šumma šinni muškēnim itaddi*). These are nearly translations.

CC differs in describing the assault in verse 26 as a case of striking (הכה) and destroying (שחת) the eye. LH uses the verb *puḥḥudum*, which comprehends the assault and its result “to blind.” CC’s use of the verb הכה “strike” must be due to the context of striking in the foregoing laws (vv. 12, 15, 18, 20), which depend on striking (*maḥāṣum*) in their corresponding laws in LH. In mentioning striking as the means of blinding, CC may be linking the law specifically to the context of verses 20–21, which deal with the death of a slave by a master’s beating. Another link to verses 20–21 is describing the slave as belonging to the assailant. In LH, the slave belongs to someone else. CC

appears to be formulating verses 26–27 as a conceptual alternative to verses 20–21.¹⁵⁴

The description of knocking out a tooth in verse 27 with the verb הפיל “to cause to fall (out)” more directly reflects Akkadian verb *nadûm* “throw (down, out), knock out.” Both verbs imply the action of striking as we all describe the result. One of the differences in the protasis of verse 27 over against verse 26 is that it does not mention the man. The subject is pronominally entailed in the verb “he knocked out.” This parallels the wording of LH. Verse 26 had to add the explicit subject “man” because it had no previous referent. The “man” of verse 26 can be seen as a replication of the “man” (*awîlum*) from the beginning of the first block of laws in LH 196 (the explicit subject “man” is set down again at the beginning of the second block of laws in LH 201).

The graded talion laws in LH distinguish the penalties for free persons over against those for commoners and slaves. When a free person is a victim, the talion penalty applies, as in LH 196: “if an *awîlum* blinds the eye of an *awîlum* they shall blind his eye.” For commoners and slaves, only monetary fines are exacted. The monetary fines for lesser statuses may have partly influenced CC to change talion to monetary compensation as opposed to bodily mutilation for free persons in verses 23b–25. But CC did not follow its source in prescribing payments for permanent injuries to slaves. They are to be released. This is partly due to the change of the assailant from an outside party to the owner himself. It would make no sense for the owner to pay a fine to himself. But the change in penalty and also the change in who the assailant is come from a larger systematic modification. CC’s slaves in this law, described with the terms עבד “male slave” and אמה “female slave,” include debt-slaves as well as chattel-slaves, as argued previously in the section on verses 20–21.

The blending of debt- and chattel-slaves in CC’s slave legislation explains a point of tension between 21:20–21 and 26–27.¹⁵⁵ Why must an owner send a slave free when he blinds or knocks out a tooth of a slave but may beat a slave within an inch of his or her life, and even to death, as long as the death is not immediate? The answer is that the release of the slave prescribed by verses 26–27, as well as the liability legislated for the death of the slave if he dies immediately from a beating according to verse 20, relates to strictures imposed from the point of view of debt-servitude legislation. The leniency in not ascribing liability for delayed death is from the perspective of chattel-slavery. CC’s legal inconsistency comes from the mixing of distinct legal categories.

In formulating the penalty in verses 26–27, CC continued to employ the preposition תחת “for, in place of” used in the dyadic summary of talion laws in verses 23–25: the slave is sent free “for (תחת) his eye/tooth.” The use of תחת here also lends support to the understanding that the talion rule in verses 23b–25 refers to payment rather than bodily deformation. The preposition תחת indicates equivalency of value.¹⁵⁶

The Unity of Verses 18–27

Just as the beginning of this chapter determined that the homicide laws in Exodus 21:12–14 were a unity, so the evidence indicates that the various assault and homicide laws in verses 18–27 are to be considered a unity. In much scholarship hitherto, the injury law in verses 18–19 and a form of the miscarriage law in verses 22–23 are seen as the original core. These laws, it is believed, were later updated with the participial laws (vv. 12, 15–17), the slave homicide law of verses 20–21, the talion list in verses 23b–25, and the slave-injury laws in verses 26–27. The talion list itself is often seen as composite, consisting perhaps first of only verse 23b, supplemented by verse 24, and then by verse 25. The evidence for these conclusions includes the very real change of style in verses 23b–25, the conceptual misfit of the talion law with the preceding miscarriage law, and a view that all of the slave laws in Exodus 21 are an addition to a more basic collection of assault laws. This last view is based on the correlation and apparent dependence of verses 26–27 on the talion list of verse 24, which is esteemed secondary, as just noted. If the slave laws of verses 26–27 are secondary, then so also must be the slave laws in verses 20–21, and even verses 2–11. The secondariness of the slave laws also gains support from the seemingly awkward position of verses 2–11 at the beginning of the casuistic laws and by thinking that a concern about slaves, especially debt-slaves, reflects a later sociological stage than the rest of the casuistic laws.¹⁵⁷

If we did not have LH and did not see it as a source for CC, it would be foolhardy to gainsay a critical judgment along these lines. The evidence of CC's source outlined earlier, however, provides firmer empirical data that require rejection of a standard redactional analysis. All of the material that correlates with and can reasonably be seen to derive from LH must be viewed as coming from a single use of LH. At it turns out, every single law in verses 18–27 has a correlation with LH: the injury law in verses 18–19 with LH 206, the slave homicide law in verses 20–21 with LH 208 and 115–116, the miscarriage law in verses 22–23 with LH 209–210, the talion law in verses 23b–25 with LH 196–201 (and the "wound" in 206), and the slave "talion" law in verses 26–27 with LH 199, 201. The dependence of verses 18–21 on LH 206 and 208 is further intertwined with the dependence of the homicide law of verses 12–14 on LH 207. In addition to these correspondences with LH as a source, the differences in CC throughout its various assault and homicide laws over against LH demonstrate a systematic revision and reinterpretation of its source. Verses 18–27 thus betray a conceptual unity, especially in their concern to explore the theme of intent, to see it play out in ways different than in their source text(s), and to envision a system of penalties that presumably attempts to be more rational than its source. The stylistic variations and remaining points of unevenness and tensions in the text have to be viewed as artifacts of weaving together laws from different places in LH, along with associated legal innovations and revisions.

Conclusion

The mirroring of LH in the homicide and assault laws of Exodus 21:12–14, 18–27, coupled with the resystematization of penalties in connection with the matter of intentionality, extends our understanding that CC is attempting to create a text that competes with its source, visible already in the debt-slave laws examined in the previous chapter. CC replaces punishments in LH that might be considered rhetorical—vicarious punishment and bodily mutilation from literal performance of talion penalties—with penalties that directly punish the agents of assault and that can be quantified monetarily (though it leaves amounts open). The only bodily penalty that CC prescribes in these laws is capital punishment, for intentional homicide. This is carried over from the implications of Hammurabi's laws. The goal of CC's revisions does not seem to be ethical. The composition pursues, rather, an aesthetics of legal logic. CC seeks to create a more consistent system of law that surmounts difficulties that it perceived in its source. One of its chief motivations in refiguring the system of punishments was to ensure proper satisfaction—whether this be vengeance or monetary compensation—to the victims of various attacks.

The homicide and assault laws in this section of CC were primarily built on the sequence of LH 206–208, on unintentional injury and homicide, and the immediately following law in LH 209–210, on the aggravated miscarriage of a free woman. CC moved the law on homicide from the middle of the first group of laws (LH 207) to the beginning of its assault laws. In doing this, it revised the style of the law in accordance with a native participial source (which was also influential in vv. 15–17 and 22:17–19; see the next chapter). CC may have used the participial source and formulation in part because LH lacked an explicit law on intentional homicide. To this basic law, CC added laws on unintentional homicide in verses 13–14, reflecting the modality of inadvertence found in LH 207. It used a deviant casuistic form in these verses partly because the initial participial style derailed the use of normal casuistic form and partly because it drew from the altar laws of 20:24–26 for themes and even stylistic features. Part of the reason for bringing in motifs from the altar laws was the requirement of temple adjudication implicit in LH 207.

When CC returned to its primary assault laws in verses 18–19, it resumed the casuistic form of its primary source (LH 206). It modified the modality of intentionality in these verses to include both intentional and inadvertent assault and added a disability payment beyond what was required in LH for the time lost due to incapacitation. Immediately after this, CC wrote a law about killing a slave in verses 20–21, based on LH 208. It changed the victim's status from commoner to slave. This was based on the context of other laws with social gradations in the environment of LH 208, which include chattel-slaves. But CC went beyond the context of Hammurabi's graded laws and blended motifs from the debt-servitude laws of LH 115–116 into verses 20–21. This conflation of slave types is responsible for the tension in the verses, where a slave owner is

not punished if his beating does not lead to the same-day death of his slave. The ensuing miscarriage laws in verses 22–23 were created from LH 209–210. Like LH, these deal with two cases: the death of a child and then the death of the mother. CC changed Hammurabi’s intentionality to inadvertence and replaced the requirement of vicarious penalty for killing a mother with a summary of Hammurabi’s nearby talion law (LH 196–201) in verses 23b–25. CC formulated this law to serve two purposes, as an apodosis to the second miscarriage law and as a general law that requires equivalent payment in all cases of inadvertent homicide or injury. As a general rule in a case of homicide, it complemented the homicide law of verses 12–14 by prescribing that a person who killed inadvertently must pay compensation (“life for life”) to the victim’s family. As a general rule in a case of injury, the talion payment was a disability payment that complemented the payment for lost wages prescribed in verse 19. CC also derived its slave injury laws in verses 26–27 from Hammurabi’s talion laws, in which social gradations are present. CC, however, conflated slave types in these verses and prescribed release of the slaves for a permanent injury, similar to the release of debt-slaves described in verses 2–11.

One may ask the extent to which these laws reflect legal reality in Israel and Judah. This is an important question, especially since these laws have served as data to chart the history of the practice of homicide asylum in Israel and Judah¹⁵⁸ and the evolution of talion as a principle in Near Eastern law.¹⁵⁹ That most of verses 12–14, 18–27 are responses to Hammurabi’s laws and, in particular, seek to revise its system indicates that CC’s laws do not primarily reflect native Israelite or Judean legal practice. The most that we can say is that there was a native tradition, reflected in the participle source, that saw intentional homicide as a capital crime. It is also possible—likely, I would say—that altar asylum reflects native practice, reflected elsewhere in 1 Kings 1:50–53, 2:28–34, and Amos 9:1–4. But CC’s altar law, as we will see, seems rather idealistic and abstract. We have to imagine that the institution of asylum as described by CC, whatever connection it has to reality, is somewhat theoretical. As for talion, native Israel and Judean societies shared the common Near Eastern propensity toward measure-for-measure punishment and had their own idioms (e.g., using תחת “in the place of”) to represent this idea. But the details of CC’s talion law are from a recasting of Hammurabi’s legislation.

7

Child Rebellion, Kidnapping, Sorcery, Bestiality, and Illicit Sacrifice (Exodus 21:15–17; 22:17–19)

The previous chapter on homicide and other assault laws demonstrated that CC in all probability used a short native list of laws, oral or written and with a participial formulation, to supplement its primary use of LH and secondary use of other cuneiform laws. The influence of this source is visible in a group of laws in Exodus 21 on homicide (21:12), child rebellion (vv. 15, 17), and kidnapping (v. 16) and in a group of laws at the very end of the casuistic laws in Exodus 22 on sorcery (v. 17), zoophilia (v. 18), and sacrifice to other gods (v. 19). With regard to the homicide law, chapter 6 concluded that the topic was stimulated by the law on inadvertent homicide in LH 207 but that the general form of the law followed a similar law on this topic in the native participial source. The burden of this chapter is to examine the other participial laws in CC, to assess their relationship to the laws of LH, to determine which of the participial laws may have originated from the native participial source, and to explain why CC has separated the two groups of participial laws.

Child Rebellion (21:15, 17)

After the law on homicide (21:13–14), CC continues with the theme of child rebellion (21:15, 17; for the disruptive law on kidnapping in v. 16, see later). These laws correlate with Hammurabi's laws on verbally denouncing and

striking parents, which appear at the end of Hammurabi's laws on family issues. CC has inverted the order of these laws:¹

Exodus 21:15, 17

¹⁵One who strikes his father or mother shall be put to death.

¹⁷One who curses his father or mother shall be put to death.

¹⁵וּמַכָּה אָבִיו וְאִמּוֹ מוֹת יוֹמָת

¹⁷וּמִקְלָל אָבִיו וְאִמּוֹ מוֹת יוֹמָת

LH 192–193, 195

¹⁹²If the son (raised by) a *girseqûm* (a male) or a son (raised by) a *sekretum* (a female) says to the father who raised him or the mother who raised him, “You are not my father; you are not my mother;” they shall cut out his tongue.

¹⁹³If the son (raised by) a *girseqûm* or the son (raised by) a *sekretum* identifies his father's house and shows hatred toward the father who raised him and the mother who raised him, and leaves for his (biological) father's house, they shall pluck out his eye.

¹⁹⁵If a son strikes his father, they shall cut off his hand.

¹⁹²*šumma mār girseqûm ū lū mār sekretim ana abim murabbīšu ū ummim murabbīšu ul abī attā ul ummī atti iqtabi lišānšu inakkisū*

¹⁹³*šumma mār girseqûm ū lū mār sekretim bīt abīšu uweddīma abam murabbīšu ū ummam murabbīssu izīrma ana bīt abīšu ittalak īnšu inassaḥū*

¹⁹⁵*šumma mārūm abāšu imtaḥaṣ rittašu inakkisū*

The reason for the inversion has to do with the shift of the location of the homicide law. As noted in chapter 6, CC took the topic of homicide from the middle of the sequence of LH 206–208 and placed it at the beginning of its assault laws. Once its assault laws were made to begin with homicide, then striking a parent, the type of offense in verse 15 (= LH 195), needed to follow the homicide law, which also involves striking (v. 12; cf. LH 207). Verbal denunciation therefore became secondary in CC's context.

Part of the reason for CC's inclusion of the child rebellion laws is that the father-striking law of LH 195 begins the section on assault in LH 195–214, which is the foundation for CC's section of laws on assault in 21:12–27. This block of verses in CC follows the order of the corresponding group of laws in LH for the most part and renders many of the legal details similarly. The father-striking law was therefore of particular thematic importance in CC's reading of Hammurabi's laws.

The laws on striking parents in both collections (LH 195; v. 15) correlate closely. Their modes of assault are described with Akkadian and Hebrew verbs

maḥāṣum and הכה, both “to strike.” Chapter 6 noted that this is a regular inter-dialectical correlation between the laws in LH 195–214 and verses 12–27. The parent-striking laws in the two collections are also brief legal statements, in contrast to the longer laws about verbal denunciation in LH 192–193. They set forth the condition of striking, succinctly followed by an equally succinct pronouncement of corporal or capital punishment. Both laws deal with any child, not an adoptive child as in LH 192–193. The act of striking in the two laws is not said to cause the death of the parent.² The main differences in verse 15 as opposed to LH 195 are the participial form, the capital penalty, and the inclusion of the mother as well as the father. These features are discussed momentarily.

The verbal denunciation laws in verse 17 and LH 192–193 are much less similar than the striking laws of the two collections. The law in verse 17 is concisely formulated and is parallel to the formulation of its companion striking law in verse 15, whereas LH 192–193 set up specialized circumstances. The Akkadian paragraphs are concerned with a child who has been raised by adoptive parents, specifically a *girseqûm* or a *sekretum*.³ This context is set up by LH 185–191, which pertain to adoption of children. These laws move back and forth between cases in which a son must remain with the adoptive parent(s), is allowed to return to his birth parents, and where disinheritance is a concern. LH 185 gives a general rule: “If a man takes a young child (*ṣeḥrum*) for adoption at birth and raises him, that raised child cannot be reclaimed.” LH 186 qualifies this, saying that if the child seeks his mother or father *at the time of adoption*, the child may return to his father’s house. The next law (LH 187) gives another general rule that a child adopted by a *girseqûm* (specifically who is a “palace attendant” *muzzaz ekallim*) or *sekretum* is not reclaimable. Likewise, a child adopted by a craftsman is not reclaimable (LH 188) unless the father does not teach him his trade (LH 189). The laws also require that the adoptive parents consider the child of equal status to their own physically born children (LH 190). If the father disinherits the adoptive child after having more children, the father must provide him with a share of his inheritance (LH 191).

In contrast to these foregoing laws, where parents demand the child back or oust the child, LH 192–193 treat cases where the adoptive child himself seeks emancipation.⁴ The child makes a formal declaration in LH 192, comparable to formulations found in marriage, divorce, adoption, disinheritance, and other legal contexts (cf. LH 9, 49, gap[¶]a, gap[¶]e, 126, 142, 159, 160, 161, 168, 170, 171, 206, 227, 282). He says “You are not my father; you are not my mother” (*ul abī atta ul ummī atti*).⁵ The measure-for-measure penalty, that the child’s tongue be excised, shows that this announcement is viewed as a verbal offense. LH 193 also implies verbal conflict, inasmuch as the child has identified his father’s house and shows hatred (*zêrum*) toward his adoptive parents. Such hatred may be displayed by verbal denunciation of the parents or a formal repudiation of their custody, as in LH 192. A similar situation is found in LH 142: “If a woman *hates* her husband, and says ‘You shall not take me (sexually) . . .’” (*šumma sinništum mussa izêrma ul taḥḥazanni iqtabi*). “Hating” is

here accompanied by a declaration that alters the existing interpersonal relationship, similar to that in LH 192.⁶ Like LH 192 and 195, LH 193 prescribes a measure-for-measure punishment; the child's eye is plucked out because he is implicitly *looking* for his original parents.⁷

Cursing in the biblical law corresponds with the child's denunciations in LH 192–193. It is true that the verb קלל “curse” does not necessarily refer to a formal legal declaration whereby a child seeks to emancipate himself or herself. It appears to be broader in scope, referring to any denunciation of the parents.⁸ A sense of what may be entailed by the verb in CC is found in the story about Shimei ben Gera. On the journey away from Jerusalem, this relative of Saul showed up and harassed David (2 Sam 16:6–8):

He threw stones at David and all the servants of King David, while all the people and warriors were on his right and left. This is what Shimei said as he cursed him (בִּקְלָל): “Get out, get out you blood guilty man, you scoundrel! Yahweh is paying you back for all the blood of Saul's house that you usurped. May Yahweh give kingship over to Absalom your son. Now you are suffering ruin because you are a blood guilty man!”

Abishai further defines Shimei's denunciation as a curse when he says to David: “Why do you let this dead dog denounce (יִקְלַל) my lord, the king. Let me go over and sever his head” (v. 9).⁹

The chief difference between CC's child rebellion laws and their counterparts in LH is in the penalties exacted. As noted already, Hammurabi imposes measure-for-measure punishments that suit each particular offense. CC requires the death penalty for both striking and cursing a parent. This penalty is probably to be explained by use of the native participial source. This source, as chapter 6 suggested, probably contained a law on homicide. It also probably contained a law on child rebellion. This makes sense in view of the surmise that this source would have been a short list of laws on a variety of subjects, to tell from the topics visible in CC's various participial laws. Being a short list, however, it probably had only one law on child rebellion, since more than one law on the topic would have been redundant. Moreover, it would also seem too much of a coincidence to have laws about striking and verbal abuse of parents, along with homicide, in both the participial source and in LH. Of the two laws that appear in CC, the participial source probably contained a law about cursing parents more or less similar to what we find in verse 17. The notion of cursing is broader than striking and thus more suitable as a general law in a short list. Other biblical passages, laws or wisdom sayings, refer to cursing parents as opposed to hitting them (Lev 20:9; Deut 27:16;¹⁰ Ezek 22:7; Prov 20:20; 30:11). The law about parents in the Decalogue speaks of honoring parents using the verb כָּבַד (Exod 20:12; Deut 5:16). This is essentially the positive formulation of the notion expressed by קלל. The Holiness Legislation's alternate positive formulation is comparable: “You shall each fear your mother and your father” (אִישׁ אָמוֹ וְאָבִיו תִּירָאוּ; Lev 19:3). These broad, positive formulations support the

idea that the child rebellion law in the participial source would have been a broad law against cursing parents rather than a specific against striking them. Another hint that the cursing law was original to the participial source is that it is significantly different in its overall content and extent compared with LH 192–193, in contrast to the much closer correspondence between the parent-striking laws in verse 15 and LH 195. It is much easier to see verse 15 deriving from LH 195 than to see verse 17 deriving from LH 192–193.

CC appears to have chosen the wording of the parent-cursing law in the native source as a *substitute* for the content of LH 192–193. This explains the requirement of capital punishment for cursing parents. This penalty would have been found in the original participial laws. Indeed, these laws are defined not only by their participial form but also by their accompanying death penalty, often described by מוֹת יוֹמָת “he shall be put to death.” CC brought this over from the native source.

It appears that the use of the native parent-cursing law for LH 192–193 is primarily why CC used the participial source and form for laws in this part of CC, against the casuistic formulation of corresponding laws in LH. Once CC had decided to use the extant participial parent-cursing law for LH 192–193, it used this same form, with its associated capital penalty, to render the father-striking law of LH 195 in verse 15. Refiguring acts of child rebellion as capital cases set the stage for moving the homicide law, also a capital case, from its position in the middle of the series of assault laws in LH 206–208 to the beginning of CC’s capital cases. This move and the formulation of the homicide law in participial form were facilitated by the presumed existence of a simple law about homicide in the native participial source that had a formulation similar to verse 12. This provided further impetus for CC to use the participial form for all of the capital offenses in verses 12–17. For consistency, CC extended the participial form to the kidnapping law of verse 16 in rendering the casuistic law of LH 14, as the next section of this chapter shows. Hence the deviant participial formulation in verses 12–17 has a completely rational explanation in terms of sources used. Their aberrant form is original to the law collection’s basic composition.

Two minor issues remain for discussion. It is reasonable to think that the native parent-cursing law mentioned both father and mother. A law with only one or the other is hard to explain. Hence the inclusion of both is not generated from the mention of parents of both genders in LH 192–193. The mention of both parents in the parent-striking law in verse 15, as opposed to simply the father in LH 195, derives from the mention of both parents in the parent-cursing law in the participial source.

Last, because the parents in the CC laws are primarily birth parents (though theoretically adoptive parents would not be excluded), CC had no reason to include the declarations found in LH 192 “You are not my father; you are not my mother.”¹¹ This declaration is a denial of a legally constructed relationship, much like a husband-wife or slave-master relationship. Such relationships may

be denied and undone. CC, however, does have one such a declaration, in its debt-slave law in 21:5, where a debt-slave says: “I love my master, my wife, and my children; I will not go free.” His ear is then pierced, and he becomes a permanent slave. Recall that this is an inversion of LH 282, where a slave says of his owner, similar to the child in LH 192: “You are not my owner.”

Kidnapping (21:16)

CC’s kidnapping law (21:16) has a participial formulation like the homicide and child rebellion laws: “And one who steals a man and either sells him or he is found in his possession shall be put to death” (וְגֵבֵב אִישׁ וּמְכָרוֹ וּנְמָצָא בְיָדוֹ מוֹת יוֹמָת).¹² Its location between the two child rebellion laws is awkward, whether one attributes this to the original formulation of the text or sees it as an addition.¹³ It would be better placed after the child rebellion laws.

CC’s dependence on LH explains the position of this law. Hammurabi’s child rebellion laws are similarly interrupted by a divergent law (LH 194):¹⁴

If a man gives his *son* to a wet nurse and that *son/young child* dies in the care of the wet nurse, and the wet nurse without the permission of his (the child’s) father or mother contracts for a second *young child*, they shall prosecute her. Because she contracted for a second *young child* without the permission of his (the first child’s) father or mother, they shall cut off her breast.

šumma awīlum DUMU (māra)-šu ana mušēniqtim iddinma DUMU/TUR (mārum/šeḫrum) šū ina qāt mušēniqtim imtūt mušēniqum balum abīšu u ummīšu TUR (šeḫram) šaniamma irtakas ukannūšīma aššum balum abīšu u ummīšu TUR (šeḫram) šaniam irkusu tulāša inakkisū

Although this deals with a child, the subject of this law is decidedly different from the laws about a child renouncing his parents (LH 192–193) or striking his father (LH 195). It might make better sense if it followed LH 195. The place of LH 194, of course, is logical in the broader context of Hammurabi’s laws. This law pertains to the general context of children in the previous laws and rounds out the context of adoption in LH 185–193. LH 195 then goes on to provide a pivot between the laws on *children* that precede and the laws on *striking* that follow.

CC has imitated the ostensibly disruptive pattern of LH 192–195. Because the wet-nurse law was legally and perhaps culturally too specific to provide a model for a law—certainly, it cannot be reduced to a participial form to fit nicely with verses 15 and 17—CC used the technique of cross-referencing to find a more cogent substitute for its context. Near the beginning of Hammurabi’s collection, we find a kidnapping law (LH 14): “If a man steals the young child of a man, he shall be put to death” (*šumma awīlum mār awīlim šeḫram ištariq iddāk*).¹⁵

Various features in the context of LH 194 and the laws that CC was creating in verses 12–17 led CC to use Hammurabi’s kidnapping law. The first is

the similar terminology used of the victim. While LH 194 uses the ambiguous logogram DUMU/TUR four times to describe its victim (see the text cited above), only the first demands being read as DUMU = *mārum* “son.” The other cases may be read as TUR = *ṣeḥrum* “young child,” especially the last two. Other laws in the vicinity refer to a *ṣeḥrum* (spelled syllabically; LH 185, 186, 190, 191) and use the aforementioned logogram apparently with the value TUR = *ṣeḥrum* (LH 188, 191).¹⁶ The possible reading of TUR (= *ṣeḥrum*) in LH 194 could have led CC’s eye or memory to *ṣeḥrum* in LH 14. In addition, LH 194 deals with the wrongful acquisition of a child. Clearly this is case in LH 14. Finally, CC was looking for a law with a capital penalty. LH 14 prescribes this explicitly. Hence, even though LH 14 is at a significant distance from LH 194 and not part of the sequential template that CC generally follows, its content made it ripe for CC’s compositional picking.

This logic suggests that CC’s kidnapping law was not part of the native participial source.¹⁷ Of course, we cannot be definitive on this matter. A kidnapping law is otherwise a good candidate for inclusion in a basic list of capital crimes. Moreover, the short list of rules in the Decalogue includes a general prohibition against theft, which has been interpreted as prohibiting kidnapping.¹⁸ CC’s description of the victim as a “man” (אִישׁ) and not a child might also be explained by the wording of a kidnapping law in the participial source that was not concerned specifically with kidnapping.¹⁹ But CC may be generalizing the context from that of a child in LH 14 to one of any age. In this regard, observe that while LH 194 and other laws in the context speak about a *ṣeḥrum* “young child,” and while the children in LH 192–193, 195 appear to be minors, CC’s child-rebellion laws in verses 15 and 17 do not specify the age of the child. CC may have broadened the context to children young and old, including adult children who have an obligation to support ailing parents.²⁰ A broadening of a young child (*ṣeḥrum*) in LH 14 to “a man” (אִישׁ) in the intervening kidnapping law of verse 16 makes sense in such a reformulation.

The other chief difference between verse 16 and LH 14 is the inclusion of certain subconditions in CC’s law: “and sells him or he is found in his possession” (וּמְכָרוֹ וּנְמָצָא בְיָדוֹ). These subconditions can be attributed to CC’s use of LH. The two conditions appear in the animal theft law of 21:37 + 22:2b–3: “If a man steals an ox or sheep and slaughters it or sells it” (כִּי יִגְבוֹ אִישׁ שׂוֹר אוֹ) “if the theft is found in his hand” (אִם הִמְצָא תְּמָצָא) (בִּידוֹ הִגְבָּהּ; 22:3). These conditions derive from the agricultural theft laws upon which CC’s animal theft laws are sequentially dependent (see chapter 9 for detail). LH 265 speaks of selling a stolen animal: “If a shepherd to whom cattle and flock animals were given for shepherding acts criminally (?), alters a possession mark and sells (them) (*ana kaspim ittadin*).” LH 253 speaks of stolen grain being found in a thief’s possession: “If that man steals either seed or fodder and it is found in his hand (*ina qātīšu ittaṣbat*).” It is reasonable to believe that these two conditions, primary to the context of the animal theft laws, were introduced into a basic kidnapping law. This addition could have been made in the drafting stage; it is not necessarily an insertion at a later stage of redaction.

The conceptually awkward position of the second subcondition (“or [!] is found in his possession”) in 21:16 is not a definitive sign of a later insertion. The order of the phrases merely replicates the order that the phrases are found in the animal theft law (21:37 followed by 22:3).²¹

The context of Hammurabi’s kidnapping law may have stimulated the inclusion of the subconditions just examined. The laws immediately after LH 14 are concerned with enabling the escape of slaves and harboring them (LH 15–20). LH 19 speaks of finding a slave in someone’s possession:

If he (a man finding a fugitive slave) detains that slave in his house, and later the slave is seized in his hand, that man shall be put to death.

The idiom “is seized in his hand” (*ina qātīšu ittašbat*; cf. LH 20) is the same as in LH 253, which lies behind 22:3. Detaining a slave is like kidnapping.

The Final Participial Laws (22:17–19)

The participial laws in 22:17–19 are at some distance from the initial participial laws in 21:12, 15–17. Some who have seen the similarities between the two sets of laws have concluded that the separation is due to CC’s arrangement in chiasmic form.²² Although CC does display intentional chiasmic arrangement elsewhere, this is not the reason for the separation of the two sets of participial laws. Exodus 22:17–19 have been attached at the end of CC’s casuistic laws because they are a miscellaneous appendix.²³ Unlike the laws in 21:12, 15–17, they have no specific connection with the sequential content of LH that generated the bulk of the casuistic laws in CC. Moreover, they do not provide a legal basis for, or have a clear attachment to, laws in the body of casuistic laws, unlike the appended seduction law in 22:15–16, which provides the rationale for a creditor’s marriage to the daughter of a debtor in 21:7–11 and which was also placed near the end of CC’s casuistic laws because it is based on a source other than LH (see chapter 5). Therefore, the final participial laws were placed at the very end of the casuistic laws, but still as part of CC’s original composition.

In what follows, we review the three final participial laws to see what relationship they may have to themes in cuneiform law, to examine their thematic relationship to the rest of CC, and to assess whether they were part of the participial source that CC employed or were secondarily created by CC on the pattern of the participial source.

Sorcery (22:17)

The sorcery law in 22:17 is somewhat different than the other participial laws: “You shall not let a sorceress live” (מְכַשְׁפָּה לֹא תַחְיֶה). The verb describing the penalty is second person, and the word in participial form is the object of this verb. The law would be more similar to the other participial laws if it read “a

sorceress shall not live” (מכשפה לא תהיה), with the participial form as a subject.²⁴ Another difference is that the participial form מכשפה “sorceress” refers to a class of persons more than to the performance of an action. Nevertheless, because the basic form of the law is close to the other participial laws and verse 17 is contiguous to the participial laws in verses 18–19, we may assume that it is to be associated with the participial legal form in CC.

Of the three final participial laws, this law is most relatable to the content of Akkadian legal collections.²⁵ LH 2 describes a case where a man charges another with *kišpū* “sorcery,” the same Semitic root of CC’s מכשפה “sorceress.”²⁶ The penalty is death: either the accused, guilty of sorcery, succumbs in a divine river ordeal, or the accuser suffers death for false accusation, apparently a measure-for-measure punishment. NLB 7 speaks specifically about a *woman* practicing a magical act (*nepēšu*) or purification (*takpirtu*), though it does not use the root *kšp* to describe her activity. She pays threefold the loss that occurs. The end of the law is broken, but it seems to say that if she is caught in the act, she is to be put to death.

The law closest to verse 17 is MAL A 47. The first part of the law sets down the basic case:

If a man or a woman performs witchcraft and they are found out (lit. [witchcraft] is found in their hands), they shall charge and convict them, they shall kill the performer of sorcery.

šumma lū a’īlu lū sinniltu kišpē uppišūma ina qātēšunu iṣṣabtū ubta’erūšunu ukta’ inūšunu muppišāna ša kišpē idukkū

This law uses the root *kšp*. A female is included as one practicing sorcery. Moreover, the phrase *muppišāna ša kišpē idukkū* “they shall kill the performer of sorcery” contains, conceptually, all the basic elements of CC’s law.

It is possible, though not certain, that CC constructed a participial law based on a casuistic source like this, which can help explain why it deviates from the more standard form of the other participial capital punishment laws. The reason for creating this law may have been a desire to include a third law on religious taboos to complement the participial laws on bestiality (v. 18) and illicit sacrifice (v. 19). A third law of this sort gives the group coherence as a unit within CC. As such, the law may be a response to Assyrian practices. Schwienhorst-Schönberger, for example, believes that the law grew up in response to a foreign context and fits best in the Neo-Assyrian period:

The first appearance of the term [the root כשפ] in the middle of the seventh century—apart for the time being from Exod 22:17—and the well attested connection back to non-Israelite circles makes plausible the thesis that the activity or professional group designated by כשפ does not belong to an old genuine Israelite tradition of magical or divinatory practices, such as the Ephod, Urim and Thummim, but apparently came into Israel under the influence of Assyrian culture.²⁷

The position and content of the law may also be related in function to the seduction law that precedes it in verses 15–16. Van der Toorn observed that a woman might employ the means prohibited by verse 17 to achieve ends not open to her through normal legal channels:

Juridically, a woman could only undertake an action against her husband or in-laws in extreme cases. . . . One may imagine the following situation: a newly married woman seems to be no longer fertile after a first pregnancy. Not satisfied with one child, her husband takes a concubine. What must the first woman do with her anger over the humiliation; does she swallow it? Possibly. But she could also try to make her rival sick by means of spells, or deprive her husband of his potency by adding magical materials to his food. In other words, she became a sorceress.²⁸

If so, the sorcery law may operate in a fashion similar to the immediately preceding seduction law of 22:15–16 and provide commentary on the slave wife law of 21:7–11. It may be tied specifically to the displeasure that the creditor-husband has for the woman and her subsequent marginalization in the household (21:8, 10–11). Her response may be to attack him magically, especially if he does not release her. The sorcery law may be similarly and directly related to the seduction law. A woman may use sorcery to react to her seducer and to her father who agrees to give her to the seducer.²⁹ Thus verse 17 provides a conceptual pivot between the seduction law in verses 15–16 and the laws on religious taboos in verses 18–19.

Bestiality (22:18)

CC's next participial law prescribes: "Anyone who lies with an animal shall be put to death" (כל שֶׁכַּב עִם בְּהֵמָה מוֹת יוֹמָת; 22:18).³⁰ The form of this law is more akin to the participial laws in 21:12, 15–17 than to 22:17, 19. It differs from the first group only in having the generalizing noun "all/any" (כל) attached at the beginning (see table 6.1 in chapter 6). This term could be an addition by CC, if the law derives from the participial source.

The law does not clearly depend on cuneiform sources. LH contains laws about incest (cf. LH 154–158) but none about bestiality. The Hittite Laws contain several laws about bestiality (HtL 187–188, 199–200a) in addition to incest (HtL 189–196). But these seem to reflect the particular cultural views of the Hittites and would not be manifested as such in Akkadian law sources now unknown to us but available in the Neo-Assyrian period.³¹ It is possible that CC did use an unknown Mesopotamian source that proscribed bestiality, though not with the extent or content of the rules in the Hittite Laws. But in view of a lack of clear attachment to a cuneiform source and the reasonable supposition

that some of the participial laws in 22:17–19 come from a participial source, this may be identified as one of those laws.³²

The law has no clear connection to the main body of casuistic laws or to the apodictic laws. It is doubtful that we are to connect it to the topic of animals mentioned in the laws on negligence, theft, and agricultural concerns (21:33–22:14)—that it warns against their misappropriation for sexual purposes! It has been argued that the prohibition has to do with bestiality in a cultic context, which has some support from the surrounding participial laws.³³ This, however, is not clear. It is best to explain it topically, as noted already, as legislating a general religious and cultural taboo.

Sacrifice to Other Gods (22:19)

The last participial law deals with sacrifice to other gods: “One who sacrifices to (other) gods shall be proscribed (i.e., exterminated)—apart from Yahweh alone” (other) gods shall be proscribed (i.e., exterminated)—apart from Yahweh alone” (זָבַח לֵאלֹהִים יִחָרֵם בְּלֹתִי לַיהוָה לְבַדּוֹ). The last phrase in CC’s law, “apart from Yahweh alone” (v. 19b), appears to be secondary.³⁴ The Samaritan reads differently and supports eliminating the explanatory clause of MT as part of the original text. It reads: “One who sacrifices to other gods shall be exterminated” (זָבַח לֵאלֹהִים אֲחֵרִים יִחָרֵם). The Samaritan, however, has added its own gloss, “other” (אֲחֵרִים), unless this is original and has been dropped by haplography because of similarity to יִחָרֵם “be exterminated.”³⁵ The original text probably read “one who offers to gods (i.e., other gods) shall be exterminated” (זָבַח לֵאלֹהִים יִחָרֵם).³⁶ The full wording of CC law, however, may not be significantly late because 2 Kings 5:17 appears to reflect the wording of CC. Naaman, after asking to take some earth of the land of Israel with him back to Syria, explains “for your servant (i.e., Naaman) will never again offer a burnt offering and sacrifice to other gods except Yahweh” (כִּי לֹא יַעֲשֶׂה עוֹד עִבְדְּךָ עֹלָה וְזָבַח לֵאלֹהִים אֲחֵרִים כִּי אִם לַיהוָה).³⁷

CC’s law, even in the presumed original truncated version of 22:19a, has no counterpart in cuneiform collections. It reflects Judean and Israelite theological perspectives, and laws about making sacrifices to gods are not part of cuneiform legal collections. This is the type of law that one might expect to see in the native participial source.

Of the three participial laws in verses 17–19, this one is the most relatable to the context.³⁸ It echoes other laws in the apodictic sections that require loyalty to Yahweh (20:23–26; 22:27; 23:13) and relates to the primary theme of cultic practice (20:23–26; 22:28–30; 23:14–19). This theme in the apodictic laws may have determined the use of 22:19 from the participial source. The presence of this theme in the final apodictic laws may have determined that the law on sacrifice should be placed at the end of the three participial laws in 22:17–19.³⁹ It may be that this law led to the invention of its companion laws in verses 17–18 to give substance to the appendix of participial laws. But this, of course, is speculative.

Conclusion

The participial laws that clearly or relatively clearly appear to have been part of the native participial source include the laws on parent cursing (21:17) and on homicide (21:12). Others that were probably included in this source are the laws on bestiality (22:18) and on sacrifice to other gods (22:19). It is less likely that the laws about the sorceress (22:17) and kidnapping (21:16) were part of this source, and it is quite certain, in the logic of this study's argument, that the law on striking a parent (21:15) did not belong to this source. The laws that derive from the participial source were probably revised somewhat to fit the context of CC, and some were influenced by motifs in LH. It is therefore impossible to be certain of the original wording of the laws in the participial source. We might also assume that some laws in the participial source were left out of CC.

The two groups of participial laws were separated from each other in CC because of their correlations or lack thereof with LH. The first participial laws correlate with or are based on laws from LH: homicide (21:12 // LH 207), child rebellion (vv. 15, 17 // LH 192–193, 195), and kidnapping (v. 16 // LH 14 via cross-referencing from LH 194). The last participial laws do not correlate with the content of LH, and only the sorcery law (22:17) seems to have any possible correlation in known Akkadian legislation (cf. MAL A 47). The lack of relationship to LH determined the placement of the final group of participial laws, as an appendix to the casuistic laws. The primary reason for including this last group of laws appears to be that as a whole they emphasize Yahweh's superiority and prescribe sanctions for reprehensible behaviors.

This analysis indicates that all of the participial laws in CC are original to its basic composition, even though they have a genre distinct from the casuistic laws in which they are contextualized.⁴⁰ The retention of the form is mainly because CC presumably found in the participial source a ready-made law that could stand in the place of Hammurabi's parent denunciation laws (LH 192–193). CC carried this over essentially unchanged in 21:17. This offered the syntactic template, as well as the punishment, for the parent-striking law in verse 15, whose content was otherwise derived from LH 195. Once CC had thus chosen to use the participial form with its attending capital punishment for the child rebellion laws, it used it for its homicide law (v. 12), which probably in any case had a parallel in the participial source. CC also used the participial form and capital penalty for the kidnapping law in verse 16, based on LH 14. The participial laws in 22:17–19, some of which may derive from the participial source, were placed at the end of the collection as a miscellaneous appendix, still as part of the basic composition of CC. If the laws on bestiality and sacrifice to other gods in 22:18–19 were part of the participial source, they may have generated a prohibition against sorcery in verse 17 from Akkadian law as a companion regulation, perhaps to provide some balance with the first set of participial laws. The last set of participial laws is thus part of the body of casuistic legislation, as is first set. They do not form the beginning of the final

apodictic laws, even though they have associations with the religious theme of the final apodictic laws.⁴¹

Within CC's casuistic laws, it is in the participial laws that we find clearer expressions of native legal ideas. Those laws that are original to the participial source presumably reflect, at least ideally, how those cases were treated in Israel or Judah. The participial laws secondarily created within the context of CC may also be consistent with native views.

The Goring Ox and Negligence (Exodus 21:28–36)

The goring ox laws in CC and LH (Exod 21:28–32 and LH 250–252) have been a focus of study for reconstructing the history of Near Eastern legal ideas and testing theories of comparative analysis. They have been viewed as a microcosm of the larger issues that must be explored in study of the relationship of CC and LH and of biblical and Near Eastern law more generally.¹ The close similarities between the biblical and Akkadian laws are visible even by casual inspection. At the same time, the biblical laws have significant differences. These are usually explained as developments in custom over time. It has been thought, for example, that both sets of laws stem from common ancestral legislation in the early second millennium and that over the centuries, as the laws were passed on orally and independently, and as they came to be practiced in ancient Israel, CC's laws acquired their unique features.

Against this conventional model, this chapter explains how the distinctive formulation of CC's goring ox laws arose from the direct systematic revision of LH. After using LH 195–214 for its homicide, assault, miscarriage, talion, and slave injury laws in 21:12–27, CC jumped ahead to the goring ox laws in LH 250–252 to expand its legislation on homicide. Its consideration of these laws in connection with another goring ox law similar to LE 53 led it to identify contradictions whose solutions generated the distinctive features of its ox laws in 21:28–32, 35–36, including the requirement of stoning a lethal ox. As it developed laws on this supplemental topic of negligent homicide, CC created its associated laws on the topic of negligence (vv. 33–34), generated in part by other laws in the context of Hammurabi's ox laws.

Goring a Human (21:28–32)

CC's laws about an ox lethally goring a human correspond closely with the three goring ox laws of LH 250–252:²

Exodus 21:28–32

²⁸If an ox gores a man or woman and he dies, the ox shall be stoned, its flesh shall not be eaten, and the owner of the ox is not liable.

²⁹If an ox is a habitual gorer, from previous experience, and its owner has been warned, but he did not restrain it, and it kills a man or woman,

the ox shall be stoned and its owner shall be put to death.

³⁰If ransom is laid upon him, he shall pay the redemption price for his life, according to whatever is laid upon him.

³¹Or (if) it gores a son or daughter, it shall be done for him according to this law.

³²If the ox gores a male slave or a female slave, he shall pay thirty shekels of silver to his (the slave's) master and the ox shall be stoned.

²⁸וכי יגח שור את איש או את אשה ומת סקול יסקל
השור ולא יאכל את בשרו ובעל השור נקי

²⁹ואם שור נגח הוא מתמל שלשם והועד בבעליו
ולא ישמרנו והמית איש או אשה

השור יסקל וגם בעליו יומת
³⁰אם כפר יושת עליו ונתן פדיו נפשו ככל אשר יושת
עליו

³¹או בן יגח או בת יגח כמשפט הזה יעשה לו
³²אם עבד יגח השור או אמה כסף שלשים שקלים
יתן לאדניו והשור יסקל

LH 250–252

²⁵⁰If an ox gores a man while passing through the street and kills (him), that case has no claim.

²⁵¹If a man's ox is a habitual gorer, and his district has informed him that it is a habitual gorer, but he did not file its horns and did not control his ox, and that ox gores a man of the *awīlum*-class/son of a man and kills (him), he shall pay one-half mina (= thirty shekels) of silver.

²⁵²If it is the slave of an *awīlum* he (the ox owner) shall pay one-third mina (= twenty shekels) of silver.

²⁵⁰*šumma alpum sūqam ina
alākīšu awīlam ikkipma uštamīt
dīnum šū rugummām ul īšu*

²⁵¹*šumma alap awīlim
nakkāpīma kīma nakkāpū
bābtašu ušēdīšumma qarnīšu lā
ušarrim alapšu lā usanniqma
alpum šū mār awīlim ikkipma
uštamīt*

1/2 mana kaspam inaddin

²⁵²*šumma warad awīlim 1/3
mana kaspam inaddin*

The three laws of LH appear in CC in the same order, with the same distribution of protases and apodoses, and with almost the same basic legal judgments. In the first law (21:28; LH 250), the protases describe a case of ad hoc goring in which a person dies, and the apodoses pronounce (in different words) that the owner of the ox is not liable. The next law (21:29; LH 251) describes a case of a habitually goring ox killing a person. The protases of the two laws state that the owner has been warned but he did not control the animal, and the apodoses hold the owner liable. Although CC first uniquely requires execution, it ultimately allows monetary payment (v. 30; on the originality of this verse, see later), as does LH, though CC does not state a specific sum. If the following verse (v. 31) about a child victim is considered a footnote to verses 28–30 (see later), then the next main law in CC is about a slave as a victim (v. 32). CC's protasis in verse 32 is fully formulated as opposed to the abbreviated form in LH 252, which is dependent conceptually on LH 250–251 that immediately precede it (see later discussion). Verse 32, like LH, prescribes a fixed fine, though its thirty shekels is the amount required for a known gorer killing a free person in LH 251.

Despite the observable differences, to be explained later, CC has clearly used LH as the foundation for 21:28–36. The verses after the core in verses 28–32 (i.e., vv. 33–36) supplement the main law and are based on laws from other places in LH or on another Akkadian law, as we will see. The intermediate law in verse 31 grows out of an element of LH 251 in connection with laws elsewhere in LH and thus supplements the main laws in verses 28–30, 32 that are squarely based on LH. This organizational structure is similar to the majority of other sections of CC, where topics begin with material that correlates with LH or where the main structure of the section correlates with LH.³

Literary and Redaction-Critical Analysis

That the main source text of Exodus 21:28–32 is LH 250–252 correlates remarkably well with literary, form, or redaction-critical evidence and observations on an elemental and pericope-specific level. I summarize here the evidence presented in Schwienhorst-Schönberger's mainly literary critical analysis of the composition of the verses, since his is the most detailed. This summary is supplemented occasionally with other observations that complement his conclusions.⁴

For Schwienhorst-Schönberger, various stylistic and conceptual inconsistencies lead to the conclusion that the original text of 21:28–32 consisted of only verses 28–29 plus 32. He considers verse 30 secondary because it interrupts the context and provides an alternative penalty to verse 29 and because the penalty in verse 31, “it shall be done for him according to this rule” (כמשפט לו יהוה יעשה לו), seems to follow verse 29 and seems to refer to a single penalty,

the killing of the owner.⁵ Further, he says, if verse 30 were original, verse 31 would probably have restated the subject (i.e., “the ox”) of the verb *gore* in its first clause (hypothetically יגה בן יגה השור או בת יגה “or if *the ox* gores a son or a daughter”). It does not need to be stated if verse 31 directly followed verse 29.⁶ Otto provides two other reasons for separating verse 30: the verse has a somewhat tautological, even redundant, formulation different from verses 28–29, and it goes against the apparent unconditionality or fixity (“Unabdingbarkeit”) of the capital penalty in verse 29.⁷

But verse 31 itself is also an addition, in the view of Schwienhorst-Schönberger. It expands the case of verses 28–29 and does not use the regular casuistic conjunctions כִּי־אם “if,” but the alternative conjunction או “or.”⁸ Otto also notes that verse 31 (as well as v. 32, which he groups with v. 31) begins with the victim, as opposed to verses 28–29. Verse 31 replicates the concern for “male” and “female” victims of verses 28–29.⁹

Schwienhorst-Schönberger additionally notes that the prohibition “its flesh shall not be eaten” (וְלֹא יֵאָכַל אֶת בִּשְׂרוֹ; v. 28) stands out in the context of what is otherwise casuistic law. This prohibition is more like the legislation in the apodictic sections of the collection (20:23–26; 22:17–23:19). Moreover, removal of the prohibition leaves a conceptually smooth text: *סְקוּל יִסְקַל הַשּׁוֹר וּבֶעַל הַשּׁוֹר נָקִי “the ox shall be stoned; the owner of the ox is not liable.” Nevertheless, he notes that if this was the original text, the second instance of הַשּׁוֹר (“the ox”) here might be represented by a pronoun: *סְקוּל יִסְקַל הַשּׁוֹר וּבֶעַלָּיו נָקִי “the ox shall be stoned and its owner is not liable,” similar to the construction of verse 29, הַשּׁוֹר יִסְקַל, “the ox shall be stoned and its owner shall also be put to death.” He concludes, in the end, that the prohibition of eating was brought in from preexisting tradition but was nevertheless part of CC’s original formulation of the text.

One could modify Schwienhorst-Schönberger’s conclusion, however, and imagine that the whole ox penalty (סְקוּל יִסְקַל הַשּׁוֹר וְלֹא יֵאָכַל אֶת בִּשְׂרוֹ “the ox shall be stoned; its flesh shall not be eaten”) and the conjunction before בֶּעַל “owner” are secondary in verse 28. There is then no problem with the formulation of the last clause; the basic text would have read: וְכִי יִגַּח שׁוֹר אֶת אִישׁ אוֹ אֶת אִשָּׁה וּמָת בֶּעַל הַשּׁוֹר נָקִי “if an ox gores a man or woman and he dies, the owner of the ox is not liable.” If this is removed, then the stoning requirement in verses 29 and 32 would also have to be removed for consistency.

The entire basic text, with the stoning requirement and eating prohibition bracketed as a conceptual and traditional expression if not a textual supplement, according to this mode of analysis, runs as follows:¹⁰

וְכִי יִגַּח שׁוֹר אֶת אִישׁ אוֹ אֶת אִשָּׁה וּמָת [סְקוּל יִסְקַל
הַשּׁוֹר וְלֹא יֵאָכַל אֶת בִּשְׂרוֹ] בֶּעַל הַשּׁוֹר נָקִי

²⁸If an ox gores a man or woman and he dies, [the ox shall be stoned, its flesh shall not be eaten, and] the owner of the ox is not liable.

29 ואם שור נגח הוא מתמל שלשם והועד בבעליו ולא
ישמרנו והמית איש או אשה [השור יסקל וגם] בעליו
יומת

29If an ox is a habitual gorer, from previous experience, and its owner has been warned but does not restrain it, and it kills a man or woman, [the ox shall be stoned and] its owner shall [also] be put to death.

32 אם עבד יגח השור או אמה כסף שלשים שקלים יתן
לאדניו [השור יסקל]

32If the ox gores a male slave or a female slave, he shall pay thirty shekels of silver to (the slave's) master [and the ox shall be stoned].

It is remarkable that this text, which is deduced mainly on the basis of literary critical criteria and not on a comparison with cuneiform law, turns out to be very close to that of LH 250–252.¹¹ The similarities here between CC and LH are almost as close as the similarities between Exodus 21:35 and LE 53, to be examined shortly. If one concludes that 21:35 depends on a law similar to LE 53, as Schwienhorst-Schönberger and some others do,¹² then to be consistent, one must conclude that the original core of the goring ox laws in 21:28–30, 32 results from literary dependence.

But what is one to make of the components that can be separated from this core text? Rather than accretions added to the text over a long period of time by various editors, as Schwienhorst-Schönberger and others would argue, I submit that they are the result of CC's creative revision of its cuneiform source texts. Its various compositional operations—rendering sources, expanding upon these, systematizing data from them, adding amendments, and so forth—produced most of the sharp edges and inconsistencies perceived in the text. In short, there are strata in the text, but these mainly reflect the various sources that CC used and its modifications of and additions to those sources.

CC's Changes to the Main Goring Ox Law

With these general observations in place, we are in a position to describe CC's reworking of its sources in verses 28–32. The first observable modification in verse 28 is the omission of the phrase describing the goring as occurring while the ox was “passing through the street” in LH 250.¹³ Perhaps CC intended to generalize the context, not limiting the event to an urban or market context. Thus goring in a pen or the open country would fall under the same rule.

Another modification in verse 28 is the inclusion of a woman as a victim, along with a man. This is also found in verse 29 (the case of a habitually goring ox) and in verse 32, where a female slave (אמה) is mentioned in addition to a

male slave (עבד). LH mentions only “a man” in 250–251 and a “(male) slave” in 252. A similar expansion is found in verse 31, where a daughter, along with a son, is mentioned as a victim. LH 229–230, which are a part of the inspiration for this verse (see later), mention only a “son.” Chapter 5 examined the evidence for gender inclusivity in CC and LH, noting that some formulations with gender inclusivity in LH elsewhere may have influenced CC to include both genders in several of its laws.

A slight variation in CC in verse 28 is the G-stem of the verb מוֹת for the victim (ימת “and he dies”) as opposed to the C-stem in LH (“and it kills [him]” *uštamīt*). This may have been chosen to avoid using a causative verb without an explicit object as in LH. CC does retain the causative הִמִּית “it killed” in verse 29 with the object when it omits the verb for goring. This verb has the object (“and it kills a man or woman”; see later). The G-stem is consistent with the form used in 21:12, 18. The law related to these verses is LH 208, which uses the G-stem *imtūt* “he dies.”

The requirement to stone the ox and not eat its flesh is the most obvious difference in verse 28. A full explanation for this has to wait until we have looked at verses 35–36. We will find that the stoning of the ox is an attempt to provide systematic consistency to the various Akkadian laws that CC used.

The last difference to note in verse 28 is the variation in the final clauses that refer to the owner’s lack of culpability. The formulation in CC, that “the owner of the ox is not liable,” over against LH’s impersonal phrasing, that “that case has no claim,” is probably due to CC’s reformulation of the owner’s penalty in the more severe case of verse 29. There, the owner is specifically mentioned (to complement the mention of the ox’s and its penalty; see later). Hence verse 28 mentions the owner and his legal status to stand in parallel to the formulation of verse 29, as opposed to merely saying that the case is not prosecutable.

In verse 29, CC follows LH in describing the ox as a gorer, even using a *qattāl*-based form as found in LH (נָקָה; *nakkāpūm*).¹⁴ CC adds the adverbial “from previous experience” (מתמל שלשם). This may have been to show that the habit of goring is something founded on a clear behavioral history or simply to emphasize the fact that the animal had been known to gore.

Verse 29 also uses the verb הוֹעֵד, literally, “warning was given” (C-passive stem of 15, עוֹד whereas LH uses *ušēdīšum* “(it) informed him” (C-stem of *idū*, cognate to יָדַע “know”). One wonders if the Hebrew text originally read הוֹדַע “he (an impersonal subject) informed.”¹⁶ This would be supported by the appearance of the N-stem of יָדַע in a similar context in verse 36: “(if) it is known (נוֹדַע) that the ox is a habitual gorer. . . .” Yet, the use of the preposition -בֹּ makes it more likely that הוֹעֵד is correct since this verb often takes that preposition. The Akkadian verb may have raised the possibility of using the root יָדַע, but CC brought in another legal term with phonological similarity to that root. The shift to הוֹעֵד may be partly due to—or the cause of—the omission of reference to the agency of the owner’s “district” (*bābtašu*). By using a term of legal warning associated with authority, the actual agent could remain implicit.

Of course, omitting the “district” could also match differences in CC’s native institutional structure.¹⁷

CC omits the phrase in LH “he did not file its horns” in verse 29. It only has *וּלֹא יִשְׁמְרֵנוּ* “(he) did not restrain it,” which correlates with the phrase *alapšu lā usanniqma* “he did not control his ox.”¹⁸ CC may be abbreviating the double formulation in LH, or it may be seeking to eliminate a superfluous criterion. The real issue is control of the animal. If, for example, the owner had filed the horns of a habitual gorer, but it killed someone, the owner would still be liable. Therefore, this need not be said.

As noted earlier, verse 29 uses *הָמִית* “it killed,” the causative stem of the root *מָת*, similar to the causative *uštamīt* “it killed” in LH. Preserving the C-stem is apparently due to the omission of the verb *ikkip* “it gored” in LH. The noun *אִישׁ* “man” and the added *אִשָּׁה* “woman” (as discussed earlier) become the objects of *הָמִית*.

CC follows the revision it made in penalties in verse 28 at the end of verse 29. It adds that the ox is to be stoned and that, in the case of a habitual gorer, the owner is to be put to death. These modifications are part of a systematic interpretation of its cuneiform sources, as I discuss later.

It is possible that verse 30, which allows for a monetary ransom, is an addition by a later editor. But the requirement of capital punishment in verse 29 is excessive within the context of CC. This is, after all, not a case of intentional homicide.¹⁹ CC may have written verse 30 as a retreat from the idealistic rigor of verse 29. LH 251 provided the inspiration for this alternative penalty by its requirement to pay thirty shekels of silver. CC left the amount undetermined.²⁰ That verse 30 is original is also suggested by the consistency of its requirement of payment with the requirement of payment in the case of a slave in verse 32, which must be part of the core law.²¹ Verse 30 thus hovers between the pure idealism of verse 29 and the practical economic solution of verse 32. The verse’s disruptive character and unusual formulation are due to its being a secondary response conceptually and its not following LH closely at this point.

Part of the reason that the amount to be paid in verse 30 was left unspecified, probably to be determined by the victim’s kin as in the miscarriage law of verse 22,²² is that CC made the thirty shekels of LH 251 the penalty for killing a slave in 21:32. One of the notable differences is CC’s calling the payment a *כֶּפֶר* “ransom” and a *פְּדִיּוֹן נַפְשׁוֹ* “redemption price for his life.”²³ This description depends on the possible requirement of capital punishment in the previous verse. LH does not view its payment as a ransom because capital punishment is not raised as a possibility. The payment there is only indemnification.²⁴ How CC’s ransom relates to the requirement of indemnification for inadvertent homicide (cf. v. 23a and chapter 6) is discussed later.

Verse 31, which says that the case is handled like that of an adult when a child is a victim of goring, comes from the same hand that created verses 28–30. It has two stimuli. The immediate cause is the wording of LH 251,

which speaks of the victim as a *mār awīlim*, as opposed to a simple *awīlum* in 250. The term *mār awīlim* could be interpreted literally as “son of a man,” as opposed to the possible interpretation as “member of the *awīlum* class.” This dispute is found among modern scholars. For example, Jackson and Westbrook take the idiom in LH 251 literally.²⁵ This way, the laws of LH 250–251 entail an exemplary completeness, by treating different types of victims. Yaron, on the other hand, would render the term as simply “free man.”²⁶ It appears that this dispute existed in antiquity as well. CC created laws based on both semantic possibilities. Verses 29–30 deal with a case where the term is understood to refer to an adult; verse 31 deals with a case where the term is taken literally. Thus verse 31 is by no means secondary, and it becomes specific proof that CC is working with the Akkadian text of LH.

In verse 31, CC is also responding to the three laws in LH that prescribe vicarious punishment when a child is a victim of a homicide. These include LH 116, where a creditor’s abusive killing of a debtor’s son requires the execution of the creditor’s son (cited in chapter 6); LH 210, where a person’s killing of a pregnant woman, described as a “daughter of a man,” requires the execution of his daughter (also cited in chapter 6); and LH 230, where the death of a householder’s son as a result of the collapse of a shoddily built house requires the execution of the builder’s son (cited later). CC clearly knew the first two of these laws and wrote corresponding legislation, but did not follow their penalties, as demonstrated in chapter 6. It used LH 116 as background legislation for the law about killing slaves in 21:20–21. It apparently objected to and replaced LH 210 with a summary of the talion laws for the penalty when a pregnant woman dies when struck by fighting men in 21:23–25.²⁷ CC also probably knew and used the law on the falling house in LH 229–230, and of the three laws from LH, this may have had particular influence on 21:31.²⁸ As the next section of this chapter points out, LH 229–230 have similarities with and presumably influenced the negligence law in verses 33–34, which is only one intervening verse away from the child victim rule in verse 31. LH 229–230 were therefore probably prominent in CC’s mind at this point in drafting the text. Too, it should be noted that LH 229–230 are textually not too distant from the goring ox laws of LH 250–252. Furthermore, of the three laws featuring vicarious punishment, LH 230 is the closest conceptually to verse 31 (see the text later). It involves a case of negligence, and the killing is indirect.

Because CC is creatively drafting a law from the implications of LH and using materials outside the specific context of LH 250–252 for verse 31, it was free to use a slightly deviant formulation and so begin the law with the conjunction *u* “or.”²⁹ The same conjunction is found in verse 36, apparently also an innovation (see later). This is similar to other laws where CC shows freedom in formulation when it does not follow the specific order or formulation of LH: the case of homicide in 21:12–14 and the talion laws in 21:23b–25 (see chapters 6 and 7). Divergence from strict casuistic form is therefore not necessarily an indication of augmentation by a later hand.

Finally, verse 32 is quite similar to LH 252.³⁰ CC's full formulation of the law, with verb and its subject, is due to the inclusion of verses 30–31, which interrupt the conceptual flow and thus required restating the fact that the ox gores.³¹ Verse 32, in harmony with verses 28, 29, and 31, adds a female victim (see earlier). The monetary penalty in verse 32 is thirty shekels of silver (כספ, *kaspum*), as opposed to the twenty shekels required by LH. As we see in detail later, CC systematically increases the penalties in cases of a goring ox. CC boosted the amount for a slave by taking over the amount to be paid in a case of a free man (*awīlum*) in LH 251.

Negligence and Animals (21:33–34)

The verses just after the laws about an ox killing a human are concerned with negligence (21:33–34). These relate to the previous laws in dealing with an ox and expand the case to include an ass as well. But the animals are victims in this law, not delinquents. This law does not have a close counterpart in LH or in any other known cuneiform collection. The evidence does not allow for a definitive explanation of the derivation of this law. Two possibilities are outlined here: it is either a rather free creation based on stimuli mainly in LH, or it depends substantially on a currently unknown cuneiform law. The first option is admittedly speculative, and the second is based on circumstantial evidence. But these options demonstrate the directions that an explanation may go and provide a basis for developing other theories of development within a hypothesis of CC's general dependence on LH and similar sources.

The first solution sees the law as deriving primarily from motifs in the law about a jerry-builder's negligence in LH 229–230:³²

Exodus 21:33–34

³³If a man opens a pit or if he digs a pit and does not cover it, and an ox or ass falls into it, ³⁴the pit owner shall repay (it); he shall restore silver to its owner, and the dead animal shall belong to him (i.e., the pit owner).

וכי יפתח איש בור או כי יכרה איש בר ולא יכסנו
ונפל שמה שור או חמור ³⁴בעל הבור ישלם כסף
ישיב לבעליו והמת יהיה לו

LH 229–230

²²⁹If a builder makes a house for a man, but does not fortify his work, and the house he made falls and kills the house owner, that builder shall be put to death.

²³⁰If it kills the son of the house owner, they shall kill the son of that builder.

²²⁹*šumma itinum ana awīlim
bītam ipušma šipiršu lā udanninma
bīt ipušu imqutma bēl bītīm uštamīt
itinnun šū iddâk*

²³⁰*šumma mār bēl bītīm uštamīt
mār itinnim šuāti iddukū*

The signs of dependence are oblique. First, LH 230 may have partly motivated 21:31, just two verses away, as discussed previously. Therefore, CC appears to have been aware of this law, in the context and neighborhood of the goring ox laws. Second, both verses 33–34 and LH 229–230 involve a case of “falling,” using the verbs נפל and *maqātum*, respectively. The difference is that the falling in CC is subjective, where the victim falls, while in LH it is objective, where the victim is fallen upon. Nevertheless, the verb *maqātum* is used in other Akkadian texts subjectively and is in fact used of falling into a pit. For example, in Tablet VI of the Gilgamesh epic, the snorting of the bull of heaven opens up (*petūm*; cf. Heb פתח in 21:33) holes or chasms (*šutātum*) into which Enkidu and hundreds of people from Uruk fall.³³ The Akkadian verb is also used of falling into a *būrum*, a term cognate with the Hebrew בור: ³⁴2 ĪR.É(!).GAL *ša ana būri imqutū ša išēn kirrašu šebir* “of the two builders(?) who fell into the well, one suffered a broken clavicle.”³⁵ Hence, the idea of “falling” in LH 229–230 could have produced a new law about “falling” in CC.

The creative logic proposed seems strained until one recognizes that a significant organizational and generative principle in Near Eastern law is association or attraction, where a subordinate contextual element in a law provides a pivot for introducing another law or series of laws on a different topic.³⁶ A good example of this within Hammurabi’s collection is LH 195, discussed in chapter 7. This deals with a child striking his father. On the one hand, this concludes the long series of laws on the family, which starts as early as LH 115. On the other hand, the *subordinate* matter of striking in LH 195 (subordinate in view of the laws that precede it) introduces the following group of laws whose *primary* theme is striking (LH 195–214). LH 195 is thus a hinge between the laws before and after. In the case of the negligence law in 21:33–34, we are merely missing the transitional law, that is, one similar to LH 229–230. The reason for CC’s not including a topically transitional law like LH 229–230 is that the context did not call for it.³⁷

Conceptually, CC’s law is the inverse of Hammurabi’s—concave (a dug pit that is fallen into) rather than convex (an erected house that falls down). This is in accord with other examples of conceptual inversion of source material in CC. The chief example is converting the law about a slave’s rejection of his master and the severing of the slave’s ear as a punishment into a law about a debt-slave declaring his loyalty to his master and the piercing of the slave’s ear as a sign of permanent servitude (LH 282; 21:5–6; see chapter 5). Other primary examples include switching statuses in LH 175 to create the slave ownership law of 21:4 (chapter 5) and the replacement of Hammurabi with Yahweh in the apodictic laws (chapter 11).

Most scholars do not offer a detailed critical analysis of the development of verses 33–34, though several believe they are secondary to the context.³⁸ Schwienhorst-Schönberger, in contrast, argues that at least a nucleus of verses 33–34 was part of the original pericope. His analysis is worth examining in

connection with the source hypothesis of this study. In his view, the original text read:³⁹

When a man digs a pit and an ox or ass falls into it, the owner of the pit shall make restitution.

וכי יכרה איש בר ונפל שמה שור או חמור בעל הבור ישלם

The phrase כי יפתח אִישׁ בור “when a person opens a pit” in the MT is secondary, he says, because the apodosis that speaks about the “the owner of the pit” really only fits a case of one digging a pit, not of one merely opening it.⁴⁰ A *pit opener* is not necessarily the *pit owner*. The phrase ולא יכסנו “and he does not cover it” in the MT is also secondary because it goes best with the notion of opening a pit. Schwienhorst-Schönberger also posits an originally more limited apodosis in verse 34. CC’s wording of this phrase seems contradictory and overloaded in its context.⁴¹ Nowhere else in the יִשְׂרָאֵלִים-laws of CC is the D-stem of שלם used of repayment in silver. It is only used of replacing lost items in kind (21:36, 37; 22:2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 14). Verse 34 especially stands out against the apodosis of verse 36, whose legal situation and formulation is in other respects similar to verse 34: שלם ישלם שור תחת השור והמת יהיה לו: “he shall make restitution ox for ox, and the dead shall belong to him” (v. 36). Too, verse 34 has a double, perhaps redundant, verbal construction with ישלם “he repays” and ישיב “he returns.” This leads Schwienhorst-Schönberger to the conclusion that כסף ישיב לבעליו “he shall return silver to its owner” is an addition.⁴²

Nevertheless, other laws in LH may have influenced the formulation of verses 33–34 and may account for the unusual elements there. We start with the apodosis in verse 34. This is similar to part of the apodosis in LH 125, as noted by some scholars:⁴³

¹²⁵If a man gives his property over for safekeeping and there where he gave (for safekeeping), either through break-in or wall-scaling, his property along with the property of the house owner was lost, the house owner who was negligent shall pay back whatever was given to him for safekeeping and allowed to be lost and restore it to the property owner (*bēl bītīm ša īgūma mimma ša ana mašsarūtīm iddinūšumma uḥalliḳu ušallamma ana bēl makkūrim irīab*). The house owner may seek out his lost property and take it from the thief who stole it from him.

CC’s phrasing כסף ישיב לבעליו “the owner of the pit shall pay; he shall restore silver to its owner” (v. 34) is similar to Hammurabi’s *bēl bītīm... ušallamma ana bēl makkūrim irīab* “the house owner... shall pay back and restore to the property owner.” Both contain two verbs referring to repayment or restitution, the first being a D-stem of the root *šlm*. There are cases in other texts of Akkadian D-stem *šalāmum* meaning “repay, restore” being used in hendiadys, especially with the verb *nadānum* “to give.”⁴⁴ That LH 125 is concerned with negligence, as are verses 33–34, and that CC appears to have

relied on LH 120–126 in the formulation of its deposit laws in 22:6–8 (see chapter 9) show that a connection between LH 125 and verse 34 is possible. The double verb formulation of CC, consequently, may be original.

The apodosis of verse 34 is also similar to the wording of LH 267, which deals with a case of negligence and correlates in terms of the sequential pattern of LH with the animal theft law of 22:11 (see chapter 10). The law reads:

If a shepherd is negligent and allows *pissatum* to occur in the pen, the shepherd shall repay in cattle or flock animals the loss of/from the *pissatum* that he allowed to occur in the pen and give (it) to their owner (*rē' ūm ḥiḥīt pissatim ša ina tarbašim ušabšū liātīm u šēnam ušallamma ana bēlīšunu inaddin*).

Like LH 125, this has a repayment clause with *šullumum* followed by a deliverance clause, but with the verb *nadānum* “to give.” This latter verb is less similar to השׁיב than *rābum* in LH 125, but it is semantically close. LH 267 is closer to the context of verses 33–34 in that it deals with animals rather than general property. This lends support to the view that CC has replicated a double-verb repayment clause in negligence laws from LH.

But the appearance of כסף “silver” as the object of ישיב is admittedly still problematic, since the corresponding verbs in LH 125 (*irāb*) and 267 (*inaddin*) have no express objects. CC’s “silver” could be subtracted, leaving a ruling quite similar to LH 125 and 267 and consistent with the other ישרם-laws in CC: בעל הבור ישרם ישיב לבעליו “the owner of the pit shall replace (it); he shall restore (it) to its owner.” Here both ישיב and ישרם would refer to restoration in kind. This is consistent with the use of the corresponding verbs in the broad context of LH.⁴⁵

But other data from LH suggest that כסף “silver” may not necessarily be an addition. First, monetary payment is not inconsistent with the in-kind payment that is the focus of the ישרם-laws. For example, LH 245–248 constitute a series of graded animal injury laws, of which CC otherwise has some knowledge (cf. 22:13–14 and LH 244–249; see chapter 10). According to LH 245–246, when a rented animal suffers death or a serious injury by negligence or abuse, the renter “shall restore an ox like (the injured) ox to the ox owner” (*alpam kīma alpim ana bēl alpim irāb*; LH 246; for this phraseology, see later). LH 247–248 go on to deal with moderate and light injuries to the ox. In such cases, the renter “shall give in silver one-half its price to the ox owner” (*kaspam mišil šīmīšu ana bēl alpim inaddin*) or “give in silver one quarter of its value” (*kaspam IGI.4(?)*). GAL *šīmīšu inaddin*). This is similar to verse 34 in allowing payment of silver. The payment of silver in LH 247–248, one can argue, implies that the in-kind payment of LH 245–246 is not literally required. Only commensurate payment is due, and this could possibly be in silver. LH has other instances of compensation paid in silver: one-quarter the value of a donkey for failed surgery on the animal (LH 225; silver implied), one-half the value of a boat when it sinks (LH 238; silver explicit), five shekels of silver for a stolen *epinum* plow (LH 259),

and three shekels for stolen *ḥarbum* or *maššakātum* plows (LH 260).⁴⁶ Thus verse 34 can be seen as making the monetary option concrete, consistent with its source or at least an interpretation of its source.

The protasis in verse 33 may have also been influenced by other laws in LH, though this is less certain than the possible relationship of verse 34 and LH 125 and 267. A series of laws addresses negligence in connection with acts of “opening” (*petûm*; cognate with Hebrew פתח in v. 33),⁴⁷ specifically of a breach in a weak irrigation canal bank or of a person releasing water that damages another person’s field:⁴⁸

LH 53: If a man does not take care to reinforce the bank of (the irrigation canal of) his field... and a breach opens (*šumma awīlum ana kār eqlišu dunnunim aḥšu iddīma... pītum ittepte*)....

LH 55: If a man opens his channel for watering and he does not take care (*šumma awīlum atappašu ana šiqītim iptē aḥšu iddīma*)....

LH 56: If a man opens water (*šumma awīlum mē iptēma*)....

CC may have known these laws because it apparently used the neighboring laws on grazing a field in LH 57–58 to formulate Exodus 22:4 (see chapter 9).

The protasis in verse 33 may have been influenced by another (unknown) cuneiform law, to tell from NBL 3 (an early seventh-century BCE collection):⁴⁹

[A man who ope]ns his cistern/pool for watering and does not reinforce (it), [...] and he causes a breach and floods the field of his neighbor, he shall give grain like his neighbor(’s field) [to the field owner].

[*amēlu ša*] *būrašu ana mašqītu [ipt]û lā udanninūma* [...] *x ibtuqūma [eqel it]ēšu [uṭab]bû [uṭtata kī] itē [ana bēl eqli] inandin*

Here the description of opening the cistern (*būra petû*) is cognate with CC’s wording פתח בור in verse 33, though the purpose for and phenomenology of cistern opening in each case is different. Moreover, the malfeasance in NBL 3 is otherwise similar to what we find in the irrigation laws of LH 53 and 55. Hence, the use of the Akkadian verb *petûm* (= Heb. פתח) in LH’s negligence laws and *būra petû* in the NBL negligence law indicates that there may well be some influence on verse 33 from an unknown Akkadian law.⁵⁰ Assuming that this influence comes in at the same level as other cuneiform influences, one must judge Schwienhorst-Schönberger’s estimate of the original text to be hypercritical.⁵¹ Opening the pit can be considered original to the verse.

If the creation of this law was similar to that described previously, we see in it the operation of cross-referencing, a technique that was operative in other laws. Verses 33–34 had their initial stimulus in LH 229–230, a law in the environment of the goring ox law of LH, with secondary influence from laws earlier in LH, including LH 125 or 267 for the repayment clause and perhaps LH 53–56 or even a law like NBL 3 for the notion of opening a pit. CC would have gotten to these other laws by the theme of negligence. LH 53, 55, 125, and 267

use terminology expressly describing negligence: *aḥam nadûm* “to be lazy” (literally, “to drop the arm”) or *egûm* “be negligent.”

Consideration of NBL 3, however, raises the possibility that CC may have used an Akkadian law that was rather similar to verses 33–34. The elements of these verses are consistent with Akkadian law and linguistic idiom, as the foregoing discussion has indicated.⁵² From this and other Akkadian legal terminology, one can reconstruct a hypothetical Akkadian law that might have served as a basis for CC: *šumma awīlum būram iptēma alap awīlim ina būrim šuāti imtaqut bēl būrim alpam ušallamma ana bēlīšu irītab/inaddin* “If a man opens a pit and the ox of a man falls into that pit, the owner of the pit shall repay the ox, he shall restore/give (it) to its owner.” Even if verses 33–34 are based on an independent Akkadian law such as this, LH 229–230 could have still been instrumental in bringing this negligence law into CC. That is, CC would still have had LH 229–230 in mind when composing this part of its text in view of the influence of those laws on verse 31. The relative proximity of LH 229–230 to the goring ox law in LH 250–252 could have suggested the incorporation of a negligence law having to do with *falling* in this area of the text, especially since both LH 229 and the hypothesized Akkadian law use the verb *maqātum* “to fall.” These themes in LH 229–230, plus the context of animals in the goring ox laws, led CC to a law in another source dealing with the negligent death of animals. The negligence law was placed immediately after the law about an ox goring humans because of its connection to LH 229–230, which were tied by the theme of vicarious punishment to verse 31 of the goring ox laws.⁵³ The next section of this chapter suggests another reason why verses 33–34 may have been placed before verses 35–36.

An Ox Goring Another Ox (21:35–36)

Although we remain unsure about the derivation of verses 33–34, it is clear that the law about an ox goring an ox in verse 35 comes from a source other than LH. This verse is almost verbatim the law of LE 53. Because of this, some have thought that this verse, if nothing else in CC, depends directly on cuneiform law.⁵⁴ The correspondence is clear evidence that CC has used an Akkadian source other than LH:

Exodus 21:35

If the ox of a man knocks the ox of his neighbor and it dies, they shall sell the live ox and divide the resulting silver, and also divide the dead (ox).

וכי יגף שור איש את שור רעהו ומת ומכרו את השור
החי והצנו את כספו וגם את המת יחצון

LE 53

If an ox gores an(other) ox and kills (it), both ox owners shall divide the price of the live ox and the carcass of the dead ox.

*šumma alpum alpam ikkimma
uštamūt šīm alpim balṭim u šīr
alpim mītim bēl alpim kilallān
izuzzū*

This is one of several examples where CC appears to have used a source or sources other than LH (for a summary, see table 1.3 in chapter 1 and the appendix to chapter 12). Chapter 4 observed that CC's source for this law was not necessarily the Laws of Eshnunna as we know them from archaeological excavations. CC could have used another source available in the Neo-Assyrian period that is now unknown but that contained this law.

Our first question is why verses 35–36 do not come immediately after the other goring ox laws in verses 28–32. Wagner, in his study of the organization of CC, asked this question and noted that “otherwise § 9’ [vv. 33–34] fits in elegantly between § 10’ [vv. 35–36] and § 11’ [v. 37]. How this arrived at its present order is not clear.”⁵⁵ The reason for the placement of verses 35–36 is now obvious in view of the sources used. The initial goring ox laws in verses 28–32 depend primarily on Hammurabi's collection (LH 250–252). The subsequent negligence law in verses 33–34 also depends on or relates thematically to Hammurabi's collection, specifically LH 229–230, especially if CC's verses are a conceptual inversion of those laws, as described in the previous section of this chapter. Hence verses 33–34 were placed immediately after the laws about an ox goring a human. The law about an ox goring an ox in verse 35 (which was augmented with v. 36; see later) depends fully on a different cuneiform source. Hence it was placed at the end of the goring ox pericope.

CC has other examples of the prioritization of material from LH over material from other sources. This tendency was described and charted in my previous article on the goring ox laws.⁵⁶ Chief cases are worth reviewing here. The animal theft and field destruction laws begin with material from the topical sequence of LH (21:37 + 22:2b–3; LH 253–264). This is followed by material from LH but outside the topical sequence (22:4; LH 57–58). This is then followed by a law that corresponds with a collection other than LH (22:5; HtL 105–106; for this series, see chapter 9). Another example is found in the law about seducing a virgin (22:15–16 // MAL A 55–56; see chapter 5). This law, though set down to explain why the creditor marries an unbetrothed daughter of his debtor in 21:7–11, is placed almost at the end of the casuistic laws because of its derivation from a miscellaneous source. The participial laws in 22:17–19 confirm this rationale. They are a miscellaneous group with no clear connection to the content of the main body of casuistic laws and were therefore placed at the very end of the casuistic laws, after the seduction law, as leftovers from or generated on the model of laws in the native participial source, which was used primarily for laws in 21:12–17 (see chapters 6 and 7).

The slight differences in Exodus 21:35 vis-à-vis LE 53 show how CC sought to clarify ideas in the sources it used. For this analysis, I adopt the working assumption that the law in the unknown source that CC used was more similar to LE 53 than to verse 35.⁵⁷ LE 53, to be sure, is not particularly obscure, but one question that arises is how the two owners go about dividing the price.⁵⁸ CC explained that the ox *is to be sold* and the resulting silver is to be divided. In making this explicit, CC crafted two separate clauses describing the division of the silver and the division of the dead carcass, each with their own finite

verb “they divide” (יהצון, והצון). In doing this, CC translated the Akkadian *alpim balṭim* “the live ox” word for word as השור החי “the live ox,” but abbreviated *alpim mūtīm* “the dead ox” with the cognate adjective המת “the dead (one).” CC also took the owners mentioned in the apodosis of LE 53 and placed them in the protasis of its law: the goring ox is “an ox of a man” and the gored ox is “the ox of his neighbor.” The term שור איש “ox of a man” is also equivalent to the wording in LH 251 (*alap awīlim*) and is thus consistent with the assumption that the author of verse 35 knew LH and that this is the same author who formulated verses 28–32, which reflect LH. This formulation of the protasis personalizes the law and may focus responsibility on the human owner, in comparison to the cuneiform law. CC also displays here its tendency to translate the Akkadian C-stem *uštāmūt* “and it kills (it)” with the Hebrew G-stem ומת “and it died,” found already in verse 28. As noted previously, the G-stem may have been chosen since the object is not explicit in the Akkadian text.

One of the differences in verse 35 in contrast to verse 28–32 is the use of the verb נגף “to strike, knock” instead of גהה “to gore.”⁵⁹ This is not necessarily a sign of different authorship. CC elsewhere was not averse to using variant Hebrew terms for a single underlying Akkadian term. For example, Akkadian *maḥāšum* “to strike” is generally rendered with Hebrew הכה “to strike” (21:12 // LH 207 [cf. 206]; 21:15 // LH 195; 21:18 // LH 206; 21:20 // LH 208, the verb is implicit from 206–207).⁶⁰ But the miscarriage law in verse 22, even though the corresponding laws of LH 209–214 have *maḥāšum*, uses נגף “to strike, knock,” the same verb as found in verse 35. The variant wording in CC is no doubt from the same author because the miscarriage laws, as well as the other striking laws just referred to, appear together in LH and as a block were used in the composition of CC.⁶¹ Moreover, verse 36, which is conceptually part of verse 35, returns to the root גהה for the noun נָגַף “gorer” to describe the animal. Unless this verse is assigned to still yet another editor, it indicates that the writer of verse 35 could alternate between the two roots.

What led CC to use a different verb in verse 35? Considering a different source for verse 35 required a break between the composition of the main goring ox law and verses 35–36. This led CC to formulate verse 35 in terms somewhat different from those used in verses 28–29, 32. It may have chosen to follow its source more closely in verse 35, choosing the phonetically similar and etymologically equivalent verb נגף to mirror the underlying Akkadian *nakāpum* in LE 53 (which is also the Akkadian verb in LH 250–252).⁶²

But there is an alternative and more compelling reason for CC to have rendered this cuneiform word, as well as the rest of the verse, quite literally. As argued later, the source similar to LE 53 that CC used was the baseline for its system of punishments in verses 28–36. This system required it to revise LH 250–252 significantly but did not necessitate substantial changes in the law akin to LE 53. Therefore, CC kept it more or less word for word.

Exodus 21:36 extends the law of verse 35, apparently created as a parallel to verse 29, which itself depends on LH 251:

Exod 21:36

Or [if] it is known that the ox is a habitual gorer, from previous experience, and its owner does not restrain it, he shall make restitution ox for ox, and the dead shall belong to him.

או נודע כי שור נגח הוא מתמול שלשם ולא
ישמרנו בעליו שלם שור תחת השור
והמת יהיה לו

Exod 21:29

²⁹If an ox is a habitual gorer, from previous experience, and its owner has been warned, but did not restrain it, and it kills a man or woman, the ox shall be stoned and its owner shall be put to death.

ואם שור נגח הוא מתמול שלשם והועד בבעליו
ולא ישמרנו והמית איש או אשה השור יסקל
וגם בעליו יומת

The protasis is similar to that of verse 29. The phrase שור נגח הוא מתמול שלשם “the ox is a habitual gorer, from previous experience” is identical in both paragraphs.⁶³ And the phrases ולא ישמרנו בעליו “and its owner does not restrain it” and ולא ישמרנו “he does not restrain it” are nearly identical.⁶⁴

Although the verb נודע “it is known” may have been generated by the similar verb הועד “he has been warned” of verse 29, it may actually be a more direct reflection of Akkadian *uṣēdīšumma* “(the district authority) informed him” in LH 251, which lies paronomastically behind הועד in verse 29, as noted earlier.⁶⁵ Thus, נודע is not necessarily evidence of a later editor but comes from the writer who used LH and who is the author of verse 28.⁶⁶ The use of נודע and its relocation to the beginning of the protasis account for the specific mention of בעליו “its owner” after the verb referring to restraint in verse 36.

The use of the conjunction או “or” instead of ואם “and if,” which has been seen as a sign of a later author,⁶⁷ is more simply explained by the freedom used by CC when composing material not directly tied to cuneiform sources. Verse 36 has no close counterpart in known cuneiform law.

Verse 36 is also different from verse 29 in lacking mention of the ox’s killing a victim in the protasis. That an ox is a victim in verse 36 is made explicit in the apodosis (see later). Not mentioning the ox in the protasis is probably the result of a copying error on the part of CC. Formulating a new apodosis to fit the new context required CC to forsake dependence on verse 29 about halfway through. But it did this prematurely, failing to produce an equivalent of אשה או איש “and it kills a man or a woman” in verse 29 (i.e., something like איש שור איש “and it kills a[nother] man’s ox”).

CC’s reason for formulating verse 36 may not have been merely to add a supplement that parallels and echoes verse 29. The cuneiform source that it used, which had the equivalent of verse 35, may have also had a law similar to verse 36. But this law need not have been a cuneiform equivalent of verse 36. It may have been like LE 54. This law involves a case of a habitually goring ox, though with a human victim, like LH 251:

If the ox is a habitual gorer, and the district has informed its owner, but he does not control his ox and it gores a man and kills (him), he shall weigh out two-thirds mina (= forty shekels) of silver.

šumma alpum nakkāpīma bābtum ana bēlīšu ušēdīma alapšu lā u<šē>širma⁶⁸ awīlam ikkimma uštamīt bēl alpim 2/3 manā kaspam išaqqal

Such a law could have suggested to CC that a case of habitual goring should follow verse 35. It altered this to fit the context of verse 35, using verse 29 at the same time.

Whether verse 36 was influenced by a cuneiform law like LE 54 or only by verse 29, its apodosis is a new creation. The last rule, that the dead animal belongs to the owner of the goring ox, is the same as that at the end of the law about an animal falling in a pit (v. 34). It is difficult to decide which of these is contextually more original, and given the thesis of this study, it may not be important. The two cases are quite similar: both involve negligence on the part of the pit or ox owner that leads to the death of an animal. He must make restoration, but he gets to keep the dead animal. The similar requirement shows a consistency in CC's treatment of two distinct cases. It may well be that the position of verses 33–34 was partly determined as an anticipation to verse 36, to provide a “precedent” for its rule. If so, then verse 36 constructed its law not only from verse 29 but also from verse 34.

An inconsistency is visible in the restoration prescribed by verses 34 and 36. The former allows the owner to make monetary payment. Verse 36 requires him to restore “ox for ox.” As argued earlier, there may not be a practical difference between these two options. Nonetheless, the difference in formulation may have to do with different points of influence from LH. The double verb formulation in LH 125 and 267 may have influenced the repayment formulation in verse 34 to some degree. Verse 36, however, may have been influenced by LH 263 (cf. LH 246), which is nearby in the general sequence of laws that CC follows (see table 1.1 in chapter 1; see chapter 9):

If he (a herdsman) causes the loss of [an ox] or [a sheep] that were given to him, he shall restore to the owner a similar ox or similar sheep (*alpam kīma [alpim] immeram kīma [immerim] ana bēlī[šu] irīab*).

The phrase *השור תחת השור* “he shall make restitution ox for ox” in verse 36 is nearly identical with the phrasing in this Akkadian law.

In summary, I can agree with those who say that verses 35–36 are a supplement to the passage.⁶⁹ Where I differ with these earlier studies is in the temporal framework for the expansion. Verses 35–36 appear to have been added by the author of verses 28–34. They display signs of secondariness because of the different source used for verse 35 and because verse 36 may be an invention to flesh out verse 35.

Stoning the Ox and Other Penalties

CC's use of LH and a law similar to LE 53 is the reason behind the most distinctive features of CC's goring ox laws in verses 28–32: the requirement to stone

Table 8.1: Penalties for ox goring in LH and LE

Law	Laws of Hammurabi and Eshnunna			
	Owner of goring ox		Owner of gored ox/family of human victim/owner of slave victim	
	Gains And Losses	Net	Gains And Losses	Net
LE 53 ox v. ox, ad hoc	-1 ox liquidated (at least theoretically) +1/2 of price, +1/2 of dead ox	0 (but with decline in quality)	-1 ox killed, +1/2 of price, +1/2 of dead ox	0 (but with decline in quality)
(no equivalent of Ex 21:36, ox v. ox, habitual)	—	—	—	—
LH 250 ox v. free human, ad hoc	no penalty	0 (no loss) (!)	family member killed	-1 family member (!)
LH 251 ox v. free human, habitual	-30 shekel fine	-30 shekels	family member killed, + 30 shekels	0 (the 30 shekels compensates the family member)
LH 252 ox v. slave, habitual	- 20 shekels	-20 shekels	- slave, + 20 shekels	0 (the 20 shekels replaces the slave)

an ox that kills a person and to execute the owner of a habitually goring ox that kills a person.⁷⁰ A problem becomes visible when LH 250–251 and LE 53 are viewed systematically (see table 8.1). A person whose ox is killed by a goring ox obtains some relief (LE 53). Though he loses an ox, he gets half its carcass and half the price of the owner's goring ox. He breaks even mathematically, though there is a decrease in quality because he receives part of a gored carcass and money.⁷¹ In contrast, the kin of a person killed by a similar act of ad hoc goring *receives no compensation of any sort* (LH 250). Their net outcome is the loss of a family member. At the same time, the owner of the goring ox remarkably suffers no loss; he retains the animal and presumably may profit from it as he would have before. In the other cases of an ox goring a human, the victim's family (implicitly; LH 251) or slave-owner (LH 252) is compensated.

I propose that the inconsistencies in LH 250 vis-à-vis LE 53 led to a revision of penalties in CC to make them more consistent and reasonable throughout the range of goring ox laws. According to this revision (see table 8.2), the requirements of LE 53 were taken as the baseline (v. 35). CC accepted this fully and literally, only making explicit how the goring ox is liquidated so that the price can be divided. Verse 36 was formulated to fill in a gap left by the cuneiform texts.

Table 8.2: Penalties for ox goring in CC

Ex 21:28–36				
Verse	Owner of goring ox		Owner of gored ox/family of human victim/owner of slave victim	
	Gains And Losses	Net	Gains and losses	Net
v. 35 ox v. ox, ad hoc	–1 ox sold, +1/2 of price, +1/2 of dead ox	0 (but with decline in quality)	–1 ox killed, +1/2 of price, +1/2 of dead ox	0 (but with decline in quality)
v. 36 ox v. ox, habitual	–1 replacement animal	–1 ox (goring ox is retained)	–1 ox killed, +1 replacement	0 (theoretically no decline in quality)
v. 28 ox v. free human, ad hoc	ox stoned	–1 ox	family member killed, ox stoned	–1 family member, + vengeance on ox
v. 29–30 ox v. free human, habitual	ox stoned, -fine or even execution	–1 ox, – fine or life	family member killed, ox stoned, + fine (above 30 shekels) or execution of ox owner	0 (the vengeance on the ox and execution of owner or ransom payment compensate for the loss)
v. 32 ox v. slave, habitual	ox stoned, –30 shekels	–1 ox, –30 shekels	ox stoned –1 slave, +30 shekels	0 (the 30 shekels compensates the owner and vengeance on the ox presumably satisfies the family; debt also canceled if a debt-slave)

The owner of the gored ox in this case breaks even, but in contrast to verse 35, he suffers no decline in quality. He receives a whole, living animal (possibly payable in silver, to be consistent with v. 34). As noted before, CC derives this solution from LH 263. Since the owner of the victim is requited sufficiently, there is no need to penalize the goring ox in this case.⁷² CC attempts to solve the inconsistency in the case where a human is a victim (vv. 28–29) by requiring the execution of the goring ox. That this is an execution is indicated by the wording of verse 29: “the ox shall be stoned, and its owner shall *also* (אף) be put to death” (v. 29). The adverb אף “also” draws an equation between the two acts of killing.⁷³ Thus, in the case of ad hoc goring (v. 28), though a family member is lost, the kin satisfies its vengeance on the ox and thus receives emotional compensation at least.⁷⁴ CC did not—could not—go further and provide economic compensation because this was an accident. In the case where a habitual

gorer kills a human (v. 29), CC extended, at least theoretically, execution to the owner in addition to the ox.⁷⁵ CC reined in this theoretical extension, however, with verse 30, which adds an alternative more consistent with the Akkadian source. The owner may ransom his life by paying a fine if the victim's kin allows. CC may have permitted this after the fact because the case is a matter of negligence.⁷⁶ The amount of this fine, however, is not specified, as opposed to LH 251, which requires payment of 30 shekels. Nevertheless, it is presumably more than 30 shekels, which verse 32 requires in the case of a slave.

The increased payment for a slave can be explained in one of three ways, which are not necessarily mutually exclusive. The increase in penalties in verses 28–30 by itself may have led to boosting the amount for a slave. CC simply used the 30 shekels in LH 251 for a free person as a guide, the next step above the slave law in LH 252. Alternatively, if CC used a cuneiform source that had a law like LE 54, then its requirement that 40 shekels be paid in a case of a known gorer killing a free person, as opposed to 30 shekels in LH 251, may have led CC to increase the amount of LH 252 by 10 shekels (though LE 55 only requires 15 shekels when a slave is a victim).

But a systematic rethinking of laws on subjected persons found in LH may be at work. CC has generally conflated data and perspectives about chattel-slaves and debt-servants, as outlined in chapter 6. Hence, the increased penalty in verse 32 over against LH 252 may be due to the conflation of slave types and the inclusion of debt-slaves in the law. One might expect that such a revision would transfer the payment of silver to the slave's kin. CC probably retains payment to the slave's master/creditor because the slave is ultimately the master's property (21:21). His economic interests must still be satisfied. The kin would be satisfied by the presumed cancellation of the debt and the stoning of the animal. CC did not make the penalties against the ox owner in verses 29–30 applicable here either because it left its systematic revision incomplete, being content to reflect the basic components of LH 252, or as in the case of 21:21, mitigating factors (here *indirect* homicide of a *debt-slave*) prevented it from applying these penalties.

The requirement of stoning in verses 28–29, 32, part of CC's systematic increase in penalties, requires an explanation. Why was this particular form of execution legislated? We must start with verse 35 and its source law, a law like LE 53. Custom behind the source law may have allowed the owners to use their respective halves of the dead ox for different purposes, including food and various forms of manufacture.⁷⁷ While CC replicated the distribution of the carcass, it is doubtful that CC allowed consumption of the meat. Exodus 22:30, the last law in the first string of the final apodictic laws, which is part of the original text of CC (see chapters 11–12), prohibits consumption of the flesh from animals killed by predators (טרפה) because the people are to be holy. The flesh is to be thrown to the dogs.⁷⁸ The flesh of an ox killed by another ox would presumably be similar to טרפה meat, the animal having been killed by another animal. Therefore, it would not be eaten. Therefore, the only use that

humans might have of the carcass in verse 35—and the carcass in verse 34 as well—would be for manufacturing purposes.⁷⁹

What of the stoned ox in verses 28–29, 32? It is reasonable to think that the carcass of this ox would also be equivalent to טרפה meat. Stoning it would be goring it in return—the talion principle circumlocuted. Stoning is chosen specifically to disallow dietary use. That stoning rendered the animal inedible is clear in the phrase “its flesh shall not be eaten” in verse 28, which comes immediately after the rule that it be pelted.⁸⁰

But could the carcass of a stoned ox be used for manufacturing purposes? Verses 28–29 say nothing about the owner retaining possession of the carcass, in contrast to verses 33–34, 36. This may mean that CC did not envision even the nondietary use of the carcass of an ox that killed a human. It was simply to be discarded—at most, perhaps, to be thrown to the dogs, in accord with 22:30. The reason for a comprehensive ban on the carcass would be that killing the animal is a punishment, as the text indicates by the wording of verse 29 (see earlier).

Some have argued that the increase of penalties in 21:28–32 arises out of or is a reflection of CC’s higher theological estimate of life over against LH.⁸¹ This seems an unlikely explanation. Other homicide laws in CC, primarily discussed in chapter 6, do not show an increase in penalties or a reflection of ethical concerns over against LH. The basic homicide law in 21:12–14 requires capital punishment for intentional homicide. This penalty is implied by Hammurabi’s legislation, even though it does not have a law directly on this subject. The miscarriage and talion law in verses 22–25 requires indemnification for unintentional homicide, which is the requirement of LH 207. The slave homicide law in verses 20–21 even allows the owner to kill his slave, even a debt-slave, if death is not immediate. This ruling is more lax than its source law, LH 116, which does not set down a time past which the killer is not liable. CC therefore appears to be uninterested, at least primarily, in the ethics of homicide. CC seems to be striving for, though not always achieving, systematic congruency, not ethical clarity. CC’s chief interest in the homicide laws appears to lie in providing proper *satisfaction* in each case, whether concrete indemnification or a psychological expression of vengeance (cf. 21:12–13, 20, 28–32).⁸²

Finally, we should observe that the ransom payment in verse 30 correlates with the requirement of “giving (i.e., paying) life for life” in the talion law of verse 23b. Recall from the discussion in chapter 6 that the talion law applies to a case of inadvertent homicide and prescribes a payment that indemnifies the victim’s family. It is likely that the agent that determines the amount of the ransom in verse 30 is the victim’s family, similar to the husband’s being the one who determines the penalty for loss of a child in aggravated miscarriage in verse 22. In fact, the wording in the two laws is very close: “he shall be fined as the husband of the woman imposes on him he shall pay *bipilîm*” (ענוש יענוש) (כאשר ישית עליו בעל האשה ונתן בפללים) in verse 22 and “if a ransom is imposed on him and he shall pay a redemption price for his life according to whatever

is imposed upon him” (אם כפר יושת עליו ונתן פדין נפשו ככל אשר יושת עליו) in verse 30. If the husband makes the determination in the case of the loss of a child in verse 22, it is likely that he would also make the determination for the loss of his wife according to the talion law of verse 23. Moreover, because verse 23b also serves as a general rule for indemnification in all cases of homicide, the implication is that in other cases of inadvertent homicide, a family member with legal standing would make the determination of payment. Verse 30 reflects this rule. Its passive verb “is imposed” (יושת) avoids having to specify the particular family member who makes the determination, which may differ from case to case. That verses 23 and 30 reflect the same level of legal liability makes sense because LH 207, the law that lies behind CC’s requirement of indemnification for inadvertent homicide in verse 23b, and LH 251, the law behind verse 30, both prescribe a 30-shekel payment. Hammurabi’s text sees both types of homicide, inadvertent and negligent, as commensurate. The relationship of verse 30 to the miscarriage and talion laws, which themselves are tied systematically to the other homicide and injury laws of 21:12–21, demonstrates how carefully CC has read and responded to its sources.⁸³

Conclusions

The short story of the composition of Exodus 21:28–36 can be told thus: CC followed the template of LH 250–252 to create a basic law on a goring ox in verses 28–32. It skipped to these laws in LH from the context of miscarriage in LH 209–214 and talion LH 196–201, which is used for verses 22–27 because of the relevance of the goring ox laws for the topic of homicide and assault. CC took LH 250–252 as the foundation for the passage and replicated every essential detail. A concern to present a system of laws more coherent than those of its sources led CC to expand the penalties to include stoning a goring ox that had killed a human and, in a case where the ox was a known gorer, to require capital punishment for the owner (Exod 21:28–29, 32). This revision stemmed from an inconsistency CC found between Hammurabi’s ox law and another Akkadian law about an ox goring an ox, similar to LE 53, where the latter provided recompense to a person whose ox was killed in a case of ad hoc goring, while Hammurabi’s law provided no satisfaction to the family of a person killed in a similar case of goring. CC included its version of LE 53 at the end of its pericope, in verse 35, because it came from a source other than LH. CC created verse 36, mainly on the pattern of verse 29 and partly verse 34, to augment and flesh out this law.

Within the main goring ox law, CC made two additions. One was verse 30, which prescribed a ransom payment instead of capital punishment. This was set down as a practical measure that was consonant with the requirement of indemnification for inadvertent homicide in its talion law of verse 23. The other addition was verse 31, a law prescribing that the same punishment applies if

children are the victim of goring. This was based primarily on an interpretation of the ambiguous *mār awīlim* in LH 250, which can mean “member of the *awīlum*” class or, literally, “son of an *awīlum*.”

In between its ox laws, CC included a negligence law (vv. 33–34). This may have been creatively based on LH 229–230 and some other laws in LH, or it may have been derived from a currently unknown Akkadian law. In any case, CC’s law seems to have been given its place because of its thematic connection with LH 229–230, which uses the verb *fall* and treats a case of negligence. This Akkadian law also includes a case of vicarious punishment and was apparently influential in CC’s rejection of this option in the nearby verse 31. Verses 33–34 were also given their place to prepare for—set a precedent for—the animal death law in verses 35–36. All of verses 33–36 also created a transition into the laws on animal theft and loss in 21:37–22:14.

In view of this description of the development of Exodus 21:28–36, the laws therein have to be judged largely an academic creation. They do not necessarily reflect local practice. This agrees, but for different reasons, with Finkelstein’s estimate that the goring ox laws are ideal formulations. He observes that in the various ox laws attested in the cuneiform literature

we are confronted . . . not with independent developments, but with a single, organically interrelated, literary tradition. This has to do with the fact that in all of the tens of thousands of cuneiform documents relating to legal matters which have thus far come down to us, there is hardly a single allusion to a real instance in which an ox killed or injured a person or another animal. I do not mean to imply that such occurrences never happened or that they could not happen, but merely intend to suggest that such occurrences would have been rare at best.⁸⁴

He then uses this consideration to make a conclusion consonant with this study, already cited in chapter 1 but worth repeating:

It is also the very unlikelihood of such an accidental occurrence that makes us concede that the biblical goring-ox laws must have been dependent upon their literary Mesopotamian prototypes; it would be too unreasonable to posit that such an unusual incident occurred also in early Israelite experience, and then became quite independently the source of the goring-ox laws of the Book of Exodus.⁸⁵

In the academic rewriting of its Akkadian sources, CC was not primarily interested in writing laws that were more ethical but in creating consistency and, with this, writing laws that provided victims with proper psychological or economic satisfaction. If a replacement for lost kin or animals could not be provided, at least anger and grief could be vented through stoning an ox that had killed a human. But if CC did not have ethical concerns in mind, this does not mean that later biblical writers did not read those concerns into CC. The penalties for the goring ox may have led the writers of Priestly narrative to formulate

the idea that animals are liable to bloodguilt when they kill people: “Yet I will exact your blood for your lives; from every beast I will exact it. From a human being for his brother—I will exact the life of a human being” (Gen 9:5).⁸⁶ This served further as a basis for the later Holiness Legislation in Leviticus 17:4, according to which humans suffer bloodguilt for killing sacrificeable animals outside the sanctuary.⁸⁷ Thus we see a chain of creative interpretations (LH and other Akkadian texts → CC → Genesis 9 → Leviticus 17), where each successive text, by response to an earlier text or texts, created a new text that in turn required or evoked further explication.

9

Animal Theft, Crop Destruction, Deposit, and Burglary (Exodus 21:37–22:8)

Immediately after their goring ox laws (LH 250–252; Exod 21:28–32, 35–36), both collections turn to agricultural and animal theft (LH 253–265; Exod 21:37 + 2b–3). The influence of the sequential topics of LH are seen again most visibly in the laws on animal injury, death, and rental in the middle of Exodus 22 (i.e., 22:9–12 // LH 266–267; 22:13–14 // LH 268–271; chapter 10). The first part of Exodus 22, however, is something of an interlude in the replication of the topical sequence of LH. The deposit laws of verses 6–8, as well as the burglary law of verses 1–2a, have a relationship to the topical sequence, but they arise from a process of cross-referencing that brings in laws and motifs from other places in LH and even other collections. The conception and idiom of LH 264–265 led CC to use the deposit laws of LH 120–126, and these laws in turn led CC to use the burglary and robbery laws of LH 21–23. Cross-referencing also led CC to create its law on animals grazing in another person's field (v. 4), on the basis of LH 57–58. It further led to the creation of the law on burning another person's crops (v. 5), presumably on the basis of another unknown Akkadian law collection.

Animal Theft (21:37 + 22:2b–3)

Exodus 21:37–22:3 combines laws on two different topics, animal theft and burglary. Scholars dispute to which of these two laws verse 2b belongs (the

texts are cited further along in this chapter). Some take it as part of the preceding burglary law in verses 1–2a. In this interpretation, the burglar must pay a fine, either for his attempted crime or for what he actually stole (v. 2b).¹ The main problem is that the burglar has been killed in verse 2a—how could he pay as required by verse 2b? It is therefore more reasonable to see verse 2b as the continuation of the animal theft law in verse 37. The infinitive absolute construction in verse 2b_a is either the direct continuation of verse 37 or was added to put a reader back on the track of verse 37 after the insertion of the burglary law in verses 1–2a.² Our focus in this part of the chapter is the animal theft law; the burglary law is addressed later.

The animal theft law in 21:37 + 22:2b–3 contains three cases: (a) a main case requiring five or fourfold restitution when the animal is unrecoverable, (b) a subcase requiring the sale of the thief into debt-slavery to pay the fine, and (c) another case, an alternative to (a), requiring only twofold payment when the animal is found in the thief's possession. This law correlates in a complex way with several agricultural and animal theft laws in LH 253–265. Five of the laws in this series from LH mention theft (using the verb *šarāqum*): LH 253, 255, 259, 260, 265. Other laws use other descriptions that amount to theft: LH 254 (taking), LH 255 (giving to another), and 263 (causing the loss):

Exodus 21:37 + 22:2b–3

³⁷When a man steals an ox or flock animal and slaughters it or sells it, he shall repay five cattle for the ox, or four flock animals for the flock animal.

^{2b}He must repay. If he does not have the means, he shall be sold for his theft.

³If the stolen (animal) is found in his hand alive, whether an ox or ass or flock animal, he shall repay twofold.

LH 253–265

²⁵³If a man hires a man to care for his field, and he entrusts him with a grain quota, entrusts him with cattle, and puts him under contract to cultivate the field—if that man steals seed or feed and it is seized in his hand, they shall cut off his hand.

²⁵⁴If he takes the grain quota and (thus) weakens the cattle, he shall replace twofold the grain that he received.

²⁵⁵If he gives out the cattle of a man for hire or he steals seed, and he does not produce (crops), they shall convict that man, at harvest he shall measure out sixty kors of grain for each bur of land.

²⁵⁶If he is not able to meet his obligation, they shall drag him around that field by cattle.

...

²⁵⁹If a man steals a plow from the community meadow, he shall pay five shekels of silver to the plow owner.

²⁶⁰If he steals a *ḥarbum*-plow or a harrow, he shall pay three shekels of silver.

...

²⁶³If he (a herdsman, cf. LH 261–262) causes the loss of an [ox] or [sheep] that were given to him,

he shall make restoration of an ox like (the lost) [ox] or a sheep like (the lost) [sheep].

²⁶⁴If [a shepherd], to whom were given cattle or flock animals, has received his full wages and is satisfied, and he causes the cattle to decrease, causes the flock animals to decrease, or reduces the offspring, he shall pay offspring and yield in accord with his contract.

²⁶⁵If a shepherd to whom were given cattle or flock animals for shepherding acts deceitfully and alters the ownership mark and sells (them), they shall convict him, and he shall restore cattle and flock animals to the owner tenfold what he stole.

³⁷כי יגנב איש שור או שה
וטבחו או מכרו חמשה בקר
ישלם תחת השור וארבע צאן
תחת השה
^{2:2}שלם שלם אם אין לו ונמכר
בגנבתו

²⁵³*šumma awīlum awīlam ana panī eqlīšu uzuzzim*
īgurma aldām iqīpšu liātīm ipqissum [ana] eqlim
erēšim urakkissu šumma awīlum šū zēram ū
lū ukullām išriqma ina qātīšu ittašbat rittašu
inakkisū

³אם המצא תמצא בידו הגנבה
משור עד חמור עד שה חיים
שנים ישלם

²⁵⁴*šumma aldām ilqēma liātīm ūtenniš tašna*
še'am ša imḥuru irītab
²⁵⁵*šumma liāt awīlim ana igrim ittadin ū lū*
zēram išriqma ina eqlim lā uštābši awīlam šuāti
ukannūšūma ina ebūrim ana 1 būrum 60 kur
še'am imaddad

²⁵⁶*šumma pīḥassu apālam lā ile''i ina eqlim*
šuāti ina liātīm imtanaššarūšu
...

²⁵⁹*šumma awīlum epinnam ina ugārim išriq 5 šiqil*
kaspam ana bēl epinnim inaddin

²⁶⁰*šumma ḥarbam ū lū maškakātīm ištariq 3 šiqil*
kaspam inaddin
...

²⁶³*šumma [alpam] ū lū [immeram] ša innadnūšum*
uḥtalliq alpam kīma [alpm] immeram kīma
[immerim] ana bēlī[šu] irītab

²⁶⁴*šumma [re'um] ša liātum ū lū šēnum ana re'im*
innadnūšum idīšu gamrātīm maḥir libbašu ṭāb
liātīm ušṣaḥḥir šēnam ušṣaḥḥir tālittam umtaṭṭi
ana pī riksātīšu tālittam u biltam inaddin

²⁶⁵*šumma re'um ša liātum ū lū šēnum ana re'im*
innadnūšum usarrirma šimtam uttakkir u ana
kaspim ittadin ukannūšūma adi 10-šu ša išriqu
liātīm u šēnam ana bēlīšunu irītab

CC's first law (21:37) corresponds most closely with the last law in the Akkadian series (LH 265). Both speak of cattle (*liātum* // בקר, שור) and flock animals (*šēnum* // צאן, שה); both mention these animals in the protases and in the apodoses; both use a verb for theft (*šarāqum* // גנב); both have exaggerated multiple repayment (tenfold in the Akkadian // fivefold or fourfold in CC);³ and both use synonyms for repayment (*riābum* // שלם).

Another similarity between verse 37 and LH 265 is mentioning two ways of illegally dealing with the animal: its sale (*ana kaspim nadānum* // מכר) or physically misusing it (alteration of the ownership mark, possibly a brand or ear mark // sacrificing the animal). Altering an ownership mark and slaughtering may not seem to be connected until one realizes that CC elsewhere conceptually transforms legislation in LH to create new law, even in a photo-negative fashion. A shift from altering an owner mark to slaughter is not entirely different than CC's changing ear-severing to ear-piercing in its reformulation of LH 282 to create the slave fealty law in 21:5–6. Of course, altering an ownership mark in LH 265 is not an alternative to selling but, rather, precedes and facilitates the sale.

A similar revision is seen in the apparent reduction of the tenfold penalty in LH 265 to a fivefold and fourfold penalty in CC. Recall that CC changed by a factor of two—but in the other direction—the number of years for debt-slavery, six instead of three. CC also significantly revised Hammurabi's penalties for intentional and inadvertent injury and homicide and the penalties for the goring ox laws. Although clear reasons exist for changing the period of debt-slavery and the penalties in the assault and homicide laws, the reason for halving the tenfold penalty of LH 265 is not clear. The tenfold repayment may have been considered excessive. Fivefold indemnification is found in LH in the long series of laws dealing with a claim about lost property and its sale (LH 9–13). This appears to have been a background influence on 22:8 (see later). According to this series in LH, a buyer of the lost property can be reimbursed fivefold from the household of a deceased seller (LH 12). The reason for the *fourfold* repayment of flock animals in CC can be attributed their lesser worth compared to bovines.⁴

While verse 37 has a number of similarities with LH 265, it is also similar in a fundamental way to the first law in the block cited before. A subcondition in LH 253 reads: “if that man steals seed or feed” (*šumma awīlum šū zēram ū lū ukullām išriqma*). If one removes the demonstrative adjective and changes the context to animals, one has CC's basic law, “If a man steals an ox or flock animal. . .” (כי יגנב איש שור או שה). We will see later that another motif in LH 253 was influential in the formulation of the third theft law of 22:3.

The repayment formula in 21:37, “he shall repay five cattle for the ox or four flock animals for the flock animal” (חמשה בקר ישלם תחת השור וארבע צאן תחת השה), follows the talion-related formulation found already in 21:36, “he shall repay ox for ox” (שלם ישלם שור תחת השור), and both echo the earlier talion formulations in 21:23b–25 and 26–27. This confirms that those laws were in place or conceived

of before the animal theft law was written. The latter builds on their context and links the second half of the collection to the first.

The second law in 22:2b is introduced by the infinitive absolute construction “he must repay” (שָׁלַם יִשְׁלַם). This repeats the rule in 21:37, which uses the simple verb “he must repay.” The phrase in verse 2b may be a resumptive repetition that brings the reader back to the topic of 21:37 after the interruption of the secondarily inserted burglary law in verses 1–2a.⁵ Alternatively, it may be contextually part of the animal theft law and set up the rule that if he cannot pay the high sums required by verse 37, he is to be sold for his theft (end of v. 2b).

The second law of verse 2b correlates with LH 256. The Akkadian law is a follow-up to LH 255, which imposes a severe fine for hiring out animals without the permission of the owner (conceptually close to animal theft) and stealing seed.⁶ LH 256 says that “if he (the malefactor of LH 255) is not able to meet his obligation” (*šumma piḥassu apālam lā ile*’i), he is to be dragged plowlike around the field that he was to have cultivated, perhaps by the very cattle that he was to have used for cultivation. The law in 22:2b reflects LH 256 in mentioning the condition “if he does not have the means” (אֵין לוֹ). CC prescribes a different penalty and one suited to the larger context of CC: the thief is sold, presumably as a Hebrew debt-slave (cf. 21:2, 7), to pay off the debt.⁷ This is a measure-for-measure penalty; if he sells the animal, he may have to sell himself (both using the root מכר). This plays against the talionic “in place of” (תַּחַת) of verse 37.⁸

Inability to pay is found in two other laws in LH. According to LH 8 (cited in full later in the section on deposit), a person who “steals an ox, sheep, donkey, pig, or a boat” (*lū alpam lū immeram lū imēram lū šahām ū lū elippam išriq*) belonging to the temple or palace is to repay thirtyfold; if the animal or boat belongs to a commoner (a palace dependent), he replaces tenfold. The law adds: “if the thief does not have the means to pay he shall be put to death” (*šumma šarrāqānum ša nadānim lā iṣu iddāk*). The idiom of *lā iṣu* “he does not have” here is closer to לוֹ אֵין “there is not to him” in 22:2b than is the idiom of *lā ile*’i “he is not able” in LH 256. LH 8 also has two levels of multifold payment similar to verse 37, though they are based on the identity and status of the owner, not the type of animal. The consequence of inability to pay, however, is presumably more severe in LH 8 than in LH 256, unless being dragged by the animals causes death. CC’s apparent knowledge of the nearby laws of LH 9–13 (discussed here later) suggests that it could have known of LH 8.⁹

The second law reflecting the motif of the inability to pay is LH 54. Though it concerns the replacement of grain destroyed by a flood from not maintaining an irrigation system (with the context set up by LH 53) and uses the idiom of inability to pay found in LH 256, it prescribes the selling of the culprit as in 22:2b:¹⁰ “If he cannot restore (*riābam lā ile*’i) the grain, *they shall sell him* and his property (*šuāti u bīšašu ana kaspim inaddinūma*), and the people of the *uḡārum* where water carried away their grain shall divide (the resulting money).” The infinitive that complements the verb of the inability to pay is

“restore” (*riābum*), which correlates with the verb שלם “repay” in verse 2b. The verb for selling in the Akkadian text (literally, “they shall give him and his property for silver”) has an undefined “they.” The passive “be sold” in CC is conceptually equivalent. CC may have known LH 54, inasmuch as LH 53, which describes the flooding as an “opening” (*petūm*) up of the bank, along with other laws that involve “opening” canals in LH 55–56 and that also involve negligence, may have influenced the law on the negligent “opening” (פתח) of a pit in 21:33–34 (see chapter 8). More important for the context of 21:37 + 22:2b–3, the laws that follow the irrigation laws of LH 53–56 legislate about letting flocks graze in another person’s field (LH 57–58). These are the apparent source for the very next law in CC, on depasturation (22:4; see later).¹¹ Moreover, the extreme penalty of LH 255, which lies behind the inability to pay in LH 256, is also found in LH 58 (“at harvest he shall measure out sixty kors of grain for each bur of land”; see later on 22:4).

We may have here a case of cross-referencing. The motif of inability to pay in LH 256 with the idiom *lā ile’i*, which occurs in the main sequence of texts that CC follows for its general topics, may have led CC to LH 54 with the same motif and idiom. CC used the penalty in this law to replace the corporal punishment for theft in LH 256. This is consistent with CC’s avoidance of corporal punishment in other cases (see chapter 7).

Another general point to note is that the prescriptions about the inability to pay in LH 8, 54, and 256 have to do with penalties that are relatively substantial, not simple double repayment as prescribed in other CC and LH laws. This may explain why the repayment law appears in 22:2b, immediately after the penalties of fivefold or fourfold replacement in 21:37, rather than after the double replacement law in 22:3.¹² This supports the interpretation that the infinitive absolute construction in verse 2b is not a resumptive repetition but is original to the animal theft law before the addition of the burglary law and emphasizes the need to pay this fine, which sets up the context for the rule that the thief may be sold.

The third law in 22:3 echoes the first law in the Akkadian series cited earlier, LH 253. CC has a phrase stating “it is found in his hand” (המצא תמצא בידו), which is similar to Hammurabi’s statement that the stolen item “is seized in his hand” (*ina qātīšu ittašbat*).¹³ CC displays other correlations between the verb מצא “be found” and Akkadian *našbutum* “be seized,” which are discussed later.¹⁴ In the present law, CC adds the adjective *alive* (חיים) to make it clear that we are not dealing with a carcass, as in 21:35–36.¹⁵

The seizure of the property in 22:3 provides an alternative to the case where the property is not recoverable in 21:37. These two verses are paralleled by the selling of a kidnap victim or finding him in the kidnapper’s possession in 21:16, otherwise based on LH 14. Recall from chapter 7 that the alternatives in the animal theft law—selling or being found in the thief’s possession—were probably brought into the kidnapping law from the animal theft law to give it legislative complexity.

The law in 22:3 differs from 21:37 in prescribing only twofold repayment when the animal is found alive in the thief's possession. This probably means that in addition to returning the animal, the thief must pay one other animal.¹⁶ Twofold payment is found in LH 254: "If he takes the grain quota and (thus) weakens the cattle, he shall replace twofold the grain (*tašna še'am . . . irīab*) that he received." Twofold payment is found also in Hammurabi's deposit laws (LH 120, 124, 126). The requirement in these laws influenced the twofold payment in CC's deposit laws in 22:6–8, as we will see.¹⁷ CC got to Hammurabi's deposit laws (LH 120–126) by cross-referencing through a similar idiom in LH 265. This law, as we have seen, was influential in the creation of CC's animal theft laws. This means that CC could have already had Hammurabi's deposit laws in mind when creating verse 3.

The reason for the difference in fivefold and fourfold payment in 21:37 versus twofold payment in 22:3 is thus, in large part, driven by sources. Therefore, it cannot be argued that the laws reflect legal evolution, just as CC does not encode the evolution of homicide, assault, or talion laws.¹⁸ The difference in penalties in the animal theft law is due to the resystematizing of sources. The severer penalty is required when the animal is unrecoverable, having been slaughtered or sold. When the animal is found alive in the thief's possession, then only double replacement is required. But the specific reason that CC would have maintained a difference in the penalties is not clear. Schwienhorst-Schönberger observed that if the animal that could not be recovered was of extremely high quality, double replacement might not provide sufficient compensation and penalty. Therefore fivefold or fourfold payment is required. When the animal is recovered, this question does not arise; one animal is added as a penalty.¹⁹ Houtman has alternatively explained that verse 37 has cattle rustlers in mind, whereas verse 3 has in mind persons who steal animals for their own use. The intent to do wrong is more heinous in the case of the former than the latter.²⁰

When the first law in 21:37 is seen to correlate mainly with LH 265 and the third law in 22:3 with LH 253–254, then it appears that CC has inverted the order of its source. This may not be coincidence in view of the inversion of other laws, including those on child rebellion (21:15 // LH 195; 21:17 // LH 192–193) and slave homicide (21:20 // LH 116; 21:21 // LH 115). Contextual reasons appear to be responsible for the reversal in these other cases. In the animal theft laws, CC apparently put the law based on LH 265 first because it deals with animals, the topic of 21:28–36. It completed its series with a law based on the principles in LH 253–254, which deal mainly with crop production, though those paragraphs do mention animals.²¹

Depasturation (22:4)

The previous section noted that the law on being sold when one cannot pay the penalty for flooding a field in LH 53–54 may have influenced the animal

theft law in 22:2b by means of terminological cross-referencing from LH 265, a law in the sequential template that CC follows. Both Akkadian laws use the specific idiom “he is not able” (*lā ile*”*i*) of the inability to pay a prescribed fine, the concern of verse 2b. Moreover, LH 54 and verse 2b prescribe that the insolvent liable party is to be sold to pay the fine. The laws immediately following LH 54 might have been influential on the negligence law of 21:33–34. LH 55–56 include the motif of negligence and use the verb “to open” (*petûm*) of water sources (canals), similar to 21:33–34, which speak of opening (פתח) a cistern into which an animal falls (see chapter 8). If CC knew LH 53–56, then one can surmise that CC also knew the next laws on depasturation in LH 57–58, to which 22:4 is similar. Indeed, it is reasonable to think that the use of laws in this area of LH for verse 2b was a primary stimulus for bringing in a law about negligent grazing just at this point in the structure of CC:²²

Exod 22:4

^{4aα}If a man lets a field (belonging to another) or a vineyard be grazed,

^{4aβγ}Or (!) releases his animals and they graze in another person’s field, ^{4b}he shall repay from the best of his own field or the best of his own vineyard.²³

כרם (8)84 כי יבְעַר-איש שדה או כרם

84(ב)ושלח את בעִירָהּ ובעֵר
בשדה אחר ²⁴מיטב שדהו
ומיטב כרמו ישלם

LH 57–58

⁵⁷If a shepherd does not make an agreement with a field owner to let his flock graze on the plants, and without the permission of the field owner he lets his flock graze the field, the owner of the field shall harvest his field. The shepherd who lets his flock graze the field without the permission of the field owner shall pay in addition twenty kors of grain to the field owner for each bur (of the field).

⁵⁸If after the flock has gone up from the irrigated land and (after) the pennant (signaling) the termination (of pasturing) has been wound around the town gate, a shepherd releases his flock into a field and lets it graze the field, the shepherd shall guard the field where he allowed grazing to occur. At the harvest he shall measure out to the owner of the field sixty kors of grain for each bur (of the field).

⁵⁷*šumma re’ûm ana šammî šēnim šūkulum itti bēl eqlim lā imtagarma balum bēl eqlim eqlam šēnam uštākil bēl eqlim eqelšu išsid re’ûm ša ina balum bēl eqlim eqlam šēnam ušākilu elēnumma ana 1 būrum 20 kur še’am ana bēl eqlim inaddin*
⁵⁸*šumma ištu šēnum ina ugārim ūtelianim kannu gamratim ina abullim ittaḥlalu re’ûm šēnam ana eqlim iddīma eqlam šēnam uštākil re’ûm eqel ušākilu inaššarma ina ebūrim ana 1 būrum 60 kur še’am ana bēl eqlim imaddad*

Two difficulties in verse 4 complicate comparison with LH 57–58. First, it is not clear if the verse refers to grazing or burning a field.²⁴ The root בער that occurs thrice in the verse can be associated with the meaning “to burn.”²⁵ It occurs in that meaning in 22:5b: “the one who burned shall repay the burning” (שלם ישלם המִבְעֵר את הַבְּעֵרָה). Targum Neofiti understands verse 4 as referring to burning.²⁶ Perhaps more important, the description of Samson’s incineration of Philistine crops (Judg 15:5) reflects the language of Exodus 22:4 (italicized here) mixed with that of verse 5 (italicized and underlined; for the citation of v. 5, see later):²⁷

Judg15:5 *He set fire* to the torches and *sent* (them, i.e., foxes) into the *standing grain* of the Philistines, and he burned up *stacked grain, standing grain, vineyards* (and) olive trees.

ויִבְעֵר אֵשׁ בַּלְפִּידִים וַיִּשְׁלַח בַּקְמֹת פְּלִשְׁתִּים וַיִּבְעֵר מִגְדִּישׁ וְעַד קֶמֶה וְעַד כְּרֵם זֵית^{15:5}

On the surface, Judges 15 appears to be interpreting CC’s verse 4 as referring to burning a field. But note that the implicit object of its verb “he sent” (וישלח) is the three hundred foxes that Samson captures according to the preceding verse.²⁸ Hence, Judges recognizes the other interpretation of Exodus 22:4 that views animals as the cause of crop damage. It is presumably taking advantage of the ambiguity of Exodus 22:4–5 and conflates the language and phenomenology of the laws to tell its story.

The meaning of Exodus 22:4 has to be determined apart from its later interpreters. One consideration in favor of taking verse 4 to refer to the grazing of animals is the redundancy with verse 5 that would be created otherwise. Both verses 4 and 5 would apparently deal with *inadvertent* burning, though in two different contexts: verse 4, an attempted controlled burn in a field or vineyard that becomes unmanageable and burns another person’s field, and verse 5, a fire from another source (an oven or fire to burn brush) that catches and spreads to grain, harvested or in the field.²⁹ A particular redundancy lies in the mention of a field as the object of damage in both verses. This creates a contradiction in that a greater penalty is prescribed in verse 4 (paying “the best” of a field or vineyard) as opposed to verse 5 (simply replacing what was burned). Perhaps, in this interpretation, greater responsibility is placed on a person undertaking a controlled burn in a field in verse 4 versus the spread of a fire in verse 5 that was not created to destroy brush. But this may be an overly fine distinction.

More significant than apparent redundancy between the verses, the term קָעִיר of verse 4 refers elsewhere in the Bible clearly to cattle (Gen 45:17; Num 20:4, 8, 11; Ps 78:48). One can start with this datum to interpret the verbs הַקְּעִיר־בְּעֵר in the verse. They mean “to remove, glean, sweep away,” rather than “burn.”³⁰ Verse 5 also begins with the conjunction כִּי not אִם, which means that this is probably a case distinct from that in verse 4. Furthermore, the Hittite Laws contain contiguous laws about fire destroying a field or vineyard and letting a sheep into a vineyard that destroys it (HtL 105–107; cited and discussed later).

This, in principle, shows that two such laws may be expected in CC. Hence, it is reasonable to take verse 4 to refer to animal grazing.³¹ Zakovitch reasonably concluded that verse 4 used the root בער “in order to assimilate it to the law that immediately follows it (v. 5), in order to strengthen the connection between the two so that they become a short collection dealing with damages caused to a piece of land either by allowing a flock to stray, or by a fire.”³²

The second difficulty for verse 4 is the textual plus of the Samaritan and LXX in the middle of the verse. In this formulation, the verse has two distinct laws (marked a and b here; the plus is italicized):

- (a) If a man lets a field or a vineyard be grazed, and releases his animals and they graze in another person’s field, *he shall repay from his field according to its produce*; (b) *and if he lets the whole field be grazed*, he shall repay from the best of his own field or from the best of his own vineyard.³³

The plus is probably an addition to harmonize the stricter payment required in MT verse 4b over against that in verse 5. Note also that in the MT as it stands, the (initial) protasis and apodosis have both “field” and “vineyard,” whereas the plus of the versions has only a “field” in its two members (these are underlined in the foregoing citation). This creates some inconsistency in the distribution of locales in the two laws of the Samaritan and Greek.³⁴

If verse 4 deals with grazing, and the economy of the Masoretic formulation is original, then the law can be compared with LH 57–58. The laws in both collections use causative or intensive stem verbs referring to consumption (הבעיר, בער, *šūkulum*), and both mention the release of animals (שלה, *nadūm*), together with a verb for consumption (בער, *šūkulum*). CC has either conflated the two cases of LH 57–58 where a person lets his flock graze (57) and releases his flock (58) into one law, or the *waw*-conjunction וּשְׁלַח “and he releases” in the protasis is to be construed with the alternative sense of “or.” This usage is found elsewhere in CC: “his mother *and* [= or] his father” (21:15, 17); “he sells him *and* [= or] he is found in his possession” (21:16); “five herd animals he shall repay for the ox *and* [= or] four flock animals for the flock animal” (21:37); “an ass or an ox or a flock animal *and* [= or] any animal” (22:9).³⁵ Note that the example in 21:16 consists of verbal clauses (וּמְכַר וּנְמָצָא בִּידוֹ), not merely a list of nouns.³⁶ That the verbs in 22:4 are to be construed as alternatives is further suggested by the difficulty in making sense of them in terms of simple consecutive action. Interpreters are generally forced to take the second clause as defining the first: “If a man lets a field (belonging to another) or a vineyard be grazed, i.e., he releases his animals and they graze in another person’s field.”³⁷

Hence verse 4 may therefore refer to alternative cases. The first case may lack intentionality.³⁸ In this, the person merely “lets the field or vineyard be grazed” (יִבְעַר); that is, his animals may have strayed to the field and vineyard, and he did not restrict their activity. The second case (where a person releases his animals) appears to involve intention, indicated by the verb וּשְׁלַח “or he

releases.”³⁹ These two cases roughly match LH 57–58, though CC must be seen as changing the specifics. CC removes the details of the source laws and repeats only the primary operative clauses: “if a shepherd . . . lets his flock graze” (LH 57) and “if . . . a shepherd releases his flock into a field and lets it graze the field” (LH 58). CC provides a simpler apodosis (“he shall repay from the best of his own field or the best of his own vineyard”) in the place of the complex grain-per-land ratios of LH. CC’s penalty probably means that, assuming that repayment will be equivalent, the offender is to pay in crops of the highest *quality*. But given the ratios in LH, one wonders if מִיטֵב in CC could mean “best *yield*,” that is, the highest *quantity* that damaged field or vineyard might yield. In this case, the suffix pronoun “his” on “field” and “vineyard” in verse 4b would refer to the person suffering the damage.⁴⁰

Although this interpretation of מִיטֵב is hypothetical, the grain-per-land ratios in the Akkadian agricultural laws facilitated cross-reference from one to the other. LH 255, which appears in the topical sequence that CC generally follows and whose companion law (LH 256) correlates with 22:2b in the motif of the inability to pay, contains the same penalty as LH 58: “at harvest he shall measure out sixty kors of grain (to the field owner) for each bur of land” (*ina ebūrim ana 1 burum 60 kur še’am imaddad*). The only difference is the inclusion of the recipient of payment “to the field owner” (*ana bēl eqlim*) in LH 58. While other agricultural laws in LH have proportioned payments (LH 44, 56, 57, 63), LH 58 is the only law that has the same grain-per-land ratio as LH 255.⁴¹ CC was able to bring LH 58 and its companion LH 57 into its composition by way of the common penalty in LH 255.

Crop Destruction by Fire (22:5)

The law of verse 5 is related to verse 4. But unlike verse 4, this does not have a counterpart in LH. It does, however, have one in the Hittite Laws:⁴²

Exodus 22:5

HtL 105–106

¹⁰⁵[If someone] lights [a field] on fire and it ignites a [fruit-bearing viney]ard—if a vine, apple tree, [pear tree, or p]lum tree burns, for each tree he shall pay [six shekels of silver]. He shall replant the [pl]antation. [He shall look to his house for] it. If he is a slave, he shall pay three shekels of silver.

If fire escapes and catches thorns so that stacked grain, standing grain, or a field is consumed, the burner shall pay for what is burned.

¹⁰⁶[If s]omeone carries [fire to his field, and i]gnites a fruit-bearing [field (alternately: another person’s field)], the one who burnt it [shall take the burned field]d. [He shall give] a good field [to the owner of the (burned) field, a]nd he will harvest it.

¹⁰⁵[*takku* A.ŠÀ-an *kuišk*]i *lukezzi nuzan anda* [*miantan* ^{GIŠ}KIRI₆.GEŠTIN] *epzi takku* GEŠTIN-iš ^{GIŠ}HAŠḪUR [^{GIŠ}HAŠḪUR. KUR.RA *našma* ^{GIŠ}Š]ENNUR *warani ANA 1* GIŠ-ŠÍ [*6 GÍN.GÍN KÙ.BABBAR* *pai nu a*]ršin EGIR-pa *aršaiuzzi* [*parnaššea šuwaez*] *zi takku ARAD-ša 3 GÍN.GÍN KÙ.BABBAR* *pai*

כי תצא אש ומצאה קצים ונאכל
גדיש או הקמה או השדה שלם
ישלם המבער את הבערה

¹⁰⁶[*takku* *paḥḫur* ANA A.ŠÀ-ŠU *k*]uiški *pedai nu miandan* [A.ŠÀ (alternately: *tamella* A.ŠÀ) *lukkezz*]i *kuišat lukkezzi* [*nuza lukkandan* A.ŠÀ-a]n *apaš dai* SIG₅-andanma A.ŠÀ-LUM [ANA EN A.ŠÀ *pai t*]az *waršezzi*

HtL 105–106 portray two cases, the first where a fire is properly ignited in a field but gets out of hand and burns trees, and the second where the fire burns a ripe field. CC’s law is more like the second law because both are concerned with fields. But CC’s law lists a number of crop items, similar to the list of trees in HtL 105.⁴³ CC’s law is also similar to the second Hittite law in using the same verb stem for a burner and thing burned in the penalty: “the burner shall pay for what is burned” (שלם ישלם המבער את הבערה) compared with “the one who burnt it shall take the burned field” (*kuišat lukkezzi* [*nuza lukkandan* A.ŠÀ-a]n *apaš dai*). One feature here is reminiscent of what CC has apparently done in verse 4. The earlier verse apparently reduced two rather complex laws in LH 57–58 into a simpler, though two-part, law. If CC’s source for verse 5 had two laws similar to the two Hittite laws, CC has reduced them to a simpler single rule.

CC’s preceding law about animal grazing (v. 4) has some correspondences with HtL 106. The Hittite law requires the burner to give to the victim a “good field” (SIG₅-andanma A.ŠÀ-LUM), probably the burner’s own field, for harvesting. This is broadly similar to the penalty in CC’s previous law (v. 4), “he shall repay from the *best* of his own field or the *best* of his own vineyard” (מיטב שדהו ומיטב כרמו ישלם), depending how the noun מיטב is to be understood. A variant reading in the second Hittite law is a description of the field as “the field of another” (*tamella* A.ŠÀ).⁴⁴ Verse 4 (MT) similarly says “they (the released animals) graze in the field of another” (ויבער בשדה אחר).⁴⁵

A broader point of similarity is visible in verse 5 and the context of the Hittite laws cited previously. Both have contiguous laws about animals destroying crops. The next Hittite law (107) reads: “If a man lets loose (*tarnai*) his flock animals into a productive vineyard (^{GIŠ}KIRI₆.GEŠTIN) and damages it, if it is fruit-bearing, he shall give ten shekels of silver for each iku of land. If it is bare, he shall give three (variant: five) shekels of silver.” The vineyard in this law reminds one of the vineyard (כרם) in verse 4. It stands out in particular because LH 57–58 only speak of a field (also mentioned in v. 4).⁴⁶ Moreover, HtL 107 has the verb *tarnai* “he let loose,” which is similar to ושלח

“he releases” in verse 4, though LH 58 does have *iddi* “he released,” as noted before.

It is impossible to claim that CC depends on the Hittite Laws themselves (see chapter 4). But the correspondences between verse 5 and even verse 4 and these laws, and especially the collocation of grazing and burning laws in the two collections, in connection with the larger source dependence of CC on LH and other cuneiform sources, allow one to hypothesize that CC had access to an *Akkadian* collection, at present unknown, which had laws on grazing and burning somewhat similar to what we find in the Hittite Laws. This obviously complicates the source analysis of verse 4 and its dependence on LH 57–58, presented previously. The nature of this complication has to remain open for further discussion.

CC’s laws in verses 4–5 are the reverse order of the laws in HtL 105–107. If CC’s hypothetical Akkadian source contained laws similar to the Hittite rules and in the same order, then we have another case of CC’s transposition of the order of its sources, in addition to those noted at the end of the prior section on animal theft. Putting the law on depasturation first would be partly due to the primacy of laws about animals, the topic of 21:37 + 22:2b–3, and the larger pericope. Putting this law first would also be due to the correlation of the topic with laws in LH, CC’s dominant source (i.e., LH 57–58). This rationale would be similar to the possible explanation for the placement of the law on negligence in 21:33–34 relative to those on an ox goring an ox verses 35–36. The negligence law may have been placed after the main ox law of verses 28–32 because it was inspired by a law in LH (i.e., LH 229–230). The law on an ox goring an ox (vv. 35–36) followed at the end of the pericope because it came from a source other than LH (cf. LE 53).

Deposit (22:6–8)

The deposit laws of Exodus 22:6–8 correspond thematically to LH 264–266 of the sequential template of Hammurabi’s laws:

Exodus 22:6–8

⁶If a man gives to his fellow silver or (other) items for safekeeping, and it is stolen from the house of the man, if the thief is found, he shall repay double. ⁷If the thief is not found, the house owner shall approach the God (to verify) whether or not he misappropriated the property of his fellow.

⁸In any case of a wrong, whether

LH 264–266

²⁶⁴If [a shepherd], to whom were given cattle or flock animals, has received his full wages and is satisfied, and he causes the cattle to decrease, causes the flock animals to decrease, or reduces the offspring, he shall pay offspring and yield in accord with his contract.

²⁶⁵If a shepherd to whom were given cattle or flock animals for shepherding acts deceitfully and alters the ownership

concerning an ox, ass, flock animal, garment, or anything lost, about which one might say “This is it/he”—the claim of both of them shall come to the God. He whom God convicts shall pay twofold to his fellow.

כי יתן איש אל רעהו כסף או כלים⁶
 לשמר וגנב מבית האיש אם ימצא הגנב
 ישלם שנים⁷ אם לא ימצא הגנב ונקרב
 בעל הבית אל האלהים אם לא שלה ידו
 במלאכת רעהו⁸ על כל דבר פשע על שור
 על חמור על שה על שלמה על כל אבדה
 אשר יאמר כי הוא זה עד האלהים יבא
 דבר שניהם אשר ירשיען אלהים ישלם
 שנים לרעהו

mark and sells (them), they shall convict him, and he shall restore cattle and flock animals to the owner tenfold what he stole.

²⁶⁶If in an animal pen a plague occurs or a lion makes a kill, the shepherd shall declare his innocence before the god. The owner of the pen shall accept from him the loss in the pen.

²⁶⁴*šumma [rē'um] ša liātum ū lū šēnum ana re'im innadnūšum idīšu gamrātīm maḥir libbašu ṭāb liātīm uššaḥḥir šēnam uššaḥḥir tālittam umtaṭṭi ana pī riksātīšu tālittam u biltam inaddin*

²⁶⁵*šumma rē'um ša liātum ū lū šēnum ana re'im innadnūšum usarrirma šimtam uttakkir u ana kaspim ittadin ukannūšūma adi 10-šu ša išriqu liātīm u šēnam ana bēlīšunu irītab*

²⁶⁶*šumma ina tarbašim lipit ilim ittabši ū lū nēšum iddūk rē'um maḥar ilim ubbamma miqitti tarbašim bēl tarbašim imaḥḥaršu*

The correspondences are most visible in verse 8. This mentions animals, as opposed to verses 6–7, which deal with other property. It begins “In any case of a wrong, whether concerning an ox, ass, flock animal” (על שור על חמור על שה). This relates topically to the “cattle or flock animals” (*liātum ū lū šēnum*) mentioned several times in LH 264–265 and the topic of LH 266. Also, verse 8, like LH 266, describes a judicial declaration or procedure before or in connection with the god, also found in verse 7.

Verses 6–7 relate to LH 264–265 through the technique of cross-referencing, already seen operative in the animal theft and depasturation laws. CC used the idiom “to give for shepherding” (*ana re'im nadānum*) in LH 264–265 as an avenue to the deposit laws of LH 120–126, which use the similar idioms “to give for safekeeping” (*ana maššarūtīm nadānum*; LH 122–125) and “to pile up/store in (grain)-storage” (*ana našpakūtīm šapākum*; LH 120, cf. 121). These are the conceptual equivalent of the idiom in the shepherding laws:

¹²⁰If a man stores his grain in grain-storage in a man's house and a diminution occurs in the grain-store or the house owner opens the storage place and takes grain or he wholly denies that grain was stored at his house, the grain owner shall affirm his grain before the god and the house owner who took the grain shall pay twofold to the grain owner.

¹²²If a man gives to a man silver, gold, or anything for safekeeping, whatever he gives he shall show to witnesses; he shall make a contract and shall (then) give for safekeeping.

¹²³If he gives for safekeeping without witnesses or contract, and with respect to the place where he gave (for safekeeping) they refute him, that case has no claim.

¹²⁴If a man gives to a man silver, gold, or anything before witnesses for safekeeping and (then) denies it, they shall convict that man. Whatever he denied he shall give twofold.

¹²⁵If a man gives his property over for safekeeping and there where he gave (for safekeeping) either through break-in or wall-scaling his property along with the property of the house owner was lost, the house owner who was negligent shall pay back whatever was given to him for safekeeping and allowed to be lost and restore it to the property owner. The house owner may seek out his lost property and take it from the thief who stole it from him.

¹²⁶If a man whose property was not lost says “My property is lost,” and makes a claim on his district administration, his district administration shall establish against him before the god that his property was not lost; whatever he claimed he shall pay double to his district administration.

¹²⁰*šumma awīlum še'ašu ana našpakūtīm ina bīt awīlim išpukma ina qarūtīm ibbūm ittabši ū lū bēl bītīm našpakam iptēma še'am ilqe ū lū še'am ša ina bītīšu iššapku ana gamrim ittakir bēl še'im maḥar ilim še'ašu ubārma bēl bītīm še'am ša ilqū uštašannāma ana bēl še'im inaddin*

¹²²*šumma awīlum ana awīlim kaspam ḥurāšam ū mimma šumšu ana maššarūtīm inaddin mimma mala inaddinu šībī ukallam riksātīm išakkanma ana maššarūtīm inaddin*

¹²³*šumma balum šībī u riksātīm ana maššarūtīm iddinma ašar iddinu ittakrūšu dīnum šū rugummām ul išu*

¹²⁴*šumma awīlum ana awīlim kaspam ḥurāšam ū mimma šumšu maḥar šībī ana maššarūtīm iddinma ittakiršu awīlam šuāti ukannūšūma mimma ša ikkuru uštašannāma inaddin*

¹²⁵*šumma awīlum mimmāšu ana maššarūtīm iddinma ašar iddinu ū lū ina pilšim ū lū ina nabalkattim mimmāšu itti mimmē bēl bītīm iḥtaliq bēl bītīm ša īgūma mimma ša ana maššarūtīm iddinušumma uḥalliḳu ušallamma ana bēl makkūrīm irīab bēl bītīm mimmāšu ḥalqam ištene''īma itti šarrāqānīšu ileqqe*

¹²⁶*šumma awīlum mimmāšu lā ḥal[īq]ma mimmē ḥaliq iqtabi bābtašu ūtebbir kīma mimmāšu lā ḥalqu bābtašu ina maḥar ilim ubāršūma mimma ša irgumu uštašannāma ana bābtīšu inaddin*

LH 264–265 and 120–126 have more in common that just the idiom of custodianship, noted previously. The shepherd is phenomenologically like the house

owner who guards another person's property. Both sets of laws also speak about the shepherd's or custodian's misappropriation of or malfeasance toward the property. Both sets require multifold payment (LH 265 and 120, 124). And both sets use the verb *nakārum* to describe a context of deceit (LH 265 D-stem "to alter"; LH 120 and 124 G-stem "to deny"). One can also add the declaration "before the god" (*maḥar ilim*), found in LH 266, which follows LH 264–265, and the declarations "before the god" required in LH 120 and 126. LH 266 presumes a type of animal bailment like LH 264–265. Such declarations are fitting in cases where there is a dispute about the theft of property of whatever type.

The similarities between CC's and Hammurabi's deposit laws are clear.⁴⁷ CC uses the idiom "give for safekeeping" (נתן לשמר) in verse 6a (also repeated in v. 9), a translation of "to give for safekeeping" (*ana maššarūtīm nadānum*). The objects of the verbs of "giving" for safekeeping in CC are "silver or (other) items" (כסף או כלים) in verse 6a (see later on the longer list in v. 8) and in LH 122 and 124, "silver, gold, or anything" (*kaspam ḥurāšam ū mimma šumšu*). Both lists refer to a specific precious metal and then use a general term to cover other miscellaneous items. Both sets of laws refer to a "house owner," using cognate terms (בעל הבית in v. 7; *bēl bītīm* in LH 120, 125). CC refers to a "thief" (גנב; vv. 6b, 7a), as does LH 125 (*šarrāqānum*). CC also uses the passive verb "was stolen" (גנב; v. 6a), which correlates with the intransitive verb "was lost, disappeared" (G of *ḥalāqum*; LH 125, 126, in the context, almost with a sense of "be stolen"). The main protasis of the law in verse 6a can even be seen as having telescoped the initial phrase from LH 122 or 124 with an element from the protasis of LH 125:

^{122/124}If a man gives to a man silver, gold, or anything for safekeeping and...¹²⁵... his property with the property of the householder is lost....

^{122/124}*šumma awīlum ana awīlim kaspam ḥurāšam u mimma šumšu ana maššarūtīm iddinma...*¹²⁵... *mimmūšu itti mimmē bēl bītīm iḥṭaliq...*

This is reduced and transformed to the following (v. 6a):

If a man gives to his fellow silver or objects for safekeeping and it is stolen from the house of the man...

כי יתן איש אל רעהו כסף או כלים לשמר וגנב מבית האיש...

Just as we saw in the cases of the animal theft, grazing, and field burning laws, CC has taken a more complex set of legislation and boiled it down into a compact simple law.

The chief reason for CC's bringing in the deposit laws from earlier in Hammurabi's collection is that they are general property laws. Theoretically, they would or could include giving an animal for shepherding, as verse 8 specifically brings into the context. In this way, CC turns a series of laws of rather limited scope in LH 253–271 (// 21:37 + 22:2b–3, 8, 9–14), dealing with animals, into laws dealing with property more broadly (22:1–2a, 6–7, 8). Part of

this expansion was the creation of the burglary law in verses 1–2a, formulated in connection with the deposit laws under study here, which CC then located at an earlier place in its animal series (to be explained presently). As a broad property law, especially with the general law in verse 8, verses 6–8 become a legislative focal point of this latter half of the casuistic laws, much like the talion law, also a general law, is the focal point of the homicide and assault laws.

LH 120–126 were not the only influence on CC’s deposit law. After the general protasis in verse 6a, CC introduces two alternate subcases: “(A) if the thief is found he shall repay double; (B) if the thief is not found, the house owner shall approach the God (to verify) whether or not he misappropriated the property of his fellow” (אם ימצא הגנב ישלם שנים אם לא ימצא הגנב ונקרב בעל הבית) אם ימצא הגנב ישלם שנים אם לא ימצא הגנב ונקרב בעל הבית) אלא האלהים אם לא שלח ידו במלאכת רעהו vv. 6b–7).⁴⁸ Alternating cases of this sort are not found within LH 120–126 but are found earlier in the robbery laws of LH 22–23:

²²If a man commits robbery and is seized, that man shall be put to death.

²³If the robber is not seized, the robbed man shall declare his lost property before the god, and the city and the governor in whose locale and district the robbery occurred shall replace for him his lost property.

²²*šumma awīlum ḥubtam iḥbutma ittaṣbat awīlum šū iddāk*

²³*šumma ḥabbātum lā ittaṣbat awīlum ḥabtum mimmāšu ḥalqam maḥar ilim ubārma ālum u rabiānum ša ina eršetišunu u paṭṭīšunu ḥubtum iḥhabtu mimmāšu ḥalqam iriabbūšum*

Both of these laws deal with robbery (*ḥabātum*), conceptually similar to general theft (גנב) in verses 6–8.⁴⁹ Too, like verse 7, LH 23 includes a declaration before the deity (*maḥar ilim*) as part of the resolution to the case where the thief is not found. And like verses 6b–7, the order of the cases is the same (apprehending the thief, not apprehending the thief).

The feature that gave CC license to use LH 22–23 for its deposit laws is found in the law that immediately precedes them, LH 21, which deals with burglary:

If a man digs into a house, they shall kill him in front of that breach and hang him up.

šumma awīlum bītam ipluṣ ina pani pilšim šuāti idukkūšūma iḥallalūšu

The deposit law of LH 125 (cited previously) includes as one of the circumstances theft “by breach/digging through” (*ina pilšim*). This condition appears in the clause that describes the loss of the deposited property: “either by digging through or wall-scaling his property along with the property of the house owner is lost” (*ū lū ina pilšim ū lū ina nabalkattim mimmāšu itti mimmê bēl bītim iḥtaliq*). This was the clause that the foregoing discussion said appears to have influenced CC’s wording “and it was stolen from the house of the man” in verse 6aβ. Thus we have reason to believe that CC had this very part of LH

125 in mind in its creation of its deposit laws. The phrase *ina pilšim* “by digging through” in this clause presumably led CC to *palāšum* “to dig through” of LH 21. As we discuss in detail later, CC used this very law to create its burglary law of verses 1–2a. It reflects Akkadian *palāšum* in its description of burglary as occurring במחתרת “by digging through.” The cross-reference from LH 125 to LH 21 allowed CC to bring in the immediately following laws of LH 22–23 to supply the motifs of a thief being found or not found in verses 6b–7. Later we see that CC’s burglary law fits *conceptually* between verses 6 and 7. This reinforces our perception that CC considered LH 21 in the context of the deposit laws.

Another mechanism for CC’s adducing motifs from LH 22–23 is that LH 125 presumes a case where the thief is not found. After replacing the depositor’s lost property, the custodian may continue to look for his own lost property, “and he shall take (it) from the one who stole it” (*itti šarrāqānišu ileqqe*). This naturally raises the question about the alternatives of finding or not finding the thief. Again, LH 22–23 provided a model for legislating about this question.

The correlation of the subconditions in verses 6 and 7 with LH 22–23 is another example of the correspondence of Hebrew נמצא “be found” and Akkadian *našbutum* “be seized.”⁵⁰ We saw this correspondence in the animal theft law (“if the stolen item is found in his hand” אם המצא תמצא בידו הגנבה, 22:3; “if that man steals . . . and it is seized in his hand” *šumma awilum šū . . . išriqma ina qātīšu ittašbat*, LH 253). The same correlation exists between CC’s burglary law and another Akkadian burglary law, LE 13 (“if the thief is found while digging through” אם במחתרת ימצא הגנב, 22:1; “a man who is seized in the house” *awilum ša ina bītim . . . iṣšabatu*). This is discussed later in this chapter. CC uses the term in the kidnapping law (“and [the victim] is found in his hand” 21:16, (ונמצא בידו, though Hammurabi’s kidnapping law (LH 14) does not use the phrase. As noted earlier and in chapter 7, the phrase in this law appears to have been inserted from the process that created the animal theft law (22:3 and LH 253; see chapter 7).⁵¹ The correlation of נמצא and *našbutum* is an interdialectical correlation, similar to that of הכה and *maḥāšum*, both “to strike,” found in the homicide and assault laws discussed in chapter 6.

The apodoses of the two cases in verses 6 and 7 are also determined by cuneiform law. When the thief is found (v. 6), “he shall pay twofold” (שׁלם שנייה; v. 6bβ). This is equivalent to the penalty in LH 124: *mimma ša ikkiru uštašannāma inaddin* “whatever he denied he shall give twofold” (literally: “he shall double and give”). A twofold penalty is found in other safekeeping laws. When grain is stored in a man’s house and there is a loss or the custodian takes some of the grain, the custodian must pay twofold (LH 120). A person who claims falsely that his property is lost and accuses his city government must pay twofold what he claimed was lost (LH 126).⁵²

When the thief is not found, according to verse 7, a different legal solution is required. The custodian makes a declaration before the deity: “if the thief is not found, the house owner shall approach the God (to verify) whether or not

he misappropriated the property of his fellow” (אם לא ימצא הגנב ונקרב בעל הבית). This is based on LH 23: “If the robber is not seized, the robbed man shall declare his lost property before the god” (*šumma ḥabbātum lā ittašbat awīlum ḥabtum mimmāšu maḥar ilim ubārma*). The persons making the declaration in verse 7 and LH 23 are conceptually equivalent. In verse 7, it is the custodian from whom the entrusted property has been stolen; in LH 23, it is the man who was robbed. If LH 23 dealt with a case of safekeeping, its “robbed man” would be the bailee. CC can be seen as adapting the rule of LH 23 to fit the context of deposit.

LH 23 goes on to provide a remedy where the local administration replaces the lost property. CC does not follow this. The implicit or default result of the oracular oath in verse 7, as the next section of this chapter argues, is the exoneration of the custodian. In such a case, verse 7 lets the loss remain the depositor’s. (On the apparent contradiction with v. 11, see chapter 10.) CC’s ruling thus contrasts also with LH 125, which has otherwise been influential in the formulation of CC’s law, as noted so far. According to LH 125, the custodian must repay the lost property to the owner, though the house owner may continue to look for his own stolen property. The implication of verse 7, that the property owner remains unrecompensed, may be partly influenced by LH 266 (cited previously), which is part of the general sequence of laws in LH to which CC’s deposit law corresponds. When an act of divine will kills an animal, “the shepherd shall declare his innocence before the god; the owner of the pen shall accept from him the loss of the pen.” This law is a primary influence on the next laws in CC (vv. 9–10). Note that the protasis of verse 9 repeats the phraseology of the deposit law of verse 6. This shows a mutuality between verses 6–8 and 9–10 and therefore that LH 266 may be in CC’s view in the creation of verse 7.

Other Akkadian legislation on deposits may have influenced the rule in verse 7. The laws of LE 36–37 are similar to LH 125 but make a distinction in liability:⁵³

³⁶If a man gives his property to an acquaintance for safekeeping, and the house was not broken into, the door-jamb scuffed, or the window disturbed, but he allows the property given to him for safekeeping to be lost, he shall restore his property.

³⁷If a man’s house has been looted, and the property of the house owner is lost along with the property of the depositor who gave (property) to him (i.e., the house owner), the house owner shall swear to him an oath at the gate of (the god) Tishpak:⁵⁴ “My property was indeed lost with your property. I have not committed maliciousness or dishonesty.” He says (thus) to him. He no longer (therefore) has any (claim) against him.

³⁶*šumma awīlum bušēšu ana napṭarim ana maššartim iddinma bītum lā pališ sippu lā ḥališ aptum lā našḥat bušē maššartim ša iddinūšum uḥtalliḳ bušēšu irābšum*

³⁷ *šumma bīt awīlim luqqut itti bušē awīl maššartim ša iddinūšum huluq bēl bītim ḥaliq bēl bītim ina bāb Tišpak nīš ilim izakkaršumma itti bušēka bušūya lū ḥalqū iwītam ū sartam lā ēpušu izakkaršumma mimma elīšu ul išu*

In the first of these laws, there is no sign of a break-in, and only the depositor's property is lost. Therefore, the custodian is suspect and must pay. In the second, there is a break-in, indicated by the verb *laqātum*, D, which means “plunder, strip (a house).”⁵⁵ The custodian's property has also been lost. Therefore, he is not suspect and makes satisfaction by swearing only an oath. CC's verse 7 is similar to the LE 37 in not requiring repayment after an exonerating oath. LH 125 differs from LE 37 by the mention of the bailee's negligence (with the verb *egūm*) and lack of a prescription of an oath. The law's formulation thus assumes the custodian's guilt. LE 37 and verse 7 do not.

CC may have brought in motifs from other theft laws in LH, particularly for the formulation of verse 8. The most detailed law on the topic in Hammurabi's collection is LH 9–13.⁵⁶ These form a unit, a concatenation of alternatives based on changing conditions. The first and longest paragraph sets up the case:

⁹If a man whose property has been lost seizes his lost property in the hand of a(nother) man, but the man in whose hand *the lost item* has been seized says “A seller sold it to me, I made the purchase before witnesses,” and the owner of *the lost item* says “I can bring witnesses who can identify my *lost item*”—if the buyer brings forth the seller who sold to him and witnesses in whose presence he made the purchase, and the owner of *the lost item* brings forth witnesses who can identify his *lost item*, the judges shall investigate their words. The witnesses in whose presence the purchase was made and the witnesses who can identify *the lost item* shall declare their knowledge before the deity. The seller is a thief. He shall be put to death. The owner of *the lost item* shall take his *lost item*. The buyer shall take the silver he weighed out (for the purchase) from the house of the seller.

⁹*šumma awīlum ša mimmušu ḥalqu mimmašu ḥalqam ina qāti awīlim iṣṣabat awīlum ša ḥulqum ina qātīšu ṣabtu nādinānummi iddinam maḥar šībīmi ašām iqtabi u bēl ḥulqim šībī mudē ḥulqiyami lublam iqtabi šāyimānum nādin iddinūšum u šībī ša ina maḥrīšunu išāmu itbalam u bēl ḥulqim šībī mudē ḥulqīšu itbalam dayānū awātīšunu immarūma šībū ša maḥrīšunu šīmum iššāmu u šībū mudē ḥulqim mudūssunu maḥar ilim iqabbūma nādinānum šarrāq iddāk bēl ḥulqim huluqšu ileqqe šāyimānum ina bīt nādinānim kasap išqulu ileqqe*

This law, as opposed to several of the theft laws cited previously, portrays two people who are in dispute about ownership of an item, and it is not immediately apparent where the guilt may lie, the type of situation imagined by verse 8. The disputants have equally valid claims, and both bring evidence to support

their claims. In addition, both texts refer to the *words* of these disputants: verse 8 speaks of “word of the two of them” and gives a brief citation of what they might say: כִּי הוּא הֵן, which might be construed as “This is it,” referring to the lost property or the facts of the case, or possibly “This is he,” referring to the guilty party.⁵⁷ This can be seen as abbreviating the citation of the claims of the two parties in LH 9. Both laws also have declarations before the deity, though in LH the witnesses do this after the initial claims of the disputants, whereas in CC the disputants appear to make their initial claims before the deity; to be sure, however, the brief formulation of verse 8 could be understood more in line with LH 9. If CC were dependent on this law, it is easy to imagine that CC generalized the content so that it would apply to various situations, not just a matter of disputed and stolen property.

Other correlations are visible. Both LH 9–13 and verse 8 use a term meaning “lost item.” In CC, this is אבדָה. Although this is relatable to the term *mimmû ḥalqum* “lost property” in LH 23 and 125, which are influential on verses 6–7 otherwise,⁵⁸ a closer parallel is in the simple noun *ḥulqum*, which appears fourteen times in the first three paragraphs (LH 9–11) of LH 9–13.⁵⁹ LH 10–11, cited here, continue from LH 9. The translation of term *ḥulqum* as “lost item” has been placed in italics in the prior citation of LH 9 and the citation of LH 10–11 here:

¹⁰If the buyer cannot bring forth the seller who sold to him and witnesses in whose presence he made the purchase, but the owner of *the lost item* can bring forth witnesses who can identify his *lost item*, the buyer is a thief. He shall be put to death. The owner of *the lost item* shall take his *lost item*.

¹¹If the owner of *the lost item* cannot bring forth witnesses who can identify his *lost item*, he is a liar. He has caused hostility. He shall be put to death.

¹⁰*šumma šāyimānum nādinān iddinūšum u šībī ša ina maḥrīšunu išāmu lā itbalam bēl ḥulqimma šībī mudē ḥulqīšu itbalam šāyimānum šarrāq iddāk bēl ḥulqim ḥuluqšu ileqqe*

¹¹*šumma bēl ḥulqim šībī mudē ḥulqīšu lā itbalam sār tuššamma iddi iddāk*

The influence of LH 9–13 is perhaps otherwise seen in the fivefold payment penalty in the case of animal theft in 21:37 (noted earlier in this chapter). LH 12, the next law in the series, says that if the seller has died, the buyer takes *fivefold* from the estate of the seller.

That CC may have been aware of LH 9–13 is suggested by its awareness of the next law, LH 14, on kidnapping, which influenced 21:16 (see chapter 7). Recall, too, that LH 21–23, laws not too much further on in the text, influenced the burglary and deposit laws (22:1–2a and 6–7). A further indication of CC’s knowledge of LH 9–13 is the possible influence of LH 7–8, which immediately precede. CC’s list, in which, as discussed before, the word “lost item” appears

(“In any case of a wrong, whether concerning an ox, ass, flock animal, garment, or anything lost” (על שור על חמור על שיה ועל שלמה על כל אבדה), is similar to the lists in LH 7–8:

⁷If a man buys either silver, gold, a male slave, a female slave, an ox, a sheep, an ass, or anything from the hand of a member of the *awilum* class (lit.: son of an *awilum*) or a slave of an *awilum* without witnesses and contract, or receives such for safekeeping, that man is a thief; he shall be put to death.

⁸If a man steals an ox, sheep, ass, pig, or a boat, whether it belongs to the god or whether it belongs to the palace, he shall give (pay) thirtyfold. If it belongs to a commoner, he shall restore tenfold. If the thief does not have anything to give (pay), he shall be put to death.

⁷*šumma awilum lū kaspam lū hurāšam lū wardam lū amtam lū alpam lū immeram lū imēram ū lū mimma šumšu ina qāt mār awilim ū lū warad awilim balum šībī u riksātīm ištām ū lū ana maššarūtīm imḥur awilum šū šarrāq iddāk*

⁸*šumma awilum lū alpam lū immeram lū imēram lū šaḥām ū lū elip-pam išriq šumma ša ilim šumma ša ekallim adi 30-šu inaddin šumma ša muškēnim adi 10-šu irīb šumma šarrāqānum ša nadānim lā išu iddāk*

Note in particular the group *ox, sheep and ass* in LH 7 and the *ox, ass, flock animal* in verse 8. The prior discussion of the animal theft law already observed that LH 8 may be a possible influence on the motif of not being able to pay a similar graded multiple fine (21:37; 22:2b). LH 7 also refers to deposit (*maššarūtum*), the topic of the influential deposit laws of LH 120–126. If CC built on the lists in LH 7–8, it expanded them to include a garment (שלמה). One is tempted to explain the presence of the garment as a reflex of the garment pledge law in the final apodictic laws (23:25–26).

The list in verse 8 reminds one of the talion list in 21:23b–25. This is not a coincidence, since both are part of general laws.⁶⁰ Even though the style of the two laws is not the same, they both exit regular casuistic form to set down general principles that relate broadly to the laws in their vicinity. Their lists are one of the means of formulating laws of broad application. The talion law fills in blanks left in the homicide and injury laws that precede. It says that inadvertent homicide requires indemnification of the victim’s family and prescribes a disability payment for permanent injury that complements the disability payment prescribed in 21:19 (payment for lost wages). Verse 8 in chapter 22 extends the principle of dispute resolution before the deity to all cases of personal property dispute. As noted earlier, inserting general rules in each of the major sections of CC is a way of summarizing the essence of legal principles from LH and other cuneiform sources without having to write a collection of comparable length and detail. What makes the foregoing analysis particularly credible is that CC’s two general rules appear to summarize major

fundamental and prominent blocks of legislation in Hammurabi's collection: 21:23b–25 summarizes the talion-injury laws of LH 196–201, and 22:8 summarizes the theft laws of LH 9–13. These are the very passages to which one expects CC to have paid attention.

As a general rule, verse 8 provides a transition between verses 6–7, which deal with theft of objects (the same subject presumably of vv. 1–2a), and verses 9–14, which deal with animals. The initial wording “in every case of wrong” and the following list, which includes animals, a garment, and the summarizing “or anything lost,” look backward and forward in content. This style, divergent from casuistic law,⁶¹ as well as the content, can be understood as resulting from writing a general law that also functioned to return to the sequential template of LH 265–266, which deal with the theft or loss of animals. From this point through verse 14, CC adheres to the topic of animals, as found in LH 265–271.⁶²

The Judicial Procedures and Declarations in 22:7, 8, and 10

Until now, I have not explained what CC intends in the procedures in connection with “the God” in verses 7, 8, and further on in verse 10, which is similar to verse 7. To remind ourselves, verse 7 says that in a case where deposited property has been stolen and the thief is not found, “the house owner shall approach the God (to verify) whether or not he misappropriated the property of his fellow” (ונקרר בעל הבית אל האלהים אם לא שלח ידו במלאכת רעהו).⁶³ Verse 8 gives a general rule saying that in a case of dispute about personal property, “the claim of both of them [the disputants] shall come to the God. He whom God convicts shall pay twofold to his fellow” (עד האלהים יבא דבר שניהם אשר) (ירשיען אלהים ישלם שנים לרעהו). Verses 9–10, which we examine in more detail in chapter 10, say that when an animal in the custody of another dies, is injured, or is taken away by a predator, “an oath by Yahweh shall be between the two of them [the owner and custodian] (to verify) whether or not he misappropriated the property of his fellow; its [the animal's] owner shall accept; he [the custodian] does not have to pay” (שבעת יהיה תהיה בין שניהם אם לא שלח ידו במלאכת רעהו) (ולקח בעליו ולא ישלם v. 10).

The interpretation of these procedures must start with a realization that they are reflexes of declarations performed (*ina*) *maḥar ilim* “before the god” in LH.⁶⁴ We noted earlier in the chapter that verse 7 had correlations with various laws that contained declarations before the god: LH 23 (a declaration of lost property; with the governing verb *D-bârum* III “affirm, specify”),⁶⁵ 120 (of lost grain; *D-bârum*), 126 (of evidence against a false claimant; *D-bârum*, with sense of “convict”), and 266 (of innocence; *D-ebēbum* “to affirm innocence, clear oneself”).⁶⁶ Verse 7 may also have contacts with a law like LE 37 (cited earlier), where an oath is made (*nīš ilim zakārum*) at the gate of Tishpak's shrine (a declaration of innocence). We further saw that verse 8 had a possible

correlation to laws with declarations before the god: LH 9 (of witness testimony; *qabûm* “speak”) and 126 (just described). As discussed in the next chapter, verses 9–10 replicate LH 266 in some detail. This law prescribes that when a plague (*lipit ilim*) or lion kills an animal in a shepherd’s custody, “the shepherd shall declare his innocence before the god (*maḥar ilim ubbamma*); the owner of the pen shall accept for him the loss in the pen.”

Hammurabi’s collection contains other examples of declarations “before the God”: LH 106 (of proof against a trading agent; governing verb *D-kānum* “convict”), 240 (of property on a sunken boat; *D-bārum*), and 281 (of the price paid for a slave; *qabûm*). These are complemented by the requirement in other laws of declaring an oath (*nīš ilim zakārum*), the same idiom used in LE 37. The laws with this idiom include LH 20 (an oath of innocence in not retaining possession of an escaped slave), 103 (in abandoning goods on a trading mission), 131 (of a wife in suspected adultery), and 249 (in the death of a rented animal). The two descriptions intersect in the similar laws of LH 249 and 266: when an act of god kills an animal belonging to another, the custodian/shepherd either swears an oath of innocence (LH 249) or declares his innocence before the god (LH 266). LE 37 brings the two phenomena together: to attest to his innocence, a custodian of property swears an oath (*nīš ilim zakārum*) “at the gate/house of (the sanctuary of) Tishpak,” that is, in terms of geography, before the god. Two other laws in LH use the verb *tamûm* “to swear” in oaths of inadvertence: LH 206–207 (injury and homicide; influential on 21:12–14 and 18–19; see chapter 6) and LH 227 (shaving off a slave’s hair-lock).

In summary, Hammurabi’s laws portray two main types of verbal utterances in judicial contexts, defined or definable in connection with an *ilum* “god.” The first is a *declaration or oath of innocence or inadvertence*, with three subtypes: (a) those affirmed verbally “before the god” (*maḥar ilim*), (b) those spoken as “(an oath by) the life of the god” (*nīš ilim*), and (c) those simply sworn (*tamûm*). The latter two presumably occur “before the god,” or at least can be understood as occurring there. The other main type of utterance is a *presentation of facts or evidence* “before the god” (*maḥar ilim*). The facts may be a description of property lost, the amount paid for property, or proof of property ownership.

In view of these data, the use of the term האלהים (ה) in the description of the declarations in 22:7 and 8 must be understood as an imitation of the generic term for deity, *ilum*.⁶⁷ CC reflects this same terminology in other laws. According to Exodus 21:6, when a male debt-slave, who has been given a wife by his creditor-master, has children by her and wants to stay with them, “his master shall bring him to *the God* (האלהים); he shall bring him to the door or doorpost and his master shall pierce his ear with an awl so that he may be a slave for him permanently.” Exodus 21:13 uses this term to describe an act of inadvertent homicide: “and he who did not plan, but the God (האלהים) caused (the victim) to meet his hand. . . .” LH speaks of the accidental death of animals in similar terms and uses the general term *ilum* to describe the agency: “if a man rents an ox and a god (*ilum*) strikes it and kills (it) . . .” (LH 249); “if in an animal pen a

divine stroke (*lipit ilim*) occurs or a lion makes a kill . . .” (LH 266). Chapter 10 shows that both of these laws were influential on the animal laws in 22:9–14.

Who is intended by the term אלהים (ה) in 21:6, 13 and 22:7 and 8, and to *what place* does it refer? The latter question was addressed in part in chapter 5, on the debt-slave. It refers to a sanctuary.⁶⁸ From within the casuistic laws of CC, proof comes from the homicide law. One flees to the place of an altar, that is, a sanctuary, for adjudication (21:13–14; see chapter 6). This law is part of the basic composition of CC and reacts to LH 207, which requires an exculpatory oath, presumably at a shrine or temple. The procedure determining whether a person is an inadvertent killer in CC would probably have to include, at least, an oath by the killer. This would be similar to verses 7, 10 and possibly 8, which, as we will see, involve exculpatory oaths. It makes sense to see all exculpatory oaths, for homicide or theft, as occurring at the sanctuary.

Another consideration supports this conclusion. CC’s various laws involving procedures in connection with the deity employ verbs of movement.⁶⁹ In the debt-slave law, the owner “brings” (הגיש) the slave who wishes to become permanently enslaved to the deity and the door or doorpost there (21:6); in the homicide law, one “flees” (גוס) to the place where the altar is (21:13–14); in the deposit laws, one “approaches” (נקרב), and the word of two disputants “comes” (בוא) to the deity (22:7, 8).⁷⁰ None of the *maḥar ilim*, *nīš ilim*, and *tamûm* laws in Hammurabi’s casuistic laws mentions movement toward the deity. A prescription for going to the temple, however, is found in the wronged-man passage of the exhortatory block of the epilogue, which was otherwise fundamentally influential on the apodictic laws (see chapters 3 and 11–12). The passage urges a man who has been wronged to come before Hammurabi’s statue and stela at the Esagil temple:

Let a wronged man (*awīlum ḥablum*) who has a case (“word”; *awātam*) come (*lillik*) before the statue of me (*ana maḥar ṣalmīya*), the king of justice. Let him have my inscribed stela recited to him. Let him hear my precious words. Let my stela reveal to him the case (“word”; *awātam*). Let him recognize his case (*dīnšu*). Let him calm his heart.

This has an idiom almost identical with “before the god” (*ina maḥar ilim*) in the various casuistic laws of LH. In the wronged-man passage the individual comes “before my (Hammurabi’s) statue” *ana maḥar ṣalmīya*. I submit that, as it conceptually replaced Hammurabi with Yahweh and took up motifs from the exhortatory block, CC associated the wronged-man passage with the casuistic laws featuring declarations or oaths (*ina maḥar ilim*). According to this transformative reading of the passage, a man with a legal case was exhorted to go before Yahweh’s cult symbol, the altar, at Yahweh’s cult place for judicial review. This influenced CC to include motifs of traveling—bringing, fleeing, approaching, and coming—to “the God” or sanctuary “place.” Connecting this passage with the (*ina maḥar ilim*) laws may not have been a great stretch for CC. A little later in the passage, the wronged man is urged to “pray (in

praise) for me (Hammurabi) with his whole heart *before* Marduk, my Lord, and Zarpanitu, my Mistress (*ina maḥar Marduk bēlīya Zarpānītum bēlīya*.)” The wronged-man appears not just before royal symbols but also *before the gods* in connection with his judicial review.⁷¹

The wronged-man passage apparently influenced the general rule of verse 8 in other respects. Both are all-purpose judicial recommendations. Both describe a judicial “case” with a noun meaning “word”: verse 8 speaks of דבר פשע “case (lit., “word”) of wrong” and דבר שניהם “the case (lit., “word”) of the two of them”; the wronged-man passage uses *awātum* “case” of what motivates a person to go to the stela and what is clarified. Both texts also speak of the “word” as something that is *possessed*: the case of verse 8 belongs to the two men (דבר שניהם “the case/word of the two of them”); the wronged man is one “*who has a case*” (*ša awātam irāššū*). The two laws speak of legal determination or clarification: in verse 8, “the God convicts” the guilty party; in the wronged-man passage, the law is read to him and his case is “revealed.” One can also see a correlation in the terms פשע “wrong, crime”⁷² in the phrase דבר פשע “case of wrong” and the adjective “wronged” *ḥablum* used to describe the man who comes to the stela. The Akkadian verb *ḥabālum* means “to do wrong, do violence to.”⁷³

The evidence about the locale of (ה)אלהים has already indicated to whom this term refers, namely, CC’s national deity, Yahweh. Hence the term may be translated “(the) God.” This identification is explicit in verse 10, which speaks of an “oath by Yahweh.” Although the use of a deity’s proper name is unusual in these contexts in Akkadian law and the generic *ilum* is preferred, LE 37 shows that a deity’s name (Tishpak in that case) may be substituted. Therefore, we need not assume that the mention of Yahweh in verse 10 is secondary. The appearance of Yahweh in verse 10 and the understanding of (ה)אלהים as Yahweh are also consistent with the theological picture in the apodictic laws. There, Yahweh is to be the only object of the Israelites’ religious attention (cf. 20:23; 22:19, 27; 23:13, 17, 19). Because the apodictic laws are part of CC’s basic composition, their theological perspective is determinative for the meaning of (ה)אלהים.

The evidence for the place intended by the term (ה)אלהים and its identity means that we have to surrender the translations “(the) gods” (in a general sense),⁷⁴ “household deities,”⁷⁵ or the traditional rendering “judges.”⁷⁶ The last two options are further disqualified when it is realized that the meaning of (ה)אלהים in judicial procedures (21:6; 22:7, 8) must be the same as the האלהים as an agent of accidental homicide in 21:13. Moreover, the singularity of the verb with האלהים in this verse indicates that the term for deity is singular: והאלהים “and the God caused (the victim) to meet his hand.” This verse is part of the original formulation of CC, as argued in chapter 6 and therefore does not represent a later theological perspective. This means further that the instance of (ה)אלהים as the subject of a plural verb in 22:8 אשר ירשיעו אלהים ישלם שנים) cannot be translated “he whom *gods* convict shall repay twofold to his

fellow.”⁷⁷ This must conceptually be a singular, similar to cases elsewhere in the Bible where אלהים(ה) is modified by verbs and adjectives in the plural but is clearly to be understood as a singularity.⁷⁸ The wording of 23:7 confirms this. This echoes the notion of 22:8, now with Yahweh as the speaker: “I will not exonerate the guilty” (לא אצדיק רשע).⁷⁹ This phrase and its verse are original to the text because it is part of the chiasmic core structure around which the final apodictic laws are built and which structure is dependent on the exhortatory block of the epilogue.⁸⁰ Just as the deity in 23:7 is singular, so “the God” in 22:8 must be singular. The plural verb in 22:8 may be an emphatic formulation by virtue of this being a general rule. As such, its “deviant” verb form may be compared with the deviant verb form in the talion rule of 21:23b, “you shall give” (ונתתה). The unexpected forms draw attention to their contexts as climaxes or foci of legal formulation.⁸¹

That CC’s use of the term אלהים(ה) in its casuistic laws is a conscious reflection of Hammurabi’s generic *ilum* is reinforced by how CC, in contrast, represents deity in its apodictic laws. In these outer sections of the composition, Yahweh is a dynamic being with clear character traits. This correlates with the prologue and epilogue of LH, where the deities are named and their actions, interests, and personalities are described. CC has carefully imitated the portrayal of deity in the different genre sections of its source. Therefore, the undeveloped character of the deity in the casuistic laws of CC is not evidence of a different theological perspective or an earlier stage of theological thought.

The preceding discussion provides a foundation for determining more specifically what procedures CC has in mind in 22:7, 8, and 10.⁸² Part of problem is ascertaining the relationship of the phrase אם לא שלה ידו במלאכת רעהו (literally, “if he did not misappropriate the property of his fellow”) in verses 7 and 10 to the clauses that immediately precede it. The conjunction אם appears to mark a dependent question, as in Job 1:11: “Yet put out your hand and touch all that belongs to him (to see) whether or not he will directly curse you” (ואולם שלה נא). (ידך וגע בכל אשר לו אם לא על פניך יברכך).⁸³ In view of this, CC’s phrase should be translated: “he shall approach the deity (to see or determine) whether or not he misappropriated the property of his fellow” (v. 7) and “there shall be an oath by Yahweh between the two of them (to see or determine) whether or not he misappropriated the property of his fellow” (v. 10). This points to a divinatory or oracular procedure, such as using lots, as in determining whether Achan stole devoted property (Josh 7:13–21) or Jonathan tasted honey when Saul adjured troops not to eat food (1 Sam 14:37–46), or in “electing” Saul as king (1 Sam 10:20–24).⁸⁴ Exodus 22:8 indicates an oracular process when it says that when two disputants bring their case, “he whom God *convicts* shall pay.” A similar procedure is found in the story where Saul is told to make an oracular consultation before fighting the Philistines. A priest says to him: “Let us here approach the God” (נקרבה הלם אל האלהים); 1 Sam 14:36). The idiom of approach and deity here matches that of Exodus 22:7. Saul then (v. 37) asks the deity (שאל באלהים) two complementary yes-no questions: “Shall I go down after the Philistines?

Will you give them into the hand of Israel?" Such questions could easily be answered by a lotlike oracle, as in the next verses that describe the process for discovering Jonathan's crime.⁸⁵

Exodus 22:10, however, requires us to fine-tune this understanding. Immediately after it says "there shall be an oath by Yahweh between the two of them (to see or determine) whether or not he misappropriated the property of his fellow," it says "its (the animal's) owner shall accept; he (the custodian/shepherd) shall not pay." This does not allow for an open-ended oracular process in which the individual might be declared guilty but assumes that the oath leads to absolution. In other words, the oath is exculpatory.⁸⁶ This follows the context of LH 266 upon which the verse relies. In that law, as noted before, the shepherd "clears himself before the deity" (*maḥar ilim ubbamma*). Bringing the two streams of evidence together, we may understand verse 10 to refer to an exculpatory oath that is then tested or verified oracularly. The law assumes, as a default perspective, that the result will be confirmation of the oath; it therefore prescribes a result based on that assumption. Because the situation in verse 7 is comparable to that in verse 10 and because both laws use the same clause of indirect question, we may conclude that verse 7 intends the same process. That may be why verse 7 contains no result beyond the clause describing the approach to the deity. It, like verse 10, presumes that a declaration of innocence will be confirmed by oracle. Verse 8 may allow a more open-ended case in which the claims on either side are of equal weight, much like the two disputants in LH 9 (see earlier). In such a case, the claims of both are tested oracularly.⁸⁷

Where did CC get its rule about an oracular test, especially since Hammurabi's casuistic laws about legal declarations described with *maḥar ilim*, *nīš ilim*, and *tamūm* do not point clearly to such a test? It could partly come from an interpretation of presentation of evidence before the deity, such as LH 9 (cited previously). One reading this could infer that this presentation is for the purpose of oracular verification. It is also possible that ordeal passages in LH have influenced the interpretation. LH 2 and 132 say that accusations of witchcraft and adultery are to be proved by having the accused jump into the River, identified as a divine being. If the River overcomes the accuser, the accuser is guilty.⁸⁸ It is not impossible that CC considered LH 2 in its composition, inasmuch as it also has a law on sorcery (22:17) that uses the same Semitic root (*kšp*; see chapter 7). The laws on false accusation and perfidious judgment in LH 1–5 also seem to partly inform the chiasmic core of the final apodictic laws on proper judgment (23:1–8). But admittedly, the river ordeal is phenomenologically quite distinct from the declarations and oaths otherwise in LH and CC.

Another source for the oracular test may be CC's own native custom or idiom of approaching the deity for an oracle. This may have been blended with motifs from LH because the basic phenomenology was consistent with the declaration and oath passages of the casuistic laws of LH and approaching the symbol of the source of law described in the exhortatory block. To go to the deity for judgment, in CC's perspective, was to seek an oracle. It used traditional language

to articulate this. Recall that Saul's inquiry to determine battle strategy, noted previously, uses language similar to 22:7: "... 'Let us draw near here to the God'; So Saul inquired of the deity..." (ונקרבנה ה'אלם אל האלהים וישאל שאול באלהים) (1 Sam 14:37–38).⁸⁹ Although this text is technically later than CC, I would not argue that its idiom derives from CC. The context is different, involving a king's taking counsel from a priest on military matters. Moreover, "inquiring of the God/Yahweh" (שאל באלהים/ביהוה), the central phenomenon described, appears often in the context of inquiries about military or royal matters.⁹⁰ It shows no signs of being generated from CC.⁹¹

In summary, the procedures briefly described in Exodus 22:7, 8, and 10 are actually quite complex. This can be considered due to CC's combining motifs from LH and native tradition. Verses 7 and 10 were based on procedures performed *maḥar ilim* "before the god." To this, CC adds the exculpatory oath, a reflex of *nīš ilim zakārum*. It requires that this be tested oracularly, a procedure apparently drawn from native tradition. Verse 8, in a somewhat different manner, built on the idea of presenting competing claims before the god, as in LH 9. But as in the case of verses 7 and 10, CC folded in the native oracular test. The procedures in these various verses are understood as taking place at the sanctuary, and the general term for deity refers to Yahweh.

Burglary (22:1–2a)

The intrusive law about burglary in 22:1–2a has similarities to the burglary law of LH 21 (as noted in brief, previously), as well as the burglary law of LE 13:⁹²

Exodus 22:1–2a

¹If the thief is found in the act of digging in, and he is struck and dies, there is no bloodguilt for him.

^{2a}If the sun has risen over him, there is bloodguilt for him.

אם במחתרת ימצא הגנב והכה ומת אין לו
דמים
אם זרחה השמש עליו דמים לו²

LH 21 and LE 13

LH²¹If a man digs into a house, they shall kill him in front of that breach and hang him up.

LE¹³A man who is seized in the house of a commoner, inside the house at midday shall weigh out ten shekels of silver. He who is seized at night inside the house shall die, he shall not live.

LH²¹*šumma awīlum bītam ipluṣ
ina pani pilšim šuāti idukkūšūma
iḥallalūšu*

LE¹³*awīlum ša ina bītīm ša
muškēnim ina bītīm ina mušlālim
iṣṣabbatu 10 šiqil kaspam iṣṣaqal ša
ina mūšim ina bītīm iṣṣabbatu imât
ul iballuṭ*

CC's law corresponds with LH 21 in describing the burglary as an act of digging through or boring; its noun *מהרת* "digging in" corresponds with the Akkadian verb *palāšum* "to dig" and noun *pilšum* "digging through, tunneling."⁹³ In contrast to LH 21, LE 13 does not mention tunneling. This may be implied in the situation. The law, however, only says that the person is "inside the house" of the commoner. He may have entered by other means.⁹⁴ Both CC and LH 21 also present the killing of the burglar as the primary case, as opposed to LE 13, where the killing appears in the second law in the series. CC, however, corresponds with LE 13 in incorporating the variable of day versus night,⁹⁵ devoting separate laws or clauses to these cases (though in reverse order), and allowing the thief to be killed at night. Even though verse 1 does not mention the night, it is entailed implicitly and retrospectively from the context of the second case, which mentions the risen sun.⁹⁶ CC and LE 13 also use terms for finding/seizing the individual (*נמצא*/*našbutum*). This correspondence, found in other laws of CC and its Akkadian sources, was discussed earlier in this chapter. Recall that the laws immediately following LH 21 speak of a robber being seized or not seized. Hence the motif is in the environment of Hammurabi's law on burglary.

Given CC's use of LH generally, the unique correspondences with LH 21 over against LE 13, and that LH 22–23 were used by CC for verses 6–7 (see earlier and later), one has to imagine that LH 21 has been influential on the CC law. But the correspondences with LE 13 indicate that a law similar to it was also influential. As noted before in this chapter and elsewhere in this study, some laws in CC have similarities to laws in LE (especially 21:35 // LE 53 and to some extent 22:6–7 // LE 37). As chapter 4 has indicated, however, we cannot say that CC knew LE, but only that CC had a source with some laws similar to LE.⁹⁷

The primary contrasts in CC's law are its mention of "blood," referring to bloodguilt or blood vengeance, and putting the death of the burglar in the protasis.⁹⁸ LH 21 and LE 13 place his death—an on-the-spot execution—in the apodosis. In CC, the death is a condition that leads to a judgment about whether there is bloodguilt or vengeance. Therefore, CC's law is less about burglary and more about homicide. It thus augments the theme of the laws in 21:12–32. The burglary law raises criteria to be considered in the judgment of intentionality: the time of day and the nature of the activity in which the victim was involved. These supplement the list of other criteria already presented earlier: the killer's frame of mind (21:12–14, 22–23), the instrument used (fist or stone; vv. 18–19), immediacy of death (for a slave; vv. 20–21), and indirectness of the assault (vv. 28–32).

The burglary law also augments the rules about vengeance and indemnification. Chapter 6 summarized the penalties accompanying intentional and unintentional homicide. It observed that according to the talion law in 21:23–25, *unintentional* homicide and injury require indemnification. The burglary law may present a case where such indemnification is not required. If a burglar

breaks in at night, he is assumed to be intent on harming the unsuspecting residents of the house and stealing their property. The householder's defense of his life and property presumably releases him from paying indemnification. Another way of explaining this is that in terms of the ledger sheet of cross obligations, the requirement in LE 13 that the daytime burglar pay ten shekels of silver shows that he has an economic obligation toward his burglary victim. This obligation could in principle cancel anything that a householder may owe in return for homicide without premeditation.

But CC treads on new ground in its rules about the daytime killing of the burglar. For LE 13, the burglar has liability even in the daytime. CC, however, shifts the burden to the house owner when it says that, if the sun has risen, "there is bloodguilt for him." This appears to mean that he the killer is *capitally* liable. This contradicts CC's basic homicide law because the daytime killing does not seem to be intentional but a defensive act. CC may assume that the intentions of the burglar and a judgment about the situation are more clearly discernible in the daytime and that one can defend against burglary without having to kill the burglar. A burglar who uses the shield of night to pursue the crime may have designs beyond thievery, whereas the daylight criminal seeks only property. The conditions of night and day may also indicate different locations of the burglar and differences in the extent of his tunneling. At night, the house owner is inside, and the burglar may have already penetrated the house. At day, especially if we take the description of "the sun has risen on him (i.e., the burglar)" literally, he may still be outside and not yet pose a serious risk. This may account for CC's not following a law with wording like LE 13 that says the burglar is caught midday (*muṣṣalum*, "siesta time") and specifying the locale of apprehension as inside the house.⁹⁹

Perhaps the greatest difficulty with the burglary law is its position. As noted at the beginning of this chapter, it interrupts the animal theft law of 21:37 + 22:2b–3.¹⁰⁰ Its intrusive character is even more evident, now that we have identified it as a law about homicide and not about theft. All things considered, however, the burglary law goes best contextually with the deposit law of verses 6–7. One might even put it between verses 6 and 7:¹⁰¹

⁶If a man gives to his fellow silver or (other) items for safekeeping, and it is stolen from the man's *house* (בית),

if *the thief* (הגנב) is *found* (מֵצָא), he shall repay double.

¹If *the thief* (הגנב) is *found* (מֵצָא) in the act of digging (into the *house*) and is struck and dies, there is no bloodguilt for him.

^{2a}If the sun has risen on him, there is bloodguilt for him.

⁷If the thief (הגנב) is not *found* (לֹא מֵצָא), the owner of the *house* (בית) shall approach the God (to verify) whether or not he misappropriated the property of his fellow.

This provides a better context for tunneling—a house (v. 6) rather than what seems to be a cattle pen in 21:37.¹⁰² House burglary accords with LH 21 and

LE 13. If verses 1–2a follow verse 6, they have no need to explicitly mention a house. Moreover, verse 6 mentions that “the thief is found” (יִמָּצֵא הַגֵּנֵב). The same phrase appears in verse 1 and thus relates to the context of verse 6. Furthermore, the mention of “*the* thief” connects smoothly to the context of verse 6, which also mentions “*the* thief.” Verse 7, which has the alternative case to verse 6b, continues the terminology of “finding” (though negatively formulated) and refers to “*the* thief.”¹⁰³

That the burglary law has an association with the deposit laws of verses 6–7 is confirmed by CC’s sources for the deposit law, as described earlier in this chapter. By the technique of cross-referencing, CC was able to incorporate laws on theft from various parts of LH. Sequentially, CC’s deposit laws correlate with LH 264–265. But the idiom of “giving for shepherding” in these Akkadian laws took CC to the deposit laws of LH 120–126 and their idiom of “giving for safekeeping.” Next, the mention of burglary by tunneling in LH 125 took CC to the burglary law of LH 21 and, with these, the contiguous robbery laws of LH 22–23, which mention the alternative of a robber being or not being seized. It is completely reasonable that the burglary law of verses 1–2a would have been conceived of in this process of cross-referencing back to the laws of LH 21–23. Thus the thesis that verses 1–2a fit into the context of verses 6–7, determined previously solely on thematic and terminological considerations in the Hebrew text, is verified by source analysis.¹⁰⁴

I readily admit that although verses 1–2a go best between verses 6 and 7, they do disturb the context of alternating laws in verses 6b and 7.¹⁰⁵ In fact, verses 6b and 7 as a unit are a rather paradigmatically pure example of Near Eastern legal form. This is not enough, however, to say that the burglary law could not have had its home there in the original context of CC. The rest of CC shows that, though it generally imitates Near Eastern legal forms, it deviates from those forms (especially 21:2, 12–14, 15–17, 23–25; 22:17–19). Therefore, it is quite possible that verses 1–2a originally interrupted verses 6b–7. An alternative is to imagine that CC formulated the burglary law along with verses 6–7 in the conceptualizing and drafting process, but put it in its present position in the final composition.

Why did CC or a later editor place the burglary law in the middle of the animal theft law?¹⁰⁶ A primary reason may have been the architecture of the Israelite four-room or pillared house.¹⁰⁷ The upper floor was used for living and sleeping, and the bottom floor was used for food preparation, storage, and keeping one or two animals, mainly sheep or goats. Thus animal theft could take place in a house. In my view, this placement and consideration would be secondary because 21:37 + 2b–3 do not talk about a house as the venue of animal theft, and verses 1–2a otherwise do not fit well into the context of the animal theft law. Another reason for this placement of the burglary law may have been to locate it as close to the homicide laws as possible while keeping it in the context of the theft laws.¹⁰⁸

Conclusion

The group of laws on animal theft, burglary, crop destruction, and deposit in 21:37–22:8 appear on the surface to be a miscellany. Scholarship has generally pared back the text to a smaller group of original laws that has been successively expanded. The laws primarily identified as secondary additions include the burglary laws in 22:1–2a, the crop destruction laws in verses 4–5, and the general law of verse 8.¹⁰⁹ Other parts have been seen as secondary, including the second half of the animal theft law (vv. 2b–3) and even the deposit law of verses 6–7. The foregoing source and compositional analysis indicates, however, that the whole of 21:37–22:8 is a compositional unity based on a reworking of LH and one or more other Akkadian sources.¹¹⁰

CC based its series of laws on the general topics of LH 253–265, agricultural and animal theft and animal custody. The animal theft law of 21:37 + 22:2b–3 was created from this series of Akkadian laws and reflects it in reverse order: verse 37 mainly echoes LH 265; verse 2b, LH 256; and verse 3, LH 253–254. To fill out its legislation, CC used the technique of cross-referencing to bring in motifs from other laws in LH. The motif of the inability to pay in LH 256 led perhaps to the use of perhaps LH 8 and more clearly to the use of LH 54 for verse 2b. The use of LH 54 in turn allowed bringing in the nearby laws on grazing a field in LH 57–58, the subject of verse 4. The similarity of the penalties in LH 255 (of which 256 is the continuation) and LH 58 also allowed CC to bring LH 57–58 into play. CC simplified the two laws in LH 57–58 to create a short two-part law about releasing animals into a field in verse 4. The topic of grazing allowed CC to introduce a law on the destruction of a field and crops by fire, based on a law from another Akkadian collection.

The deposit laws in verses 6–8 were built on the motifs suggested by LH 264–265, laws at the end of the series that stimulated CC's animal theft laws. CC again used the technique of cross-referencing to build the deposit laws. The idiom of "giving for shepherding" in these laws led to laws with the idiom "to give for safekeeping" in LH 120–126. The use of the term "digging through" in one of these laws (LH 125) led CC further to incorporate motifs from the burglary law of LH 21, which uses the same term, and with this the following laws on a robber being found or not found in LH 22–23. From this gathering of laws, CC created its simple basic law on deposit in verses 6–7, the burglary law in verses 1–2a (whose present position may be secondary), and the general rule in verse 8. However, other influences are likely. The burglary law apparently built on motifs from a burglary law in another collection (like LE 13). The general rule in verse 8 may have been shaped by the primary theft law in LH 9–12 that pits two claimants against one another, the lists of stolen items in LH 7–8, and the wronged-man passage in the exhortatory block calling for an appearance before Hammurabi's statue and stela for judicial review. Verse 8 also has LH 265–266 in view. From these, it derives the motif of animals, to bring the biblical composition back on the track of the sequential template of LH.

If our object of study was only 21:37–22:8, the complexity of its fabrication as described here would be highly speculative. License for looking for influences from throughout LH and other sources, as well as identifying cross-referencing as a technique, comes from the overall dependence of CC on LH, visible in the broad pattern of sequential correlations with LH in both the casuistic and apodictic laws. That many of the specific regulations and motifs of CC correspond closely to features of LH suggests that this analysis is not unreasonable. These specifics include exaggerated multiple replacement for stolen animals, twofold replacement in most cases of theft, the motif of the inability to pay, being sold (as a slave) when unable to pay, terms for tunneling in the burglary law, the common idiom for the deposit law (“to give . . . for safekeeping”), inclusion of silver and a general term for possessions in the deposit law, similar lists of objects or animals, the motifs of a thief being or not being found, deposition or oath before the deity, and the use of a general term for deity (*ilum*/האלהים), especially in contrast to the more personal and dynamic description of deity in the outer sections of the two compositions.

Furthermore, the technique of cross-referencing, while more in evidence in 21:37–22:8, is not the first time we have seen it. We found it operative in the creation of the debt-slave laws of 21:2–11 and also in the slave-homicide laws of 21:20–21. In these cases, the topics of Hammurabi’s sequential template led CC to bring in laws on related topics outside the sequence and even outside LH. Cross-referencing in these other instances is more limited and therefore seems more plausible. But that the technique is operative elsewhere gives us a basis for positing its operation, even though more elaborately, in the pericope under study here. This technique therefore comes to the fore as a prominent feature in the creation of CC.

The variety of topics and styles evidenced in 21:37–22:8, used to chart a diachronic redactional development of the passage, come from this crisscross use of laws and motifs from different places within LH and from other sources. The most deviant element of the pericope, verse 8, which lacks casuistic formulation, is partly the result of its being formulated to bring CC back on the track of the sequential template of LH after the deviation that created the deposit and crop destruction laws. Its unusual formulation is also due to its being written as a general rule. As such, it parallels the also deviantly formed talion rule in 21:23b–25 and, like it, serves as a conceptual focus of the group of laws in which it appears. The second most deviant feature of our passage is the placement of the burglary law. Though this may have been moved to its present location after the basic text of CC was written, it is conceptually at home in the original composition. It appears to have been formulated in connection with the deposit law of verses 6–7.

Certain ideological elements appear in 21:37–22:8. These include the oaths made before the deity, identifiable as Yahweh. These tie the deposit laws to the prominence of the deity in the apodictic laws and to the theme of the cult found there (20:23–26; 22:28–30; 23:14–19). If the wronged-man passage of the

epilogue can be connected with the judicial declarations in verses 7–8, then these passages are indirectly connected with the major ideological transformation in CC, the replacement of Hammurabi with Yahweh. A lesser ideological modification is adapting the burglary law to the homicide law, to the extent that this was not already apparent in CC's sources. This fleshes out CC's view about punishments for and the operation of intent in homicide, a major point of revision in 21:12–32.

As for the theft laws themselves, CC may be seen as reacting to excessive multiple payment by restricting penalties to, at most, fivefold and fourfold replacement in 21:37, over against greater factors in corresponding laws of LH (e.g., LH 8, 265). CC avoids severe penalties, such as the measure-for-measure corporal punishment where animals drag an offender around a field when he cannot pay the fine. CC's replacement penalty—the insolvent thief's sale as a debt-slave—is grave but not life-threatening. But CC did not invent this solution; it drew it in from another law in LH. The lessening of the severity of penalties in the theft laws corresponds with the rejection of vicarious punishment and bodily mutilation in 21:12–32. In general, CC may be seen as imposing a balanced reality over against the perhaps rhetorical extremes exhibited in its sources.

Finally, native Israelite and Judean features appeared occasionally in these laws. Besides the obvious identification of “the God” in 22:7 and 8 as Yahweh, the main feature of this sort is the *oracular testing* of the oath or declaration made at the sanctuary. This is not necessarily inconsistent with the cuneiform sources, but it does not appear to derive from them. Given the other passages in the Bible where this appears and which are unrelated to CC, this is a reasonable conclusion.

10

Animal Injury, Death, and Rental (Exodus 22:9–14)

The laws on the death, injury, and rental of animals in 22:9–14 are the last section of correspondences between CC and LH within the casuistic laws. CC's laws at this point adhere more closely to the topical sequence of LH than did the preceding laws on animal theft, burglary, depasturation, burning a field, and deposit in 21:37–22:8. The previous laws correlate with the topical sequence of LH but were augmented significantly by using material from elsewhere in LH and from other sources. The current group of laws continues the laws on deposit but follows LH 266–271, with cross-referencing only to the related group of laws on animal rental in LH 244–249. Verses 9–14 refine Hammurabi's corresponding legislation by providing nuance to the issues of accident, negligence, and associated liabilities. They thus contribute to CC's general goal, manifested in the other sections of its casuistic laws, of solving problems in LH and other sources to create more coherent legislation.

Injury and Death of Animals: The Basic Law (22:9–10)

The primary legal situation in verses 9–10 corresponds to and derives from LH 266:¹

Exodus 22:9–10

⁹If a man gives to his fellow an ass, ox, flock animal, or any animal for

LH 266

If in the pen a divine stroke occurs or a lion kills,

safekeeping and it dies or is injured or is snatched away and no one sees,¹⁰ an oath by Yahweh shall be between the two of them (to verify) whether or not he misappropriated the property of his fellow.

Its owner shall accept. He need not repay.

כי יתן איש אל רעהו חמור או שור או שה וכל
בהמה לשמר ומת או נשבר או נשבה אין ראה
שבעת יהוה תהיה בין שניהם אם לא שלח ידו
במלאכת רעהו
ולקח בעליו ולא ישלם

the shepherd shall declare his innocence before the god.

The owner of the pen shall accept from him the loss in the pen.

šumma ina tarbašim lipit ilim ittabšī
ū lū nēšum iddūk
rē'ūm maḥar ilim ubbamma
miqitti tarbašim bēl tarbašim
imaḥḥaršu

Though CC's law is informed by LH 266, it begins by reiterating the language of the deposit law in verse 6aα, which reads: "If a man gives to his fellow silver or articles for safekeeping" (כי יתן איש אל רעהו כסף או כלים לשמר). Chapter 9 demonstrated how this language correlates with and is inspired by the idiom for giving animals over for shepherding in LH 264–265 (*ana rē'īm nadānum* "to give for shepherding") by cross-reference to the idiom for giving objects over for deposit (*ana maššarūtīm nadānum* "to give for safekeeping"). The idiom in verse 9, with the verb לשמר "to keep" but in the context of animals, is a hybrid. One might have expected verse 9, following the wording of LH 264–265 and the context of animal custody in LH 266, to be formulated with the verb "to shepherd" (לרעהו), the exact equivalent of *ana rē'īm*.² The wording in verse 9 was probably chosen to create a topical tie between verses 9–12 and verses 6–8.

Verse 9 is also tied to the preceding verses in the list of animals that is the object for the verb "to keep" לשמר: "an ass, ox, flock animal, or any animal." This echoes the list of animals in verse 8 that might be objects of dispute: "concerning an ox, an ass, a flock animal" (על שור על חמור על שה). Chapter 9 observed that the list in verse 8, while based in part on the short list in LH 264–265 that includes "cattle or flock animals" (*liātum ū lū šēnum*), may have been influenced by a longer list as found in the earlier theft laws of LH 7, which includes (among other things) "an ox, sheep, ass," and LH 8, which lists "an ox, sheep, ass, pig." Verse 9 builds on the longer list of verse 8, changing the order slightly and adding the catchall "or any animal" (וכל בהמה).³

The foregoing considerations indicate that verses 6–8 have conceptual and compositional primacy over verse 9. This does not mean that verse 9 was added by a later hand. Rather, the originality of verse 9, indicated by its correlation with LH 266, demonstrates that verses 6–8 must also be seen as original, if there was still a question after the examination of these verses in chapter 9.⁴

Apart from the initial wording of the protasis in verse 9, which follows verse 6, the rest of the law in verses 9–10 follows LH 266 and does so quite closely. CC's

law shares three motifs in the same order: (1) accidental death of animals, (2) an oath before the deity, and (3) the acceptance of the owner. The following discusses these points of correlation and brings in analysis of CC's legislation along the way.

With regard to the first point of correlation, LH 266 describes the accidental death of the animal caused by an act of god or a lion. Verse 9 generalizes and expands these cases to say that the animal may simply die. This is conceptually equivalent to the "divine stroke" (*lipit ilim*) in LH.⁵ CC does not employ this theological explanation, perhaps in the interest of abbreviating description. But CC is not averse to this type of explanation and includes it in its homicide law, where it describes inadvertent killing as a case where "the God (האלהים) directed (the homicide victim) to his (the killer's) hand" (21:13). The general term *ilum* "god" in the idiom *lipit ilim* corresponds with the general term האלהים "the God" in 21:13 in the same way that *ilum* in the idiom *maḥar ilim* in judicial declarations correlates with (ה)אלהים "the God" in 22:7–8 (see chapter 9). Given CC's willingness to move textual elements around, we may wonder if the motif in the homicide law was stimulated by LH 266. CC may have moved the location of the motif because, more than any case of inadvertence in CC, accidental homicide required theological or causal grounding.

Verse 9 toward the end also says that the animal may "be snatched away," literally "be captured" (נשבה).⁶ Other instances of the root שבה have humans as agents. If humans alone are the implicit agents of this action in the law, it seems to pose a contradiction with verse 11 (cited in full later). The later verse says that in a case of theft, described with the verb גנב, the shepherd or custodian must repay, as opposed to verses 9–10, which say that he does not pay. The tension may be resolved in part if the act indicated by שבה is considered to involve extreme force, as opposed to a case of simple theft as described by גנב.⁷ The care normally expected from a shepherd that would protect an animal from theft is not enough to protect it from forceful capture. In contrast, a simple theft (v. 11) may occur because of some degree of negligence on the part of the shepherd (see later).

Predatory animals are probably to be included as possible agents of the action described by the verb נשבה "be snatched away." Though the Bible does not use this root with animals as agents, we have descriptions of animal attacks that fit the context as described here. Prior to his fight with Goliath, David describes his audacity for Saul: "Your servant was a shepherd of flocks for his father. When a lion or bear came and carried off (נשא) an animal from the group, I would go out after it, strike it, and rescue it from its mouth. If it rose against me, I would grab it by its mane and strike it and kill it" (1 Sam 17:34–35). Here the lion takes its victim completely away. Similarly, Isaiah 5:29 refers to a growling lion that "seizes prey and carries (it) off (ויפליט) with none to rescue."⁸ CC's use of LH 266, which speaks about a lion making a kill, supports the notion that animals are to be included as implicit agents of the action indicated by נשבה. CC therefore breaks animal attack down into two cases: the case here, where the animal is completely lost and where an oath suffices to

exonerate the shepherd, and the case in verse 12, where the predator leaves part of the animal, which is brought to the owner as proof of predation.

By leaving the agent of נשבה “be snatched away” unspecified in verse 9, CC was able to write a law of more general application, which could include both humans and animals as the cause. This omission parallels leaving out Hammurabi’s description of “the god” in the case of the animal’s unexplained death. CC here is not interested in agents, only the event of the animal’s loss or injury.

Verse 9 adds that the animal might “be broken” (נשבר). This is not found in LH 266. In contrast to dying and being snatched away, “being broken” does not seem to indicate that the animal is lost or even dead. Verse 13 refers to the same event in a case of animal rental. This stands alongside the death of the animal: “If a man rents (an animal) from his fellow and it is broken or dies” (וְכִי יִשְׂאֵל אִישׁ (מֵעַם רֵעֵהוּ וְנִשְׁבַּר אֹר מֵת). The mention of just these two possibilities delineates in brief the range of what an animal might suffer. Though not in LH 266, animal injury of this type is found in LH 246 and 248, which use the Akkadian root *šebērum* “to break,” cognate with Hebrew שבר:

²⁴⁶If a man rents an ox and breaks its leg or cuts its neck (tendon), he shall restore ox like (the injured) ox to the ox owner.

²⁴⁸If a man rents an ox and breaks its horn or cuts off its tail or damages its heel tendon, he shall give silver one-fourth of its value.

²⁴⁶*šumma awīlum alpam īgurma šēpšu ištebir ū lū labiānšu ittakis alpam kīma alpim ana bēl alpim irītab*

²⁴⁸*šumma awīlum alpam īgurma qaranšu iš<te>bir zibbassu ittakis ū lū šašallašu ittasaḥ kaspam IGI.4(?)*.GÁL *šmīšu inaddin*

It is likely that “being broken” in CC was added under the influence of these Akkadian laws. We will see that the whole series of laws about animal rental in LH 244–249 were influential in verse 12 and particularly in the animal rental laws of verses 13–14. Therefore, they were in CC’s view when the laws in this area of the text were composed. A difference between the breaking in verse 9 and Hammurabi’s laws is that in LH 246 and 248 the shepherd is the agent of the action. CC’s passive verb “was broken” (נשבר) may have been chosen to include accidental or inexplicable injuries, from animal’s own agency (cf. 1 Kings 13:26, 28) or by natural causes (cf. Ezek 34:16).⁹ Thus CC continues to broaden agency in the description of what the animal suffers beyond the description in its source.¹⁰

The second motif that correlates with LH 266 is the oath of innocence in verse 10. CC further contextualizes this by saying that “no one sees” (אִין רָאָה; v. 9); that is, there is no witness. Witnesses would be able to affirm the custodian’s innocence, which would preclude his having to swear an oath. The concern about witnesses is resumed in different terms in the rental law, which prescribes a different outcome when the owner of the rented animal is present and

it is injured or dies (vv. 13–14). The need for the oath is also given context by verse 12, which allows a shepherd to bring the remnant of a carcass as proof as predation. In the case of verse 9, there is no remnant; hence an oath is required.

The description of the oath in verse 10 differs significantly from that in LH 266. In LH, the shepherd simply declares himself innocent before the god. CC's wording is abstract, without description of an agent: "An oath by Yahweh shall be between the two of them (to verify) whether or not he misappropriated the property of his fellow" (שבעת יהוה תהיה בין שניהם אם לא שלח ידו במלאכת רעהו).¹¹ The wording here is similar to the oath in verse 7, where "the house owner draw nears to the God (to verify) whether or not he misappropriated the property of his fellow" (ונקרב בעל הבית אל האלהים אם לא שלח ידו במלאכת רעהו). This, then, is another feature that ties verses 9–10 to the preceding deposit law.

One of the differences of verse 10 against verse 7 and against LH 266 is mention of the proper name of deity. Chapter 9 studied the various declarations and procedures performed before the deity in CC and Akkadian law collections. This demonstrated that though mentioning the divine name is unusual, it is not unprecedented. LE 37, for example, mentions the deity Tishpak in an oath context.¹² The reason for mentioning "Yahweh" in verse 10, however, may not be due to following a source like LE 37 but to CC's pervasive concern about the motif of recalling the divine name. The three textual sequences of the apodictic laws, based on the exhortatory block of LH, manifest this theme prominently (see chapters 3 and 11). The initial apodictic laws contain the primary datum about the announcement of the divine name. There the deity says: "in every place where I proclaim my name (אזכיר את שמי) I will come and bless you" (20:24). This is balanced thematically and structurally by a rule in each string of the final apodictic laws: "do not curse God (אלהים לא תקלל) and do not curse the chieftain among your people" (22:27) and "you shall not mention the name of other gods or let it be heard on your lips (ישמע על פיך) (רשם אלהים אחרים לא תזכירו לא ישמע על פיך)" (23:13). The casuistic laws complement this thematic emphasis, though by implication. CC probably imagined the use of Yahweh's name in the other judicial declarations prescribed in 22:7 and 8. Similarly, CC probably expected that a person who had inadvertently killed someone would invoke the divine name in a declaration of innocence at the sanctuary (21:13; see LH 206–207 and chapter 6). CC perhaps also expected a similar oath in cases of inadvertent injury described in 21:18–25, inasmuch as LH 206, a source for 21:18–19 and a background influence on the talion laws of 21:23–25, requires a declaration of innocence in such cases (see chapter 6). Therefore, in CC's imagination, the use of the divine name is as prominent in the casuistic legislation as it is in the apodictic laws. Chapter 12 shows, further, that an interest in the use of the divine name spills over into the narrative of Exodus in which CC was set.

The oath in verse 10 is said to be made "between the two of them" (בין שניהם). This develops from verse 8, which says that "the word of *the two of them* shall come to the God" (עד האלהים יבא דבר שניהם). This further ties verses 9–10 to the preceding deposit law. In verse 8, either of the parties may be culpable.

In verse 10 (and the declaration in v. 7), only the custodian is possibly culpable. Nevertheless, as chapter 9 has explained, all of the declarations in verses 7, 8, and 10 involve a test of veracity. In verse 8, the question as to whose declaration is valid is left open when it says that “the God will convict” one of the parties. Verse 10 is written from the default perspective that the oath is proved true. Therefore, the law says that the custodian need not recompense the loss. This optimistic default perspective can be attributed to the use of LH, which portrays the oath as exculpatory.

The foregoing considerations indicate that the oath in verse 10, including the mention of the divine name, is not a later addition.¹³ The irregularities in CC’s text at this point, which might be taken as a sign of secondariness, are due to CC’s revision of the bare description of judicial declaration in LH 266 to approximate the wording of verse 7 and to provide explicit correlation with the theme of the pronouncement of the divine name. This description of a judicial oath is the last of the various casuistic laws that implicitly or explicitly entail judicial declarations in connection with the deity (cf. 21:13–14; 22:7, 8). Perhaps, therefore, for climactic emphasis, the divine name is explicitly mentioned.

The third common motif between verses 9–10 and LH 266 is the acceptance of the owner: “its owner shall take/accept; (the shepherd) need not repay” (ולקח ושלם (בעליו ולא ישלם) and “the owner of the pen shall receive the loss of the pen” (*miqitti tarbašim bēl tarbašim imahḥaršu*). The Akkadian phrase is clear about what the owner accepts: the loss that was suffered. Another law, LH gap||z,¹⁴ also uses the Akkadian verb *maḥārum* in a similar way. It describes a case where a man borrows from a merchant and can repay only with other goods. The law allows the man to pay thus, adding that “the merchant cannot object (*ul uppas*);¹⁵ he shall accept (*imahḥar*).” The verb *maḥārum* in LH is also used to describe the receipt of wages (LH 264) and rent on a field (LH 45, 46). The wording of verse 10 is terse, which makes what is accepted unclear.¹⁶ The object may be the “property” mentioned in the oath and thus mean that the owner takes the dead or injured animal, if it is available.¹⁷ The object may be the abstract economic loss; that may be why it is not specified. Or the object may be the oath; this alone is the owner’s recompense. The reason CC left the object unmentioned may be a function of adding the condition of the animal’s being “snatched away” beyond the case described in LH 266. Since the animal’s carcass may not be available according to CC’s law, the owner cannot literally “take the loss” as described in LH 266. This evidence and these considerations mean, incidentally, that the stipulation of acceptance is not a later addition to the basic text of CC.¹⁸ Awkwardness in CC’s formulation is, again, a function of adapting its source to fit the new context.

Finally, CC adds the clarifying rule that the custodian does not have to repay after the statement about accepting the loss or the oath in verse 10. LH 266 does not say that the shepherd does not need to repay, but this is the implication. CC

makes this judgment overt, probably because of the context of the related laws in verses 11 and 12. The ruling in verse 10 provides a contrast with verse 11, a case of theft where the custodian has to repay. The ruling of verse 10 is then echoed in verse 12, which says that if the animal was torn by predators, he does not repay (see later). The terminological stimulus for the verb שָׁלַם in verse 10 is probably the next Akkadian law, LH 267 (cited later), which dictates that in the case of negligence, a shepherd needs to make restitution, described with the cognate verb *šullumum*. This law may have influenced verse 11 otherwise, as we will now see.

Animal Theft (22:11)

Verses 11–12, to which the previous section has already referred, add subconditions to the law in verses 9–10. Verse 11 may have been partially spurred by LH 267, since both of these laws are next in the sequence of both collections and display some similarity.

Exodus 22:11

If it is stolen from him, he shall repay to its owner.

ואם גָּנַב יִגְנַב מעמו יִשְׁלַם לְבַעֲלָיו

LH 267

If a shepherd is negligent and allows *pissatum* to occur in the pen, the shepherd shall repay in cattle or flock animals the loss from the *pissatum* that he allowed to occur in the pen and give (it) to their owner.

šumma rē'ûm iġûma ina tarbašim pissatam uštabši rē'ûm hiīt pissatim ša ina tarbašim ušabšû liātīm u šēnam ušallamma ana bēlīšunu inaddin

The specific similarities of the two laws are their dealing with the loss of animals in some way, singlefold repayment to the owner, the use of the Semitic root *šlm* to describe this repayment, and the description of this payment as being “to its/their owner,” with the preposition “to” (*ana/-ל*), and cognate nouns for “owner” (*bēlum/בעל*) with suffixes referring to the animals.

Problematic for our understanding of a correlation is the term *pissatum*. Most take this to refer to a disease that occurs among animals.¹⁹ It is possible that this term was not clearly understood by CC. The context indicated that this referred to some type of harm or damage to animals, and therefore CC substituted for it a case of theft. CC could have followed the meaning of a homonym that means “cancellation” and hence a loss of animals.²⁰ The problem with this interpretation is that *pissatum* with this meaning is attested only as a technical term in omen texts. In any case, LH 267 does refer to the notion of a loss in the phrase *hiīt pissatim* “loss resulting from *pissatum*.” This may have been suggestive enough to generate a law on theft.

Verse 11 is in ostensible contradiction to verses 7 and 9–10.²¹ The previous section of this chapter already offered a solution to the contradiction with verses 9–10, saying that the act indicated by the verb נשבה “was snatched away” in verse 9 refers to the loss of the animal in which extraordinary force was used over against mere theft in verse 11. The contradiction between verse 11 and verse 7 is a more complex matter. Both verses speak about theft of property by using the same verb גנב “steal,” but verse 11 requires the custodian to pay, whereas verse 7 does not prescribe a payment:

⁹If a man gives to his fellow an ass, an ox, a flock animal, or any animal for safekeeping . . . ¹¹if it is stolen from him he shall repay (it) to its owner.

כי יתן איש אל רעהו חמור או שור או
שה וכל בהמה לשמר . . . ¹¹ואם גנב יגנב
מעמו ישלם לבעליו

⁶If a man gives to his fellow silver or (other) items for safekeeping, and it is stolen from the house of the man, if the thief is found, he shall repay double. ⁷If the thief is not found, the house owner shall approach the God (to verify) whether or not he misappropriated the property of his fellow.

כי יתן איש אל רעהו כסף או כלים לשמר וגנב
מבית האיש אם ימצא הגנב ישלם שנים
⁷אם לא ימצא הגנב ונקרב בעל הבית אל האלהים
אם לא שלח ידו במלאכת רעהו

The shepherd in verse 11 cannot escape by swearing an exculpatory oath like the custodian in verse 7. Why?

It could be argued that verse 7 is deficiently formulated—that it has not incorporated the necessary penalty clause and that the ruling of verse 11 applies also in that case.²² But chapter 9 argued that verse 7 was analogous to verse 10, which has a similar exculpatory oath. If the declaration is determined to be true, which is the default assumption of the legislation certainly in verse 10, the custodian is absolved of any responsibility and payment, as indicated explicitly by verse 10. This perspective and specific ruling applies also to verse 7. That is why verse 7 has no penalty clause at the end. Hence the apparent contradiction between verses 11 and 7 remains.

A possible solution is that verse 11 may involve negligence, as opposed to verse 7. That negligence is a determining factor in similar theft laws was already seen in the examination of LH 125 and LE 37 in chapter 9. The cases in these two laws are nearly the same: there has been a burglary, and the property of the depositor has been stolen, along with that of the custodian. But LH 125 requires repayment of the stolen property, whereas LE 37 does not. A crucial difference is that LH 125 says, in passing, that the custodian was negligent, using the verb *egûm*. LE 37, however, does not include this condition. It instead prescribes an oath that the custodian swears, whose content implies that it is not a case of negligence. He declares: “My property was lost along with your property; *I have not committed maliciousness or dishonesty.*”

That negligence may be an operative factor in verse 11 can be connected with the place where the property is presumably held and how it is supervised.²³ In verses 6–7, the deposited silver or objects are kept in a house and would be secured along with the householder’s own property. Although verse 11 does not mention a place of custody, it is probably not a house.²⁴ The animals are presumably kept in a pen, like the Akkadian *tarbašum* of LH 266–267, or in an open field. In this environment and owing to the nature of what shepherding entails, the animals would not always be under the immediate eye of the custodian. Hence animals would be more susceptible to theft. Verse 11, therefore, may have increased the liability of the animal custodian to ensure that he be on guard to prevent theft.²⁵

That verse 11 involves a case of negligence is supported by the influence of LH 267. The Akkadian law explicitly involves a case of negligence, described with the verb *egûm*. This verb is found in various laws about negligence in LH, including LH 125, just mentioned.²⁶ CC does not need to explicitly state that negligence is a factor when this is contextually apparent. The description that a pit owner did not cover a pit in the negligence law of 21:33–34 effectively portrays his carelessness (see chapter 8). Further on in this chapter, we explore the animal borrowing and rental laws (22:13–14). Verse 13 there requires the borrower or renter to replace an animal that has been injured or that dies when the owner is not present. This presumes possible negligence, even though that condition is not explicitly described. In verse 11, negligence is indicated not so much by the inner wording of the verse itself, but in its contrast with verses 9–10, and specifically with the verb נשבה “was snatched away.”

But this contrast of verbs allows for a slightly different explanation of the contradiction, one that does not require us to posit underlying negligence in verse 11. The law of LH 266 and the associated law LH 244 (compare LH 249) set down the precedent that the indefensible force posed by an attacking lion releases the shepherd of all liability. CC wrote two laws on the matter: verses 9–10, where the animal victim is completely carried away, and verse 12, where part of the carcass remains. The implication from Hammurabi’s source laws may have led CC to suppose, in contrast, that simple theft of an animal (apart from any question of negligence) carried a liability that required the shepherd to replace the animal. Hence it wrote the exceptional law in verse 11. In this interpretation, CC may have intended that the implied agent of the action indicated by the verb נשבה “it was snatched away” in verse 9 was only a predatory animal, not a human. CC used a verb from the sphere of military capture to metaphorically describe a predator’s attack and pilfering. If so, CC stayed close to the meaning of its source text LH 266 for verse 9. In contrast, *humans* are the implied agents of theft (גנב) in verse 11. Hence, the variable in verse 11 may not be negligence but the identity of the agent and, with this, whether a reasonable defense could be made to protect the entrusted animal. This created a law in verse 11 that ended up in conflict with verses 6–7. The tension was allowed to stand because of the phenomenological independence of the two cases (deposit versus shepherding).

That CC had the issue of defensibility in mind while creating the various deposit laws of verses 6–12 is signaled by the formulation of the burglary law (22:1–2a) in the context of verses 6–7, as argued in chapter 9. Only secondarily did that law receive its location at the beginning of Exodus 22, outside the context of the deposit laws. The burglary law is concerned about liability for killing the very person who would be responsible for the theft from a house in verses 6–7. One may further wonder if the issue of defensibility in cases of animal theft had something to do with moving the burglary law to its present contextually odd location. That is, the basic animal theft law in 21:37 + 22:2b–3 relates conceptually to the law about the theft of an animal given in deposit in 22:11. The burglary law in its present context therefore reflects indirectly on defensibility in a case such as verse 11 over against verse 9. It may give permission analogically to the shepherd to kill a thief who operates in the sheepfold at night.

Finally, we can comment on the perceived secondariness of verse 11.²⁷ The verse is an addition to verses 9–10, but one made in the course of CC's composition rather than at a later redactional level. As noted previously, it appears to have been stimulated in part by LH 267. This associates the verse with the compositional activity that used LH as a source generally. Moreover, although it is not exactly clear how the case of theft in verse 11 relates systematically to the cases in verses 9–10 and the preceding law about deposit in verses 6–7, in terms of language and general conception, it is consistent with verses 6–7.²⁸

Predation with Evidence Remaining (22:12)

Exodus 22:12 clearly deals with predation: “If it (the animal in custody) is torn by a predator, he will bring it as evidence; he need not repay an animal torn by a predator” (אם טָרַף יִטְרַף יבֹאֵהוּ עַד הַטְרֵפָה לֹא יִשְׁלֵם).²⁹ This topic depends on LH 266: “If in the pen a divine stroke occurs or a lion kills” (cited in full earlier).³⁰ Predation was already introduced in verse 9, which speaks of an animal being “snatched away” (נִשְׁבָּה). This includes a predator if it does not speak solely of a predator, as discussed in the previous section of this chapter. The description of the animal's being “injured” (נִשְׁבַּר) in verse 9 may also entail an animal attack. In verse 12, the animal has been killed by a predator. It contrasts with verse 9 in that part of the animal remains, which can be brought as evidence of attack by another animal. This evidence leads to exoneration by demonstrating that it is a case of loss beyond the custodian's control. When part of the carcass is available, no oath as in verse 10 is necessary.

LH 244 may have also influenced verse 12, especially since this and associated laws were influential in the next law of verses 13–14:³¹

If a man rents an ox or a donkey and a lion kills it in the open country, (it, the loss, belongs) to its owner.

šumma awīlum alpam imēram īgurma ina šērim nēšum iddūkšu ana bēlīšuma

LH 244 agrees with LH 266 that an animal killed by a predator is the owner's loss. But LH 244 has a somewhat peculiar formulation. It ends with the phrase, literally rendered, "to its owner." This means that "(the loss is) the owner's." One wonders if CC construed this prepositional phrase with the verb *bring* to yield "*he shall bring it to the owner*" in verse 12.

CC's law uniquely says that the person brings the animal as evidence. The evidence may be like the carcass parts described in Amos 3:12:

Thus says Yahweh: Just as a shepherd saves two legs or an ear tip from the mouth of a lion, thus the Israelites who dwell in Samaria will escape....

כה אמר יהוה כאשר יציל הרעה מפי הארי שתי כרעים או בדל און כן ינצלו בני ישראל
הישיבים בשמרון....

It is not clear, however, that this rescue is for evidential value, or simply describes a failed attempt to save the animal. Legal intent is clearer in Jacob's protest of innocence to Laban (Gen 31:39):

I never brought to you a torn carcass. I bore the loss of it myself. You demanded it from me, whether it was stolen by day or stolen by night.

טרפה לא הבאתי אליך אנכי אחטנה מידי תבקשנה גנבתי יום וגנבתי לילה

This has language similar to CC's law: טרפה "torn carcass" and הביא "bring." Jacob also indicates that, in contrast to CC's law, he himself bore the loss. The wording of this passage may be an indication that CC drew on traditional Israelite practice to create verse 12 to augment verses 9–10, which are based on LH 266.³²

The verb טרף "tear, prey upon" and noun טרפה "torn carcass" used in verse 12 anticipate the use of the noun in 22:30 at the end of the cultic laws of the first string of the final apodictic laws:

You shall be holy people to me. Flesh in the field—torn carcass—you shall not eat. You shall throw it to the dogs.

ואנשי קדש תהיון לי ובשר בשדה טרפה לא תאכלו לכלב תשלכון אתו

The wording in this law may have been influenced from LH 244: *ina šērim nēšum iddūkšu* "in the open country a lion kills it." "In the open country" is equivalent to CC's "in the field." The flesh of an animal carcass was also of implicit concern in the prohibition of using a stoned ox in the diet (21:28). Stoning makes the flesh of the ox equivalent to טרפה meat. The use of animal carcasses is also a concern in the laws about an uncovered pit and a gored ox, which allow the animal owners to keep the dead animals, though probably not to use them as food (21:34, 35–36; see chapter 8).

The Basic Meaning of the Animal Rental Laws (22:13–14)

Before we can undertake a comparative analysis of the rental laws in verses 13–14, we need to determine their meaning. Interpretation is difficult because of points of ambiguity in verse 14b. Here is my translation, which I shall subsequently justify:

¹³If a man borrows (an animal) from his fellow and it is injured or dies, and its owner is not with it, he shall repay.

^{14a}If its owner is with it, he (the borrower) does not repay.

^{14b}If it is rented, he (the renter) is responsible for its rent-payment.

וְכִי יִשְׁאַל אִישׁ מֵעַם רֵעֵהוּ וְנִשְׁבַּר אֹר מֵת בְּעֵלָיו אִין עֲמוּ שְׁלֹם יִשְׁלֹם¹³
 אִם בְּעֵלָיו עֲמוּ לֹא יִשְׁלֹם^{14a}
 אִם שָׂכִיר הוּא בֹא בְּשָׂכְרוֹ^{14b}

The term שכיר in verse 14b may be interpreted either as an adjective “rented,”³³ referring to the animal, or as a noun meaning “hired person,” referring to the person who rents³⁴ (v. 13), or the בעל “owner” in verses 13–14a. This owner is either the same as the “fellow” of verse 13 or a separate supervisor.³⁵ The phrase בֹּא בְּשָׂכְרוֹ in verse 14b may also be given several interpretations, depending on the values for its pronominal elements:

If he is a hired person,
 it (the loss) comes out of his (the hired person’s) wages;³⁶
 he (the hired person) is entitled to his wages.³⁷

If it is rented,
 it (the loss) is included in/covered by its/his (the animal’s/
 owner’s) rent payment;³⁸
 he (the owner) is entitled to its/his (the animal’s/owner’s) rent
 payment;³⁹
 he (the renter) is liable for its/his (the animal’s/renter’s) rent
 payment.⁴⁰

The alternatives for each of these problematic elements, and how they are seen to relate to the two laws of verses 13 and 14a, have been combined in different ways to produce a variety of interpretations. This, in turn, affects the interpretation of the primary operative verb שאל in verse 13. For example, if שכיר means a “rented (animal),” then שאל means “borrow,” that is, to make use of without payment. If שכיר means a “hired person,” then שאל may mean “rent.”

Interpreting שכיר as referring to a hired worker and translating verse 14b as “if he is a hired worker, he (the worker) is entitled to his wage” is an attractive option in view of biblical evidence at large, the economy of CC’s legislation, and the particular argument of this study. The term שכיר is well attested with

this meaning.⁴¹ This interpretation would allow one to take the verb שאל as “rent,” not “borrow,” thus yielding a simple law describing one type of economic engagement with the animal rather than both borrowing and renting. The appearance of a “hired worker” would also be consistent with the ideological interests of CC. The שכיר in other biblical texts is included among those who are impoverished. CC elsewhere mentions various impoverished persons: debt- and chattel-slaves (21:2–11, 20–21, 26–27, 32; 23:12), the immigrant (22:20; 23:9, 12), the widow and orphan (22:21, 23), and the poor in general (22:24–26; 23:11). A requirement to pay the hired worker’s wage in 22:14b would be consistent with not taking interest from the poor and returning a garment pledge at sundown (22:25–26). (For the theme of poverty in CC, see the discussion in chapter 11.)

Nevertheless, I am constrained to take שכיר as an adjective referring to the animal because of the difficulty in seeing how a “hired person” makes contextual sense. If שכיר refers to such a person, then שכרו means “his (the hired person’s) wages,” whether the interpretation of the phrase בא בשכרו is “he (the hired person) is to be paid his wages” or “it (the loss) is docked from his (the hired person’s) wages.” In this interpretation, the person most likely to be responsible for the wages would be the animal owner. At the same time, the verb שאל of verse 13 would probably mean “rent,” not simply “borrow,” as indicated earlier. This means that the hired person is paying the owner for use of the animal.⁴² The problem is that it is not clear why the owner would receive rent from this worker and at the same time pay him a wage—why the owner would even require a rental fee for his own animal for work done for his benefit. A similar question could be asked if the verb שאל is taken to mean “borrow.” Why would a worker’s use of his employer’s animal be described as a case of or require borrowing?

Jackson sought to solve such problems by enlarging the number of persons involved:

We have here a three-party situation.... One man (*ish*, v.13) borrows (for rental) livestock from another (*re’ehu*, v.13), and entrusts them to an actual keeper, *ba’al* (v.13). His liability for loss due to death or mutilation depends upon whether the *ba’al* is with the animal at the time. But if that *ba’al* is his own hired labourer (v.14), as opposed to an independent shepherd with whom he subcontracts, the last verse of the paragraph stresses that he must not deduct the loss from the labourer’s wages.⁴³

This seems unlikely because בעל logically refers to the animal’s owner and hence is the same as the “fellow” (רע) from whom the animal was borrowed. Elsewhere in CC, an animal’s בעל is its owner (21:28, 29, 34, 36; 22:10, 11), not a deputized custodian. The comparative evidence from LH 242–247, to be examined later, confirms this understanding. These laws use the cognate Akkadian term *bēlum* “owner, master” to refer to an animal’s owner. It is to this *bēlum* that recompense is paid. Similarly in CC’s laws, we must

understand the בעל as the one to whom recompense is paid in verse 13, that is, the animal's owner.⁴⁴

By elimination, therefore, I arrive at the translation set out earlier. The initial two laws in verses 13–14a have to do with borrowing, that is, receiving benefit of an animal without paying a fee for hire. That שאל can have this meaning is clear from other usages in the Hebrew Bible.⁴⁵ Elisha tells a destitute woman to “borrow” empty vessels that will be miraculously filled with oil (2 Kings 4:3). An axe head that is “borrowed” falls into water (2 Kings 6:5). The Israelites “borrow” gold and silver objects and clothing from their “fellows” prior to the Exodus (Exod 11:2; 12:35). These items do not seem to be acquired by payment of a fee but are simply on loan gratis. As we see later, this economic relationship, different from that in verses 9–12, helps explain why the borrower must pay even for an accidental death or injury according to verse 13. It is an insurance policy benefiting the lender for lending his animal. Verse 14a protects the borrower from a truly accidental death, where there can be no suspicion of the borrower's foul play.

The law in verse 14b extends the preceding law to a case where the animal is rented. The adjective שכיר refers to the status of the animal. In this case, a fee has been paid for its use. That this term may be used adjectivally is indicated by Isaiah 7:20, which describes Assyria as a “razor hired” (תער שכירה) by God to punish Judah. The noun שכר in the phrase בא בשכרו at the end of verse 14b must mean “rental fee,” to correlate with the interpretation of שכיר as “rented (animal).” The phrase could mean either “it (the loss) is covered by its (the animal's) rental price”⁴⁶ or “he (the renter) is responsible for its rent payment.” The first option does not make much sense in the context. If the phrase with this meaning were understood to qualify verse 13 in particular, it would mean that a renter does not need to pay for the injured or dead animal when the owner was not present. But the rental price would be significantly less than the value of the animal and would hardly provide adequate compensation.⁴⁷ If taken as a qualification of verse 14a, the phrase with the first meaning would be redundant or meaningless. That is, since verse 14a requires no payment whatsoever, why even say that the loss is covered by the rental fee? Hence, again by way of elimination, the second interpretation of the phrase makes better sense: the loss of the animal does not negate the requirement to pay the full rental fee and does not entitle the renter to a rebate if the fee has already been paid.

CC's idiom may be related to other examples of “coming into” (בוא ב-) a particular status or condition. The objects of the preposition in this idiom include bloodguilt (דמים; 1 Sam 25:26), an imprecation (אלה; Ezek 17:13; Neh 10:30), an oath (שבועה; Neh 10:30), and a covenant (ברית; Jer 34:10; cf. Deut 29:11). These phrases refer to acquiring liability for these respective statuses or conditions. To be “liable” to a fee (שכר) in our verse can be construed as being responsible for paying it. The unusual suffixing verb form “he came” (בא) in the apodosis of the law may have been chosen because the rental fee is conceived to have already been paid or that, by the prior rental agreement, the renter has made himself or herself liable for the full rate.⁴⁸

The short oblique rule on rental in verse 14b augments the rules for borrowing in verses 13–14a. It means that everything prescribed in the borrowing law applies in a case of rental: the renter has to replace the animal if it is injured or dies when the owner is not present. It is perhaps in view of this case that verse 14b has its particular force; despite the fact that the animal is replaced, the renter still has to pay the rental fee. The greater liability in this case and in the overall law of verses 13–14, in contrast to verses 9–10, where the natural death or injury of the animal does not require replacement, has to do with who the beneficiary of the animal’s custody is. In verses 9–10, the animal’s *owner* is the beneficiary of the custody arrangement; hence the custodian has no obligation to replace the animal. In contrast, in verses 12–14, the *borrower or renter* makes use of the animal and therefore has an obligation of restitution. If a primary difference is to be sought between a case of borrowing versus rental, it is likely that a borrower would be more careful in using the animal, whereas a renter, paying a fee for the beast, might feel freer to beat it to make it work.

Comparative Analysis of the Animal Rental Laws

Immediately after the laws about the accidental death or injury of animals (vv. 9–12 // LH 266–267), the two collections turn to the topic of animal rental.⁴⁹

Exodus 22:13–14

¹³If a man borrows (an animal) from his fellow and it is injured or dies, and its owner is not with it, he shall repay.
¹⁴If its owner is with it, he (the borrower) does not repay. If it is rented, he (the renter) is responsible for its rent-payment.

וכי ישאל איש מעם רעהו
ונשבר או מת בעליו אין עמו
שלם ישלם¹⁴ אם בעליו עמו
לא ישלם אם שכיר הוא בא
בשכרו

LH 268–271

²⁶⁸If a man rents an ox for threshing, its rent is two suts (20 silas) of grain.
²⁶⁹If he rents a donkey for threshing, its rent is one sut (10 silas) of grain.
²⁷⁰If he rents a goat for threshing, its rent is one qa (1 sila) of grain.
²⁷¹If a man rents cattle, a wagon, and its driver, he shall pay three parsikat (180 silas) of grain per day.

²⁶⁸*šumma awīlum alpam ana diāšim īgur 2 sūt*
šē’um idūšu

²⁶⁹*šumma imēram ana diāšim īgur 1 sūt še’um*
idūšū

²⁷⁰*šumma urīṣam ana diāšim īgur 1 qa še’um*
idūšū

²⁷¹*šumma awīlum liātīm ereqqam u murteddīša*
īgur ina ūmim ištēn 3 parsikat še’am inaddin

The specific content of LH 268–271 differs from verses 13–14. Hammurabi’s laws give rates of hire for animals. These are followed by rates of hire for other

objects and persons (a wagon, LH 272; a laborer, 273; a craftsman, 274; boats, 275–277). CC deals with the topic of animal rental but treats this in terms of the death or injury of the animal, the interest of the preceding verses. Despite the difference in the orientation toward animal rental, CC does have significant correlations with LH 268–271. The qualification in verse 14b is specifically concerned about rent payment. The noun שכר “wage, price of hire, rent” is equivalent to Akkadian *idū* (a plural noun) with the same meaning, which runs through LH 268–270.⁵⁰ The payment that CC has in mind is akin to those listed in LH. Further, the verb behind the passive participle שכיר “hired, rented” has the same range of meaning as the Akkadian verb *agārum* “hire, rent” used in LH 268–271. The correlation of שכר with *idū* and שכיר with the verb *agārum* indicate that the interpretation for these terms given in the previous section of this chapter, argued independently of LH, is correct.

CC’s ignoring rates of hire in these laws is consistent with its ignoring similar regulations elsewhere in LH. Laws giving rates of hire or pay appear throughout the block of laws that CC primarily relies on for the sequential outline of its collection (e.g., LH 228, 241–243, 257–258, 261–262). CC does not replicate any of these.

Instead of writing laws about rental fees, CC uses LH 268–271 as a door through which it can introduce other animal rental laws from earlier in LH. These correspond closely to the content of verses 13–14:⁵¹

²⁴⁴If a man rents an ox or a donkey and a lion kills it in the open country, (the loss) is the owner’s.

²⁴⁵If a man rents an ox and through negligence or by beating kills (it), he shall restore ox like (the killed) ox to the ox owner.

²⁴⁶If a man rents an ox and breaks its leg or cuts its neck (tendon), he shall restore ox like (the injured) ox to the ox owner.

²⁴⁷If a man rents an ox and blinds its eye, he shall pay one-half its price to the ox owner.

²⁴⁸If a man rents an ox and breaks its horn, severs its tail, injures its heel tendon, he shall give silver one-fourth of its value.

²⁴⁹If a man rents an ox and the god strikes it and it dies, the man who rented the ox shall swear a divine oath and shall be released.

²⁴⁴ *šumma awīlum alpam imēram īgurma ina šērim nēšum iddūkšu ana bēlīšuma*

²⁴⁵ *šumma awīlum alpam īgurma ina mēgūtīm ū lū ina maḥāšim uštamīt alpam kīma alpim ana bēl alpim irīab*

²⁴⁶ *šumma awīlum alpam īgurma šēpšu ištebir ū lū labiānšu ittakīs alpam kīma alpim ana bēl alpim irīab*

²⁴⁷ *šumma awīlum alpam īgurma īnšu uḥtappid kaspam 1/2 šīmīšu ana bēl alpim inaddin*

²⁴⁸ *šumma awīlum alpam īgurma qaranšu iš<te>bir zibbassu ittakīs ū lū šašallašu ittasak kaspam IGI.4(?).GÁL šīmīšu inaddin*

²⁴⁹*šumma awīlum alpam īgurma ilum imḥassūma imtūt awīlum ša alpam īguru nīš ilim izakkarma ūtaššar*

These laws deal with the death and injury of animals that are rented or borrowed. The cases in LH 244 and 249 refer to accidental death. The middle laws, LH 245–248, treat death and injury resulting from negligence. CC's borrowing and rental laws are written so that they include both accidental and negligent death and injury of the animal. That CC knew LH 244–249 is confirmed in view of the fact that it knew the goring ox laws that immediately follow (LH 250–251), which it used in formulating its own goring ox laws in 21:28–32 (chapter 8).

A major difference in verses 13–14a over against LH 244–249 (and LH 268–271) is that they deal first with borrowing and add rental almost as an afterthought in verse 14b. Recall, however, from the prior discussion of the basic meaning of verses 13–14 that the rules governing borrowing also apply to rental. Therefore, rental is not a miscellaneous concern. It is stated in few words but is parallel legislatively to the case of borrowing. CC may have included borrowing to broaden the scope of the law. It may have also included this to emphasize the difference in liability over against a case of animal custody described in verses 9–12.

CC's basic rule that the borrower or renter make restitution in verse 13 is probably based on LH 245–246, which say that a renter must replace the animal that he killed by negligence or by beating, or an ox whose leg he broke or neck tendon he cut. The injuries to the leg and neck, if they did not kill the animal immediately, would render it useless and require that it be killed. CC's rule is also consistent with LH 246–247, which require partial compensation if the animal is not mortally injured. CC does not specifically state the object of the verb שלם "repay" in verses 13–14. Hence it may not necessarily refer to in-kind payment or replacement of a whole animal, but to monetary payment when the injury is nonfatal and less than the full price of the animal.

Despite this consistency, verses 13–14 are stricter than LH 244 and 249 (also LH 266), and even than CC's own law on animal custody in verses 9–12, in not absolving a borrower or renter of responsibility for compensation if an animal is killed or injured by accident or natural causes. The main reason for this is the labor factor. The intent of a borrower or renter is to use the animal for work, such as plowing fields or hauling loads. To get it to perform as desired, the user will necessarily goad or whip the animal.⁵² These stresses increase the likelihood of injury or death. For CC, this put the onus of responsibility on the borrower or renter. This precluded exoneration by oath. Indeed, an oath, which would determine "whether or not he misappropriated (literally, put his hand on) the property of his fellow" (לא שלה ידו במלאכת רעהו), as found in verses 7 and 10, would almost be a contradiction in view of the labor situation. CC therefore used, and perhaps even invented, a more empirical criterion that allowed for exoneration in certain cases but that did not privilege the borrower/renter as does an oath. It ruled that if the owner is present, the borrower/renter need not

pay compensation. The owner would act as a deterrent to the misuse of his animal and also as a witness. This requirement has a connection with the animal custody law. Verse 9, when describing the accidental or natural death or injury of an animal, adds that “there is no one who sees” (אין ראה). Verse 13 uses similar language of absence when it says “its owner is not with it” (בעליו אין עמו). Using the criterion of the owner’s presence allowed CC to write a binary legal formulation, one where the owner is absent (v. 13) and another where he is present (v. 14a) in the style of casuistic formulation elsewhere in CC and in Near Eastern law at large. Movement away from an oath as a solution is found also in verse 12 over against the source law of LH 266. According to that verse, as we have seen, if part of the animal carcass remains after predation, it is brought as evidence to the owner; no oath is prescribed. LH 266 appears to allow an oath in a case where part of the carcass remains.

Other relationships to verses 9–12 may be observed. The initial wording of the protasis in verse 13 is similar to and derives from the protases in LH 244–249, as well as in LH 268–271: “If a man borrows (an animal) from his fellow” (וכי ישאל איש מעם רעהו); “If a man rents an ox...” (*šumma awīlum alpam...īgur*). But the phrase “from his fellow” in the Hebrew text does not have a correspondent in these Akkadian laws. This is drawn from “to his fellow” (אל רעהו) in verses 6 and 9, whose wording derives from laws such as LH 122 and 124, which have “to a[nother] man” (*ana awīlim*).⁵³

CC also lacks mention of the object borrowed in verse 13. That it is an animal is clear from the rest of the protasis, where what is borrowed is broken or dies. The object has to be supplied from verse 9. Conceived of this way, verse 13 is like a resumptive repetition to verses 9–10. It builds on the conceptualization of verse 9 to prescribe an alternate case. Viewed thus, the addition of “from his fellow” in verse 13 makes perfect sense as a contrast to “to his fellow” in verse 9. Thus, unlike LH, CC ties its laws on animal borrowing and rental to the context of deposit. Moreover, the phrase “from his fellow” in verse 13 acts like ballast for the lack of the mention of animals. Note that in Hammurabi’s various rental laws (cf. LH 242–249, 268–272), animals or other items appear as objects, but there is no equivalent of the phrase “from his fellow,” such as *itti awīlim* “from a man.”⁵⁴ CC’s introduction of the “fellow” (רע) in verse 13 is partially responsible for the confusion a reader might have about the identity of the “owner” (בעל) in verses 13–14 (see Jackson’s interpretation, earlier).⁵⁵

The relationship of verses 13–14 to verses 9–12 is also seen in what the animal may suffer. It may “be broken or die” (ונשבר או מת; v. 13). This is similar to “and it dies, is broken, or is snatched away” (ומת או נשבר או נשבה) in verse 9. Hammurabi’s laws have influenced these conditions in the two verses, as explained earlier in this chapter. LH 266, to which verse 9 corresponds in the topical sequence of LH, speaks of a divine plague or a kill by a lion. This is the primary source for the conditions of dying or being snatched away in verse 9. But Hammurabi’s rental laws have influenced verse 9 in their description of breakage (*šebērum*) in LH 246 and 248. “Being broken” in verse 13 as well as

verse 9 is to be seen as a synecdoche for a larger range of injuries as detailed in LH 246–248, like cutting a tendon, blinding an eye, or cutting off a tail. Just as neither verse 9 nor verse 13 spells out how the animal dies, so neither spells out in detail how it may be injured. The text is striving for economy and legal generalization.⁵⁶

We may say something about the supposed redactional development of the borrowing/rental law. Verse 14b looks secondary because it changes the topic, is briefly formulated, uses an unusual verb tense, and otherwise seems an appendage.⁵⁷ The prior analysis, however, has demonstrated that if anything in verses 13–14 is original, it is verse 14b because its topic—rental—correlates precisely with LH 268–271 and 244–249. Its secondary character does not come from a later hand but from the original writer(s) of CC, who added a rule with the topic of his source after setting down a law on borrowing, a topic not precisely based on his source. Therefore, what is actually secondary, at least from a conceptual point of view, is the borrowing law in verses 13–14a. This shows how the compositional process created artifacts that can mislead redactional analysis that looks only at CC's text by itself.

Another element whose originality has been questioned is the criterion of the presence or absence of the animal's owner and how it affects the case in verses 13ba and 14a.⁵⁸ There is nothing in the correlations with LH that require this to be seen as original. Nevertheless, setting down a criterion that differentiates between a stricter and lesser penalty seems consistent with the legislative tendency of CC, and it seems to be precisely created to replace the option of an oath. To ascribe this to a secondary level lacks a clear rationale, especially given the originality of complex and stylistically variable features in the casuistic legislation of CC generally.⁵⁹

Finally, we can comment on the relationship of verses 13–14 in the larger context of CC and LH. The laws on animal borrowing and rental in CC are the last of the composition's casuistic laws that correspond with LH and specifically with laws in the topical sequence that has provided the spine for the organization of CC's casuistic laws. The animal rental laws appear near the end of Hammurabi's law collection and are virtually the last that CC could use. The next few laws in LH 272–277 continue rates of hire, for objects and persons. The topic of these laws is perhaps too specific for CC. Therefore, it leaves these laws out of consideration. The final laws in LH 278–282 deal with purchasing slaves. CC does not use these laws at this point in its collection because it has already used them for the debt-slave legislation at the beginning of Exodus 21. LH 282 lies behind 21:5–6, and motifs of LH 280–281 influenced aspects of 21:2–11 (see chapter 5). CC's remaining laws in its casuistic section are a miscellaneous appendix. They rely on sources other than LH. The seduction law in 22:15–16 used a law like MAL A 55–56 (see chapter 5), and the three final participial laws, 22:17–19, derive from or were influenced by a native participial source (see chapter 7). Thus the topical development of CC's casuistic laws stops basically where Hammurabi's casuistic laws stop.

Conclusions

CC in large part follows LH 266–271 for verses 9–13. In the first law on animal death and injury in verses 9–10, though CC used the wording of verse 6 to initiate the description of the case, it replicated the three main elements of LH 266: a description of animal loss, a declaration of innocence, and a statement of the owner's acceptance. CC agreed to the judgment and penalty of its source law: if an animal dies, is injured, or is taken away by the threatening attack of a predator, and perhaps an attack of similar surprise and force by a human, the shepherd is not liable. CC fleshed out its legislation about accidental death or injury with two related laws in verses 11–12. Verse 11 was written to deal with a case of simple theft over against a case of an animal's being snatched away in verse 9. It ruled that in a case of simple theft, the animal custodian must repay. CC either assumed that negligence was operative in this case, or it saw the violent attack by a predator in verse 9 (and LH 266), which does not require repayment, as the baseline law, which then led CC to set down greater liability for a case of simple theft by a human agent. Some of the motifs in verse 11 appear to have been stimulated by LH 267, which deals with animal loss through negligence and requires repayment to the owner. Verse 12 was added as part of the basic composition of CC to complement verse 9. As opposed to the earlier verse, verse 12 ruled that if part of the animal carcass remains from a predatory attack, it is to be brought as evidence to the animal's owner, implicitly in the place of an exculpatory oath. This nuance may have been drawn from native legal tradition.

The laws about animal borrowing and rental in verses 13–14 developed topically from the laws on animal rental in LH 268–271. CC's laws reflect some of the language used in these Akkadian laws. But the Akkadian laws only prescribed rates of hire and not malfeasance with respect to these animals. CC used them as an avenue to bring in laws about the death and injury of rented animals from LH 244–249. CC broadened its laws to include animal borrowing in addition to rental. The change in the holder's relation to the animal led CC to change the liability in the law. Against its source laws in LH 244 and 249 and in contrast to verses 9–10, CC required repayment of an animal that died naturally or was injured. It made an exception if the owner was present. Even though CC focused on borrowing as the primarily functional case in verses 13–14a, it included rental in verse 14b, which, despite its supplementary character, operates on the same level as borrowing in the main law. CC added to the requirements in a case of borrowing that the renter of an animal is obligated to pay the rent for the animal, even though the animal dies.

Compared with LH, CC's laws appear concerned to explore cases that are similar but could lead to different judgments in liability. In verse 11, it adds a law about animal theft to a more basic law about loss by natural causes in verses 9–10, based on LH 266. In verse 12, it adds a case where part of a carcass remains, as opposed to its complete loss in verses 9–10. In the rental laws

of verses 13–14a, it adds the case of borrowing to the case of rental in verse 14b, based on LH 228–271. Moreover, the laws of verses 9–14 appear to be concerned to provide nuance to the issue of what is required for evidence. Instead of allowing exculpatory oaths as in LH 249 and 266, CC brings in forms of empirical evidence of innocence, including animal remains in verse 12 and the owner's presence in verses 13–14. Hence, we see CC here expanding the legislative scope of its source rather than simply summarizing it or extracting its essence. Thus, in all of the property laws of 21:33–22:14, CC is concerned about different levels of liability and the evidence that may be used to establish liability. This complements CC's concern about modalities of intention and liability in the homicide and assault laws of 21:12–32, including the burglary law of 22:1–2a. These features turn out to be the conceptual glue that holds together the majority of CC's casuistic laws.⁶⁰

11

The Themes and Ideology of the Apodictic Laws (Exodus 20:23–26; 21:1; 22:20–23:19)

As chapter 3 demonstrated, the overall structure of CC imitates the A-B-A configuration of LH. The pattern of the initial apodictic laws (20:23–26, plus the transitional introduction of 21:1), followed by the central casuistic laws (21:2–22:19), and then by the final apodictic laws (22:20–23:19) correlates with Hammurabi's structure of prologue, laws, and epilogue. At the same time, even though CC's initial apodictic laws reflect the cultic theme of the prologue, the specific topical outline of CC's apodictic laws mainly comes from the exhortatory block of the epilogue, the section of the epilogue that contains commands and prohibitions amid a larger context of royal praise. CC in fact replicated the sequence of themes of the exhortatory block thrice, once in the initial apodictic laws and twice in the two parallel strings of the final apodictic laws (string I 22:20–30 // string II 23:9–19). These two strings were placed around a chiasmic core (23:1–8), which itself continues the thematic sequence of string I based on the exhortatory block. CC also imitated the injunctive mood prevalent in the exhortatory block, writing apodictic law instead of praise or casuistic law.

As CC revised its source, it created a text with a distinctive ideology. The collectivity of motifs in CC's apodictic laws is familiar against Hammurabi's text and the ethos of lawgiving described in it: law has a divine source; the poor, the cult, and justice are objects of the lawgiver's concern; the lawgiver is worthy of acclaim; and the worlds of law and cult converge. But CC altered the identity of the lawgiver, adjusted the scope of those included in subjected classes, and incorporated Israelite and Judean national memory to counter the

landscape of power in LH. This leads to the conclusion that CC's goal was more than just writing law: it was a response to the experience of Assyrian imperialism in the late eighth or early seventh centuries BCE. Standing on the shoulders of its overlords' most culturally prestigious legal text and of the sovereign responsible for its promulgation, CC sought to build a text of analogous esteem, which, if it could not deliver its audience from oppression, at least could operate in implicit protest against it. One senses that CC worked against its source, not so much to answer it polemically point by point as to present a broad alternative religious and political worldview.

This chapter mainly describes the ideological transformations that CC made in its apodictic laws. It thus gives an account of the whole of the apodictic laws, even though it does not treat them consecutively or individually, as the preceding chapters treated the casuistic laws. We first review the major conceptual alterations involving the replacement of Hammurabi and Mesopotamian gods with Yahweh and then look at the main themes of CC that were stimulated by the exhortatory block. This allows us to answer specific questions about CC's structural imitation and elaboration of Hammurabi's text. It also allows us to look for or speculate about other sources that influenced some of the passages in the apodictic laws. The next chapter continues the discussion of this chapter to engage the questions about the redactional development versus unity of the apodictic laws and the relationship of CC to its narrative context in the book of Exodus.

Replacement of Hammurabi and Foreign Gods with Yahweh

The primary and most obvious permutation that CC wrought upon the material from the exhortatory block and the epilogue and prologue generally was the replacement of Hammurabi and Mesopotamian gods with Yahweh.¹ Once this creative innovation is recognized, the similarities between CC's apodictic laws and their source come into focus. At first thought, it seems to be a rather minor matter to substitute one identity for another. But in our text, this has major ideological consequences because it redefined the source of the laws and required the description of a cultic context with a different symbol for the lawgiver and a different way in which his name is to be commemorated.

Yahweh as Author of the Laws

Although CC's apodictic laws are mainly a reflection of the exhortatory block, CC was familiar with the whole of the prologue and epilogue, to tell from the influence of the prologue on the initial apodictic laws in regard to the topic of cult and CC's extensive knowledge of the casuistic laws of LH otherwise. Therefore, CC's portrayal of Yahweh as lawgiver can be considered a response

to the whole picture painted in the prologue and epilogue. These bookends to LH depict Hammurabi as one called and charged by the gods with the task of promoting the welfare of the people, mainly through pursuing justice and formulating law. The beginning of the prologue describes the king's relationship to the gods. Anu and Enlil gave power to Marduk and named Babylon as the supreme city, and these chief deities chose Hammurabi. The text, composed in Hammurabi's voice, says:

At that time, to bring well-being to the people, the gods Anu and Enlil named me by my name, Hammurabi, the pious prince, the one who worships the gods, in order to make justice appear in the land, to eradicate the wicked and evil, so that the strong not wrong the weak, to rise like Shamash (the sun) over humanity, to enlighten the land. (col. 1:27–49)

After a long list of beneficial acts, including cultic acts that the king performed for various cities (cols. 1:50–5:13), the transitional introduction to the casuistic laws further defines Hammurabi's and the gods' role in the creation of law:

When Marduk commanded me to provide justice for the people of the land, to instill proper behavior, I placed truth and justice in the mouth of the land. I increased the people's well-being. At that time: [the laws follow]. (col. 5:14–25)

According to this, Marduk, who had been placed in supreme position over Babylon by Anu and Enlil according to the first part of the prologue, commanded Hammurabi to provide justice. Marduk does not reveal the law; he only commands the promulgation of justice. It is Hammurabi who translates this ideal into reality by formulating law. This idea is repeated at the beginning of the epilogue, which resumptively repeats the transitional introduction at the end of the prologue:

(These are) the just laws that Hammurabi, the capable king, established and has directed the land to follow sound custom and good conduct. (col. 47:1–8)

The fifty lines that lie between this introduction to the epilogue and the exhortatory block reflect on Hammurabi's beneficial acts for the people:

I am Hammurabi, the venerable king. With regard to humanity that Enlil has entrusted to me, the shepherding of whom Marduk gave me, I have not been negligent nor have I been inattentive. I have sought out for them peaceful abodes. I have opened up difficult straits. I made light rise over them. By the mighty weapon that Zababa and Ishtar generously bestowed upon me, by the wisdom that Ea granted me, and by the talent that Marduk gave me, I have uprooted enemies above and below. I have made wars cease. I brought well-being to the land. I made the people of the settlements lie down in meadows. I did not allow anyone to trouble

them. The great gods called me. I am the peace-making shepherd whose staff is just. My kind shade is spread over my city. I have held the people of the Sumerian and Akkadian land in my lap. They have thrived under my protective deity. I have maintained them in peace. I have protected them by my wisdom. (col. 47:9–58)

This reiterates the fact of Hammurabi's call and commission by the gods. It describes the advantage that he provided the people, mainly in terms of military or security activities. This extends the description of the nonjudicial and mainly cultic benefits that Hammurabi accomplished, described in the prologue.

The exhortatory block that follows deals specifically with the promulgation of law. It begins with Hammurabi saying:

So that the strong not wrong the weak and to secure justice for the destitute girl and widow, in Babylon, . . . for the purpose of setting down the law of the land, to render the verdicts of the land, and to secure justice for the wronged, I have written my treasured words on my stela and set (it) up before the image of me, the king of justice. (col. 47:59–78)

According to this, Hammurabi is expressly the author of the law. The exhortatory block continues by referring to the command of the gods that lies behind the promulgation of law:

By the command of Shamash the great judge of heaven and earth may my justice appear. By the command of Marduk my lord may my ordinances not have anyone who would remove them. (col. 47:84–92)

The prayer that the wronged man offers in the Esagil temple, mentioned further on in the exhortatory block, entails all the major motifs seen here: divine call, securing the land, and providing benefit to the land, including lawgiving. The visitor says:

Hammurabi, the lord, who is like a begetting father to the people, submitted himself to the command of Marduk his lord. He achieved the triumph of Marduk above and below. He gladdened the heart of Marduk his lord. He obtained well-being for the people forever, and he provided justice for the land. (col. 48:20–38)

The admonition to a future king, which follows shortly after this praise, reflects Hammurabi's own relationship to law:

In the future at any time, may any king who appears in the land keep the just commands that I have written on my stela. May he not alter the law of the land that I have set down or the verdicts of the land that I have rendered. May he not remove my ordinances. If that man has understanding and is able to provide justice for his land, let him give heed to the words that I have written on my stela. May this stela reveal to him the way, behavior, the law of the land that I have set down and the verdicts of the

land that I have rendered. May he secure justice for humankind. May he set down their law. May he render their verdicts. May he root up the evil and wicked from his land. May he promote the well-being of his people. (col. 48:59–94)

Here again, Hammurabi renders the decisions and writes them as laws on the stela. The prescriptions are his.

Finally, the passages describing the blessing of an obedient future king and the curses to fall on a disobedient future king credit Shamash as a source of legal inspiration and emphasize Hammurabi's legal authorship:

I am Hammurabi, king of justice, on whom Shamash has bestowed truth. My words are choice; my deeds are without equal. They are vanity to the fool, but to the wise they are objects of praise. If that man (the future king) gives heed to my words which I have written on my stela, and does not remove my law, overthrow my words, or alter my ordinances, may Shamash lengthen the scepter of that man as he did for me, the king of justice. May he shepherd his people in justice.

If that man does not give heed to the words that I have written on my stela. . . . (If) he erases the law I set down, overthrows my words, or alters my ordinances. . . ., may great Anu. . . smash his scepter. . . . (col. 48:95–49:17; other curses from other gods follow)

In contrast to this model of indirect divine influence in the promulgation of law described in the prologue and epilogue, CC presents Yahweh as both the *source and author* of the laws in the collection. He is not in the background giving a charge that is left to human initiative to fulfill. Yahweh's authorship of law is primarily evident in his being portrayed as the first-person speaker of the apodictic laws. Previous scholarship has focused on this stylistic feature as a mark of the distinctive perspective and authorship of the apodictic laws. It has led to identifying this type of law as expressing the *Privilegrecht (Privileganspruch) Jahwes* and arising from a redactor with an interest in formulating *Gottesrecht*, law that makes clear theological claims, distinct in origin and intent from the casuistic laws.² Despite the difference in conception in the apodictic laws, the motif of divine first-person speech derives from the prologue and epilogue, where Hammurabi is the first-person speaker, visible in the several passages about Hammurabi's authorship of his laws from the prologue and epilogue, cited previously.³

In some cases, CC retains terminology with first-person wording very close to that found in LH and recontextualizes it to make Yahweh the pronominal referent. The term "my name" appears in both texts in the passages about memorializing the sovereign: "in the Esagil (temple) that I love may *my name (šumī)* be recalled eternally for good" (col. 48:1–2); "in every place where I cause *my name (שמ׳)* to be recalled I will come and bless you" (20:24). Hebrew שמ׳ replicates Akkadian *šumī* literally, but it has a new referent.

In a similar way, just before the passage about name memorialization in the exhortatory block, Hammurabi speaks of “my statue”: “I have written my precious words on my stela and set it up before the *statue of me* (*šalmīya*), the king of justice” (col. 47:75–78). As chapter 3 has shown, this corresponds with 20:23–24, according to which CC rejects the fabrication of idols in favor of an altar (see also further later).⁴ But even with the substitution in cultic installation, CC still uses the first-person pronoun, calling it “my altar”: “do not ascend by stairs on *my altar* (מזבחה)” in 20:26 and “you shall take him from *my altar* (מזבחה) to be put to death” (21:14, based on 20:23–26). The various prepositional phrases with first-person pronouns that appear in CC’s laws about the construction of images and the altar conceptually augment the construction of the first-person pronoun attached to the מזבחה “altar”: “do not make *with me* (אתי) gods of silver” (20:23); “an altar of earth you shall make *for me* (לי)” (20:24); “if you make an altar of stone *for me* (לי)” (20:25).

CC’s pilgrimage laws (23:14–19) also reflect this change of first-person referent. These laws were stimulated by the passage about a wronged man going to the Esagil temple for judicial clarification (to be discussed in more detail later). This man comes “before *my* (Hammurabi’s) statue (*šalmīya*)” (col. 48:6–8). CC uses similar first-person language when it says that festival celebrants “shall not appear *before me* (emended: see *my presence*) empty-handed” (ולא יראו פני ריקם 23:15). CC’s festival passage also uses a preposition with first-person pronoun to refer to the supreme beneficiary of festival celebration, similar to the prepositional phrases in the statue and the altar laws: “Three occasions you shall celebrate as pilgrimage festivals *for me* (לי)” (23:14). Sacrifices made on these occasions are also called “*my* festal offering (הגני)” (23:18b) and “*my* sacrifice (זבחה)” (23:18a).

A number of other first-person references to Yahweh are scattered across the apodictic laws: “when he cries to *me* (אלי) *I will hear* (שמע אשמע) his cry” (22:22); “*I will become angry* (והרה אפי) and *I will slay* (והרגתי) you with the sword” (22:23); “if you lend money to *my* people (עמי)” (22:24); “if he cries to *me, I will hear* (ושמעתי) because *I am* compassionate (חנון אני)” (22:26); “the first born of your children you shall give *me* (לי)” (22:28); “on the eighth day, you shall give it (the first born animal) *to me* (לי)” (22:29); “you shall be holy people *to me* (לי)” (22:30); “for *I will not exonerate* (לא אצדיק) the guilty” (23:7); “be observant with regard to all that *I have said* (אמרתי) to you” (23:13a); “as *I have commanded* you (צויתך)” (23:15). The first person is also found in the homicide law of 21:13, which is dependent on 20:24–26: “*I will appoint* (ושמת) a place for you where he (the murderer) may flee” (21:13). These all echo and transform broadly the ubiquitous first person of Hammurabi’s speech in the prologue and epilogue, forms that emphasize his agency in creating the laws (again, see the passages cited at the beginning of this section). Yahweh as first-person speaker and focus takes over the king’s role.

Another primary marker of divine authorship for the casuistic laws is in the transitional introduction in 21:1 that bridges the apodictic laws in 20:23–26 and

the casuistic laws that follow: “These are the laws that you shall place before them” (ואלה המשפטים אשר תשים לפניהם). Yahweh is the speaker and Moses is the addressee, according to the immediate and larger narrative context. This sets the whole of the casuistic laws up as the words of deity. This introduction was influenced by the transitional introductions at the end of the prologue and beginning of the epilogue, and its position was determined by that of the introduction at the end of the prologue (see chapter 3).⁵ The transitional introduction at the end of the prologue and that at the beginning of the epilogue have the function of portraying Hammurabi as author of the 282 laws that lie between them, even though those laws make no mention of Hammurabi or his authorship. CC follows its model precisely. Its outer sections and transitional introduction in 21:1 tell us who the laws’ author is, while its central casuistic laws are effectively silent on the matter. The only exception in CC is the appearance of the first-person speech in the homicide law of 21:13–14, which comes from the influence of the initial apodictic laws of 20:24–26. This deviation is due to CC’s intent to provide detail about the place where the determination of the murderer’s intention takes place, described only limitedly in the casuistic source law (LH 207; see chapter 6). As CC drew on the altar law for this detail, it brought in the first-person expression.

The change to Yahweh as the speaker of law may be partly due to prophetic phenomenology and ideology.⁶ According to this, the deity speaks through prophetic mediators who presumably report only the divine word. They do not compose words for the deity. This perspective is found, for example, in the portions of Hosea and Amos that predate CC. Moreover, given the relatively late date of CC, the notion of Moses’ mediation of Yahweh’s word as a prophet probably already existed in national religious tradition. CC used this for recontextualizing traditional Near Eastern law. A major innovation of CC was to put a *long* law composition in the mouth of Yahweh, whereas before, the deity was portrayed as announcing short ad hoc oracles. It cannot be underestimated how important the use of LH was for the development of the concepts of revelation and even Torah in subsequent biblical text and thought, and the religious traditions that grow from these sources. Without LH, the theologies of the Bible, Judaism, Christianity, and beyond would be quite different, if they could exist at all.

Another reason for the replacement of Hammurabi with Yahweh has to do with political ideology and realities. The kings of Israel and Judah during the Neo-Assyrian period were beholden to the greater Mesopotamian power. They could not, without dire consequences, promulgate decrees and institute reforms that might undercut imperial interests. Therefore, CC’s author could not realistically present a king as an author of a law collection. Only the fiction of pseudonymous attribution to deity and to his revelation to Moses in the foundational past, which could not be disproved, could trump Assyrian and Mesopotamian authority.⁷ Yahweh, the “king” of the whole earth, thus became the author of law.⁸

CC's replacement of Hammurabi with Yahweh parallels Deuteronomy's replacement of the Neo-Assyrian monarch of vassal treaties with Yahweh.⁹ This may be seen in a comparison of Deuteronomy 13 with VTE §§10 and 12:

²If in your midst a prophet or dream-dreamer arises...³...saying "Let us follow after other gods..." ⁴Do not listen to words of that prophet or dream-dreamer...⁵You shall follow after Yahweh your God, show him reverence, and observe his commands...⁶That prophet or dream-dreamer shall be put to death because he spoke rebellion against Yahweh your God...⁷If your brother, son of your mother, or your son or daughter, or the wife of your lap, or your fellow of equal status incites you secretly saying, "Let us go and worship other gods..."⁸ you shall not agree with him or listen to him...¹⁰You shall slay him...¹³If you hear in one of your towns...¹⁴that people of no account have gone forth..., saying "Let us go and worship other gods..."¹⁵you shall investigate...¹⁶and you shall smite the inhabitants of that town with the sword and totally destroy it...

§10 If you hear any evil, improper, ugly word which is not seemly nor good to Assurbanipal... from the mouth of your brothers, your sons, your daughters, or from the mouth of a prophet, ecstatic, an inquirer of oracles..., you shall not conceal it but come and report it to Assurbanipal.

§12 If anyone should speak to you of rebellion and insurrection (with the purpose) of ki[[ling], assassinating, and eliminating Assurbanipal... or if you should hear it from the mouth of anyone, you shall seize the perpetrators of insurrection, and bring them before Assurbanipal... If you are able to seize them and put them to death, then you shall destroy their name and their seed from the land...¹⁰

The correspondences here, along with other correspondences, indicate that Deuteronomy has used Assyrian treaty (or treaties) in its formulation. It has created obligations of loyalty to the biblical deity by converting the Assyrian king into Yahweh.¹¹ That Deuteronomy has transformed a Mesopotamian text in this way makes it entirely reasonable that CC has done the same sort of thing to LH, especially if CC as an essential whole belongs to the Neo-Assyrian period, the view of most scholars for reasons other than those posed in this study (see chapter 4). CC and Deuteronomy, having perhaps no more than two generations between them, are part of a common religio-political hermeneutical tradition. This is some of the evidence that suggests that CC be seen as not merely pre-Deuteronomic chronologically, but *proto-Deuteronomic* in conception.

Replacing Hammurabi's Statue with Yahweh's Altar

A transformation parallel to the replacement of Hammurabi with Yahweh is the replacement of the king's statue with Yahweh's altar, briefly noted already

in discussing the first-person terminology used with the two structures (for textual comparison, see chapter 3).¹² This transformation appears overtly in the initial apodictic laws. The first two verses of this group of laws (20:23–24) entail a contrast, which is a reaction to the description of Hammurabi’s setting up his stela by his statue at the beginning of the exhortatory block. The king says: “I have written my treasured words on my stela and set (it) up before the image of me, the king of justice” (col. 47:74–78). Exodus 20:23 first prohibits making divine images; verse 24 then commands making an earthen altar: “²³Do not make with me gods of silver, and gods of gold do not make for yourselves—²⁴an altar of earth you shall make for me. . . .”¹³ Even though verse 24 does not have a conjunction that indicates an alternative, a contrast is still manifest in the shift between the two laws from prohibition to positive command: “*don’t do that—do this.*” It is evident also in the use of prepositional-pronominal phrases and pronouns attached to nouns that indicate interest and association: “do not make *with me* (אתי) gods of silver, gods of gold do not make *for yourselves* (לכם) . . . make *for me* (לי) an earthen altar; sacrifice on it *your* burnt offerings and *your* well-being offerings, *your* flock animals and *your* cattle (את עלתיך ואת שלמיך את צאנך ואת בקרך) . . . I will come *to you* and bless *you* (אליך וברכתיך) . . . If you make a stone altar *for me* (לי) . . . , do not ascend *my* altar (מזבחה) on stairs . . .” (20:23–26).

The replacement of the statue with the altar also operates latently in the festival laws at the end of the final apodictic laws (23:14–19). The wronged-man passage, which influenced this passage (see chapter 3), identifies Hammurabi’s statue as the object of judicial pilgrimage: “May a wronged man who has a case come before the statue of me (*ana maḥar ṣalmīya*), the king of justice” (col. 48:3–8). CC twice similarly describes people appearing before (or seeing) Yahweh: “they shall not appear before me [emended: see my face] empty handed” (23:15); “three times a year each of your males shall appear before [emended: see the face of] the Lord, Yahweh” (23:17). Though the altar is not mentioned in these or the other festival verses specifically, festival attendance would take place in the sanctuary court area, whose ceremonial focus would be the altar. The requirement not to appear before Yahweh empty-handed at the Feast of Unleavened Bread (23:15) is a requirement to bring sacrifices and offerings; animal sacrifices would be offered at the altar. The other cultic rules in 23:18–19, as well as in 22:28–29 (the verses parallel to the festival laws in the dual string structure of the final apodictic laws), indicate that a main activity associated with pilgrimage to the sanctuary would be sacrifice (see further in this chapter on the theme of cult).

Yahweh’s altar, though distinct in form and specific purpose from Hammurabi’s statue, would nonetheless be similar in certain respects. Both structures would be of limited size but prominent. To tell from similar finds, Hammurabi’s statue may have been life-size or somewhat larger, and made of diorite, the gray-black stone related to granite, of which the law stela was made. CC’s altar would be not much more than a moderate pile of dirt or stone, whose

volume, Zevit estimates, “could easily be carried nowadays in the bed of a small pick-up truck, though the weight might break the springs.”¹⁴ Both structures would also provide a focal point in the larger cultic context. Moreover, both would represent or entail the presence of a sovereign and be commemorative, evoking his memory or bringing him to mind.¹⁵ One of the explicit connections between the statue and altar is that they are both objects of pilgrimage and, as discussed in the next section, places or mechanisms for the memorialization of the sovereign’s name.

Memorialization of the Sovereign’s Name

Variations on the motif of name memorialization appear three times in CC’s apodictic laws (20:24; 22:27; 23:13). Each instance addresses a different aspect of the larger idea. The first in 20:24 is the closest to the wording and conception of the exhortatory block: “In every place where I cause my name to be recalled . . .” (בכל המקום אשר אזכיר את שמי) vis-à-vis “In the Esagil (temple) which I love may my name be remembered kindly forever” (*ina Esagil ša arammu šumī ina damiqtim ana dār lizzakir*; col. 47:93–48:2).¹⁶ LH indicates at least two ways in which Hammurabi’s name is memorialized according to the context that follows: the placement of his statue alongside the law stela and the prayers that those inquiring after their legal affairs might offer in praise of the monarch at the Esagil temple. Similarly, CC implicitly envisions memorialization of the divine name at the cult site in connection with the altar and through the sacrificial observances of the people (20:24). Thus both texts tie memorialization to a cult object and activity in the cultic sphere.

But CC’s formulation makes an important distinction in the agency associated with memorialization. It uses a causative verb with Yahweh as the subject instead of Hammurabi’s passive (N stem) verb.¹⁷ The exact force of CC’s verb is not clear, partly because of the unique first-person formulation with deity as subject. It may refer to the god’s announcement of his own name in revelation, following the few passages in which humans proclaim or mention a name (including 23:13b),¹⁸ or it may refer, further, to the deity’s causing his adherents to articulate, hence profess or memorialize his name (see later). In any case, the deity in 20:24 is explicitly the agent of name announcement or memorialization. We will see shortly that the deity’s agency in memorialization is connected with his theophany at the cult site and that this provides a rationale for cultic service. The theophany defines the site where it occurs as a place to which offerings may be brought to honor the deity. These offerings in turn attract the divine presence and maintain it. Ideally, the mutually affective process of divine manifestation and reverence continues indefinitely.

In addition to the erection of a monumental altar and sacrifices there, name memorialization also entails the pronouncement or use of the divine name in ceremony. This is evident from the appearance of the name memorialization motif in the second string of the final apodictic laws (23:13b): “The name of

other gods you shall not mention. It shall not be heard on your lips.”¹⁹ This prohibition appears directly before the festival laws (23:14–19). This proximity may mean that verse 13b refers specifically to the pronouncement of the name of foreign gods in cultic practice. This contextualization may have been motivated by the cultic invocation of Hammurabi’s name found in the wronged-man passage that comes immediately after the exhortation to memorialize Hammurabi’s name. In this the visitor speaks Hammurabi’s name in the temple precincts: “Hammurabi, the lord, who is like a father and begetter to the people, submitted himself to the command of Marduk his lord. He achieved the triumph of Marduk above and below. He made the heart of Marduk glad. He established well-being for the people forever and secured justice for the land” (col. 48:20–38). This passage, as already noted, must be considered an example of what is meant by the charge to memorialize the king’s name.

The prohibition in 23:13b is essentially the inverse of that in 20:24, and they can be read together: while the names of other gods are not to be pronounced, Yahweh’s name is to be acclaimed, as dictated by cultic custom.²⁰ It may not be coincidental that just before the call for memorializing Hammurabi’s name, LH reads “my (i.e., Hammurabi’s) competence has no rival/equal” (*lē’ ūti šaninam ul iṣu*; col. 47:82–83). When applied to Yahweh, this becomes a monotheistic or henotheistic pronouncement and corresponds with the notion involved in speaking of “other” (אֲחֵרִים) deities in 23:13.

The prohibition in 23:13b also conceptually complements the prohibition of divine images in 20:23, which appears next to the verse on name memorialization. We should avoid, however, taking the correlation of 20:23 and 23:13b as an indication of the original limits of CC. The festival laws that follow 23:13 also belong to the original composition of CC (see chapter 12). If 23:13b refers to cultic practice, it is conceptually part of what follows. The true inclusionary correlation is between 20:23–26 and 23:13b–19, as whole units. (Later in this chapter we will see that 23:13a, a general command to obedience, is also part of CC’s concluding unit.)

It is not clear to what extent the language describing name memorialization in 20:24 and 23:13b parrots Israelite or Judean idiom, in addition to the influence that we can identify from LH.²¹ None of the biblical attestations of שָׁמַעְתִּי (שמעתי) matches the idiom or contexts of Exodus 20:24 and 23:13, except for Joshua 23:7, according to which the Israelites are to observe everything that is written in Moses’ instruction with the command: “do not make mention of the names of other gods and do not swear” (וּשְׁמַעְתִּי אֱלֹהִים לֹא תִזְכְּרוּ וְלֹא תִשְׁבַּעוּ). This verse, being Deuteronomistic, however, is probably dependent on CC’s prohibition.²² CC’s unique first-person formulation in 20:24, “I will proclaim” (אֲזַכֵּיר), calls particular attention to its novelty. CC may nonetheless build on a native tradition of the announcement of the divine name (see, for example, the motif manifested in Gen 15:7; 17:1; Gen 28:13).

The influence of native tradition may be complex. Levinson, for example, sees a conflation of two phenomenologies in 20:24: the announcement of the name of the deity and the cultic presence of the deity. He concludes that the

mixing of these two motifs “serves as a bridge between theophany as an inaccessible event of the past, situated at a no longer accessible sacred mountain found outside the land, and the need to assure divine presence as something ongoing and accessible in the present.”²³ He says further that “by grafting together the two inconsistent conceptions of divine presence, [the author of the passage] sought intentionally to assure the continuity of divine presence in the theophany, shifting its home from Sinai to the altar, the precursor of Zion.”²⁴ The correlation with LH now makes clearer how this connection has been achieved. CC basically primordializes the memorialization of LH at the foundational event of revelation at the divine mountain, to be echoed in the cult that is built upon that revelation.²⁵ (See chapter 12 for the association of CC’s motif with Exod 3:15.)

The other passage in CC connected to the name memorialization motif in LH is in string I of the final apodictic laws (22:27). It extends requirements of verbal rectitude by prohibiting the cursing of deity and the “chieftain (נשיא) among your people.”²⁶ The term נשיא “chieftain” in 22:27 has often been understood as referring to a premonarchic leader, thus demonstrating CC’s early origins.²⁷ This has to be rejected given the monarchic date that many scholars now give to CC, especially its apodictic laws, and especially in view of the date required by the source hypothesis of this study.²⁸ The term stands in the place of the normal word for a monarch, מלך “king.” CC chose the term for purposes of verisimilitude, to avoid the anachronism of speaking about a “king” in the time of Moses. The term is also a correlative of the replacement of the human king Hammurabi with Yahweh. The excision of the foreign monarch caused CC to be circumspect about speaking of kingship even in the Israelite or Judean cultural sphere. Whatever actual role a local king might have had in the formulation of edicts and the administration of justice, this is ignored. In CC, Yahweh is both lawgiver and even judge (cf. 21:6, 13–14; 22:7, 8, 10; 23:6).²⁹

Although the rule against cursing the deity and chieftain complements the larger notion of memorializing the sovereign’s name, it may have arisen in part from a motif in the wronged-man passage. There, after the man reviews his case and calms his mind, Hammurabi urges, “let him pray for/bless me” (*lik-rubam*). CC does not go as far as LH to require praise of the local king, but it at least protects him against disparagement. If this is true, it means that CC’s use of the term נשיא is not necessarily motivated by sentiment against the local monarchy.³⁰ Thus CC is not quite like Deuteronomy 17, 1 Samuel 8, or the book of Ezekiel in its attitude toward native kings.³¹ CC’s antipathy is primarily toward *foreign* royal power. But to achieve its goals, it must demote even the local king (in Israel or Judah) in favor of the deity’s authority.

CC may be using native idiom to actualize the prohibition against cursing divine and local sovereigns. Rofé has noted the collocation of “king” מלך and “God” אלהים in the context of cursing.³² One suffering deprivation, according to an obscure prophecy in Isaiah, “will utter a curse by his king and by his god” (וקלל במלכו ובאלהיו; Isa 8:21). False witnesses against Naboth are to charge: “You have blessed (= cursed) God and king” (ברכת אלהים ומלך; 1 Kings 21:10; cf. v. 13). It is doubtful that these passages depend on CC. CC may therefore

have drawn on a preexisting constellation of terminology as represented in these passages for the wording of its law. Rofé argues that CC has replaced an original מֶלֶךְ with נְשִׂיא out of an antimonarchic tendency. It appears, however, that נְשִׂיא is original, given the ideological concerns of CC. Therefore, no textual development need be posited. Rofé's argument, however, helps explain why CC used אֱלֹהִים in 22:27, instead of "Yahweh," which one might expect, given the correlation of the verse with the other name pronouncement verses (20:24; 23:13b): this term for deity is part of native idiom.³³

CC is particular about which king should not be cursed: the one who is "among your people." Thus CC allows freely cursing the kings of foreign nations, whether those of the past like Hammurabi or contemporary suzerains, like Sennacherib, Esarhaddon, or Ashurbanipal. Viewed this way, the prohibition of cursing, though worded quite differently than the recommendation to memorialize Hammurabi's name, correlates perfectly as an expression of dissent against LH.

The use of the term "Lord" (יְהוָה) to refer to Yahweh can be connected with the notion of name memorialization, as chapter 3 has indicated. Exodus 23:17 says: "Three times a year shall each of your males appear before (or: see the presence of) the Lord (יְהוָה), Yahweh." The passage about the wronged-man's visit to the Esagil temple, to which the festival laws correspond, uses the term *lord* (*bēlum*; feminine *bēltum*) several times of the king Hammurabi and the gods Marduk and Zarpanitu (col. 48:20–58; see the citation in chapter 3). The term occurs a total of seven times there and is thus highly visible. This probably led CC to use the Hebrew equivalent in the festival laws.³⁴ As noted earlier, the prayer that the wronged man recites exhibits one of the ways that Hammurabi's name is memorialized. Although CC does not use "Lord" in the context of a prayer that a pilgrim recites, it is used in the verse that summarizes the festival requirements, thus emphasizing the explicit use of the divine name Yahweh, to which it stands in apposition. The influence of LH behind the term "Lord" in 23:17 also explains why Yahweh speaks of himself in the third person there, as opposed to the first person in the similar phrase in verse 15: the term "Lord," generated from the source text, takes the place of a first-person pronominal reference, and thus requires the third person.

Yahweh's Coming and Blessing

The clause about memorializing Yahweh's name in the altar laws is part of a main clause about Yahweh's coming to the cult place and his blessing: "in every place where I proclaim my name *I will come to you and bless you*" (אָבוֹא אֵלֶיךָ; 20:24).³⁵ Chapter 3 gave reason for believing that coming and blessing motifs were stimulated specifically by the phrasing at the end of the wronged-man passage: "may the gods that enter the Esagil...make the ominous utterances favorable daily" (*ilū ēribūt Esagil...igirrê ūmišam...lidammiqū*;

48:48–58). Although the general notion of blessing is found in other contexts of the exhortatory block and even in the rest of the prologue and epilogue, what makes this particular textual association compelling is the presence of the motifs of the gods' arrival that appears only here in both texts, the contiguity of a motif of blessing to this notice of arrival, and also the fact that all of the motifs in the initial apodictic laws associable with LH would thus be connected to passages of the exhortatory block (and the epilogue in general) that happen to mention the Esagil temple (noted in chapter 3). I will save discussion of this "Esagil axis" of thematic correlations for the end of this chapter. Our interest here is the differences in the notions of divine appearance in the two texts.

A reader could understand the scope of "the gods that enter the Esagil (*ēribūt Esagil*)" to refer not just to the protective deities that precede but to all gods who have positions in the Esagil temple.³⁶ This broad interpretation could have led CC to interpret this on a par with the "coming" of Yahweh to his cult. But CC understands the phenomenology differently. The entering described in LH refers concretely to the gods' being brought into the temple *in ritual procession*. Other Akkadian texts use the verb *erēbum* "to enter" (including its causative stem) of cult images taking or being brought to their place. Tiglath-pileser I says: "I celebrated the consecration festivals [literally: entries] in their (new) temples and brought in my lords, the great gods" (*tērubāt bītātešunu aškun ilāni rabūti bēlēya ana libbi ušērib*).³⁷ A Neo-Assyrian letter refers to a procession in which one "will make the god go forth and then return home" (*ilu ušēšā u usaḥḥar ušerrab*).³⁸ Another Neo-Assyrian letter says similarly: "the god will leave (the temple in procession), take his seat (and) come back in again toward evening" (*ilu uš]ša uššab saḥar ūmē isaḥḥar errab*).³⁹ A text from Ashurbanipal's time says: "Asshur and Ninlil... enter into the midst of this New Year's temple and they celebrate a happy fes[tival]" (*dAššur u dNinlil... qirib É.Á.KI.IT šuātu irrubūma ippušū i[sinn]i ḥidūti*).⁴⁰

Instead of bringing Yahweh into the cult concretely in procession, CC employed an alternative form of theophany: the *supernatural* arrival of the divine presence at the cult site. This is signaled by the first-person verbs "I cause my name to be memorialized... I will come... I will bless." As a supernatural event, this is consistent with the cultic stricture of CC, which rejects the use of divine images in the verse just before that on name memorialization and Yahweh's coming to the people at the cult place (20:23). Yahweh is phenomenologically detached from his cult symbol. Indeed, a procession with his cult symbol is precluded, since it is a fixed, nontransportable altar of earth or stone. A supernatural appearance of the god is furthermore consistent with the ideological force of the text, which seeks to place Yahweh in a superior position over Hammurabi and the gods of Babylon.

Yahweh's appearance and its connection to the cult site are manifested in the interplay of the initial altar laws and the festival laws at the very end of CC. The first laws say that Yahweh himself comes to the sanctuary site. The

festival laws complement this by requiring the people (specifically males) to appear before (or “see”) Yahweh at the sanctuary (23:15, 17). Thus the god, his symbol the altar, the act of memorializing his name, and worshippers all converge interactively at the sanctuary. The same interactivity is found in the exhortatory block. Hammurabi’s statue and stela are set up in the Esagil temple, Hammurabi’s name is memorialized there, and the wronged man comes to Hammurabi’s symbol in the temple to perform an act of worship and homage.

For how the coming of Yahweh relates to the same motif in the narrative description of Exodus 19:9 and 20:20, see chapter 12.

The Main Themes and Structure of the Apodictic Laws

In addition to Yahweh as lawgiver, a theme that underlies CC and is especially visible in the apodictic laws, three more limited but prominent themes appear in the work and primarily in the apodictic laws: the care for the poor, cultic performance, and the pursuit of justice. These themes are determined by LH and in particular by the exhortatory block. Moreover, just as the replacement of Hammurabi with Yahweh is a function of ideological concerns, so is CC’s foregrounding of these topics. Notably, these three themes account for the totality of the apodictic laws, except for 23:13a, which nevertheless is drawn from Hammurabi’s exhortatory block.

The Poor

The structure of the apodictic laws emphasizes the theme of poverty and the plight of the socially underprivileged. The two strings in the final apodictic laws begin with this topic (string I: 22:20–23 + 24–26; string II: 23:9 + 10–12). They each first set down a prohibition against oppressing the weak (string I: 22:20–23; string II: 23:9) and then follow this with two laws whose object is to provide benefit for these persons (string I: 22:24, a prohibition against taking interest from the poor; vv. 25–26, a prohibition against keeping a garment pledge overnight; string II: 23:10–11, leaving crops in the field for the poor; v. 12, rest for slaves and immigrants on seventh day).

The prohibition against oppressing the weak at the beginning of string I, and hence at the beginning of all the final apodictic laws, lists three persons who are not to be oppressed: the immigrant, widow, and orphan. It is therefore a more emphatic statement than the prohibition against oppressing just the immigrant at the beginning of string II. The prohibition in string II, in view of the larger structure, must be seen as an abbreviated echo of its fuller partner in string I. (See chapter 3 for the compared texts.)

As the first part of this chapter noted in regard to other contexts, the prohibition at the beginning of string I is based on the beginning of the exhortatory block of the epilogue:⁴¹

So that the strong not wrong the weak and to secure justice for the destitute girl and widow . . . (cols. 47:59–62).

dannum enšam ana lā ḥabālim ekūtam almattam šutēšurim

²⁰You shall not oppress an immigrant. You shall not repress him, because you were immigrants in the land of Egypt. ²¹You shall not afflict any widow or fatherless child. . . .

וגר לא תונה ולא תלחצנו כי גרים הייתם בארץ מצרים כל אלמנה ויתום לא תענון

Although a modern analysis might subdivide the epilogue differently,⁴² the exhortatory block is nonetheless the place in the epilogue where the text begins to move from description to prescription.⁴³ CC took the motifs of the implicit injunctions of the Akkadian purpose clauses and turned them into direct commands. It replicated the gross syntax of LH, with the first prohibition having a single object (the immigrant standing for Hammurabi's "weak person") and the second having a double object (the widow and orphan, which duplicate the classes of persons in LH).⁴⁴ But CC made a number of changes in addition to casting the expression as direct prohibitions. It used a second-person apodictic form, to address the audience of the law collection in general. Further, CC conceptually inverted Hammurabi's second admonition and wrote a prohibition against oppressing the widow and orphan rather than commanding, positively, that one provide justice for them. This is consistent with CC's conceptual inversion of other laws and motifs taken from LH. (For another explanation of this change, see chapter 12.) CC also replaced the "weak person" (*enšum*) of LH with the immigrant and added the rationale that members of CC's audience were once immigrants in Egypt. This is a significant change, indicated by CC's reference to the immigrant alone in its abbreviated formulation of the oppression prohibition in string II (23:9). CC's structure and selectivity brought the immigrant to the fore among the three classes of person liable to abuse.

Who is this immigrant? A number of studies have seen in this a reference to real sociological phenomena contemporary with the formulation of the text, suggesting that it refers to dispossessed emigrants from the Northern Kingdom after conquest by Neo-Assyrian kings Shalmaneser V and Sargon II. This fits the chronological window that this study proposes for the creation of CC (i.e., 740–640 BCE).⁴⁵ Yet it is doubtful that CC has these persons primarily in mind. The Egypt rationale that accompanies the prohibitions shows that the immigrant is one who does not share the tradition of ancestors' having been immigrants in Egypt. This would exclude northern refugees.⁴⁶ Further, the Egypt rationales point to the immigrant's being someone from a significantly different cultural and national background, like the Israelites in Egypt, not Ephraimites in Judah. CC's immigrant must be a true foreigner.⁴⁷

This definition indicates that the prohibition against oppressing an immigrant, as well as allowing the immigrant to rest on the seventh day (23:12), has a political dimension. In fact, the replacement of the "weak person" with the

immigrant is to be viewed in concert with the replacement of Hammurabi with Yahweh. The lawgiver is now Israel's deity, and one of the objects of his concern is a foreigner living among the Israelites. This poses a contrast to the reality of Neo-Assyrian hegemony. It is not that CC is a law book for the diaspora, talking about how émigrés to Mesopotamia are to be treated by the Assyrian power. The content of the laws gives no other indication that its setting and orientation are anything other than to the people of Israel or Judah in their land (cf. 20:24–26; 21:2–11, 13–14; 22:19; 23:10–11, 14–19). The analogy lies not in one of geography but of power. Just as destitute and dependent foreigners are to be treated fairly under Yahwistic law, so subject Israelites and Judeans, even in their own land, are owed just treatment by their occupiers. With this said, it is clear that CC is not prescribing law for the Assyrians. Nothing in the text indicates this. CC's political message operates by the implications of its contrasts with the political picture in LH and real experience with Assyrian power. The law about the immigrant is a symbol of the possibilities and limits of foreign domination.

The two laws that follow the prohibitions about oppressing the underprivileged in string I are concerned with interest on loans and with pledges (22:24–26):

^{22:24}If you lend silver to my people, the poor that are with you, you shall not act like a (harsh) creditor to him. You shall not exact interest from him.

אם כסף תלוה את עמי את העני עמך לא תהיה לו כנשה לא תשימון עליו נשך

²⁵If you take the garment of your fellow as a pledge, when the sun sets you shall return it to him, ²⁶because it is his only covering, it is the clothing for his skin—in what will he sleep? If he cries out to me, I will give heed, because I am compassionate.

אם חבל תחבל שלמת רעך עד בא השמש תשיבנו לו כי הוא כסותה לבדה הוא שמלתו
לערו במה ישכב והיה כי יצעק אלי ושמעתי כי חנון אני

The last phrase in the interest law (“you shall not exact interest from him”; alternatively, “add interest to it [the loan]”) may be an addition (see chapter 12). Nonetheless, it defines what is meant by “being like a creditor.”⁴⁸ The rule apparently prohibits interest, specifically on subsistence loans to the poor.⁴⁹ The second law is connected to the first law in that pledges are generally required to secure a loan.⁵⁰ In this case, the person is so impoverished that a garment is the only collateral available.

The topics of loans and pledges appear in LH and other cuneiform collections.⁵¹ But CC's laws on these topics do not have close parallels. The matter of loans is addressed at various places in LH, including LH 111–119.⁵² The last laws in this series deal with debt-servitude and were influential on CC's laws about debt-slavery (21:2, 7 // LH 117) and on killing a slave (21:20–21 // LH

116). A preoccupation with these laws may have led CC specifically to include the law prohibiting interest in 22:24. The contextual connection of these later laws to the debt-slave law is that, if a poor person were to default on a loan as in 22:24, that person would be a candidate for debt-slavery according to 21:2–11.

The topic of pledges appears in LH 38, 49–50, but these laws deal only with the pledge of fields, not personal property such as a piece of clothing, the topic of 22:25–26. CC's law on pledges may reflect native concerns, to judge from the Mazad Hashavyahu Ostrakon from the latter seventh century BCE. In this, a worker complains about the confiscation of his garment, though it is not clear that a loan is involved.⁵³ More clearly, the book of Amos refers to garments given as pledges (2:8). The pledge law is probably included in CC, not because of an impetus from cuneiform law, but because of its contextual relevance to the loan law, as noted earlier. Thus it is indirectly connected to the topic of debt-slavery via the loan law.

The cadence “because I am compassionate” (22:26) at the end of the two laws in string I, if it is thought to have the force of a concluding statement, does not mark the end of the original collection of CC, as some have argued,⁵⁴ but the end of the first section about the poor at the head of the final apodictic laws. This makes sense topically. The description of Yahweh as compassionate fits the poverty laws well, but not necessarily the whole preceding collection. Moreover, of the two sections of laws about the poor in the two strings, that in string I (22:20–26) is eighty words long and that in string II (23:9–12) is fifty words. Thus the treatment in string I is emphatic, which accords with its beginning the final apodictic laws. The formula declaring Yahweh's graciousness underscores and thus fits the emphatic nature of this first section of laws. The statements that Yahweh will hear the cry of the oppressed in verses 22 and 26 also bind the subsections of the poverty legislation in string I together and contribute to its emphatic formulation.⁵⁵

Chapter 3 noted that the phrase “for I am compassionate” appears in the same relative position in string I as the phrase “be observant with regard to all that I have said to you” in string II (23:13a). While that analysis did not decide to identify these clauses as distinct parallel elements in the string structure of the final apodictic laws, they still may both be seen as points of emphasis in the middle of their individual strings. They differ, however, in their orientation in their contexts. The phrase in string I looks backward to the poverty laws that precede, and the phrase in string II looks forward to the concluding cultic laws of CC. Although 23:13a has clearly been influenced by LH, it is not clear that the “for I am compassionate” clause has been so influenced. It is, however, consistent with motifs in the exhortatory block and the larger epilogue and prologue that represent Hammurabi as compassionate.⁵⁶

The two specific laws about the poor in string II, while structurally parallel to those in string I, deal with distinct topics (23:10–12):

¹⁰Six years you shall sow your land and gather its produce. ¹¹(In) the seventh, you shall let it drop and leave it. The poor of your people may eat

(it). What they leave the wild animals may eat. You must do this also for your vineyard and orchard.

ושש שנים תזרע את ארצך ואספת את תבואתה והשביעת תשמטנה ונטשתה ואכלו אביני עמך ויתרם תאכל חית השדה כן תעשה לכרמך לזיתך

¹²Six days you shall do your work. On the seventh day you shall cease so that your ox and ass may rest and so that the son of your slave woman and the immigrant may be refreshed.

ששת ימים תעשה מעשיך וביום השביעי תשבת למען ינוח שורך והמרך וינפש בן אמתך והגר

The first law refers to leaving crops in the field for the poor to gather.⁵⁷ If we are to envisage this as observed, the abandonment of produce would take place in different fields in different years to provide a steady supply of crops for the poor.⁵⁸ The second law is not yet a Sabbath law. Nothing is said about the holiness of the day or its performance in deference to Yahweh. It is simply a day of rest for animals and the poor.⁵⁹ Animals and poor humans in the two laws appear in inverse order (v. 13: the poor and then animals; v. 12 ox and ass and then the slave and the immigrant).⁶⁰ This probably arises from CC's interest in inverted ordering of its text, especially in the final apodictic laws. It is similar to the miniature chiasmic structure in the first verse of the collection (20:23). For laws about animals as a structural reflection of the concern for poor humans in CC, see later.

Like the two specific laws about the poor in string I, the two laws about the poor in string II have a connection to the debt-slave laws in LH and CC, but they have a content that may ultimately reflect native concerns. The connection to the debt-slave laws is in their prescriptions about time, as noted in chapter 5. The wording of the beginning of each of these laws is similar to the apodosis of the debt-slave law in 21:2: "When you acquire a Hebrew slave, *he shall work for six years and in the seventh he shall go free* (שש שנים יעבד ובשבעת יצא להפשי) without further obligation." An action is performed for six of a chronological unit, with a cessation or cancellation of that activity in the seventh. This language comes from LH 117, which prescribes work for three years with release in the fourth. But though the idioms of LH 117 and CC's debt-slave law were influential on the seventh-year and day laws, these laws or the customs behind them were influential on CC's debt-slave law, being responsible for expanding debt service from three to six years. It may be that seventh-day rest and the seventh-year deposit of produce for the poor were native customs prior to CC but that CC turned these specifically into divine dictates in its legislation.

The placement of laws about the poor at the beginning of the strings, with a particular emphasis on the laws of the poor in string I and hence at the beginning of the final apodictic laws, parallels the placement of the debt-slave laws at the beginning of the casuistic laws. As noted in chapter 5, CC's interest in the theme of poverty is why it began its casuistic laws with debt-slavery, a law

that appears in the *middle* of Hammurabi's casuistic laws (LH 117). Because the initial theme of the exhortatory block determined CC's emphasis on the poor in both genre sections of its laws, and because the apodictic laws are the primary reflection of the exhortatory block in CC, the apodictic laws have conceptual and perhaps even compositional priority over the casuistic laws.⁶¹ CC could not have determined that its casuistic laws should begin with debt-slavery until it had considered the exhortatory block and its themes and had anticipated or even drafted in advance its final apodictic laws. The other casuistic laws about slaves (21:20–21, 26–27, 32), by their inclusion of debt-slaves through the conflation of slave types, presuppose 21:2–11. Hence the casuistic laws in which the various slave laws appear are conceptually subsequent to the ideas in the apodictic laws. A specific datum that points to the priority of the apodictic laws about the poor is the lengthening of the period of debt servitude from three to six years in 21:2. This could not have been prescribed until the seventh-year and day laws of 23:10–12 were written or at least conceived of. The conceptual priority of the apodictic laws over the casuistic laws is also found in the motif of *traveling* to the sanctuary for judicial procedures (21:6, 13–14; 22:7, 8), which may reflect a similar motif in the wronged-man passage of the exhortatory block, the passage that stimulated more primarily the festival pilgrimage legislation in the final apodictic laws (see chapter 9 and here later). The conceptual priority of the apodictic laws is further indicated by the influence of the altar laws of 20:24–26 on the homicide laws of 21:13–14 (see chapter 6). CC could not have revised LH 207 to create 21:12–14 without 20:24–26 in mind. These observations, coupled with the fact that it is in the apodictic laws that one finds ideological issues unmistakably in view, show that the idea of creating CC may have started with a preoccupation with the exhortatory block rather than with the casuistic laws of LH. This means that in terms of what CC is trying to do, one must read the casuistic laws in the light of the apodictic laws, rather than seeing the casuistic laws as separable and primary.

Like the laws on the poor in the apodictic laws, the casuistic laws on debt-slavery in 21:2–11 have an implicit political interest. As chapter 5 noted, the term “Hebrew” (21:2) is primarily used to define the slave as a debt-slave, since the noun עֶבֶד “slave” is ambiguous, capable of meaning either a chattel-slave or a debt-slave. But this adjective in the very first casuistic law may have a political thrust similar to the mention of the foreign immigrant and the analogy of immigrant Israelites in Egypt at the beginning of the strings of the final apodictic laws. The exact force of these parallel political expressions is hard to define, and CC may only have intended the references to be allusive and evocative. The ethnic language and the conceptual correspondences of the debt-slave law with the laws on the poor in the final apodictic laws nevertheless at least draw the debt-slave into the sphere of the divine monarch's concern. Whereas Hammurabi provided for the release of debt-servants according to a reading of LH 117 in the context of LH as a whole, in CC it is Yahweh who provides for the release of the Israelite/Judean debt-slave.

The thematic relationship of the casuistic laws on debt-slavery and the apodictic laws on poverty allows us to reflect for a moment on their respective structural complexity. Jackson, for example, noted the intricacy of the debt slave legislation:

In a number of respects, the slave paragraphs [21:2–6, 7–11] of the *Mishpatim* stand out from the rest of the collection. Each of the two individual paragraphs is more elaborate than the mass of the casuistic paragraphs which follow: each consists of a principal clause and no less than four sub-clauses (some quite elaborate). Moreover, the two paragraphs are linked into a single discourse structure in ways not seen elsewhere in the *Mishpatim*: there is an explicit cross-reference; in content, the two paragraphs depend for their full meaning upon their opposition; and it has also been argued that the internal arrangement of the two paragraphs depends upon a crafted literary relationship between them: a movement from freedom to servitude in *Exod.* 21:2–6 and from servitude to freedom in 21:7–11.⁶²

For him, this is evidence that the debt-slave laws are secondary to the other casuistic laws. The present study has demonstrated that in their own way the laws on poverty in the final apodictic laws are equally complex from a structural point of view. The final section of this chapter on the thematic axes of the apodictic laws will make this summarily clear. Such complexity is not a result of later amplification of the text. It is original to the composition. To the extent that these passages stand out against the rest of CC, it is attributable to the role that the topic of impoverishment plays in CC.

The theme of debt slavery continues throughout the casuistic laws. This class of slaves is included in the laws about beating and killing a slave (21:20–21), freeing a slave who loses an eye or tooth (vv. 26–27), paying thirty shekels of silver to the owner of a slave gored by a habitually goring ox (21:32), and enslaving a thief who cannot pay his fine (22:2). It is not clear if CC intends every law to be an ethical improvement over Hammurabi's legislation.⁶³ Certain laws seem more repressive: the longer term of service for debt-slavery, requiring the marriage of a debtor's unbetrothed daughter to a creditor, and allowing a creditor to beat a debt-slave as long as the slave does not die the same day. It may be that CC is more concerned about the ideology of the law-giver's legislating for the poor and writing laws that solve logical and systematic obscurities within LH, even if those laws, as a side effect, impose greater strictures. At the same time, some of CC's slave laws seem to reflect ethical improvements: an owner is responsible for killing a chattel-slave the same day, chattel- and debt-slaves both are to be released if the owner puts out the slave's eye or knocks out a tooth, and a higher price (thirty instead of twenty shekels) is required for the death of a slave by a goring ox. It might be that we do not see improvements in CC's laws because we are comparing them against LH when we should be comparing them to existing Israelite and Judean custom (to

the extent this is evidentially possible). As noted in chapter 6, debt-slaves in Israelite and Judean society may have been treated like chattel-slaves. Hence CC's own rulings about debt-slaves, though harsher than LH, may have ameliorated existing practice.

The differences that one might perceive in attitudes toward the poor in the apodictic laws versus the casuistic laws are not a sign of distinct authorship.⁶⁴ They are a function of different perspectives in the different genres of CC's source. Hammurabi's prologue and epilogue, and especially the exhortatory block, clearly display compassion toward the poor and underprivileged.⁶⁵ In contrast, Hammurabi's casuistic laws prescribe the matter-of-fact enslavement of debtors, the treatment of chattel-slaves as property, and so forth. CC has carried over the differing emphases of the two genres in its two genres of law. The apparent contradiction can exist in the same compositional mind.

Other parts of the final apodictic laws besides the beginning of the two strings also refer to the poor. The central chiasmic core of the final apodictic laws mentions the "poor" לל and "deprived" אבין (23:3, 6, the b-members of the chiasmic structure). These individuals should not be favored or disfavored in judgment.⁶⁶ The animal laws in the final apodictic laws also reflect a concern about the poor by analogy. While some of these laws may have an economic and not strictly ethical motivation, it is hard to explain them all by mere economic or other practical reasons. As a group, they include leaving a firstborn animal with its mother for a week (22:29); returning a wandering animal to an adversary (23:4); relieving an adversary's overburdened animal (23:5); letting animals eat the produce of a field in the seventh year (23:11); letting animals rest on the seventh day (23:12); and not boiling a kid in its mother's milk (23:19).⁶⁷ The distribution of these laws is somewhat symmetrical. The laws about an adversary's animal appear at the center of the chiasmic structure in 23:1–8 (the c-members, vv. 4–5) and thus at the center of the whole body of final apodictic laws.⁶⁸ The laws about the offspring of animals and their mothers appear at or near the end of the cultic laws in their respective strings. The mention of animals in the seventh-year and seventh-day laws in string II (23:10–12) does not have parallels in string I, but within 23:10–12, the animals and humans are in an inverse relationship, as previously noted.

If the mention of the ethical treatment of animals is not so much for the benefit of the animals themselves, but rather in conceptual support of the more primary theme of the ethical treatment of socioeconomically depressed humans, then laws about the treatment of the animals of an enemy are not entirely out of place at the center of the final apodictic laws. Their mention in this central position complements the reference at the beginning of the two strings to the Israelites as immigrants in Egypt and the protection of the immigrant within Israelite/Judean society imagined to be governed by CC.

The law about the treatment of animals at the center of the final apodictic laws (23:4–5) may have a stimulus in cuneiform sources that CC used, which may partly explain their pseudo-casuistic form in contrast to the pure apodictic

forms in the outer members of the chiasmic structure. The Eshnunna collection contains a law about returning a fugitive slave or lost animal (LE 50):⁶⁹

⁵⁰If a governor, a canal administrator, or an official of any position catches a vagrant male slave, a vagrant female slave, a vagrant ox, or a vagrant ass that belongs to the palace or a commoner and does not bring it to Eshnunna but keeps it in his house for more than a month, the palace shall charge him with theft.

šumma šakkanakkum šāpir nārim bēl tērtim mala ibaššū wardam ḫalqam amtam ḫaliqtam alpam ḫalqam imēram ḫalqam ša ekallim u muškēnim iṣbatma ana Ešnunna lā irdiamma ina bitīšu iktala ūmī eli warḫim ištēn ušētiqma ekallum šurqam ittišu ūtawwu

^{23:4}When you encounter the ox or ass of your adversary wandering, return it to him.

⁵When you see the ass of your foe suffering under its burden, you shall resist forsaking him—(but) you must leave [the ass] with him.

כי תפגע שור איבך או חמרו תעה השב תשיבנו לו
כי תראה חמור שגאך רבץ תחת משאו וחדלת מעזב לו עזב תעזב עמו

The Akkadian law speaks specifically of an ox and ass, the very animals in the first of CC's two laws. If CC has used a law similar to this, it transformed it into an apodictic regulation with ethical rather than criminal weight. It also created the second law (v. 6) in the image of the first in order to create the two members in the chiasmic structure. CC apparently did a similar thing in creating the second law about a habitually goring ox killing an ox in 21:36, in the image of a habitually goring ox goring a person in verse 29, to be a companion to verse 35 (see chapter 8).

CC's society had its own preexisting tradition of Yahweh as a guarantor of the rights of the poor, to tell from various biblical passages not associable with CC.⁷⁰ We can assume that this tradition also informed the content of CC's laws about the poor in the final apodictic laws. Such a tradition may have facilitated the replacement of Hammurabi with Yahweh and led to the basic reconceptualization of LH as found in CC. Moreover, CC may have been influenced by background Near Eastern tradition about a monarch's concern for the poor, apart from what is found in LH.⁷¹ Hence, while the exhortatory block is the primary motivation behind the laws on poverty in the final apodictic laws, additional sources and traditions, both foreign and native, appear to have contributed to the complexity of the legislation on the poor in CC's apodictic laws.

The Cult

Like the theme of poverty, the theme of the cult is highlighted in CC's structure. The topic occupies the entire group of initial apodictic laws (20:23–26),

which prohibit images and prescribe the building of an altar, of earth or rough stone. It also appears at the end of each string in the final apodictic laws. The end of string I (22:28–30) contains a group of miscellaneous laws about offerings and dietary holiness, and the end of string II (23:13–19) prescribes the pilgrimage festivals, plus some other offering rules. By this arrangement, cultic laws occupy the beginning and the end of the whole collection and thus frame the work.⁷²

The specific subject matter of the initial apodictic laws was determined by two distinct points of influence from LH. After a short description of Hammurabi's call by the gods, the majority of the prologue describes Hammurabi's beneficent acts for various cities in his kingdom, including benefits he bestowed on the cults in those various cities (see chapter 3). Some of the descriptions refer to the building or rebuilding of cult places. This emphasis apparently led CC to focus on cultic matters in the prefatory section of its work. However, the specific topics of the initial apodictic laws, as well as its injunctive style, were generated from the exhortatory block of the epilogue. CC drew on the parts of the block that were particularly cultic in nature: the lawgiver's cult symbol in the temple, memorialization of his name there, and the supplementary motifs of divine entrance or arrival in the cult and the idea of blessing. These parts are those in which the Esagil temple appears.

As CC replaced Hammurabi with Yahweh, it changed the description of cultic institutions based on Israelite or Judean practice. It prohibited the creation of the images of the lawgiver (now Yahweh) and prescribed the building of an altar of earth or unhewn stone, without stairs.⁷³ As discussed earlier, the altar as a cult symbol stands in contrast to the prohibited images. This contrast, at the very beginning of CC, immediately takes the reader into the new cultic world that serves as a background for CC.

CC's description is somewhat idealistic. For example, while the building materials to be used for constructing its altar are clear, its form is not: "An altar of earth you shall make for me. . . . If you make an altar of stone for me, you shall not build them with hewn stone. . . . You shall not ascend my altar on stairs. . . ." The focus on materials is probably to provide a contrast to the *metals* of images in verse 23. This is, in fact, one indication that verse 23 is part of the original text of CC—verse 23 is necessary for the emphasis on materials in the altar law for it to make sense. Through this contrast, CC rejects skillfully manufactured cult symbols in favor of an unshaped altar of natural materials. Indeed, CC's altar appears to be nothing more than a pile of dirt or stones stacked in a way to function as an altar.⁷⁴ The use of a cutting tool invalidates stone for cultic use.⁷⁵ Stairs are forbidden as well, expressly because they expose nakedness, but in the material context, perhaps also because they require more elaborate planning and formal construction. It is as if these rationales are fences around the torah to prevent any construction that would begin to approximate a manufactured image. The altar's simple form may be based on the traditional use of natural stones as an altar or a pile of stones as a memorial or monument.⁷⁶ This

type of structure fits well the context of name memorialization and the function of the statue in the exhortatory block.⁷⁷ The undeveloped form of the altar may also derive in part from a desire to impart an air of antiquity to the prescription, to suit the pseudonymous contextualization of the law collection.⁷⁸

The cultic regulations in the final apodictic laws complement those in the initial apodictic laws. The festivals in 23:14–17, outlined in a coherent block of cultic legislation like the altar laws, are performed at the place where the altar is. Their performance is described with the verb *הגג*, which refers to making pilgrimage—traveling—to a sanctuary (23:14, 15, 16). Visiting the sanctuary is also indicated by the requirement that, specifically in connection with the Feast of Unleavened Bread, pilgrims are not to appear before or see Yahweh “empty-handed” (23:15); that is, they are to bring offerings that will be presented at the altar (see later). The inclusion of the festival pilgrimage laws was motivated by the exhortation for a wronged man to come before Hammurabi’s statue and law stela for judicial review.⁷⁹ As pointed out in chapter 3 and briefly here, the wronged man’s visit includes a devotional aspect, where the cultic visitor prays to the gods in praise of Hammurabi in the Esagil temple. In other words, he engages in an act of worship with respect to the sovereign, whom CC is now imagining through its transformations as Yahweh. The change in the cult symbol, from king’s statue to offering altar, also enabled CC to shift from the motif of legal to festal pilgrimage.

CC’s festival laws probably reflect preexisting custom, and their wording may be partly based on a native source, written or oral. But if this is true, CC has probably augmented and altered this source, as it has other sources. One could try to discover this source by stripping away from 23:14–17 all of the subordinate, modifying, second-person, and other presumably superfluous or unoriginal elements, as well as elements that seem to be reflections of the wronged-man passage. This would yield the following (with the presumed original person of the verb left undefined): *למועד . . . בשנה חג מצות . . . להגג* שלש רגלים* “X celebrates three occasions as pilgrimage festivals: the feast of Unleavened Bread . . . at the time of the month of Aviv . . . the Feast of Harvest . . . and the Feast of Gathering at the end of the year.”⁸⁰ CC would have imposed the second-person formulation of the verb “you shall celebrate as pilgrimage” and added the prepositional phrase “for me” (*לי*), a separate verb for observing Unleavened Bread “you shall observe” with the definite object preposition (*את . . . תשמר*), the prohibition to eat unleavened bread (*שבעת ימים תאכל מצות*), the reference to the previous command and the Exodus from Egypt (*כי בו יצאת ממצרים*), the requirement not to appear before/see the deity empty-handed (*ולא יראו פני ריקם*), and clauses about sowing and harvesting in the latter two feasts (*באספך את . . . בתורע בשדה . . . מעשיך מן השדה*). Verse 17, “three times in the year every one of your males shall appear before [emended: see the face of] Yahweh the Lord,” would presumably be a reformulation of the command of verse 14 in the original source, based on the wording of the wronged-man passage: “May a wronged person who has a

case come before the statue of me the king of justice.” The inclusion formed by verses 14 and 17 may have been created in imitation of an inclusionary form in the wronged-man passage.⁸¹ Though this reconstruction is logical, the existence of a source as proposed here is speculative and cannot be proven. The wording of CC’s festival passage may be largely an innovation.⁸²

CC’s three sets of cultic laws are associated by the theme of sacrifice and offerings. The altar law commands the people: “You shall offer on it *your burnt offerings and well-being offerings, your flock animals and your cattle*” (זבחת וזבחה עליו את עלתיך ואת שלמיך את צאנך 20:24). This anticipates laws on sacrifice in the two strings in the final apodictic laws. We have seen already that the festival laws refer to sacrifice when they prescribe that on the Feast of Unleavened Bread “they (the pilgrims) shall not appear before me [or: see my face] empty handed” (23:15). To the festival laws, CC adds four miscellaneous laws: (1) “do not offer the blood of my offering (דם זבחי) with leaven” (23:18a); (2) “the fat of my festival offering (חלב הגי) shall not remain overnight until morning” (v. 18b); (3) “you shall bring the best of the first fruits of your ground (ראשית בכורי אדמתך) to the house of Yahweh, your God” (v. 19a); (4) “do not boil a kid in the milk of its mother” (v. 19b). The first, second, and last of these involve animal sacrifice at the altar. The second and third are specifically tied to festivals. The second mentions a festival offering (though it is not clear what this is, specifically), and the third refers to first fruits, related to the “first fruits of your labor” (בכורי מעשך) in the description of the Festival of Harvest in verse 16a. The fourth can be related to festivals in that it may refer to offering a firstborn flock animal, which would have most conveniently been offered at a festival occasion.⁸³

The cultic laws at the end of string I of the final apodictic laws, in contrast to those in string II, are a miscellany. But they are similar to the laws at the end of the festival laws in string II. This miscellany in string I has four laws: (1) “You shall not delay (giving) the product of your vat or press (מלאתך ודמעך)” (22:28a); (2) “You shall give me your firstborn sons (בכור בניך)” (v. 28b); (3) “likewise you shall do with your ox and your flock animals: seven days it shall remain with its mother; on the eighth day you shall give it to me” (v. 29); (4) “you shall be holy people to me: flesh found in the field, i.e., torn flesh, you shall not eat; you shall throw it to the dog” (v. 30). These do not parallel the four miscellaneous laws in 23:18–19 in any precise manner, though there are correspondences in general motif (see later). The laws in string II are much briefer, while the third and fourth laws of string I are more elaborate. We should ascribe this difference to CC’s seeking to provide balance between the cultic laws in string I with the whole group of cultic laws in string II (i.e., 23:14–19).

In regard to the matter of balance, we can note that the entire section of cultic laws in string II (23:14–19) is longer than that of string I (22:26–30). The longer section provides a conclusion to the whole of CC. Also within the context of the final apodictic laws, the longer cultic section of string II offers structural balance to the group of laws about the poor at the beginning of string I of the final apodictic laws (22:20–26). As observed earlier, 22:20–26 is longer

than its counterpart in 23:9–12. Thus the two longer sections of legislation, in 22:20–26 (on the poor) and 23:14–19 (on the cult), create bookends—a barbell structure—around the final apodictic laws. The focus on these outer sections helps explain why their respective counterparts inside the string structure (i.e., the miscellany of cultic laws in 22:28–30 and the laws about the poor in 23:9–12 and especially v. 9) are relatively undeveloped. These inner, smaller sections are subservient conceptually and structurally to the outer, larger sections.

If the cultic laws in string I do not provide an exact structural equivalent to the cultic laws of string II, they nonetheless provide conceptual parallels. The third cultic law of string I about offering firstborn animals (22:29) complements the prohibition about a kid in its mother's milk (23:19b). Both speak of young animals to be sacrificed in relationship to their mothers. String I requires the offspring to remain with the mother a week, and string II from a practical point of view prohibits killing the offspring and mother in the same sacrificial event (cf. Lev 22:27–28). The first cultic law of string I (22:28a) about not delaying the offering of produced goods complements the law about first fruits in string II (23:19a), which, as noted before, relates to the festivals (cf. 23:16).

The laws about giving a firstborn human (22:28b) and dietary holiness (22:30) in the cultic laws of string I belong to the topic of sacrifices and offerings found in the other cultic laws of strings I and II. If the young animals of 22:29 and 23:19b are offered at festivals, we probably should assume that the “giving” of firstborn humans also occurred in connection with the festivals. What this exactly means is not clear. CC's laws about the ethical treatment of the poor, of animals, and its limitation of exorbitant penalties in criminal and civil law indicate that CC is probably not referring to human sacrifice here.⁸⁴ Further, it does not seem that CC intends that all firstborn humans be devoted to the cult, as was the boy Samuel. Hence fulfillment of this command must be through payment (cf. Lev 27:27–28; Num 3:46–47; 18:15–16) or substitution with a sacrificeable animal (cf. Exod 13:13; 34:20). This would have been paid or performed at the sanctuary at the festivals.⁸⁵

The rule about not eating carrion (22:30) does not at first glance appear to have an integral connection to the cult. The meat, after all, is found in *the field*, not at the sanctuary.⁸⁶ And there is no contextual tie to the festivals. But the later priestly and Deuteronomic sources make it clear that the meat of animals that have died on their own or killed by predators is a source of impurity and that one impure from such meat cannot partake of sacrifices. CC may share this notion. Hence, when CC commands that the people should be “people of holiness,” it may mean that the people should maintain a quality consistent with participation in sacrifice at the sanctuary.⁸⁷ The rule implies that only properly slaughtered animals can provide meat. The question then becomes whether CC allows for profane slaughter in the manner of Deuteronomy (cf. Deut 12) or whether it thinks, like the Holiness Legislation (cf. Lev 17), that animals that can be sacrificed must be slaughtered at the altar. If CC has not yet evolved to the point of Deuteronomy's legislation, then being a people of holiness means

not only being pure for the cult but also restricting the ingestion of animal flesh (at least of unblemished, domesticated animals) to cultic flesh.

A broader contextual reason for including the dietary law is its association with the goring ox law. An ox that has killed a person is to be stoned and its carcass not eaten (21:28, 29, 32). As observed in chapter 8, stoning effectively renders the animal like carrion in the field. The carrion law thus becomes a supporting law, a footnote, to explain another law. This is similar to the function of the law of seduction (22:15–16), which gives the rationale for the law about a debtor marrying his daughter to his creditor (21:7–11). The carrion law is placed at the end of the section to which it belongs, similar to the placement of the seduction law at the end of the casuistic laws. It is as if CC had the notion to include such a law, to elucidate the innovations it made to the goring ox laws, and then considered the larger structuring of themes to find the right place for it, at the end of miscellaneous cultic laws in string I.

As the theme of poverty is featured in the casuistic laws in addition to the apodictic laws, so also the theme of the cult. It is found specifically in five descriptions of judicial activities at the sanctuary. When the debt-slave wishes to be permanently enslaved to his owner/creditor, he is brought “to the god” and his ear is pierced (21:5–6; chapter 5). When someone kills a person, he flees to the sanctuary place where the altar is, implicitly for judgment, either to be turned over to die or, as argued in the chapter on homicide, to pay indemnification to the victim’s family and be allowed to return home (21:13–14; chapter 6). When property kept in deposit is stolen and the thief is not found, the custodian draws near “to the God” and declares his innocence (22:7). A general rule prescribes that in all cases of property crime, the case (literally, “word”) of the two disputants comes “to the God” and the deity convicts the guilty (22:8; chapter 9). Finally, when an animal is given over for deposit and it dies, is injured, or carried away, “an oath by Yahweh” is made between the two parties as to the innocence of the custodian, presumably at the sanctuary as in the other cases of declarations or procedures in connection with “the God,” just mentioned (22:10; chapter 10).

These judicial-cultic procedures are mainly generated by or can be coordinated with the motif of judicial activities performed “before the god” (*maḥar ilim*) found in Hammurabi’s casuistic laws and developed in CC’s deposit laws (22:6–8, 10). But chapter 9, which discussed these laws, also noted that the wronged-man passage of the exhortatory block may have influenced inclusion of verbs of movement in these various laws: *bringing* a slave to the God and doorpost (הגיש, 21:6), *fleeing* to the sanctuary (נוס; 21:13), and *approaching* or *coming* to the God to make a declaration (בוא, נקרב; 22:7, 8). The wronged-man passage has a locative goal similar to *ina maḥar ilim* plus a verb of movement: “May a wronged person who has a case *come* (*lillik*) before the statue of me (*ana maḥar ṣalmīya*) the king of justice.” The use of the wronged-man passage for the judicial procedures was facilitated by CC’s replacement of Hammurabi with Yahweh. CC was able to conceptualize the phrase “before

my [Hammurabi's] statue" (*ana maḥar ṣalmīya*) in the wronged-man passage as an appearance before the deity at the sanctuary and thus coordinate it with judicial procedures performed "before the god" (*ina maḥar ilim*), presumably at a temple, in Hammurabi's casuistic laws.

This means that CC has manifested the material from the wronged-man passage in two ways: to produce a law on festival pilgrimage in its apodictic laws and to enlarge the context of judicial declarations in its casuistic laws. This sheds important light on how CC looked at its source. It did not seek to reproduce it law for law or concept for concept. Rather, it was a fount of inspiration that could be radically transformed and manifested in different ways. This production of multiple laws from a single motif in LH is most visible in the threefold iteration of motifs from the exhortatory block in the initial apodictic laws and two strings of the final apodictic laws. Within these three passages, for example, the name memorialization motif is manifested in three ways: the explanation that Yahweh announces his name, the prohibitions against cursing the deity and the chieftain, and the prohibitions against mentioning the name of other gods (20:24; 22:27; 23:13).

Last, in regard to the matter of cultic themes, the seventh-year and seventh-day laws in the last string of the final apodictic laws (23:10–12) have a conceptual relation to the cultic laws that follow. Neither of these occasions involves performances at the temple, but, as noted earlier, these are calendrical occurrences and thus associable with the regularity of the pilgrimage festivals. The references to dates ("six years you shall sow your land . . . and the seventh you shall let it drop," 23:10–11; "six days you shall do your work, and on the seventh day you shall cease," 23:12) anticipate the festival law ("Three occasions you shall celebrate as pilgrimage feasts in the year. . . Three times each year every one of your males shall appear before the Lord Yahweh," 23:14, 17). This helps explain the organization of CC and why, specifically, the two laws about the poor in string II differ in nature from their counterparts in string I. They have been coordinated in general theme with the cultic laws that follow.

Justice

The theme of justice and judicial propriety is not as broadly attested in CC's structure as are the themes of poverty and the cult, but it is nonetheless structurally prominent in occupying the eight verses that form the chiasmic bull's-eye of the final apodictic laws. This topic was motivated by the future king passage of the exhortatory block (48:59–49:17). I cite this again here for convenience of reference, with its chiasmic structure (for the Akkadian text, see the appendix to chapter 3):

In the future at any time, may any king who appears in the land keep the just commands that I have written on my stela.

(a) May he not *alter* the law of the land that I have set down or the verdicts of the land that I have rendered,

- (b) may he not *remove* my ordinances.
 (c) *If that man has understanding* and he is able to provide justice for his land, *let him give heed to the words that I have written on my stela.*
 (d) May this stela reveal to him the way, behavior, the law of the *land* that I have set down and the verdicts of the *land* that I rendered. May he secure justice for *humankind*.
 (e) *May he set down their law.*
 (e) *May he render their verdicts.*
 (d') May he root up the evil and wicked from his *land*. May he promote the welfare of his *people*. I am Hammurabi, king of justice, on whom Shamash has bestowed truth.
 (c') My words are choice; my deeds are without equal. They are vanity to the *fool*, but to the *wise* they are objects of praise. *If that man gives heed to my words that I wrote on my stela*
 (b') and he does not *remove* my law, he does not overthrow my words,
 (a') he does not *alter* my ordinances.

May Shamash lengthen the scepter of that man as he did for me, the king of justice. May he shepherd his people in justice.

A major transformation that CC makes is generalizing the audience from an individual future leader to all of the people. This partly arises from CC's change of the political landscape of the exhortatory block and the prologue and epilogue at large. CC is uninterested in a human king and generally replaces Hammurabi with Yahweh. But since it is impossible to insert Yahweh in the place of the future king for conceptual reasons, CC was free and even forced to significantly reconceive the passage. Because CC wrote the other laws in the apodictic sections to the general populace, it oriented its laws on justice to this same audience (23:1–8; for the Hebrew, see the appendix to chapter 3):

- (a) ¹Do not promote a *false rumor*. Do not conspire with an *evil person* to be a witness that causes *violence*.
 (b) ²Do not follow the majority to do evil. Do not testify in a dispute to *perversely follow* the majority to *pervert* (justice). ³*Do not show deference to the poor in his dispute.*
 (c) ⁴*If you encounter the ox or ass of your adversary wandering, return it to him.*
 (c') ⁵*If you see the ass of your foe suffering under its burden and you would hesitate raising it, you must raise him.*
 (b') ⁶Do not *pervert* the case of your *deprived* in his dispute.
 (a') ⁷Keep yourself away from a *lying word*. Do not kill the *innocent and blameless*, for I will not exonerate an *evil person*.
 (x) ⁸Do not take a bribe, because a bribe blinds the clear-sighted and undermines the words of the innocent.

Part of the motivation for writing broadly directed laws about justice may come from the beginning of Hammurabi's casuistic laws. Chapter 3 noted that some of the language describing the future king's obligations to pursue justice is also found in the law about an individual judge rendering a judgment in Hammurabi's casuistic laws, LH 5. The idiom of this law (*dīnam diānum purussām parāsum* "to set down a law, to render a verdict") lies remarkably at the center of Hammurabi's chiasmic structure: "May he set down their law, may he render their verdicts" (*dīnšina lidīn purrusāšina liprus*). Thus the lofty obligations directed at the king in the exhortatory block are not necessarily distant from the concerns of everyday judicial procedure.

CC's passage also has thematic connections with the first laws of LH. Not favoring the poor (v. 3) or disfavoring the poor (v. 6) and not taking bribes (v. 8) are primarily associable with changing judgment in LH 5, which implies the larger ethic of proper judgment.⁸⁸ Taking up a "false rumor" (v. 1a), associating with evil persons to be a "witness that causes violence" (v. 1b), giving "testimony with the majority . . . so as to pervert (judgment)" (v. 2), perverting the justice due the poor (v. 6), not keeping far from a "lying word" (v. 7a), acting (presumably giving testimony) to cause the death of the innocent (v. 7b), and causing the just to commit perjury (v. 8b) are all comparable with making false accusations in LH 1–2, giving false testimony in LH 3–4, and making false claims about property in LH 9–13. Hammurabi's casuistic laws probably start with these topics because of their primacy for the prosecution of justice and the execution of all the laws that follow. It is reasonable to think that CC would have observed this emphasis and would have sought to incorporate the topic into its collection. Rather than placing this at the beginning of its collection, CC inserted laws on the topic just at the point where the future king is exhorted to follow Hammurabi's pattern of justice.

Perhaps the most salient feature taken over from the future king passage was its chiasmic pattern. CC presumably perceived this sufficiently to use it as a basis for creating a fully developed chiasmic passage. This brought with it the composition of the two strings (string I 22:20–30 and string II 23:9–19) in order to enlarge the core chiasmic structure.⁸⁹ The reason CC chose to create parallel strings rather than a full chiasmic form, where the elements in the two strings would be inverted instead of parallel, was apparently a desire to end the collection with cultic laws, the subject with which CC began. This also helps explain the barbell structure of the final apodictic laws, noted earlier, where the laws about the poor at the beginning of string I (i.e., 22:20–26) and the laws about the cult at the end of string II (i.e., 23:14–19) are longer than their correlating sections in the opposite string (i.e., 23:9–12 and 22:28–30). The parallel structure of the strings allowed CC to emphasize different topics in the two strings. Nevertheless, even though the distribution of themes in the strings is not chiasmic, the distribution of the weight of material is: (a) 22:20–26 large block (on the poor); (b) 22:27–30 small block (on the name and cult); (c) 23:1–8 central chiasmic core; (b') 23:9–12 small block (on the poor); (a') 23:13–19 large block (on the name and cult).

Certain motifs of the future king passage influenced CC's formulation. It is reasonable to suppose that the alteration and removal of Hammurabi's ordinances, described with the verbs *nukkurum* and *šussukum* in the a- and b- members of the future king passage, motivated taking up the theme of perverting justice in CC, described with the verb הטה "bend, warp" in the b-members of CC's structure.⁹⁰ The admonition to the future king in the d'-member that specifically mentions the wicked ("May he root up the wicked and evil from his land") may have also led to the mention of the wicked in 23:1 and 7 (the a-members of the chiasmic structure) and the antonymic mention of the innocent or righteous person in verse 7. Another possible terminological influence may be in the word *words* (*awâtum*) in the c-members of the future king structure; this could lie behind the use of "rumor" (שמע) and "word" (דבר) in verses 1 and 7, by means of conceptual inversion, as noted in chapter 3.

A question that arises in connection with the patterned formulation of 23:1–8 is whether CC has also used a native source. Various scholars have suggested that the passage builds on an earlier text. For example, McKay suggested that the original formulation consisted of a decalogue with paired members:⁹¹

You shall not bring up a false rumour;	1. לא תשא שמע שוא
You shall not make common cause with the wicked.	2. לא תשת ירך עם רשע
You shall not follow the multitude with intent to do evil;	3. לא תהיה אחרי רבים להרע
You shall not make answer against the majority with intent to pervert (justice).	4. לא תענה על רב להטת
You shall not be partial to a great man in his suit;	5. לא תהדר גדל בריבו
You shall not turn aside the poor man in his suit.	6. לא תטה אבין בריבו
You shall not slay the innocent and righteous;	8. לא תהרג נקי וצדיק
You shall not acquit the wicked.	9. לא תצדיק רשע
You shall not utter a lying word;	7. לא (תהגה) דבר שקר
You shall not take a bribe.	10. לא תקח שחד

Besides the alterations necessary to produce the present text of CC from this supposed original, McKay also views verses 4–5 as a later addition.⁹² Schwienhorst-Schönberger's literary critical analysis leads him to posit a much more limited original text of verses 1a, 2a, and 6* (i.e., לא תשא שמע שוא לא תהיה, "Do not promote a false rumor. Do not follow the majority to do evil. Do not pervert the case of your deprived in his dispute").⁹³ This formulation was subsequently expanded with verses 1b, 2b, 3–5, בריבו in verse 6, and 7ab α , constituting a ten-law series, although different from McKay's series. This series was given a conclusion in verse 7b β by Schwienhorst-Schönberger's pre-Deuteronomistic Gottesrechtsredaktor. Verses 8–9 are Deuteronomistic additions.⁹⁴ Otto's estimate lies between the two foregoing. He says that the basic collection was verses 1–3, 6–8.⁹⁵ Verse 7b β ("for

I will not justify the wicked”) is an addition, indicated by the first person of deity, from the redactor of the larger subcollection of 22:28–23:12. Verses 4–5 were added to augment the chiasmic structure. For him, all of verses 1–8 are pre-Deuteronomistic.⁹⁶

While the variety of solutions offered by different scholars indicate the difficulty of being definitive, they react to textual problems that require explanation. All these reconstructions agree that verses 4–5 are an addition. This is consistent with source considerations raised here. This study would view verses 1–3 and 6–8 as the particular parts of 23:1–8 that have been influenced by the future king passage and secondarily by LH 1–13, as described previously. Verses 4–5 are topically extraneous and were influenced from a different source, perhaps a law similar to LE 50 (see earlier in this chapter). This study differs in viewing this addition as part of the original composition of CC. The main reason for this conclusion is that without verses 4–5, the chiasmic structure is scanty, consisting of only the a- and b-members. One would expect CC, in response to the chiasmic structure of the future king passage, to have created a rather complex chiasmic structure as laid out for the whole of verses 1–7.

It is possible to imagine that a native source, written or oral, influenced verses 1–3, 6–8. But it is doubtful that this source had the chiasmic form that these verses display. It would be too much of a coincidence that both this source and the exhortatory block of LH exhibited the same structural feature. Therefore, if there is a native source behind these verses, it was probably more limited in scope, containing some of the specific motifs in these verses but without their repetition. CC has multiplied them to create the paired members in these verses, perhaps as it appears to have created two separate laws in verses 4 and 5 out of a single law such as LE 50. Hence a theory of an extensive original text as suggested by McKay or even Otto is unlikely. Schwienhorst-Schönberger’s estimate of a limited original text is perhaps closer to the quantitative truth, though I hesitate to affirm that he has correctly identified the content of that text. In the end, we have to admit that if CC has used a native source, it has modified it as it has other sources that it used, making its reconstruction impossible.

Finally, we can observe that the future king passage is also responsible for the primary rogue clause in 23:13a: “Be observant in regard to all that I have said to you.” This appears between the seventh-day law and the prohibition of mentioning the names of other gods and the following cultic laws. This echoes the c-members of the partial chiasmic structure in the future king passage: (c) “. . . let him give heed to the words that I have written on my stela”; (c’) “if that man gives heed to my words that I wrote on my stela.” This is the essence of the future king passage. It makes sense that, for this reason, CC extracted this to make a separate and emphatic point of exhortation. CC retained the injunctive mood of Hammurabi’s command. It placed the requirement near the end of its new composition, to mark its coming conclusion and to stress the prohibition against speaking the names of other gods and the upcoming cultic laws.⁹⁷

Recall that reordering or relocation of elements or laws from LH is a hallmark of CC's technique, despite its following the overall similar sequence of themes and laws in LH. The command in 23:13a confirms that CC was preoccupied with the future king passage and thus adds force to the argument that this passage has influenced 23:1–8. The command in 23:13a is an extension of the call for legal propriety in 23:1–8 and directs the audience to the content of the whole collection.

Thematic Axes

We can end this chapter with a discussion of the interrelationship of the various themes and strands of the apodictic laws. Chapter 3 noted a significant thematic correlation between the initial apodictic laws and the exhortatory block. The three points of correlation happen to be just at those points where the exhortatory block mentions the Esagil temple. Table 3.2 in chapter 3 summarized the evidence. To remind ourselves, CC prescribed that the altar of verse 24a be set up at a sanctuary “place” in lieu of Hammurabi’s statue, spoken of in the first paragraph of the exhortatory block and which contextually sets the statue in the Esagil temple precincts. In its next breath, CC located name memorialization “in every (sanctuary) place” (בכל המקום) in 20:24b α instead of “in the Esagil,” where LH locates name memorialization, described a little later on in the exhortatory block. CC next described Yahweh’s coming and blessing in 20:24b β , contextually occurring at the sanctuary “place” that it just mentioned, as opposed to Hammurabi’s formulation “may the gods that enter the Esagil...make favorable” (*ilū ēribūt Esagil...lidammiquū*), which appears at the end of the wronged-man passage, a number of lines after the previous mention of the Esagil.

CC appears to have been preoccupied with the Esagil motif. This can be connected with CC’s ideological concerns. The biblical text not only changes personal identities—Yahweh for Hammurabi and the immigrant for the “weak” person—but is also concerned with recharting religious geography. A royal lawgiver, according to the model of LH, must have a relationship to the cult, and Yahweh’s cultic association, as the Israelite/Judean lawgiver, is with Israelite or Judean cult places.⁹⁸ Focusing on phenomena associated with the Esagil temple allowed CC to identify cultic phenomena of primary concern and rearticulate these with a new content and context.

CC appears to have done a similar thing for its final apodictic laws. For these, it focused on another motif in the exhortatory block, the lexeme *ḥabālum* “to wrong.” This was described briefly in chapter 3. Recall that this Akkadian verb appears at the exhortatory block *dannum enšam ana lā ḥabālim* “so that the strong not wrong the weak.” This created the first member of the strings prohibiting oppression of the poor in 22:20–23 and 23:9. The adjective *ḥablum* appears a little later in the exhortatory block of the man who has been wronged

(*awīlum ḥablum*) and who comes to the Esagil temple (the name of the temple is not actually mentioned at this point) to answer his legal query and praise the king. This generated the festival (pilgrimage) passage in 23:14–19. Thus the beginning and final sections of CC’s final apodictic laws coordinate with *ḥabālum* passages. This may further explain the barbell structure of the strings in relation to each other, where the first section of string I (22:20–26) and the last section of string II (23:14–19) are longer than their corresponding sections in the other string (respectively, 23:9 and 22:28–30). The main influence from the phrase *ana lā ḥabālum* at the beginning of the exhortatory block was on the first section about the poor in 22:20–26 in string I, and the main influence from the *awīlum ḥablum* passage later in the exhortatory block was on the final section about the cult in 23:14–19 in string II.

The middle sections of the string structure of the final apodictic laws, which deal with name memorialization (22:27; 23:13b), do not correlate with the *ḥabālum/ḥablum* passages. They, rather, intersect with the motif of name memorialization of the initial apodictic laws (20:24b), which, as we have seen, grows from preoccupation on the Esagil theme. Thus the *ḥabālum* thematic axis overlies the Esagil thematic axis. Figure 11.1 charts out this relationship.

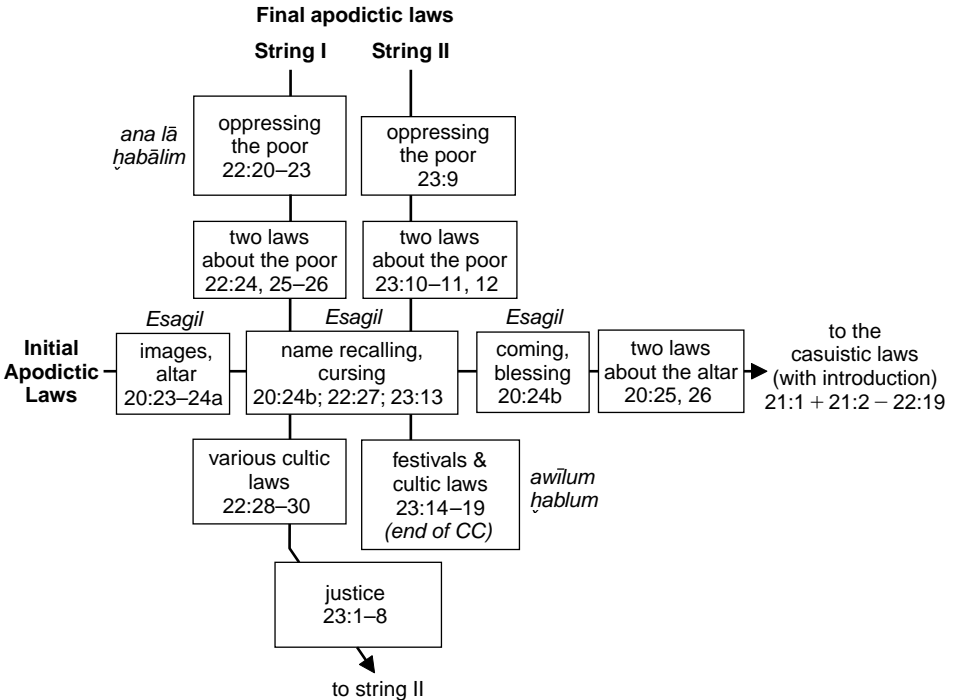


Figure 11.1. Thematic axes of CC's apodictic laws

The diagram shows the intersection of themes. It emphasizes the greater size of the first passage in string I and the last passage in string II. The chart also shows that the initial apodictic laws and the two strings each have *two supplementary laws* not based directly on LH, but which relate to the theme that precedes, which is based on LH. That is, the two laws on the altar in 20:25 and 26 complement the basic image and altar law of 20:23–24, which reacts to the description of Hammurabi’s statue; the two laws on the poor in 22:24 and 25–26 complement the opening prohibition against oppression in 22:20–23, which reflect Hammurabi’s purpose clauses about not oppressing weak members of society; and the two laws that benefit the poor in 23:10–11 and 12 complement the brief prohibition against oppression in 23:9, which is also based on Hammurabi’s purpose clauses about not oppressing the underprivileged. The passage on justice stands outside the crossing axes, but between the two strings of the final apodictic laws. Although the diagram is an abstraction, it is helpful for thinking about the thematic relationships in CC.

These thematic correlations show the intricacy of CC’s composition. This reinforces the conclusion that CC, even in its apodictic laws, is dependent on LH. It is hard to imagine that this perceived sophistication is coincidence. The art exhibited by the text is tied to its ideological expression. In the specific case before us, the apodictic laws have been created as an elaborate topical and structural frame for the casuistic laws. But describing the apodictic laws metaphorically as a frame hides the fact of their importance for the meaning of CC. It is in these outer sections of CC where the composition’s intentions are most clearly visible. We have more to say about the significance of the apodictic laws as a whole at the end of the next chapter, but we must desist at this point in order to first address some more technical questions. This chapter, which has approached the apodictic laws as a unity, should have raised questions about how the analysis and evidence relate to previous scholarship that has viewed the apodictic laws as secondary and has recognized layers of redactional growth in them. In addition, the thematic thrust and ideological tenor of the apodictic laws, as described here, lead to the question of how CC relates to the narrative context that it now inhabits. Chapter 12 tackles these questions.

12

Redactional Growth in the Apodictic Laws and the Covenant Code's Relationship to the Exodus Narrative

Two questions for the study of the apodictic laws remain to be addressed, both having to do with broader compositional issues. The first consists of two related queries, whether the apodictic laws are secondary to the composition of CC and whether the apodictic laws reflect internal redactional development. The second main question looks beyond the context of CC and asks whether the work was created as an independent composition and only later included in the narrative of the book of Exodus, or whether it was composed in connection with some version of that narrative. The answers to these questions build on the study of the themes and ideology of the apodictic laws presented in the previous chapter. Even though these questions are more technical than those considered in that chapter, they are crucial to the study of the context and meaning of CC.

Redactional Growth in the Apodictic Laws

Scholarship has hitherto concluded that the apodictic laws are the result of redactional development. As a group, they are generally considered an addition to the casuistic laws, and various strata or supplements have been identified within these laws. In particular, the laws or clauses with second-person plural referents are considered secondary to those with second-person singular referents. Other elements, such as explanatory and motive clauses, have also been

judged secondary. These conclusions require reconsideration in view of the evidence of CC's use of sources.

The Apodictic Laws as a Whole

It should be clear by now that the contention that the apodictic laws are secondary to a basic casuistic body of legislation is untenable.¹ Their differing style and orientation, second-person apodictic rather than third-person casuistic formulation and their full theological expression, is a function of dependence on the prologue and epilogue and specifically the exhortatory block of LH and the transformation of motifs from that source. What were considered in earlier scholarship to be indubitable signs of an origin distinct from the casuistic laws now actually turn into evidence of unity. It cannot be argued that the casuistic and apodictic laws were dependent on LH but composed at different times. This is not parsimonious. It is more logical to think that dependence upon LH, for the content and plan of CC, occurred at a single point of composition. Furthermore, the apodictic laws are not merely supplements to the casuistic laws. They are conceptually primary in that they reveal the ideological intent of CC and define it against its source. The theologizing that they display is not a later add-on to preexisting and more secular casuistic laws. Moreover, the exhortatory block, the primary influence on the apodictic laws, has been influential in the casuistic laws. It determined that the casuistic laws begin with debt-slavery (21:2–11). The wronged-man passage appears to have influenced the motifs of traveling to the sanctuary in the casuistic laws (21:6, 13–14; 22:7, 8). The homicide laws of 21:13–14 reflect, at the same time, the motif of inadvertent homicide and (implied) temple adjudication of LH 207 and the altar laws of 20:24–26, which themselves are a reflex of the exhortatory block. The second-person verb of 21:2 presupposes the second person of the altar law of 20:24–26, and this in part determines the basic formulation of 21:2 with the verb קנה “acquire, buy” and the use of the adjective “Hebrew.”

Chronological constraints also point to the contemporaneous origin of the casuistic and apodictic laws. Deuteronomy's basic laws are dependent upon some of CC's casuistic laws. Furthermore, most scholars believe that most of CC's apodictic laws predate Deuteronomy and that Deuteronomy also used these for its legislation.² As argued previously, CC cannot be much earlier than the basic laws of Deuteronomy. It was composed somewhere between 740 and 640 BCE, probably close to 700 (see later in this chapter). Deuteronomy's basic laws were composed not long after about 650. Thus the window between the creation of CC and Deuteronomy's dependent laws is relatively narrow. The earlier one places Deuteronomy and the later that one places CC in this window, the less time there is for the separate creation of the apodictic laws as a supplement to CC. CC's casuistic and apodictic laws must have been created in the same generation.

Second-Person Plural Forms

Within the chronological stricture just described, one may want to argue that the laws and phrases with second-person plural forms in the apodictic sections are additions.³ It is true that in many cases these may be removed, leaving a smoother context. For example, when the plurals in the law about oppressing the poor at the beginning of string I of the final apodictic laws are omitted (in 22:20b, 21, and 23), along with the phrase in verse 22a α , which seems to transition semantically from verse 21, the pronominal referents of the remaining text make sense: “You shall not oppress the immigrant . . . for if he cries to me, I will hear his cry” (וגר לא תונה . . . כי אם צעק יצעק אלי שמע אשמע צעקתו).⁴ If from this estimate the Egypt rationale in 22:20b is considered secondary, then that in 23:9b must be seen as also secondary. In addition, the phrase “You exact interest from him” (לא תשימון עליו נשך) in 22:24b, which has a plural verb, also looks like an addition, because it explains what a creditor is in verse 24a.⁵ Too, the plural forms in 23:13 may be omitted, yielding a simple prohibition against uttering the name of illegitimate gods: “the name of other gods shall not be heard on your mouth” (ושם אלהים אחרים . . . לא ישמע על פיה).⁶ If these several examples of second-person formulation are secondary, then it is logical to suppose that the remaining two laws with second-person plurals are secondary: the prohibition against making metal images in 20:23, if this did not have an original singular formulation,⁷ and the call to be holy and avoid carrion in 22:30.

Interestingly, when the plural forms are removed, the remaining text, with just second-person singular forms, still reflects the basic correlations in the thematic structure described earlier in this chapter and in chapter 3. This allows for a thesis that CC originally consisted of the casuistic laws plus the apodictic laws formulated in the second-person singular. This basic text, the theory would go, was later expanded with the laws and phrases with second-person plural but still following the pattern of the exhortatory block of LH.⁸

While I would not absolutely exclude this as a theoretical possibility, the thesis has several problems. It would limit the oppression prohibition to simply the immigrant in 22:20a and 23:9a. This goes against the model of the exhortatory block, which has three classes of individuals. One would expect CC to feature a trio in its original formulation in 22:20–23. A related problem is that the prohibition against oppressing the immigrant in 23:9a, without the Egypt rationale that contains the second plural form, becomes a three-word blip in the structure: “Do not oppress the immigrant” (וגר לא תלחץ). The rationale is necessary to give the member substance and prominence in the textual structure.

Another snag for a two-edition theory of the apodictic laws is the omission of the second-person plural prohibition against mentioning the names of other gods in 23:13b. Without this, there remains only a single prohibition in 23:13b that stands against the double prohibition against cursing the god and king in 22:27. One expects two short commands in 23:13b for reasons of structural parity. Furthermore, the other dual-law structure, which appears thrice, in

20:25–26, 22:24–26, and 23:10–12 (see figure 11.1 in chapter 11), also indicates that the two-law structure in 22:27 and 23:13b is intentional and original.

A lesser difficulty but still significant is that omitting the verse about dietary holiness in 22:30 puts the cultic laws in string I significantly out of balance over against the cultic laws in string II: two verses (22:28–29) against about six verses (23:14, 15*, 16–19).

A more general and substantial difficulty is that the theoretical original version of the apodictic laws with only second-person singular forms is essentially bereft of the ideological features described in chapter 11. There would be no reference to national exile in Egypt. But the mention of the immigrant, which replaces the “weak person” of the exhortatory block, inherently has a political motivation. This makes one wonder if CC would have really written this prohibition without the Egypt rationales. Too, the mention of a “Hebrew” slave in 21:2, part of the original composition, supports the idea that CC originally intended to impart a political message and therefore would have included the Egypt rationales.

A final reason for hesitating about mechanically attributing second-person plural passages to a later level is that this study demonstrates that a number of elements elsewhere in CC—elements that scholarship has attributed to redactional supplementation—are actually original to the composition of CC. Major examples include the transitional introduction in 21:1 (see later), the debt-slavery laws in 21:2–11, the homicide law of 21:12–14, the participial laws in 21:12, 15–16, and the talion laws in 21:23b–25. Chapter 13 provides a summary of arguments for the originality and unity of these and other passages. The stylistic and conceptual divergences in these passages arise from compositional and not chronological factors, including the combination of laws from different places in CC or from other sources, revision, and legislative creativity. Moreover, even for a hypothesis that the apodictic laws were created in two stages, experimented with earlier, a significant portion of the apodictic laws has to be considered original with the casuistic laws. That these various parts of the text are original suggests that we should not first resort to a diachronic model to solve the problem of second-person plural forms in the apodictic laws without considering other possible explanations.⁹

In looking for explanations, we should probably avoid the claim that the second plural forms are merely rhetorical devices, used for emphasis or to renew the attention of the audience.¹⁰ Some plural forms in CC do not make sense from this point of view (e.g., 22:24b, 30). More concrete mechanisms must be identified to explain divergent verb and pronominal number. One of these appears to be *nationalistic orientation*. After a specific legal obligation is formulated in the default legislative second-person singular,¹¹ which lays out obligations for individuals, a plural form may have been used to orient the command to the nation as a whole. Hence the prohibitions against oppressing the immigrant in 22:20 and 23:9 start with the singular but make reference to the national experience in Egypt in the plural. Nationalistic orientation may

also be seen in the command to observe all that the deity has commanded in 23:13a. As observed in chapters 3 and 11, this is a short extraneous element in the thematic sequence of string II but based, nonetheless, on the future king passage. It makes sense to have formulated this key command in the plural, especially as it also appears to mark the approaching conclusion of CC. The plural in the image law at the beginning of CC (20:23) may arise in part from its being a counterpart to 23:13a.¹² In both places, a plural is used to direct the whole collection to the nation.¹³ A nationalistic orientation is also perceptible in the second-person plural curse for maltreatment of the immigrant, widow, and orphan in 22:23: “I will become angry and slay you with the sword; your wives will become widows and your children, orphans.” This punishment affects the whole community collectively, not just the individual malefactors.

Some of the plural forms may be explained by *stylistic attraction*, where a successive form is plural by the influence of a preceding plural.¹⁴ Such examples include the prohibition of oppressing the widow and orphan in 22:21. This follows the nationalistic rationale of being an immigrant in Egypt, formulated in the plural (v. 20b). (The reversion to singular in verse 22 is explained later.) Another example is the prohibition of mentioning the names of other gods in 23:13b α . This follows the nationalistically motivated plural in the command to observe all that the deity commands in 23:13a. The threat for oppressing widows and orphans in 22:23 can also be explained by attraction to or agreement with the style of the widow-orphan prohibition in verse 21. The feature of attraction is found in connection with another stylistic feature in CC. The second-person verb in 21:2 (in this case, a singular) comes from the influence of the preceding altar laws, which have second-person (singular) verbs (20:24–26). Moreover, consecutive attraction in pronominal referents is found in the law about a stone altar (20:25): the feminine plural object pronoun in the phrase *גזית לא תבנה אתהן* “you shall not build *them* with hewn stone” refers to the second (feminine plural) noun in the preceding construct chain *מזבחה אבנים* “altar of stones,” rather than the first (masculine singular) noun as one might expect, and then the feminine singular pronouns in the phrase at the end of the verse *כי חרברך הנפת עליה ותחללה* “when you lift your tool against *it* you will profane *it*” shift referent again, to *גזית* “hewn stone” in the clause just before, rather than to plural stones (*אבנים*) or the altar (*מזבחה*) toward the beginning of the verse. By these referential shifts, CC maintains focus on building materials and techniques rather than on the altar as an phenomenological abstraction.

The plurals in the law about dietary holiness in 22:30 may be due simply to the *choice of noun* set down at the beginning of the phrase: “people of holiness” (*אנשי קדש*).¹⁵ This required that the following verb “you shall be” (*תהיון*) be plural.¹⁶ There is no clear reason why the writer would have been forced stylistically to use a singular noun (e.g., “holy people” *עם קדוש*) and to write a singular verb form (e.g., “you shall be” *תהיה*). The plural verbs in verse 30 after the first plural verb are plural by attraction. The plurals in the Egypt rationales in 22:20 and 23:19 may also be partly explained by noun choice: CC used the

plural noun followed by plural verb *כי גרים הייתם* “for you were immigrants” rather than a singular *כי גר היית* “for you were an immigrant.”

Some plural forms explained already may also be alternatively explained as arising from the influence of the *narrative context*. The next section of this chapter presents evidence that CC was written as part of a narrative about a revelation at the “Mountain of God” and the Exodus from Egypt. If so, the plural forms in the image prohibition of 20:23 are best explained as a bridge from the plural of national address in the preceding story to the default singular of legislation, as found in 20:24–26. The nationally oriented rationales of being immigrants in Egypt (22:20b; 23:9b) can also be explained as referring back to the narrative context where the nation is oppressed (e.g., 3:9; cited later).

The influence of *external sources*, apart from the narrative or the context of CC, may be responsible for some of the plural forms. A primary candidate for such influence is the punishment for oppressing widows and orphans in 22:23.¹⁷ This looks like a treaty curse, somewhat similar to VTE §42 (lines 428–430), which has second-person plural referents:¹⁸

²³I will become angry and slay you (*אֶחַכֶּם*) with the sword; your wives (*נְשֵׁיכֶם*) will become widows and your children (*וּבְנֵיכֶם*), orphans.¹⁹

§42 May Venus, brightest of stars, make your wives (*hirātekunu*) lie in the lap of your enemies (*LÚ.KUR-kunu*) before your eyes; may your sons (*DUMU-kunu*) not possess your house, but may a foreign enemy divide your property (*mimmûkun*).

The VTE curse comes close to saying that the traitor’s wives and children will be widows and orphans, especially in view of the curse of early death for the male traitor in VTE §37 (lines 414–416).²⁰ LH may have suggested the use of such treaty formulation through its list of curses in the last half of the epilogue, which are similar to treaty curses.²¹ Hammurabi’s penalties, in fact, threaten early death, as noted in chapter 3. The influence of an external source on 21:23 also explains why the verse does not follow smoothly from verse 22.²²

If a source with a plural formulation was influential in 22:23, it may have also led, by reverse contextual influence, to formulating the prohibition of oppressing the widow and orphan in the plural in 22:21 in the plural. Alternatively, the plural prohibition against oppressing a widow and orphan in verse 21 may itself derive from a source, foreign or native, that contained the punishment of verse 23. It has been noted that the widow and orphan are customarily paired in both biblical and Near Eastern literature, a pairing that preexisted CC.²³ It is not hard to imagine that a prohibition against oppressing this pair may have also preexisted. If so, CC can be viewed as doing here what it did in the case of the parent-cursing law of 21:17. Recall that chapter 7 argued that CC used a parent-cursing law prescribing capital punishment from a native participial source as a *substitute* for the parent denunciation laws of LH 192–193. This, in fact, appears to have been the primary reason for CC’s

use of the participial source and form in the first place. Analogously, when confronted with the task of turning an implied prohibition against oppressing the weak person, destitute girl, and widow in the exhortatory block, CC replaced the weak person with the immigrant and created a prohibition against oppressing him in the standard second-person singular. It then inserted a preexisting traditional prohibition against oppressing the widow and orphan formulated in the second-person plural. This explains why CC did not formulate an exact parallel to Hammurabi's positive formulation "to secure justice for the destitute girl and widow" and instead wrote a prohibition against *oppressing* these two classes of people. CC wove the singular and plural threads together without much concern for stylistic consistency. It may have even considered such stylistic undulation clever and desirable.

The distribution of second-person plurals may also be partly due to *structuring* of the text. These forms appear at primary positions within the apodictic laws: the beginning of the initial apodictic laws and whole collection (20:23), the beginning of the two strings of the final apodictic laws (22:20; 23:9), the end of string I (22:30), and the extraneous general command in 23:13a, drawn from the center of the future king passage, that marks the coming conclusion of string II and the whole of CC. These plurals thus virtually mark the outline of the apodictic laws. Most of the other plurals can be associated with these by attraction or context: the prohibition against oppressing the widow and orphan and the penalty for doing so in 22:21, 23 are united to the context of the plural in 22:20, and speaking of other gods in 23:13b is tied to the general command that immediately precedes in 23:13a.²⁴

Only one plural form resists explanation by any of the means just presented: "do not add (תשימון) interest to it (a loan)" (22:24b).²⁵ This follows a law regulating loans to the poor, formulated in the second-person singular. It looks like a secondary gloss, to explain what it means to not be an "(interest-exacting) creditor" (נשה). The plural may seek to echo the pattern set up by the alternation of singulars and plurals in verses 20–23. Alternatively, it may, in fact, be an addition. This judgment does not mean, however, that all the other plural forms in the apodictic laws are additions.

If some, most, or all of the second-person plural forms are original to the apodictic laws, we may well ask why the text reverts at points to second-person singular forms after using the plural, especially if the principle of stylistic attraction explains some of the cases. In most cases, these shifts can be explained by dependence on different source stimuli that caused the formulation to reset, as it were, to the default second-person singular. For example, the altar law of 20:24, though a response to the exhortatory block, is not built directly on the ideas in that source, as is verse 23, but prescribes an alternative based to some extent on native perspectives. Therefore, CC shifted to the default second-person singular, which is used in the rest of the altar law. The shift back to the singular in 22:22, after the prohibition against oppressing the widow and orphan in the plural, is due to a change in prescriptive form, from

straightforward prohibition (vv. 20–21) to pseudo-casuistic formulation (v. 22). Further, as opposed to verses 20–21, verse 22 does not depend on the exhortatory block but perhaps on narrative motifs (see later). Alternatively, if verse 21 depends on an external source (see earlier), verse 22 may have been conceived of in the singular and in connection with the immigrant of verse 20 before the actual incorporation of verse 21 (still as part of the broad original compositional process). If the prohibition against interest in 22:24b is not an addition, the reversion to the singular in verse 25 is due to taking up the new topic of a pledge, perhaps based loosely on conceptual influences from pledge laws in cuneiform or other sources. The singular in 23:1 begins the new and chiasmic section of 23:1–8; therefore, it uses the default singular form. Moreover, a change in source stimulus is involved: the preceding 22:30 is not based on specific themes in the exhortatory block, whereas 23:1–8 mimics the chiasmic form of the future king passage and echoes some of the themes LH 1–13. The shift to singular within the laws about speaking of other deities in 23:13b is more difficult to explain, but it may be due to moving back to the default singular, the style of the laws that follow (23:14–19), much like the shift from the image to the altar laws (20:23 to 24–26).

Explanatory, Motive, and Expansive Clauses

In addition to phrases with second-person plural elements, several of the clauses that provide explanations or motives or otherwise appear to conceptually extend a more basic law have been judged secondary.²⁶ The use of LH as a source, however, indicates that a number of these presumed additions must be original to the basic composition of the text. A few of these examples overlap with laws and phrases with second-person forms, for whose originality argument has been made here. These include the prohibition against making metal images of gods (20:23), prohibitions against oppressing immigrants (22:20b; 23:9b), the prohibition against oppressing the widow and orphan (22:21), the requirement to be holy and avoid carrion (22:30), and the general command to observe what the deity has commanded (23:13a).

A number of other seemingly secondary elements prove to be original because they are tied to the content or structure of the exhortatory block. These include the phrase “in every place where I cause my name to be proclaimed I will come to you and bless you” (20:24b).²⁷ This must be original because it reflects the motif of royal name memorialization, blessing, and divine arrival in the exhortatory block. The laws on building an altar of stone and ascending stairs (20:25–26)²⁸ are also fundamental because they are necessary for the structural balance of the initial apodictic laws over against the final apodictic laws, in view of the determinative A-B-A structure of LH. If these verses are removed, then the initial apodictic laws consist only of 20:23–24 or perhaps just verse 24, if verse 23 is seen as secondary. Verses 25–26 are also consistent with verses 23–24 in dealing with materials of construction: metals (v. 23), earth

(v. 24), unhewn stone (v. 25), and stairs, related to the use of stone (v. 26).²⁹ They also correlate with the configuration of 22:24–26 and 23:10–12 by providing *two laws* on a foregoing topic (see the discussion about the thematic axes at the end of chapter 11, along with figure 11.1).

In the final apodictic laws, the laws about returning and relieving animals in 23:4–5, which have a different structure and content from the surrounding laws,³⁰ must be original to the chiasmic structure of 23:1–8, being inspired by the partial chiasmic structure of the future king passage. If verses 4–5, which constitute the *c-c'* members of the chiasmus, are removed, as noted already, the remaining structure would be undeveloped and unremarkable, with just the *a-b-b'-a'* members. This is not an argument for unity based on internal chiasmic structure, but on the model and influence of an external source.³¹

The seventh-year and seventh-day laws as a whole are original, constituting two laws that benefit the poor that correlate with the two laws about the poor, on interest and pledges, in string I. More specifically, the elaborations or rationales in these laws that orient these laws to the poor are original (vv. 11aβ, 12b) because of this contextualization.³² The phrase “(so that) he be refreshed” (רִנַּפֵּשׁ) in the rationale of verse 12b may actually be motivated by the clause in the wronged-man passage “may he calm his heart” (*libbašu linappišma*; 48:18–19; compared in chapter 3), thus confirming the originality of the rationale. The clause about gathering produce in 10b is also original because the pronouns on the verbs in verse 11aα refer to תְּבוּאָה “produce” in verse 10b and not to אֶרֶץ “your land” in verse 10a. That is, verse 10b is necessary for the context.³³ The clause in verse 11b (“thus shall you do for your vineyard and olive grove”) can be considered original to the composition of CC despite its supplemental character because the firstborn animal law, which uses the same wording, must be original (22:29).³⁴ CC has separated out the field (v. 10a) from the vineyard and grove (v. 11b) so that it could use the verb זָרַע “to sow” and thus create a law with a six/seven pattern similar to the seventh-day law in verse 12a, both of which parallel the similar clause structure of 21:2 (which goes back to the pattern of LH 117). CC could not use the verb זָרַע of a vineyard or grove; therefore, it appended these in the “thus shall you do” phrase.

Some deem the festival and offering laws in 23:14–19 to be an addition, with 23:13a constituting a conclusion at an earlier stage of redactional development. The festival laws, however, must be considered original, given the LH-dependent string structure of the final apodictic laws and, in particular, the correlation of festival pilgrimage with the exhortation for a wronged man to come to the Esagil temple before Hammurabi’s stela and statue.³⁵ Specifically, not only the list of festivals in the internal verses (vv. 15–16) but also the introductory command requiring their celebration (v. 14) and the summary command that every male “appear before (or: see)...the Lord” (v. 17) are original. These last mentioned verses may even imitate a frame structure found in the wronged-man passage.³⁶ Although the cultic laws in verses 18–19 seem secondary because they go beyond the context of general festival celebration

and because they treat a variety of cultic matters, they are nonetheless consistent with the miscellaneous cultic laws in string I (22:28–30). Just as those laws must be considered original because they are part of the string structure, so those in 23:18–19 must be considered original. Too, the various miscellaneous cultic laws in 22:28–30 and 23:18–19, most of which deal with animal sacrifice or offerings, complement the altar and festival laws, as described in chapter 11.³⁷

These examples, whose originality is demonstrated because of the content and structure of LH, provide a means for judging other supposed secondary additions in the apodictic laws. These include (1) the phrase “your burnt offerings and your well-being offerings, your flock animals and your cattle” (20:24aβ). This list, at least the animal species, is authentic because the two strings of the final apodictic laws deal with making offerings (see 22:28–29; 23:15b, 18–19). This theme ties the different sections of cultic laws together.³⁸ (2) The threat of divine anger and punishment for oppressing the weak (22:23) is conceptually related in a general way to some of the curses at the end of the epilogue and may even reflect Assyrian treaty punishments. Thus it is consistent with CC’s use of sources generally and those from Mesopotamia in particular.³⁹ (3) The phrase “do not exact interest from him” (23:24b) looks secondary because it is supplemental, and an explanation for the second-person plural is not evident (see previously). (4) “Do not take a bribe, because a bribe blinds the clear-sighted and distorts the words of the upright” (23:8) may be secondary because it does not fit the chiasmatic structure of verses 1–7. At the same time, it might be original and provide closure to the chiasmatic structure by variation of structure. In any case, verse 8 is pre-Deuteronomistic.⁴⁰ (5) The phrase “as I have commanded” (in 23:15aα), attached to the requirement of eating unleavened bread for seven days in 23:15, would have to be an addition, if CC was created independently of the larger narrative context. But there is reason to believe that CC was created to supplement an earlier narrative, especially because CC by itself provides no contextualization for itself. Therefore, it may be original to CC and echo Exodus 13:6. This is discussed in the next section of this chapter. (6) The phrase “for in it (the month of Aviv) you went forth from Egypt” (23:15aβ) may be original if the rationales of being an immigrant in Egypt are original (22:20b; 23:9b) and if CC depends on the narrative. Structurally, it links the theme of the first laws in each string of the final apodictic laws with the final cultic section of the collection.

Finally, we come to the transitional introduction of 21:1: “These are the laws that you shall place before them.”⁴¹ This is generally viewed as an addition, specifically Deuteronomistic, and part of the material arising from a Deuteronomistic insertion of CC into its narrative context. Several believe that this introduction seeks to neutralize the legislative force of the altar laws over against the rest of CC.⁴² Source analysis indicates, however, that in terms of position and general content, the verse depends on the transitional introduction to Hammurabi’s casuistic laws at the end of the prologue, “I placed truth and

justice in the mouth of the land.” Its content was also apparently influenced by the wording of the transitional introduction at the end of Hammurabi’s casuistic laws and at the beginning of the epilogue: “(These are) the just laws that Hammurabi, the capable king, established and has directed the land to follow sound custom and good conduct.”⁴³

The foregoing analysis shows that, while there may well be additions to the basic text of the apodictic laws, they are minimal, possibly: את עלתיד ואת שלמיד “your burnt offerings and well-being offerings” in 20:24; לא תלהצנו “do not oppress him” in 22:20; את עמי⁴⁴ “my people” in 22:24a; לא תשימון עליו בשך “do add interest to it” in 22:24b; and perhaps the prohibition against bribes in 23:8. The analysis shows that variations in style and contextual tensions cannot be confidently used to construct the history of the text. Earlier analyses that focus on identifying redactional growth in the apodictic laws, however, are not to be ignored. They respond to real features of the text that require explanation. Their observations may be married at various points with the source analysis of this study to help explain the complexity of how the text was created. The study of the goring ox laws in chapter 8 is a chief example of how the different approaches may be blended. This study extends the questions that these earlier analyses have sought to answer by indicating that stylistic and conceptual variety in a text may arise for reasons apart from redactional supplementation.

The Relation of the Covenant Code to the Narrative of Exodus

A matter related to the unity of CC and the meaning of the apodictic laws is CC’s relationship to the narrative of Exodus.⁴⁵ Most current scholarship argues that CC was created independently and only later added to a narrative context. This view might still be maintained if the data, to be discussed here, are judged insignificant or can be explained otherwise. CC’s use of LH as a model could actually be of assistance to this view because it recommends an attractive and quite specific setting. That is, CC may have been originally inscribed on a stela and set up next to an altar of Yahweh in a temple court, in analogy to the erection of Hammurabi’s law stela next to his royal image in the Esagil temple. In this way, CC would have functioned as a public monumental response to the influence of Assyrian imperialism before it found its way into the book of Exodus.

But it is difficult to maintain that CC was originally independent. Evidence points to its having been written in connection with a narrative strand within the book of Exodus.⁴⁶ The view that CC was created independently has been able to thrive mainly because the elements that tie CC to its narrative were considered later additions. When these were detached from the text, the remaining “original” formulation could be given a purpose and setting apart from the narrative. Moreover, the supposition that the additions were for the most part

Deuteronomistic justified a thesis that CC was inserted relatively late into the narrative, by Deuteronomistic editors.⁴⁷ But because CC is an essential unity and pre-Deuteronomic, as argued in the previous section of this chapter, the whole of CC must be seen as being part of a narrative at a pre-Deuteronomic stage.

The discussion here does not attempt to correlate the evidence with a particular existing theory of Pentateuchal development. None of the existing models, from a standard documentary hypothesis to more recent explanations by the development of independent tradition-cycles brought together and supplemented, provides a ready-made framework into which observations can be inserted.⁴⁸ Instead, the analysis proceeds inductively by exploring the parts of the Exodus narrative with which CC appears to have associations. The resulting collection of passages we may dub the “Covenant Code Narrative” (CCN).⁴⁹ Our exploration, however, stops far short of identifying a complete and coherent narrative. That is the work of another book. The analysis here outlines the minimum of what needs to be included in the CCN for CC to make sense.

We must first observe two related reasons internal to CC for believing that it was originally written in association with a narrative. First, the law text does not include any significant contextualizing information. It requires a broader framework to make clear who the recipient of the collection is and when, where, and why the revelation was delivered. If CC were created independently, we would expect it to have followed Hammurabi’s model and have included such details in the sections immediately before and after the casuistic laws, where the present apodictic laws are located. That CC was written to fit a narrative makes sense of this deviation from the pattern of LH. It freed CC to write nothing but apodictic law in its outer sections. Secondly, the ideological tenor of CC as described in this and the preceding chapters demands some sort of narrative contextualization. It is hard to believe that CC could be written without such a framework. Without it, it is an undeveloped embryo that falls short of achieving its goal.

Beyond this general observation, the several correlations that CC has with the narrative of Exodus show that the law composition was created in relation to a version of that narrative. Primary among these is the similarity between CC’s passages on name memorialization or pronouncement and Exodus 3:15.⁵⁰

And God again said to Moses: Thus shall you say to the Israelites: Yahweh, the God of your fathers, the God of Abraham, the God of Isaac, and the God of Jacob, sent me to you. *This is my name forever, and this is my designation from generation to generation.*

ויאמר עוד אלהים אל משה כה תאמר אל בני ישראל יהוה אלהי אבותיכם אלהי אברהם
אלהי יצחק ואלהי יעקב שלחני אליכם זה שמי לעלם וזה זכרי לדור דר

The emphasized last half of this verse (v. 15b) uses the vocabulary of name memorialization of Hammurabi’s text, the noun *šm* “name” and root *zkr* (in v. 15b, זכר is

a noun, parallel to שם “name”), which is prominent in CC in 20:24 “in every place where I announce/proclaim my name” (בכל המקום אשר אזכיר את שמי) and 23:13 “you shall not pronounce the name of other gods” (ושם אלהים אחרים לא תזכירו). Furthermore, in both 3:15 and 20:24, the deity is the agent of the name announcement.⁵¹

The similarity of the language in the biblical passages, just referenced, and the decisive role they play in their respective contexts make it reasonable to conclude that they have a contextual association, regardless of the thesis that LH served as a source for CC. Name memorialization in CC may be viewed as the cultic realization or institutionalization of the inaugural announcement of the name to Moses. The context of 3:15, in fact, anticipates the cultic context of CC. A few verses earlier in verse 12, part of the context of verse 15, Yahweh tells Moses: “this is the sign that I sent you, when you bring the people from Egypt you shall serve the God on this mountain (הזה) את האלהים על ההר הזה.” This is the mountain of 3:1, where Moses first meets the deity, and the mountain of 19:2b, 16, 17; 20:18; and 24:4, where the divine revelation occurs. The discussion that follows shows that these verses also appear to belong to CCN (see later).⁵² The last mentioned verse is part of 24:3–8, which describes the people’s acceptance of obligations, along with the performance of a sacrifice, fulfillment of the demand in 3:12.⁵³ Thus we start to see the rough lines of a thematic arc, from name announcement and anticipation in 3:12–15, to prescription in CC, including the theme of name memorialization in 20:24 and the prohibition of mentioning other gods in 23:13, to ratification in 24:3–8.

If we did not know that LH was the source of CC and that its name memorialization passage was the stimulus for the similar motif in CC, we might conclude that the name announcement in 3:15 was the stimulus for the related motifs in CC. But the relationship must be the reverse of this. Exodus 3:15b corresponds with the wording of Hammurabi’s name memorialization passage in a small but essential motif not found in CC. The verse contains an adverbial of perpetuity similar to that in LH: “may my name be mentioned favorably *forever*” (*šumī ina damiqtim ana dār lizzakir*; 47:93–48:2). The noun דר “generation” in Exodus 3:15 is exactly cognate with Akkadian *dār(um)* “generation.”⁵⁴ Not only this, 3:15b has further associations with LH. Its wording is similar to the idiom in one of the curses to befall a disobedient king described at the end of the epilogue: “Let him (Enlil) pronounce with his revered mouth the disappearance of his (the disobedient king’s) name and memory from the land” (*šumšu u zikiršu ina mātīm lā šubšām ina pišu kabtim liqbi*; col. 49:76–80).⁵⁵ This uses the nouns *šumum* “name” and *zikrum* “name, fame, memory,” whose exact cognates are also found in tandem in Exodus 3:15b and in the same order. The epilogue passage also attaches suffix pronouns referring to the sovereign, similar to the suffixes attached to the nouns in 3:15. This curse has particular importance among the others listed in the epilogue. It appears toward the beginning of the list and, more importantly, it relates thematically to one of the transgressions described just before the curse section that prompt the maledictions that follow: “(if the defiant king) erases my (Hammurabi’s) name and writes his name (in its place)...” (*šumī šaṭram ipšitma šumšu ištatar*; col. 49:33–35). The curse of

name eradication also provides a significant conceptual complement to the mention of name memorialization earlier in the exhortatory block. Hammurabi as a proper and ideal king is to have his name memorialized; the name of a wayward king, in contrast, is to be forgotten. The infinitival phrase *lā šubšām* “to make not exist” conveys the opposite temporal conception entailed in the *ana dār* “forever” of Hammurabi’s name memorialization passage.⁵⁶

These facts indicate that the influence of LH has overflowed the banks of CC into the narrative. The main name memorialization passage in the exhortatory block generated the main name proclamation passage in CC (20:24). This passage, along with the curse passage later in the epilogue, contributed to the formulation of 3:15. The narrative verse took the two nouns from the curse passage and inverted the meaning of that passage by replacing the notion conveyed by *lā šubšām* with לדרך, the equivalent of *ana dār* in the main memorialization passage. Its transformation included, as is obvious, the replacement of the human sovereign with Yahweh. But although 3:15 inverted the negative connotation of the curse passage, CC retained its essence in another law. Exodus 23:13, as we have seen, uses the language of name memorialization to prohibit the pronouncement of the names of foreign gods: “You shall not mention the name of other gods; it shall not be heard on your mouth” (וּשְׁם אֱלֹהִים אֲחֵרִים לֹא תִזְכְּרוּ לֹא (ישמע על פיך)). This must be partly a reflex of the curse of name disappearance in LH. CC has replaced the disobedient king with foreign gods. Doing this effectively prescribed the “disappearance” (*lā šubšām*) of the memory of those gods. Moreover, CC’s phrasing about a name being heard “on your mouth” may have developed from Enlil’s pronouncement “with his mouth” (*ina pīšu*). The multiple manifestations—positive and negative—of name memorialization in the epilogue help explain why this motif has been repeated with various emphases in CC (20:24; 22:27; 23:13b) and why CC wrote its two parallel strings in the final apodictic laws.⁵⁷ The repetition in LH allowed CC to encode multiple reflexes of the name memorialization motif.

This assessment of the relationship of CC and 3:15 to LH means that the composition of CC and the composition of its narrative are contemporaneous.⁵⁸ From this, one may postulate that CC was composed as a primary constituent of this narrative, and that the narrative may have been created in the main to provide a setting for the law’s composition.⁵⁹

CC also has associations with the narrative motif of national oppression in Egypt, which also happens to appear in Exodus 3, among other passages. Recall that CC prohibits ill treatment of the immigrant, adding the rationale that “you were immigrants in the land of Egypt” (22:20; 23:9). The reference is elliptical and can be understood only with information that the accompanying narrative provides. These rationales and the wording of CC’s laws against oppressing the poor have possible associations with four pre-Priestly passages: Exodus 1:11–12; 3:7, 9, 17. These passages are listed here with CC’s at the end:⁶⁰

^{1:11}They placed over them task masters to afflict them by their forced labor....

¹²The more that *they afflicted them*, the more they increased and expanded, such that (the Egyptians) began to loathe the Israelites.

וישימו עליו שרי מסים למען ענתו בסבלתם...¹² וכאשר יענו אתו כן ירבו וכן יפרץ ויקצו מפני בני ישראל

^{3:7}Yahweh said: I have seen the *affliction* of my people who are in *Egypt*, and *I have heard their cry* resulting from their oppressors, for I know their pains.

ויאמר יהוה ראה ראייתי את עֲנֵי עַמִּי אֲשֶׁר בְּמִצְרַיִם וְאֵת צַעֲקָתָם שְׁמַעְתִּי מִפְּנֵי נִגְשָׁיו כִּי יִדְעָתִי אֵת מַכָּאֲבֵיו

^{3:9}Now, *the cry of the Israelites* has come to me, and *I have seen the oppression* with which the *Egyptians* are oppressing them.

וְעַתָּה הִנֵּה צַעֲקַת בְּנֵי יִשְׂרָאֵל בָּאָה אֵלַי וְגַם רְאִיתִי אֵת הַלְחָץ אֲשֶׁר מִצְרַיִם לֹחֲצִים אֹתָם

^{3:17}I said: I will bring you from the *affliction of Egypt* to the land of the Canaanite....

...^{3:17} ואמר אעלה אתכם מעֲנֵי מִצְרַיִם אֶל אֶרֶץ הַכְּנַעֲנִי...

^{22:20}You shall not *oppress* the immigrant, you shall not *repress* him, because you were immigrants *in the land of Egypt*. ²¹You shall not *afflict* any widow or fatherless child. ²²If you do *afflict* him, *when he cries out to me, I will heed his cry*.

...^{22:20} וגר לא תונה ולא תלחצנו כי גרים הייתם בארץ מצרים²¹ כל אלמנה ויתום לא תענון²² אם ענה תענה אתו כי אם צעק יצעק אלי שמע אשמע צעקתו

^{22:26}...*if he cries out to me, I will give heed*, because I am compassionate.

...²⁶ והיה כי יצעק אלי ושמעתי כי חנון אני

^{23:9}You shall not *repress* the immigrant. You know the mind of the immigrant, because you were immigrants *in the land of Egypt*.

...^{23:9} וגר לא תלחץ ואתם ידעתם את נפש הגר כי גרים הייתם בארץ מצרים

Exodus 1:11 uses the verb עָנָה “afflict,” found in 22:21–22. Exodus 3:17 briefly refers to the “affliction of Egypt,” using the noun עֲנֵי, from the same root as עָנָה. CC’s densest associations are with 3:7 and 3:9. The first of these not only uses the noun עֲנֵי but also refers to the deity’s hearing the cry of the oppressed, twice mentioned in CC (22:22 and 26). Exodus 3:9 uses the root לַחֵץ to refer to oppression,⁶¹ as does CC, and refers to the cry of the oppressed and its recognition by the deity.

Not all of these verses need to have been present in CCN. The prime candidates are 3:7 or 9, and only one of these would have been necessary for CC to have its significance. Of these, verse 9 presumably belonged to CCN. It goes

with verses 10–12, which in turn go with verses 14–15 as part of the name revelation passage, discussed before:

¹⁰(The deity continues his speech:) “Now go, I am sending you to Pharaoh. *Bring* my people, the Israelites, *out* of Egypt.” ¹¹But Moses said to the God, “Who am I that I should go to Pharaoh, and that *I should bring* the Israelites *out* of Egypt?” ¹²He said: “I will certainly be with you. This will be your sign that I sent you: when *you bring* the people *out* of Egypt, you shall serve God on this mountain.”

¹⁰ויעתה לכה ואשלחך אל פרעה והוצא את עמי בני ישראל ממצרים ¹¹ויאמר משה אל האלהים מי אנכי כי אלך אל פרעה וכי אוציא את בני ישראל ממצרים ¹²ויאמר כי אהיה עמך וזה לך האות כי אנכי שלחתיך בהוציאת את העם ממצרים תעבדון אל האלהים עם ההר הזה

Verse 10 is the commission to Moses, verse 11 is his first objection, and verse 12 is the response to this objection. The three verses use the verb הוציא “to bring forth,” the C-stem of יצא, which is the verb found in the debt-slave law of CC (21:2–11). In other words, Moses is to free the enslaved Israelites from Egyptian slavery in the spirit of releasing debt-slaves from oppression. This clarifies why CC placed debt-slavery first in the casuistic laws. It not only matched the theme of the beginning of the exhortatory block but also matched the national story in which CC was being contextualized. The narrative works in tandem with CC to achieve common ideological goals.

Verses at the end of Exodus 3 may have been part of CCN:⁶²

²¹(God said:) “I will give this people respect among the Egyptians so that when you go forth, *you shall not go forth impoverished*. ²²Each woman shall borrow from her neighbor and the woman dwelling with her silver and gold utensils and clothing, and you will put them on your sons, daughters, and thus despoil the Egyptians.”

²¹ונתתי את חן העם הזה בעיני מצרים והיה כי תלכו לא תלכו ריקם ²²ושאלה אשה משכנתה ומגרת ביתה כלי כסף וכלי זהב ושמלת ושמתם על בניכם ועל בנותיכם ונצלתם את מצרים

These words describe the coming release from domination, following up on the verb “bring forth” הוציא found in verses 10–12. Although verse 21 does not use the root “go forth” (יצא), it has an adverb of condition accompanying its verb of departure: “you shall not go forth *impoverished*” (לא תלכו ריקם). This is similar to the law of 21:2, also with an adverb of economic circumstance: “in the seventh (year) he shall go free *without obligation*” (ובשבעת יצא להפשי חנם). The reason for seeing an association with the debt-slave law is that Deuteronomy’s revision of the law replaces CC’s adverb with that found in Exodus 3:21: “when you send him (the debt-slave) free from you, you shall not send him free *impoverished*” (וכי תשלחנו מפשי חנם; Deut 15:13). It is possible to argue that 3:21

is based on Deuteronomy.⁶³ But Deuteronomy may have folded the motif from 3:21 into its revision of CC's debt-slave law.⁶⁴ Deuteronomy elsewhere shows a propensity for blending separate laws in CC or from CC and its narrative.⁶⁵

An explicit connection of CC to the narrative is in the prohibition against eating unleavened bread in 23:15. The legislation commands: "Seven days shall you eat unleavened bread *as I have commanded you*, at the time of the month of Aviv, because at that time you went forth from Egypt" (שבעת ימים תאכל שבעת ימים תאכל) (מצות כאשר צויתך למועד חדש האביב כי בו יצאת ממצרים). The phrase "as I have commanded you," most naturally refers to the command in 13:6, which uses similar wording: "seven days you shall eat unleavened bread and on the seventh day there shall be a pilgrim-festival for Yahweh" (שבעת ימים תאכל מצת וביום השביעי) (הג ליהיה). The phrase may be an addition in CC, especially given its overt reference to the narrative.⁶⁶ Therefore, it may not count among the evidence for CC's anchoring in a narrative context. If it is an addition, however, it does not mean that the other evidence for CC's narrative contextualization is rendered invalid. Nevertheless, Levinson has made a convincing case that Deuteronomy's festival pericope (Deut 16:1–8) has blended materials from CC's festival passage (Exod 23:14–19) and the unleavened bread legislation in Exodus 13:3–10.⁶⁷ The logic of his reconstruction demonstrates that the core of 13:3–10—or the larger unit 13:3–16—must be pre-Deuteronomistic, even though 13:3–16 contains a strong Deuteronom(ist)ic flavoring. Either a pre-Deuteronomistic narrative that contained 13:6 has been updated by Deuteronom(ist)ic editors, or the supposed Deuteronom(ist)ic features in the unit are actually proto-Deuteronomistic.⁶⁸ This study gives support to the latter view by its conclusion that CC's own elements that appear to be Deuteronomistic actually predate the creation of Deuteronomy. Given that CCN would have been composed along with CC and that CC predates Deuteronomy by only a generation or two, then the date of 13:3–16* would be relatively close to Deuteronomy.⁶⁹

To this point, we have been looking at the broader narrative context for CC. It makes sense that if CC was included in a story of national oppression and release, it would also have included an immediate description of the context in which CC was revealed, a version of the mountain theophany in Exodus 19–24. The analysis of the development of the elements in these chapters is one of the most intractable problems in Pentateuchal studies. Nevertheless, leaving aside a commitment to any particular model of Pentateuchal development, Exodus 19–20 appears to sort itself naturally into two basic narrative constellations or blocks.⁷⁰ One tells of a fire theophany, with the people purifying in preparation and with them present at the mountain (identified as Mt. Sinai) though restricted, whose core is 19:10–16aα (to הַבְּקָר), 18. The other, important for our analysis, describes a less ritualistic event, with a cloud or storm theophany, and with the people at the camp, who are then brought reluctantly to the mountain. This includes 19:2b–3a, 9a, 16aβγb, 17, 19 and 20:18–22a (excluding וַאֲתַהֲרַח עֶשֶׂן וַאֲתַהֲרַח עֶשֶׂן "and the cloud smoking" in v. 18, which harmonizes the verses phenomenologically with the fire theophany block):⁷¹

^{19:2b}Israel camped there opposite the mountain. ^{3a}Moses went up to God. ^{9a}Yahweh said to Moses: “I am about to come to you in a (the) thick cloud, so that the people will hear when I speak with you, and also so that they will have unwavering trust in you.” ^{16aβγb}Thundering and lightning, and a dense cloud, was over the mountain, with a loud blast of the horn. The people trembled in the camp. ¹⁷Moses brought the people out to God from the camp, and stood at the foot of the mountain. ¹⁹The horn blast grew louder. Moses would speak, and God would answer him with thunder (קול). ^{20:18*}As the people witnessed the thundering (קולת), flashes, and noise of the horn, [...] the people took fright and moved and stood at a distance. ¹⁹They said to Moses: “You speak with us and we will give assent, but do not let God speak with us so that we not die.” ²⁰Moses said to the people: “Do not fear, because God has come in order to put you to the test and so that his fear will be on you so that you do not sin.” ²¹And the people stood at a distance, and Moses approached the dense fog where God was. ^{22a}Yahweh said to Moses: Thus shall you say to the Israelites: (CC follows: 20:23–23:19.)

Of the two identifiable blocks, CC fits best with this narrative block, mainly because CC already belongs to its context. It is reasonable to think that CC has remained in its original narrative location and has not, for example, displaced the Decalogue, which was then relocated before 20:18.⁷²

This estimate of the original story reveals another narrative correlation. Two verses at some distance from each other refer to the god’s *coming* in theophany. The god announces to Moses: “I am about to come to you” (הנה אנכי בא אליך; 19:9a). Later in the story, after the people react in fear, Moses notes that “God has come” (בא האלהים; 20:20). This motif correlates with CC’s verse about name memorialization in 20:24: “in every place that I announce my name, *I will come to you* (אבוא אליך). . . .” Some would argue that 19:9a is an addition. This would leave us to compare CC’s verse with 20:20 alone. But the two narrative verses have a thematic connection indicating that they are part of the same basic story. In addition to the theme of the deity’s arrival, they describe the purposes of the theophany, including use of the conjunction בעבור “in order (that)” (three times total) to describe these purposes. Moreover, each verse presents two reasons for the theophany. Exod 19:9a says that the deity comes “so that (בעבור) (1) the people will hear when I speak with you, and that (2) they will have unwavering trust in you,” and 20:20 says the god has come “in order (לבעבור) (1) to put you to the test and so that (בעבור) (2) his fear will be on you so that you do not sin.” These various purposes are interrelated, having to do with the obedience to what the god reveals through his law mediator. Their differing emphases have to do with their respective speakers: Yahweh stresses the respect due Moses in 19:9a, while Moses stresses the respect due Yahweh in 20:20. In both verses the people are those who show the respective form of reverence.⁷³

The motif of the god's coming in 19:9a and 20:20 may be explained in a way similar to the motif of name announcement in 3:15, discussed above. Just as the passages on name announcement in the epilogue went beyond influencing CC in 20:24 (as well as 22:27 and 23:13) to color the description of name announcement in the narrative of 3:15, so the passage on the gods' arriving at the Esagil temple went beyond influencing 20:24 in CC to affect the description of divine arrival in the storm-theophany narrative in 19:9a and 20:20. The distribution of these two motifs in the narrative preceding CC allowed the writer(s) to provide background and foundation for the theological promise in 20:24, where these motifs are brought together.

But this is not all. The epilogue appears to have been broadly influential on the storm-theophany narrative, cited above, especially on the purposes described in 19:9a and 20:20. A motif in the first purpose listed in 19:9a, the speaking and hearing of the law, is found in the wronged-man passage: "let him (the wronged man) have my inscribed stela (aloud) read to him (*lištassīma*); let him hear (*lišmēma*) my precious words" (col. 48:10–14).⁷⁴ Later in the storm-theophany narrative the motif of speaking and hearing the law is resumed when the people ask Moses to speak to them the words of revelation, which they will hear (20:19). The two texts set the citation and hearing of law in a context where the audiences appear in the presence of their respective sovereigns in sacred space. In the storm-theophany narrative, Moses brings the people from the camp out to base of the mountain before the deity's presumably sanctifying presence (19:17). Moses himself then approaches the deity to receive CC (20:17). In Hammurabi's text, the wronged man appears before Hammurabi's statue in the Esagil temple (col. 48:3–5).⁷⁵

The second purpose in 19:9a, that the people are to trust in Moses, correlates with the prayer that the wronged-man recites after hearing the law read to him and in which he expresses his confidence in Hammurabi's leadership and lawgiving: "Hammurabi, the lord, who is like a... father to the people, submitted himself to the command of Marduk. He achieved the triumph of Marduk... He gladdened the heart of Marduk... He obtained well-being for the people forever, and he provided justice for the land" (col. 48:20–38). This prayer is an illustration of the memorialization of Hammurabi's name, called for immediately before the wronged-man passage begins. It therefore may not be a coincidence that the Israelites are expected to trust in Moses "forever" (לעולם), an adverbial found in Hammurabi's name memorialization passage: "may my name be recalled... kindly *forever*." This is as far as the text goes in granting enduring renown to the human leader, Moses.

The two purposes in 20:20 correlate with the sense of the future-king passage and the curses that follow it, that the king uphold Hammurabi's legislation, in other words, not sin. Both texts ensure obedience by describing the manifestation of perilous divine power, theophany or curses. Both texts also speak of the fear of deity. The passage in Exodus says that the god has come so that his fear will be on the people; part of the disobedient future king's sin is that "he

has not feared the curses of the gods" (*errēt ilī lā īdurma*; col. 49:25–26), the very curses that demonstrate the gods' power.

An overview of the correlations between the storm-theophany narrative with the passages just discussed shows that nearly every major theme of the former has a correlation with the latter: appearance before the sovereign (literally or symbolically), hearing the spoken law, confidence in the human law mediator or giver, a demand for obedience, and insuring obedience through the manifestation of fear-causing divine power. All of this is in addition to the motif of the god's coming with which we started our discussion of the storm-theophany narrative. In view of the legal correlations between CC and LH and the other narrative correlations between CC's narrative and LH, it is reasonable to hypothesize that the epilogue influenced the outlines of the storm-theophany story. If so, the biblical story has radically transformed the sense of what it borrowed. This can largely be ascribed to the grand theological transformation of replacing the human with the divine lawgiver. This allowed CC to recast the particular and limited legal audiences of the epilogue, the wronged man and the future king, as the nation Israel. Remember that CC similarly generalized the audience in using the wronged-man and future-king passages as stimuli for the festival and judicial laws in 23:14–19 and 23:1–8.

The conclusion of the storm theophany narrative would have been in 24:3–8 or a delimited version thereof:⁷⁶

^{24:3}Moses came and told the people all the words of Yahweh... All of the people answered unanimously and said: "We will do the things that Yahweh has spoken." ⁴Moses wrote all the words of Yahweh. He arose early and built an altar at the foot of the mountain, with twelve stelae for the twelve tribes of Israel. ⁵He dispatched young men of the Israelites to offer burnt offerings and sacrifice bulls as well-being sacrifices to Yahweh. ⁶Moses took half of the blood and put it in bowls and sprinkled the other half on the altar. ⁷He took the covenant document and read it aloud to the people. They said: "Everything that Yahweh has spoken we will do and heed." ⁸Moses took the blood and aspersed it on the people, saying: "This is the covenant blood that Yahweh made with you regarding all of these words."

The description in verse 4 may have been influenced by the model of the stela and statue of LH as reflected in the epilogue. The verse does not go as far as to say that Moses wrote the law text on the stelae,⁷⁷ but the verses do speak of the collocation of the stelae by an altar, the symbol of the sovereign. In any case, Moses publishes the law.⁷⁸ As noted already, the sacrifice and the reference to the mountain in verse 4 appear to correlate with the statement anticipating worship on the mountain in 3:12, part of CCN. The building of the altar also corresponds with the instructions at the beginning of CC in 20:24–26.

A number of analyses have concluded that 24:3–8 is Deuteronomistic, chiefly because of the appearance of covenant in verse 8. Recall that the discussion

earlier in this chapter suggested that treaty ideas may have already influenced CC in the curse of 22:23. If so, the covenant of verse 8 may not be out of place in the conceptual hermeneutics of CC. Given the close date of CC and its narrative to the creation of Deuteronomy, Exodus 24:3–8 may be proto-Deuteronomic. It was perhaps here that the notion of covenant and treaty as a primary model and source for Deuteronomy was born.

An account of CC's narrative is not complete without saying something about the Decalogue, which lies in CC's immediate narrative context. I make here only basic observations. First, the Decalogue most reasonably belongs to the narrative block about the storm theophany. Its original location seems to have been between 19:19 and 20:18. The fire theophany material, previously identified, and 19:20–25, related to this other narrative, were presumably not part of the context when the Decalogue was added.⁷⁹ Second, although some have argued that CC is secondary to the context and perhaps even influenced by the Decalogue, the more reasonable argument, especially in view of CC's sources described in this study, is that the Decalogue is secondary. The previous description shows that CC fits well where it is. The Decalogue, on the other hand, is less natural in its context. The people's fearful response makes better sense after hearing a numinous manifestation of divine thunder (קול־קולת; cf. 20:18), not the revelation of law (though see 20:22b and n. 83). Furthermore, the Decalogue may partly be a summary of CC, as Kratz has contended,⁸⁰ or at least influenced by its content, inserted to provide an anticipatory summary of the longer revelation accessible to the lay community.⁸¹ If the Decalogue is secondary in the storm theophany narrative, it would nonetheless have been inserted prior to the creation of the introductory material to Deuteronomy. Deuteronomy 5, for example, indicates that both CC and the Decalogue are present in the narrative that it used. It accepts the Decalogue as a valid revelation, cites it nearly verbatim, but replaces the content of CC with its own laws in chapters 12–26, which also revise some of CC's laws.⁸² The description of lawgiving in Deut 4:9–14 also provides a similar summary: the deity spoke the Decalogue, and the people heard. Immediately thereafter, he spoke other laws, those that Moses is about to lay out in chapters 12–26.⁸³

According to this analysis, the Golden Calf story, whose interest is in the destruction and restoration of tablets inscribed with the Decalogue, would be part of the updating of CCN with the Decalogue (e.g., Exodus 24:12–15, 18b; 32:1–24 [without הֵעֵרָה in v. 15], 30–35[?]; 34:1, 4 [without מִשֶׁה בְּבִקֵּר and חִינִי], 28). Its secondary character relative to the basic CCN is partly seen in its adding another ascent up the mountain to get the tablets after the conclusion of the storm-theophany account (24:12–15). To the extent that this story is thought to reflect northern concerns (cf. 1 Kings 12:28), it is after-the-fact rumination about the fall of Israel to the Assyrians.⁸⁴

Before drawing some broad chronological conclusions, we must note another passage in the narrative of Exodus that appears to use Mesopotamian source data for ideological purposes and that therefore may have been part of CCN.

In the present context of Exodus, not many verses before the description of the revelation of the divine name to Moses in Exodus 3, we find the story of Moses' birth and rescue in Exodus 1:22–2:10. According to this, he was born in secret to a Levite mother, who preserved him by placing him in a reed basket sealed with pitch on the Nile, to be rescued by the daughter of Pharaoh. The story is similar to the legend about the birth of Sargon of Agade:

I am Sargon, mighty king, king of Agade. My mother was an *ēntu*-priestess. I did not know my father. The brother of my father dwelt in the mountains. My city is Azuprianu, which is situated on the Euphrates bank. (My) *ēntu*-priestess mother conceived me. She bore me in secret. She put me in a reed basket. She put pitch on its opening. She abandoned me in the river from which I could not escape. The river bore me off. It carried me to Aqqi, the water drawer. Aqqi, the water drawer, took me out when he was submersing his bucket. Aqqi, the water drawer, raised me as his son.⁸⁵

It is possible that the similarities in the biblical and Akkadian stories are due to independent development.⁸⁶ Yet the thesis of this study gives us new reason to consider possible dependence, a conclusion made in some recent studies.⁸⁷ The Akkadian story is known only in tablets from the time that this study has set down for CC: two Neo-Assyrian copies and a Neo-Babylonian copy.⁸⁸ Assyriologists believe that the story may have been of ideological interest to Sargon II (721–705), the namesake of the earlier Akkadian king. It may have been revived or even composed at the time of the later king, to provide support for his rule.⁸⁹ Given CC's use of LH in this period for reconstructing its nation's early history, and given that Israelites and Judeans would probably have known something about Sargon II and his reign, in that he was the one who quelled rebellions after Shalmaneser V's conquest of Israel or may himself have conquered Israel,⁹⁰ it is possible that CCN drew on the story of Sargon of Agade Mesopotamian king to help devise the biography of Moses.⁹¹ CCN would have recontextualized Sargon's exposure to fit the context of Egyptian domination in early Israelite history, a strategy matching CC's contextualization of foreign oppression in Egypt. With the birth story as part of its narrative, CCN as a whole would have given greater context and voice to CC's anti-Assyrian proclivity. By using traditions about great paradigmatic kings of Mesopotamia—Sargon of Agade and Hammurabi of Babylon—to describe the career of Israel's founding prophet, which includes the revelation of law, the entire narrative was able to contend with claims of cultural and political superiority coming from foreign imperial powers.

If the narrative's association with the Sargon story is accepted, then the chronological scope for CC and its narrative would have to be narrowed somewhat. Their earliest date would be somewhere in the time of Sargon II, no earlier than about 710 BCE. Hence the time for creating CC and CCN would be 710–640, and 700 seems to be a reasonable approximation for purposes of

abbreviated discussion. The narrative associated with CC at this stage could have been rather limited. In fact, it could have been brief enough to be monumentally inscribed, although I would not press for this *Sitz im Leben*. If the Decalogue was added at a subsequent stage of CCN, this would have been toward the middle of the seventh century, before the writing of Deuteronomy's introduction, which reflects the Decalogue of Exodus situated in CCN. CC's narrative could have been substantially expanded at this stage. This expansion of CCN could have overlapped somewhat with the creation of Deuteronomy's basic laws, which themselves were created just after the middle of the seventh century. The chronological proximity of CC and its growing narrative to the creation of Deuteronomy helps explain perceived Deuteronomistic features in the non-Priestly narrative of the Tetrateuch. Being developed just before and contemporary with the development of Deuteronomy, Deuteronomistic features may be considered proto- and even co-Deuteronomic. They constitute the specific scribal matrix out of which the Deuteronomic and Deuteronomistic school developed.⁹²

Conclusion

The foregoing examination significantly alters our understanding of the relationship of the apodictic laws to the casuistic laws and the nature of CC as a whole. On an immediate compositional level, the two genres manifested in CC have their primary origin or stimulus in LH and arise together as part of a unified document. The apodictic laws are not a later supplement, added by redactors who, for their own theological and literary purposes, commandeered a preexisting and rather secular collection of casuistic law that derived from or reflected everyday practice. It is possible that the apodictic laws entail two redactional strata, marked by a difference in second-person singular and plural forms. But interpreting this stylistic feature diachronically ignores other factors responsible for generating a diversity in style and content, including context, sources, and structure. In view of these various considerations, it is reasonable to conclude that the materials with divergent pronominal and verbal number are all part of the original composition. In any case, the apodictic laws have their origin in a single generation, guided by the person or persons who knew and employed LH as a source. The whole of CC, from beginning to end, reflects a calculated use of LH. It is difficult to identify layers that can be viewed as existing independently from others in view of LH as a source and thematic guide. This compositional unity, along with the Neo-Assyrian contextualization of CC and its use as a source for Deuteronomy, means further that CC is a pre-Deuteronomic composition.

The exhortatory block of LH seems to have been determinative in conceptualizing CC. It provided the outline for the topical sequence in initial apodictic laws and the two strings of the final apodictic laws along the associated chiasmic

core. It also determined that the casuistic laws should begin with debt-slavery and determined the prominence of the themes of poverty, cult, and justice throughout the composition. A reason for the primacy of the influence of the exhortatory block may have been the correlation of its themes with a story of national oppression. The exhortatory block was the one place in LH that emphasized the Mesopotamian king's responsibility for protecting and alleviating the suffering of the oppressed. By rewriting the exhortatory block with Yahweh as lawgiver and protecting those under foreign rule, and placing CC in a narrative context where Yahweh liberates his people from oppression, CC and its narrative were able to create an expression of protest and aspiration in the context of Assyrian domination.

This perspective on CC's sources and goal demonstrates that the apodictic laws were of primary concern in the creation of CC. They provide the lens through which the casuistic laws are to be viewed, much like the prologue and epilogue provide the lens through which Hammurabi's casuistic laws are to be viewed. The importance of the casuistic laws in both collections is thus less what they say in substance about law than what they say ideologically about the lawgiver. The respective sets of casuistic legislation are presented as reflecting the intelligence of their promulgators. CC's formulation presumably sought to supplant the ideological message of LH in this regard. By solving problems in the casuistic laws, as described in the various chapters here, it endeavored to present a more logical and cogent law collection, despite its brevity.

Spurred by the general comparative evidence of LH, some earlier studies sought to identify a prologue or epilogue to CC.⁹³ The formulation of the first and last sections of CC as apodictic law has misled most analyses to look for the prefatory and concluding sections in the contextualizing narrative of Exodus 19–24. Certainly, parts of this narrative do provide context for CC. But these elements must be distinguished from the sections of CC that derive compositionally from the prologue and epilogue of the Mesopotamian text. CC has disengaged the contextualizing function of the prologue and epilogue from their themes. It could thus let a narrative describe when and how the revelation took place and use the themes of the prologue and epilogue to expand its legislation.

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Conclusions

The fundamental conclusion of this study is that the Covenant Code drew primarily and directly upon the Laws of Hammurabi for its entire composition. This use of LH took place in the Neo-Assyrian period, between 740 and 640 BCE.¹ This new estimate of CC's source and historical context has forced us in consequence to reconsider the meaning of the individual laws, their redactional and compositional development, and the purpose of the collection—whether it seeks to encode or prescribe normative law or whether its meaning transcends prescription. The evidence indicates that CC is a creative academic work, by and large a unitary composition, whose goal is mainly ideological, to stand as a symbolic counterstatement to the Assyrian hegemony prevailing at the time of its composition.²

Correlations, Ideology, and Purpose

Part of the ideological intent of CC's composition is evident in the pervasiveness of the influence of LH. Chapter 1 summarized the evidence for this influence. A reader will find this helpful as a review of the general argument. The observation must be stressed, however, especially now with part II in view, that within CC's casuistic laws, *every law or law topic is based on a stimulus in LH*, save four cases. Three of these exceptions, which have correspondences with laws in other known cuneiform collections, do not contradict the picture

of primary dependence on LH, inasmuch as these cases function in support of other laws drawn from LH. The seduction law of 22:15–16, presumably from a source like MAL A 55–56, provides the reason for the marriage of a debtor's daughter to his creditor in 21:7, which itself is otherwise primarily based on LH 117. The law about an ox goring an ox in 21:35, from a source like LE 53, is used, along with Hammurabi's goring ox legislation, to create more systematic legislation in 21:28–32, which are based on LH 250–252. And the law about fire destroying a person's field in 22:5, similar to HtL 105–106, enlarges the context of crop destruction that was initiated with legislation from LH in 22:4, which reflects LH 57–58. The only significantly stray piece of legislation—the fourth exception to dependence on LH—is the trio of participial laws at the very end of the casuistic laws in 22:17–19. This group, however, appears to have been attached as a miscellaneous appendix, left over from or influenced by a presumed native participial source that was used to create 21:12, 15–17. These earlier participial laws are simultaneously based on or correlate with Hammurabi's legislation (LH 192–193, 195, 207).³

In addition to CC's pervasive correlation in content with LH, this study furnished new and decisive evidence of CC's connection to LH: CC's correlation with the topical sequence of LH. We have seen that in its casuistic laws, CC for the most part followed the order of laws from LH 117, the law on debt-servitude (cf. 21:2–11), to LH 268–271, laws on animal rental nearly at the end of Hammurabi's casuistic laws (cf. 22:13–14). CC used the technique of cross-referencing to incorporate laws and motifs from other places in LH to enlarge the skeleton of themes from Hammurabi's sequential context. The insertion of motifs and laws from sources other than LH is also part of this same technique. Now having in hindsight part II of this study, which describes the technique of cross-referencing in detail, a reader may examine the appendix to this chapter. This charts the correlations between CC's casuistic laws with LH and other sources in greater detail than the schematic description in table 1.1 of chapter 1. The expanded table makes a distinction between primary and auxiliary correlations with LH. Primary correlations are those that follow the sequential pattern of the last half of LH, starting with LH 117. Auxiliary correlations are laws or motifs from laws that have been brought into the context of CC by cross-referencing. This technique solves one of the questions about CC's use of LH: why it did not replicate the content of its source from beginning to end. CC's handiwork allowed it to begin its casuistic laws with a topic of ideological importance that appears in the middle of LH, debt servitude (LH 117), and then fold in material from other places in Hammurabi's laws as appropriate. Thus CC could encompass the whole of LH in summary without replicating it from beginning to end and law for law.

CC sought to maintain the A-B-A structure of the whole of LH by surrounding the central casuistic laws with material of a different genre. CC did not wish or need to reproduce the contextualizing content like that in the prologue and epilogue of LH for various reasons, the main one being that CC was apparently

created in view of a version of the narrative of the book of Exodus, which provided the necessary contextualizing data. Therefore, CC wrote pure law in its outer sections and formulated this in the apodictic genre to distinguish it from the casuistic corpus at the center of the collection. The exemplar for writing apodictic law was found in the exhortatory block of the epilogue, which contains various indirect commands and prohibitions about the performance of Hammurabi's laws and maintaining his model of justice. As CC mimicked the genus of this part of Hammurabi's text, it also followed the themes of the exhortatory block sequentially, and did so thrice: in the initial apodictic laws and in each of the two parallel passages or strings of the final apodictic laws. The duplication of the thematic sequence in the final apodictic laws was mainly the consequence of CC's imitating and expanding a chiasmic structure visible in the future king passage in the exhortatory block. As it formulated its own chiasmic structure in 23:1–8, CC constructed around it the two strings in parallel to each other (string I: 22:20–30 // string II: 23:9–19). This allowed CC to emphasize the theme of poverty at the beginning of the final apodictic laws (22:20–26) and the theme of cult at the end (23:14–19). By this complex configuration, CC was further able to frame the whole collection with laws on the cult (20:23–26 and 23:14–19). CC also emphasized the theme of poverty by beginning its casuistic laws with the debt-slave laws (21:2–11). Placing the theme of poverty at the beginning of the casuistic laws and at the beginning of the two strings of the final apodictic laws was determined in large part by the appearance of this theme at the beginning of the exhortatory block.

Because the exhortatory block or the prologue and epilogue could not provide the specific content for CC's apodictic legislation, CC turned to native tradition and practices to fill in many of the details. This is why the apodictic laws appear more local in their perspective than the casuistic laws. Nevertheless, CC appears to have included a few motifs from cuneiform law at a few points in the apodictic laws, such as in the laws on interest and pledges (22:24–26) and in finding a lost animal (23:4–5). Other foreign sources might have been influential in the apodictic laws, for example, Assyrian treaty in the curse for oppressing the poor in 22:23.⁴

Even though CC's specific methods of using and transforming LH in its apodictic laws are different from what is found in its casuistic laws, these two parts of the text arose at the same time. The apodictic laws still reflect the basic technique manifested in the casuistic laws of using a framework of themes from LH and filling this in with detail from other sources or influences. Furthermore, CC's particular attention to the thematic structure of its text is on the last half of Hammurabi's casuistic laws (from LH 117) into the first part of the epilogue, where the exhortatory block appears. In this overall sequence, both texts shift genre at approximately the same point, soon after their laws on rented animals (22:13–14 // LH 268–271). The sequential use of LH thus continues across this genre change such that, if we use the count of fourteen associated themes in the casuistic laws given in table 1.1 (chapter 1), the correlations with LH in the final

apodictic laws extend the number to *eighteen* (see table 3.1 in chapter 3). This attention to the last half of the casuistic laws and the first part of the epilogue is indicative of a single preoccupation with and use of the source text.

It is unlikely that the creation of CC was as labor-intensive as the detailed analysis of textual correlations in part II of this study might suggest. This study has necessarily had to unravel and provide commentary on a creative process that no doubt proceeded more intuitively. It is the difference, for example, between analyzing a piece of art—literary, representational, or musical—and the actual process that the artist used to create the work. After-the-fact examination lays out in propositional and descriptive form a variety of possible influences, motivations, and techniques used and involves a perspective on the work quite different from that of the first creative mind. The difference is also akin to the writing of history versus the events studied. The historian's product is a verbal reconstruction and interpretation of events that are otherwise unrepresentable, given their wholly other phenomenological character; the *written account* is not the same as the *events* themselves, whose reality can never be reexperienced or captured. We might imagine that the process of CC's composition was more linear and simpler than what the details of analysis suggest. Whether CC made frequent reference to the sources or whether it was so familiar with its sources that it was able to reform and recombine elements without casting an eye on its sources may be debated case by case.⁵

No matter how CC specifically engaged its sources, the overall evidence is clear that CC did in fact use these sources, particularly LH. Moreover, the distribution of material and influences indicates that Hammurabi's collection was not merely a source for CC but its *model*. CC did not draw democratically from a variety of sources. It sought to emulate LH in particular and supplement this incidentally. This is remarkable in view of the fact that CC's miscellaneous sources may have been rather substantial (see chapter 4). We may surmise by this fact that CC's intent was to create a text that was, even though more limited in scope than LH, nevertheless to be viewed as commensurate with it. CC has preserved enough referentiality to evoke its prototype and, with this, its prestige, at least for those who were privy to the source text.⁶ Yet CC has transformed its primary source so as to be a distinct composition with its own ideological stamp. By imitating LH, CC sought to create an Israelite or Judean collection that was on a cultural par with the paradigmatic law collection of its overlords.

The changes that CC made to its sources are an indication of its cultural-literary objective. In its casuistic core, CC wrote laws that sought to be more systematic and reasonable than those in LH and supporting cuneiform sources. This is most evident in its penalties for homicide, assault, and theft. It excluded exorbitant and perhaps rhetorical penalties in LH, such as vicarious capital punishment, corporal punishment and retaliation, and extreme fines. In their place, CC provided a system of measured and sufficient compensation. At the same time, CC increased the penalties for the goring ox, in order to provide adequate psychological satisfaction through the expression of vengeance. Part

of its resystematization also involved the conflation of source legislation on debt- and chattel-slaves. It is not entirely clear why this was done. It may have grown out of purely academic interaction with the text, or perhaps it reflects a local perspective on slavery that did not make a significant distinction between debt- and chattel-slavery.

In its apodictic laws, CC's primary innovation was to transform statuses and thus to refigure the political landscape. It replaced Hammurabi with Yahweh, thus making the god the lawgiver. In this way, the god, not the human king, became the implied object of praise for providing law and justice. This alteration amplified the authority of CC's law in the context of political subordination to the Assyrian king, who was the cultural heir of the status and power of Hammurabi. The new law code could thus be seen as standing even above the decrees of foreign kings. At the same time, CC replaced the "weak" person at the very beginning of the exhortatory block with the "immigrant" and added the notice that the Israelites themselves had this very status when in Egypt. Thus the divine lawgiver became the guarantor of the rights of the politically oppressed and symbolically the benefactor of the Israelites and Judeans in a period of Assyrian domination. In this way, CC took up Hammurabi's emphasis on providing benefits to the subordinate classes in society and turned it to its own ends. This may be part of the reason it found the exhortatory block so useful for its composition. It also helps explain why the two strings of the final apodictic laws, as well as the casuistic laws, begin with laws on poverty.

CC's political aim is verified by Deuteronomy. Chapters 4 and 11 of this study observed that one of Deuteronomy's sources was Assyrian treaty and specifically a text similar to the Vassal Treaties of Esarhaddon, if not that very text. Deuteronomy converted obligations of loyalty toward the Assyrian king to obligations toward Yahweh. This textual transformation took place in the context or wake of Assyrian domination, probably soon after the middle of the seventh century BCE.⁷ According to this study, the date of CC is not much earlier than the basic laws of Deuteronomy, perhaps two generations at most. Thus Deuteronomy continued the same methods that CC used: it took a foreign text that enhanced Mesopotamian royal power and converted it into a text of obligations toward Yahweh with a goal of, at least symbolically, asserting an alternative ideal power structure. As such, both CC and Deuteronomy were subversive texts. Their pseudonymous contextualization as revelations in the past to Moses protected them against charges of treason. Having this immunity, they could be used to foster anti-imperial sentiment and national solidarity. It is perhaps in this context that the texts' prescriptions gained their legislative impact, if the documents sought to set down law to actually be followed. They would be tools, perhaps operative in reform contexts that advanced the nationalistic goals of various political movements.

This perspective about CC can fruitfully be brought into dialogue with post-colonial theory, as discussed recently by Morrow. He notes that two primary responses to domination are rejection and subversion:⁸

Both represent forms of resistance by the colonized people, but these terms describe separate processes. Rejection involves a refusal to use the dominant culture's language and literature, while subversion involves appropriation for native purposes that may be at odds with the intentions of the empire. Subversive language practices can also be described by the concepts of hybridity or 'mimicry.' In effect, a colonizing power requires the colonized subject to adapt to the outward forms and internalize the values and norms of the occupying power. Nevertheless, by using dominant narratives and texts other than they were 'originally' intended, the native subject is able to reverse or challenge the process of domination.

He notes further:

Colonized peoples experience a struggle between the attraction of the prestige culture and the need to assert their own identity. When they appropriate literary traditions from the dominant society, there is a desire to replicate or mimic the model of the prestige society. At times, hybridity may simply reflect a desire to imitate the dominant model, but often it betrays a subversive agenda.

Though from the Bible's legal literature Morrow only mentions Deuteronomy's use of Assyrian treaty as an example, what he says applies perfectly to the understanding of CC advanced in this study.⁹

The practical and ideological improvements to LH indicate that CC sought to write law that was *better* than its source or sources. Here I am not making the questionable and apologetic claim that CC's laws are in fact theologically and ethically better than those of LH. There is much to resist in CC from the point of view of a modern ethical critique, and certainly the later dependent works of Deuteronomy and the Holiness Legislation found difficulties in CC that they sought to resolve, though they themselves created further dilemmas for principled readers. Rather, I am suggesting as a historical observation that from its compositional perspective, CC revised LH and other cuneiform law with a goal of producing a corpus that was more coherent legislatively by solving problems and questions in its sources. The later text of Deuteronomy 4:8, speaking of the laws of Deuteronomy, reflects nationalistic pride in Israelite and Judean legislation when it says: "What great nation has just prescriptions and laws like all of this instruction which I am placing before you today?" (ומי גוי גדול) (אשר לו חקים ומשפטים צדיקים ככל התורה הזאת אשר אנכי נתן לפניכם היום). Weinfeld and Hurowitz have suggested that this may reflect knowledge of foreign law collections such as LH.¹⁰ This is a reasonable conclusion in view of what can now be said about the sources of biblical law. The writer of this preface may have been quite aware of the hermeneutical techniques used by the writers of CC's and Deuteronomy's laws. But whether this is so or not, my argument is that this sort of judgment, to the extent that it might be applied to CC, is not an after-the-fact comparative evaluation but part of the compositional intent of CC.

That CC grows out of an academic refiguring of mainly foreign sources from the Neo-Assyrian period indicates that it is not a collection of preexisting Israelite and Judean legal practices that precipitated from a long-developing cloud of legal tradition in the west that goes back centuries into the late or even early second millennium BCE. It is true that CC has used native sources, traditions, and perspectives for some of its laws, especially in the apodictic sections, as previously noted. Possible native sources include a group of participlial laws that inspired 21:12, 15–17 and 22:17–19 and, perhaps, short formulations on justice and festivals that influenced 23:1–8 and 23:14–17, respectively.¹¹ Local traditions and perspectives reflected in CC may include some of the unique features of the casuistic laws, such as stoning a goring ox or the conflation of debt- and chattel-slaves. But if CC used such sources and traditions, we must imagine that this adoption was just as innovative as CC's use of Akkadian law. Moreover, many of the features that might be ascribed to tradition could have arisen in CC's systematic and imaginative reworking of source materials. Therefore, the laws of CC cannot be taken, without due critical assessment, to reconstruct a history of legal custom in ancient Israel.

The Unity of the Covenant Code

Of all the objections that may be brought against the thesis of this study, the most formidable seems to be the combined methods and results of literary, form, tradition, and redaction criticism.¹² Although the various works employing these methods do not agree in the details of their conclusions, they agree that CC is not a unity and that it has grown traditionally or redactionally by the combination of smaller units and by the accretion of layers upon layers over centuries. This study, however, has been forced to conclude in view of the source evidence that CC is essentially a unified composition. This does not arise from any prior tendentiousness or interest in viewing CC as a unity. In fact, my starting assumption was that CC was a stratified document, as argued in the existing academic literature. But the evidence of the pervasiveness of the influence of LH throughout CC, that CC reflects an intelligible plan based on themes and genres in LH, plus the assumption that the use of LH more reasonably occurred at a single phase of composition indicate that CC is a whole. This does not mean that source analysis will always point to the unity of a text. We saw in chapter 4 that Deuteronomy's apparent use of sources, where a basic coherent body of apodictic law was supplemented by inserting laws from a third-person casuistic collection of laws about women and family in Deuteronomy 21–25, indicates successive redactional development. But for CC, the use of sources points to compositional integrity.

Consideration of the primary examples that have been believed to demonstrate CC's textual compositeness reveals the ultimate weakness of arguments

for the text's redactional evolution in view of the new evidence presented in this study:

- Current scholarship concludes with virtual unanimity that the apodictic laws come from hands and a *Sitz im Leben* distinct from those behind the casuistic laws. Yet this study has demonstrated, to the contrary, that the apodictic laws come from the same act of composition responsible for the casuistic laws. The different genre sections in CC, their distribution, and the difference in their perspectives are the result of imitating the different genre sections of LH and the apodictic laws' drawing specifically on the exhortatory block of the epilogue. (See chapters 3, 11, and 12.)
- The transitional introduction at the beginning of the casuistic laws in 21:1, whose odd placement with respect to the laws before and after and whose narrative orientation has made its originality suspect, is not an addition. Its position derives through imitation of the similar transitional introduction to Hammurabi's casuistic laws found at the end of the prologue. Its content is influenced by this transitional introduction in LH and also by the introduction transitioning out of Hammurabi's casuistic laws into the epilogue. (See chapters 3, 11, and 12.)
- Even though they have an odd topic for the beginning of a law collection and do not flow by context and genre to the laws that immediately follow, the debt-slavery laws in 21:2–11 are original to the composition in view of their dependence on LH and because they introduce the casuistic laws with the theme of poverty, consistent with the initial position of this theme in the strings of the final apodictic laws. This thematic emphasis in both genres of the text was determined by the priority of the theme in the exhortatory block. The other slave laws in the casuistic laws (21:20–21, 26–27, 32) are also original because they are generated from LH. (See chapters 5 and 6.)
- The laws on homicide and on child rebellion and kidnapping (21:12–17), though having a participial and otherwise deviant casuistic style, are original in view of their correspondences with the general topical sequence that CC follows from Hammurabi's laws (LH 207, 192–195). The divergent style was introduced primarily by CC's use of a law on cursing parents from a presumed native participial source as a substitute for the parent-rejection and denunciation laws of LH 192–193. CC followed the participial form and capital penalty of this indigenous law in the parent-striking law that it created to match LH 195. CC extended this form and punishment to its homicide law, a version of which probably also existed in the native participial source. It also extended the form to the kidnapping law, based on LH 14 via cross-referencing from LH 194. The capital penalty of CC's participial laws in this part of the text laws led CC to extract the topic of homicide from the middle of

LH 206–208 and put it at the beginning of its assault laws. The deviant casuistic form of verses 13–14 of the homicide law resulted from the stylistic deviation initiated by using the participial style in verse 12, as well as the use of motifs from the altar law in 20:24–26. (See chapters 6 and 7.)

- The miscarriage and talion laws in 21:22–27, thought to be composed of several layers, especially the stylistically divergent talion list of verses 24–25, are a unity. CC rejected the penalty of vicarious punishment in the miscarriage law of LH 210 and replaced it with a summary of the nearby talion laws from LH 196–201. This led to the mixing of genres (casuistic law and dyadic list form). The second-person verb in verse 23 comes from formulating the penalty as a general law, to apply to all other cases of inadvertent homicide and injury. This general law is systematically tied to the entire homicide law of verses 12–14, thus showing further the originality of the homicide law. (See chapter 6.)

The same judgment can be made about other lesser cases of supposed supplementation in CC. The law about a child as a victim of a goring ox in 21:31 is original because it is based on the ambiguity of *mār awīlim* “member of the *awīlum*-class/son of a man,” the description of the victim in the source law, LH 251 (chapter 8). The burglary law in 22:1–2a was probably created at the same time as the deposit law of 22:6–8, and the deposit law appears to be original because of its correlations with LH 265–266 and other laws on deposit in LH, through means of cross-referencing to LH 120–126 and other laws (chapter 9). The divergence in style in 22:8 is due to its being written as a general rule (similar to the talion rule) and to bring the collection back to the topical sequence of LH after CC’s having diverted to the deposit laws (also chapter 9). The laws about animal injury and death with the accompanying oath in 22:9–10 are original because they closely follow the pattern of LH 266 (chapter 10). The little phrase about animal rental in 22:14b is original, based on Hammurabi’s topic of rental (also chapter 10). The seduction law of 22:15–16, which seems out of context and awkwardly situated, is original because it presumably derives from a cuneiform source, consistent with the use of LH and, as noted already, provides the logic for the law that CC created about a daughter as a candidate of debt slavery in 21:7–11 (chapter 5). The miscellaneous participial laws of 22:17–19 appear to be part of CC’s basic composition because they, also as noted before, come from or are inspired by the native participial source or tradition that CC used in the main body of its laws (21:12, 15–17; chapter 7).

The second-person plural forms in the apodictic laws are the only remaining significant evidence of apparent redactional accretion. Chapter 12 allowed for viewing these as a supplement to a first edition or draft of CC with a more basic set of apodictic laws in second-person singular forms. But if the second-person plural passages are secondary, they must have been added very soon

after CC's first edition or draft and presumably under the auspices of those who produced the first edition, because the second-person plural passages still follow and bring in material from the thematic pattern of LH. Nevertheless, because they follow this pattern and because other examples of textual inconsistency noted previously have turned out to have compositional rather than redactional explanations, one may well hesitate about the reflexive solution of pronouncing second-person plural forms secondary. Chapter 12 identified other motivations for the second-person plurals that allow them to be understood as original, including source and contextual influences, as well as the thematic patterning.¹³

Only a few small and isolated elements of the text appear to be secondary in the analysis of this study. These include the reference to burnt and well-being offerings in 20:24, the prohibition of oppression with the verb $\gamma\eta\lambda$ in 22:20, "my people" in 22:24a, the gloss explaining interest (22:24b), and perhaps the prohibition of bribes (23:8).¹⁴ Moreover, the place of the burglary law, though not its substance, may be secondary (22:1–2a). It is also possible that some other incidental elements throughout CC that are not clearly connected with sources are additions. Unfortunately, the doubt that source analysis throws on intuiting redactional development through textual inconsistencies makes it difficult to confidently identify these additions. One will no doubt wonder how CC has been able to remain unscathed by the hand of supplementing editors, especially since law collections are liable to being amended and updated, as found clearly in the Hittite Laws. But as we have noted, CC is close to the time of Deuteronomy. It appears that CC's updating was not made within CC itself but in Deuteronomy, and later, in the Holiness Legislation (see later).¹⁵

When CC is understood to have used sources, much of the evidence used for making conclusions about the incremental development of the text actually becomes evidence of its dependence on those sources. The genre and thematic differences in the apodictic laws become evidence for the use of the prologue and epilogue and especially the exhortatory block, the irregularities of the miscarriage and talion laws become evidence of blending LH 196–201 with LH 209–210, and so forth. Complexities and inconsistencies in CC arose from combining different sources or discrete parts of the same source and from revision of the source material to produce a new composition. The tensions that remain are not dissimilar to those remaining after the blending together of divergent creation stories in Genesis 1–2 and especially the flood stories in Genesis 6–9.¹⁶ The difference in the case of CC is that the blending of source material is on a more limited and minute level and there is less interest in maintaining the integrity of the sources. In other words, the process in CC is less redactional and more compositional.¹⁷ Despite this new way of understanding the creation of CC, previous critical scholarship that works with a diachronic model is still relevant in its identification of and wrestling with tensions in the text. These features cannot be ignored; they become points of engagement for the new source theory.¹⁸

The Covenant Code, the Narrative of Exodus, and the Pentateuch

The main conclusions of this study have to do with the compositional nature of CC and its sources, as summarized to this point. But chapter 12 also explored the broader question of CC's relationship to the narrative of the book of Exodus. Allowance was made for the possibility that CC was created as a work independent of a narrative context and that, perhaps, it might originally have been written on a stela and placed next to an altar in a temple court. But the discussion reviewed significant evidence that CC was actually composed in connection with a version of the narrative of Exodus. CC lacks internal contextualizing information and thus requires other textual material, such as that found in the surrounding narrative, for its meaning. The analysis identified elements in Exodus that may have belonged to a contextualizing "Covenant Code Narrative." These included 3:1, 9–15, 21–22; 13:6; 19:2b–3a, 9a, 16aβyb, 17, 19 and 20:18–20*; 24:3–8*. These passages cannot be read as a continuous story and therefore obviously do not constitute the whole of the narrative to which CC belonged. Further study will be required to flesh out its full extent. But these few verses identify the players involved, set down a context of national oppression in Egypt, provide background festival legislation echoed in CC, and describe how CC was revealed to Moses. The analysis went further to show that some of the verses in this narrative appear to have been influenced by the context LH (i.e., the storm-theophany narrative in Exodus 19–20 and the revelation of Yahweh's name in 3:15). This was taken to mean that the basic narrative was composed along with CC when LH was used as a source. The analysis also suggested that the story of Moses' birth and rescue in 2:1–10 may have been part of this original narrative, not because CC refers to it but because it is ideologically consistent with the use of LH. CC and its narrative would thus have used traditions and sources about two paradigmatic Mesopotamian kings, Sargon of Agade and Hammurabi of Babylon, to construct the biography of Moses. If Moses' birth story is part of CC's narrative, and if the Sargon tale was composed or revived under Sargon II, then the chronological window for the creation of CC and its narrative would have to be narrowed from 740–640 to about 710–640 BCE. This would put CC firmly in a Judean matrix.

This analysis has implications for Pentateuchal studies at large. It indicates that around 700 BCE there existed a text that told about Egyptian national enslavement, the call of Moses, the revelation of the divine name, Moses' leading the people out of slavery, the revelation of CC at a mountain as part of an inaugural theophany, and a covenant ratification. As chapter 12 indicated, this narrative may have been expanded and the Decalogue may have been added to it sometime just before or around the middle of the seventh century and before the creation of Deuteronomy.

Perhaps shortly after the middle of the seventh century, the laws of Deuteronomy built upon the foundation of CC and its associated narrative. This later law composition may be viewed as the direct heir of the Covenant

Code “school.” Deuteronomy used CC as a major source for its laws.¹⁹ It also continued and developed CC’s techniques of legislative transformation. Bernard Levinson, in his foundational study of Deuteronomy’s use of CC, provided a summary of Deuteronomy’s techniques while addressing the question of whether the model of inner biblical exegesis sufficiently describes what Deuteronomy did to its source. This, in part, could be said of CC:

The concern of the authors of Deuteronomy was not to explicate older texts but to transform them. Neither “interpretation” nor “exegesis” adequately suggests the extent to which Deuteronomy radically transforms literary and legal history in order to forge a new vision of religion and the state. . . . If the very notion of exegesis implies the continuity of the revising text with its source, I wish to underscore the opposite: the extent to which exegesis may make itself independent of the source text, challenging and even attempting to reverse or abrogate its substantive content, all the while under the hermeneutical mantle of consistency with or dependency upon its source. Exegesis is thus often radically transformative: new religious, intellectual, or cultural insights are granted sanction and legitimacy by being presented as if they derived from authoritative texts that neither contain nor anticipate those insights.²⁰

In addition to using CC and its narrative, Deuteronomy continued CC’s model of using multiple sources. One of these other sources was Assyrian treaty, as noted earlier in this chapter. CC and its narrative may have given Deuteronomy’s scribes the idea to use treaty as a source, since treaty motifs and style are already found, though limitedly, in the earlier composition. CC probably provided the model for Deuteronomy’s replacement of the Assyrian king in treaty with Yahweh. Another apparent source for Deuteronomy was a corpus of casuistic law dealing with family, women, and related themes similar to MAL A (as discussed in chapter 4). This source may have been an outgrowth of CC’s use of MAL A—notes, as it were, that never made it into CC but were passed on in the background to Deuteronomy’s scribes and eventually incorporated in their work. Deuteronomy also appears to have used a proto-priestly source for its food laws (see n. 19). Thus a sizeable majority of Deuteronomy’s laws were generated by the use and revision of sources. In addition to sources, Deuteronomy inherited from the scribes of CC and its narrative the beginnings of a style that would soon develop into the Deuteronomic and Deuteronomistic idioms.

The later Holiness Legislation (HL), which includes not only the so-called Holiness Code (Lev 17–26) but also many passages that have previously been ascribed to the Priestly literature,²¹ also built to some extent on the content of CC, as well as Deuteronomy.²² Jeffrey Stackert summarized this in a recent study:

What can be said is that the Holiness Legislation, through its simultaneous revision of existing Priestly law on the one hand and the Covenant Collection and Deuteronomy on the other, creates a thoroughly “learned”

composition, a sort of “super law” that collects and distills the several law collections (CC, D, P) that precede it. By accommodating, reformulating, and incorporating various viewpoints from these sources, the Holiness authors create a work that is intended to supersede them all.²³

Because the Holiness Legislation used CC and Deuteronomy and because it is chronologically proximate to those earlier compositions, created not long after 550 BCE, it is reasonable to think that it inherited its approach to legal revisionism in part from scribal tradition stemming from the creation of CC and Deuteronomy. Thus we have evidence for the continuity of scribal techniques and sensibilities lasting nearly two hundred years, from about 700 to around 500 BCE. It appears that this tradition of legal revision and textual rewriting continued into later centuries and was manifested in evolved form in sectarian works such as the Temple Scroll.²⁴

Other streams of Pentateuchal narrative may have partly responded to the picture of national history and response to imperialism set out in CC and its narrative. The so-called J (Yahwist) material of Genesis can be understood as having developed this idea. Its conception of the use of the divine name from the beginning of time appears to be a reaction to the difficulty of the revelation of the divine name to Moses relatively late in world history, as found in Exodus 3:15. J remedied this problem by representing the pious as “calling upon the name of Yahweh” (קרא בשם יהוה) from the beginning of time (Gen 4:26; 12:8; 13:4; 21:33; 26:25; cf. 4:1).²⁵ For this, it used an idiom that related to but replaced CC’s “to recall/proclaim the (divine) name” (הזכיר שם). This appears to have a thematic climax in Yahweh’s emphatic declaration of his name when he bares his glory to Moses (34: 5aβ-6) and then communicates a short collection of laws (34:11–27), based in part on CC.²⁶ As J pushed the use of the divine name back in history to the beginning, it also pushed Mesopotamian cultural associations back to the beginning of time. As we saw in chapter 4, the J portion of the primordial history reflects and develops ideas found in Mesopotamian literature and culture. The J story informs its readers that the nation Israel ultimately derives from a Mesopotamian context. By this depiction, J acknowledged and conceded the primacy of Mesopotamian civilization. But J simultaneously undermined Mesopotamian power or prestige by characterizing it as having developed in ways opposed to the will of the creator Yahweh.

Priestly literature (P), eventually augmented with the Holiness Legislation, appears to have reacted in a general way to ideas in earlier non-P narrative.²⁷ It followed J in starting its story at creation.²⁸ But it purged the historical record of cultic activity until the time of Moses, thus representing the completion of creation in the foundation of the nation and cult at the time of Moses.²⁹ Its pattern thus coincides with that of Mesopotamian literature, such as *Enuma elish* and *Atrahasis*, where humans were created for the cultic service of the gods and where the act of creation sets the stage for political and national identity.³⁰ P may

well have intentionally formulated its version of creation and national origins in reaction to models from Mesopotamia. P's dependence on Mesopotamian tradition is otherwise found in its flood story. Part of P's culmination of creation in the cult and the founding of the nation was holding the revelation of the divine name until the time of Moses (Exod 6:2–9). In this, it followed the Covenant Code Narrative (Exod 3:15) and rejected J's primordialization of the use of Yahweh's name.³¹

While the content and themes of Pentateuchal literature cannot be reduced to just a reaction against the forces of imperialism, the foregoing sketch indicates that the various sources and strata of the Torah reflect at various points the international cultural and political environment of the late eighth through the end of the sixth centuries. Scholarship hitherto has generally ascribed correlations throughout the Pentateuch with Mesopotamian thought to a long history of oral tradition going back to the second millennium, as it has specifically in the case of CC's laws. Although the influence of oral tradition from centuries past should not be left unexamined or ruled out, the question that we have for the Pentateuch at large is the same that we had in the study of CC: Are we to believe that points of consonance between Pentateuchal literature and Mesopotamian tradition are to be attributed primarily to a millennium or more of oral transmission and that they just happen to find themselves expressed in the sources and strata of the Pentateuch that were produced precisely at a time when Israel and primarily Judah were dominated by Mesopotamian imperial powers? A more direct and contemporary avenue of influence recommends itself. To be sure, a search for contemporary influences from Mesopotamia in the Pentateuchal literature must proceed critically and judiciously. Possible connections will become compelling only when they are part of a larger contextual and historical argument. But the present study and the outline of broad influences just cited suggest that the development of the Pentateuch and its constituents in a comparative historical and cultural context requires renewed examination. The answers to the questions about the formation of the Torah, which have beset scholars in the last decades, are probably not contained solely within its own context or in the data found between the covers of the Hebrew Bible more broadly.

Primary and Secondary Correlations in the Order of the Casuistic Laws of CC

CC Topic	CC Passage	Primary correlations following the topical sequence of LH	Auxiliary correlations with LH and other sources
Male debt servitude	21:2 basic debt-slave law: male (son or father?) acquired, work six years, released seventh	LH 117 son sold as debt-servant (father included if <i>ittandin</i> is N-stem), work three years; released fourth (LH 117 wife sold)	
	21:3 wife accompanying		
	21:4 male slave (but freeable) + slave woman, children owned		LH 175 male slave + free woman, children free (CC inverts)
Female (daughter) debt servitude	21:5–6 slave accepts master (permanent servitude), verbal declaration, ear pierced	LH 117 daughter sold as debt-servant	LH 282 slave rejects master; verbal declaration, ear cut off (CC inverts)
	21:7 selling daughter		(MAL A55–56 sex with unbetrothed virgin requires marriage; see 22:15–16 below)
	21:8 displeasure (reason unspecified)		cf. LH 148–149 implied displeasure because of disease
	21:9 designating slave woman as wife for son; “law pertaining to daughters”		LH 155–156 father selects bride for son; daughter-in-law incest penalized (daughter incest penalized in LH 154)
Homicide	21:10–11 taking a second wife and three means of support		LH 148–149 taking a second wife, requirement of support; LH 178 three means of support (verb <i>ittanaššīši</i> “he shall support her” in both 148, 178)
	21:12–14 striking, inadvertent killing; sanctuary adjudication		native participial source, homicide
Child rebellion and kidnapping	21:15 striking parents; capital penalty	LH 192–192 verbal rejection/repudiation of foster parents; bodily mutilation	influence on form from native participial source

Family law: 21:2–11 // LH 115–119, 127–195

	21:16 kidnapping; capital penalty	~LH 194 (wet nurse; bodily mutilation) <i>ṣeḥrum</i> “young child”	LH 14 kidnapping; capital penalty <i>ṣeḥrum</i> “young child;” form from native participial source native participial source, parent-cursing law
	21:17 cursing parents; capital penalty	LH 195 striking father; bodily mutilation LH 196–201 talion: eye, bone, tooth of free person, commoner, slave	
Injury and homicide	21:18–19 fighting, striking injury, provide for cure (free person)	LH 206 fighting, striking, injury, pay physician (free person) LH 207 striking, _____ inadvertent killing, implicit temple oath	
	21:20 killing one of lower class (slave): capital liability	LH 208 killing one of a lower class (commoner); slaves in socially graded laws in nearby laws LH 196–205, 209–223	LH 115 natural death of debt-servant: no liability
	21:20 killing one of lower class (slave): no liability (vv. 20–21 include chattel- and debt-slaves)		LH 116 beating death of debt-servant: capital liability
Miscarriage and talion	21:22 miscarriage: death of fetus 21: 23 miscarriage: death/ injury of woman 21:23b–25 talion (general rule): eye, tooth, arm + leg (= bone), burn, wound, bruise 21:26–27 slave injury: eye, tooth (chattel- and debt-slaves)	LH 209 miscarriage; death of fetus LH 210 miscarriage; death of woman	LH 206 <i>simum</i> “wound” (also LH 215–220)
Ox goring a human	21:28 killing of free person in ad hoc goring; not liable 21:29–31 killing of free person and child by an ox known to gore; capital	LH 229–230 negligence: house falling LH 250 killing of free person in ad hoc goring; no claim LH 251 killing of a <i>mār awīlim</i> (ambiguously a person of the <i>awīlum</i>)	

(Continued)

(Continued)

CC Topic	CC Passage	Primary correlations following the topical sequence of LH	Auxiliary correlations with LH and other sources
	penalty or monetary ransom	class or “a child of an <i>awilum</i> ”) by an ox known to gore; 30 shekels	
	21:32 killing of slave; 30 shekels	LH 252 killing of slave; 20 shekels	
Negligence	21:33–34 digging or opening (פתח) a pit (בור) (for watering animals?); animal falls in		Cf. LH 55–56 “opening” for irrigation; NBL 3 “opening” (<i>petū</i>) a “well” (<i>būru</i>) for irrigation
Ox goring an ox	21:35 ox killed by another ox in ad hoc goring; equal division 21:36 ox killed by an ox known to gore		LE 53 ox killed by another ox in ad hoc goring; equal division 21:36 based on 21:29
Animal theft and burglary	21:37 animal theft, animal sold/killed, five/fourfold penalty	LH 253–266: agricultural (seed/animal) theft;	
		LH 253 seed stolen, found in possession; LH 254 stored grain taken, twofold penalty	
	22:1–2a burglary, tunneling, burglar may be killed at night without liability (conceptually, this burglary law fits best after 22:6; see the connection of 22:6 to LH 21, below) 22:2b-3 theft, animal found in possession, twofold penalty	LH 265 animal stolen, sold, tenfold penalty	LH 21 tunneling; burglar killed; LE 13 allows killing of burglar at night; another cuneiform source with a law <i>like</i> Roman 12 Tables VIII.12 may be influential
Grazing and fire in a field	22:4 grazing; possibly two cases: letting graze or (!) releasing animals to graze in another person’s field 22:5 fire destroying another person’s crop		LH 57–58 grazing; two cases: letting animals graze and releasing animals to graze in another person’s field HtL 105–106 fire destroys another person’s crop

Deposit (generative context for burglary law in 22:1–2a)	22:6 safekeeping of silver or objects; theft; thief found; twofold penalty	LH 265–266 <i>ana re'im nadānum</i> “to give for shepherding” →	LH 122–125 (120–126) <i>ana maššarūtīm nadānum</i> “to give for safekeeping”; LH 122, 124 “silver, gold, or anything given for safekeeping”; LH 124, 126 twofold penalty; <i>pilšum</i> “tunneling” in LH 126 leads to <i>palāšum</i> “burglary” in LH 21; in contiguous LH 22 robber is seized
	22:7 thief not found; oath of innocence		LH 23 robber not seized; LH 120, 126 legal declarations of innocence (also LE 37)
	22:8 general rule about judicial declarations	LH 266 declaration	other declarations in LH 9, 23, 120, 126
Injury and death of animals	22:9–10 accidental animal death/loss; declaration to god; owner’s acceptance	LH 266 animal killed by god or lion; declaration of innocence before god; owner’s acceptance cf. LH 267 shepherd negligent and animals perish; single repayment	(influence from context of deposit in v. 22:6–8)
	22:11 animal stolen from shepherd; single repayment		
	22:12 animal preyed upon but carcass remains; produce evidence; no repayment	LH 266 predation, declaration of innocence	native influence? (cf. Amos 3:12; Gen 31:39; cf. LH 244, 249)
Animal rental	22:13–14 two cases, depending on presence of owner, rental included	LH 268–271 animal rental (“If a man rents an ox . . .”), but these deal with rates of hire	LH 244–249 injury/death of rented animals
Seduction	22:15–16 seduction, unbetrothed maiden, marriage, bride-price, possible father’s refusal (this law justifies daughter marriage in 21:7–11)		MAL A 55–56 rape/ seduction, unbetrothed virgin, marriage, bride- price, father’s refusal
Mis- cellaneous participial laws	22:17–19 sorcery, bestiality, sacrificing to other gods		possible native participial source; see 21:12, 15–17; sorcery in MAL A 47

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Notes

Chapter 1

1. I retain the commonly used term “Covenant Code,” which is based on the term ספר הברית “document of the covenant” in Exodus 24:7, even though the work is not a law *code*, especially in the interpretation that this study advances. Verse numbers in this study follow the BHS for chapters 20 and 22. In some versions, 20:23–26 = 20:20–23 (e.g., NJPS) and 21:37–22:30 = 22:1–31 (e.g., RSV).

2. The terms *casuistic* (“if...then...” law) and *apodictic* (“do this/don’t do that” law) are used to refer to the legal forms that prevail in these respective sections.

3. See later in this chapter and throughout this study for various views.

4. See primarily Horowitz, Oshima, and Sanders, *Cuneiform*; Horowitz, Oshima, and Sanders, “Bibliographical List.” Previous discussions include Carr, *Tablet*, 47–61; Finkelstein, *Ox*, 19; Otto, *Körperverletzungen*, 175–179; Rothenbusch, *Rechtssammlung*, 481–486; Wright, “Laws of Hammurabi as a Source,” 50–51.

5. See chapter 4.

6. See Tov, *Textual Criticism*, 313–349.

7. See, for example, Tigay, *Empirical Models and Evolution of the Gilgamesh Epic*.

8. Lieberman (“Are Biblical Parallels Euclidean?” 91) warns against naïveté in thinking that “the written sources at our disposal represent the only version available at the time, or—more relevant—that they precisely reflect the version to which the Biblical writer was responding.”

9. Goetze (“Mesopotamian Laws and the Historian,” 116) observed: “Nothing was therefore more natural than to raise the question as to the relationship between Hammurabi’s law and the Jewish laws.... Pan-Babylonianism was then en vogue and

therefore it is hardly surprising to find the opinion dominant that just as, e.g., the story of creation and that of the deluge had come to the Jews from Babylon, so also Babylonian laws were the source from which the Israelites drew inspiration. Although there is little merit in this all too simple and naive solution of the problem, there was nevertheless considerable merit in posing it. It has remained alive ever since.”

10. See Wright, *Disposal*, 5–9.

11. See chapter 4.

12. The Elamite king Shutruk-nahhunte took the stela to Susa from the Ebabbara temple in the Mesopotamian city Sippar as a war trophy (cf. Hurowitz, *Inu Anum šrum*, 1, 10; Kuhrt, *Ancient Near East* 1:372; for the custom in Assyria, see Kravitz, *Divine Trophies*). The primary monumental copy of Hammurabi’s text was erected in the Esagil temple of Babylon, as indicated by the epilogue of the text.

13. Scheil, *Textes élamites-sémitiques*.

14. The comparison in this study will proceed on the basis of the form of LH as found in the Louvre stela from Susa, since it turns out that variants in other texts (stone fragments and clay tablets) are relatively minor. See chapter 4, nn. 133, 135.

15. The reasons for including 22:17–19 with the casuistic part of the collection will become clear in the study of the participial and apodictic laws in chapters 3, 6, 7, and 11. These verses are a supplement to the main casuistic laws. The final apodictic laws as a topical unit, determined by source correlations, start in 22:20.

16. Translations of Near Eastern texts throughout are mine, except where noted. For recent English translations of LH, see Roth, *Collections*, 71–142; Roth, *COS*, 2: 335–353 (text 2.131); Richardson, *Hammurabi’s Laws*.

17. Malul, *Comparative Method*, 159 (cited later in this chapter).

18. This study did not originate from a concern about the order of CC’s or Hammurabi’s laws. CC could still be dependent on LH but not have used it in a sequential fashion, much as Deuteronomy used the laws of CC (see chapter 13, n. 19). In such a case, one would have to raise questions about the organizational principles of CC apart from the question of dependence on LH. It turns out, however, that CC used LH as a topical guide. This means that other explanations of CC’s order have not satisfactorily explained the text’s organization, whether on the basis of common Near Eastern legal logic, imitation of other collections such as the Decalogue, or as a grand chiasmic structure or collection of lesser chiasmic structures. For works concerned with the ordering of laws, see Braulik, “Sequence,” 318 (and *passim*); Chirichigno, *Debt-Slavery*, 186–187 n. 2; Jackson, *Wisdom-Laws*, 445–453; Kaufman, “Structure of Deuteronomic Law”; “Second Table of the Decalogue”; Levinson, “First Constitution,” 1873 n. 82; “Hermeneutics of Innovation,” 2–77; Mendenhall, “Ancient Oriental and Biblical Law,” 38–39; Otto, *Rechtsgeschichte*; “Gesetzesfortschreibung,” 378–380; *Wandel*, 66–67; *Körpverletzungen*, 169 n. 2; Petschow, “Systematik”; Sauren, “Aufbau”; Schwienhorst-Schönberger, *Bundesbuch*, 44–51. For critique of analyses of chiasmic patterns in CC, see Wright, “Fallacies.”

19. Wright, “Laws of Hammurabi as a Source,” 35–37; “Compositional Logic,” 94–95 n. 3.

20. The x-member in table 1.5 may be considered secondary or may be original, augmenting the structure to mark its closure.

21. This attitude is summarized by Jackson (“Evolution and Foreign Influence,” 373–74): “‘Influence’ has become almost a dirty word in legal history. In no small measure this appears to be the result of a concrete situation. In 1902 the publication of

the Code of Hammurabi led to a plethora of writing in many cases designed to prove Babylonian influence upon the law codes of the Old Testament, and in particular upon the so-called ‘Covenant Code.’ . . . Many of the alleged examples of influence were, to say the least, dubious. In some the comparisons were entirely facile and superficial. In others there was a possibility of influence, but such influence could not be proved conclusively. In turn a reaction against the extremes proposed by some of these scholars developed. It was noted that many of the parallels could be explained upon the basis of independent parallel development, the underlying assumption being that legal systems faced with similar problems will tend to produce solutions which are similar. . . .” Jackson adds, “However, this reaction has probably gone too far. Scholars rightly demand the very best evidence to prove influence. From the very nature of the existing data such evidence is not always forthcoming. Yet there is more evidence than is generally supposed, and, although it is in a relatively small number of cases only that one can prove influence conclusively, there are enough cases in which one is able to assert more than a mere possibility.”

22. Boecker, *Law*, 154 (*Recht*, 133–134).

23. Koschaker, “Keilschriftrecht,” 31–32 (translation from Boecker, *Law*, 154): “Die Zeiten, da man aus inhaltlicher Übereinstimmung von Rechtssätzen in zwei verschiedenen Rechten ohne weiteres auf Entlehnung aus dem älteren Rechte schloß . . . sind vorüber, oder besser gesagt, sollten vorüber sein. Die Anwendung der komparativen Methode in der Rechtsgeschichte hat uns gelehrt, daß wir in weitem Umgange mit unabhängiger Parallelentwicklung rechnen müssen, ja daß diese sogar die zunächstliegende Erklärung für Übereinstimmungen in verschiedenen Rechten gibt und Rezeptionen und sonstige Beeinflussungen nur angenommen werden dürfen, wenn sie bewiesen oder wegnigstens wahrscheinlich gemacht werden können. . . . Jedenfalls wäre es eine primitive Vorstellung, zu glauben, daß man Rechtssätze importiert wie eine ausländische Ware.” Cited also by Schwienhorst-Schönberger, *Bundesbuch*, 243–244. In apparent contradiction to Koschaker, Fitzpatrick-McKinley (*Transformation of Torah*, 64, based on Watson, *Legal Transplants*, 22–24, which refers to the goring ox laws of LE, LH, and CC, though see his pp. 19–30 for broader context) says that “legal philosophers generally accept that in the main, at most periods of history and in most places, law develops through a process of borrowing.” She observes (p. 69) that Watson (*Legal Transplants*, 57, 88–90, 95–101; *Evolution of Law*, 115–119) notes three determinants for borrowing: (1) “that the donor system be held in some esteem by the legal specialists responsible for borrowing”; (2) “that the legal materials of the donor system are accessible”; (3) the “absence of plausible rivals to the chosen donor system.” A consonance between the actual existing legal practices of the borrower and the customs in the borrowed materials is not necessary. She makes three conclusions (p. 70): (1) “Legal rules of any society are likely to have been greatly influenced by rules borrowed from another system. Thus, they most likely do not reflect in any definitive way the underlying ethos of a people”; (2) “since legal rules do not arise out of common or established social practice, nor out of the experiences of the codifying society, they are not particularly related to that society’s social practices or norms”; and (3) “the relationship between legal development and social development is not one of correlativity. It is more accurately described as one of relative independence.”

24. Compare similarly Johns (*Relations*, 50): “Now on such a view of the general similarities many have expressed the opinion that the Hebrew laws are a more or less revised adaptation of the Babylonian law, perhaps as locally already modified in

Canaan to suit the prejudices of the invaders while they were changing their habits of life and became a settled people. But this view is not vivid enough for others. There is a certain delight which some feel in propounding views calculated to shock some one. The cruder view that the Hebrew lawgiver, call him Moses or some higher critical periphrasis for the same thing, sat down with a cuneiform copy of the Code [LH] before him and copied out the Babylonian laws with some adaptations, may have been enunciated with some such amiable wish, but was too crude to disturb any one. It is barely worth record. The differences between the Codes are too important for us to adopt it. If he made a copy it was a very bad copy." See also Meek (*Hebrew Origins*, 69): "All these similarities . . . can scarcely be regarded as wholly accidental. There must be some connection between the two codes, but the connection is not such as to indicate direct borrowing. No one today argues that. Whatever borrowing there was came indirectly, either through common inheritance or through Canaanite influence, or much more likely through both ways"; Fensham ("Extra-biblical Material," 54): "It is explicable that certain [past] scholars took the view that e.g. parts of the Covenant Code of the Old Testament are either directly borrowed from the Code of Hammurabi or are taken over and expanded to meet the needs of the Hebrew community. Not a single scholar will agree with this view today." Morgenstern ("Book of the Covenant, Part II," 243) calls a genetic theory "almost naive in its simplicity." He then goes on (pp. 241–256) to argue that CC's laws reflect a stage of legislation earlier than LH and cuneiform law and is closer to Bedouin custom. See also Blenkinsopp, *Wisdom and Law*, 96.

25. Alt, "Origins," 97–98.

26. Preiser, "Vergeltung," 243–244 ("Eine unmittelbare literarische Abhängigkeit von dem 'Gesetz' des Hammurabi oder einer anderen der uns inzwischen bekanntgewordenen vorderasiatischen Rechtssammlungen . . . ist nicht zu erweisen; sei ist, bei dem außerordentlichen zeitlichen und örtlichen Abstand . . . auch alles andere als wahrscheinlich"; translation from Boecker, *Law*, 155; cf. *Recht*, 134).

27. Boecker, *Law*, 155 (*Recht*, 134).

28. Rothenbusch, *Rechtssammlung*, 25 (my translation): "Man wird diese ersten Versuche, an deren methodischer Unzulänglichkeit sich heftige Kritik entzündete, als 'naive' Vorstellungen über einen komplizierten kulturellen Transfer verstehen dürfen, die insbesondere dessen sozio-ökonomische Bedingungen noch ganz vernachlässigten."

29. Otto, "Review of Van Seters," 6 (German version, 276–277).

30. Otto here refers to his *Körperverletzungen*, 147–164.

31. For early arguments about a direct or indirect literary connections, see Müller, *Gesetze Hammurabis* (1902–3), 210–221 (CC and LH have a common parent text; cf. Johns, "Three New Books [1904]," 398); Jeremias, *Moses und Hammurabi* (1903), 33–63 (with a detailed side-by-side listing of similar laws on pp. 36–44; similarities are due to a common Arabian matrix, pp. 62–63); Kent, "Recently Discovered Civil Code of Hammurabi (1903)" (similarities reflect a common heritage, with the biblical code being more primitive; in his *Israel's Laws* [1907] 6–7, 11, he speaks of inheritance from Semitic tradition); Duncan, "The Code of Moses and the Code of Hammurabi" (1904) (Israelites took up laws from the culture of Palestine, which knew the Babylonian laws); Edwards, *Hammurabi Code* (1904), 132 ("the Hammurabi Code must have been the immediate or remote progenitor of the Hebrew legal system"); Prince, "Code of Hammurabi (1904)," 609 ("the first Abrahamitic horde left the East . . . carrying with them those Babylonian traditions which resulted . . . in the Mosaic legal system"); Johns, *Relations* (1914), 51 ("a theory of common [perhaps Semitic]

origin will suffice to account for the likenesses”); Gressmann, *Geschichtsschreibung* (2nd ed., 1921), 221 (the actual text of LH or a later Babylonian law book was known in Canaan); Jirku, *Kommentar* (1923), 91 (the form and content are so similar that CC must come from direct or indirect contact; see his table, p. 93); Jepsen, *Bundesbuch* (1927), 80 and see 55–81 generally (the casuistic laws of CC drew from a work available in Asia Minor, Palestine, and Assyria that also served as a basis for LH, the Hittite laws, and the Middle Assyrian Laws); Bonkamp, *Die Bibel* (1939), 221–224 (Amraphel in Genesis 14 is Hammurabi and his laws were known in Palestine at the time of Abraham); Cazelles, *Études* (1946), 147–168, esp. 155–156 (CC may have known LH and used it in very free manner; in his “L’auteur du code de l’alliance (1945),” he ascribes authorship to Moses); Bright, *History* (3rd ed., 1981), 89–90 (legal traditions of CC were “brought to Palestine by groups who had migrated in the course of the second millennium from lands where the Mesopotamian traditions of jurisprudence was known”). For summaries of the various views, see Otto, *Körperverletzungen*, 11–24; Schwienhorst-Schönberger, *Bundesbuch*, 240–243; Van Seters, *Law Book*, 8–46; for an early summary of early views, see Vincent, “Laws of Hammurabi,” 746–747.

32. For recent detailed reviews of the scholarship on CC, see Fitzpatrick-McKinley, *Transformation of Torah*, 11–53; Jackson, *Wisdom-Laws*, 3–39, 406–411; Otto, *Körperverletzungen*, 11–24; “Bedeutung,” 139–141; Rothenbusch, *Rechtssammlung*, 17–19, 23–91; Schwienhorst-Schönberger, *Bundesbuch*, 8–22, 238–254; Van Seters, *Law Book*, 8–46. For less extensive reviews, see Houtman, *Exodus*, 3:78–98; Levinson, *Deuteronomy*, 11–13; Marshall, *Israel*, 5–26; Propp, *Exodus 19–40*, 306.

33. Otto says that the recognized starting point of study is “that sentences of Israelite casuistic law had their traditional historical roots in Israelite trial records” (“Town,” 4, 18; he bases this on the work of Liedke, *Gestalt*, 39–42, and Locher, *Ehre*, 83–110). One of his reasons for supposing independent genesis is the difficulty of explaining how Mesopotamian law influenced Israelite law (see his “Town,” 6, cf. p. 18; similarly *Körperverletzungen*, 171–173).

34. Otto, *Körperverletzungen*, 169–170, 173, 179–187. He says (pp. 169–170): “Während die israelitischen Einzelrechtssätze von Keilschriftrechten überlieferungsgeschichtlich unabhängig entstanden sind, haben die Redaktionen der Rechtssatzsammlungen Anteil an der Rechtskultur der Keilschriftrechte” (“While the individual Israelite laws developed independently of cuneiform laws from a tradition-historical point of view, the redactions of the law collections have a connection to the legal culture of cuneiform laws”; my translation; cf. his conclusion in “Town,” 20). Otto goes on to say (*Körperverletzungen*, 171, 172–173): “In dem bäuerlichen Milieu der Ortsgerichtsbarkeit als traditionshistorischem Wurzelgrund der kasuistischen Rechtssätze [of CC] ist die Kenntnis internationaler Rechtsgelehrsamkeit eher unwahrscheinlich. Dies gilt auch dann, wenn man mit ‘kanaanaïschen’ Ursprüngen des Volkes Israel im Kulturland rechnen will, läßt sich doch eine Herkunft aus urbanem Kontext der Spätbronzezeit nicht wahrscheinlich machen.... Eine Rezeption keilschriftlicher Rechtsüberlieferungen ist in diesem Hirtenmilieu [the socioeconomic context out of which Otto supposes that Israel arose] wie auch in dem dörflichen Milieus des eisenzeitlichen Israel eher unwahrscheinlich” (“The knowledge of international legal scholarship in the rural context of the local courts as the tradition-historical matrix of the casuistic laws [of CC] is rather unlikely. Likewise, when one considers the ‘Canaanite’ origins of the people of Israel in the agricultural land, an origin from the urban context of the Late Bronze Age does not seem probable.... A reception of the cuneiform legal

tradition in this pastoral context as well as in the village context of Iron Age Israel is unlikely”). He also notes in his discussion that his reconstructed original individual laws in some respects appear to be more archaic than those of LH (or LE). This precludes a literary connection. See further Otto, “Bedeutung,” 142–143; “Town,” 7, 16–20.

35. Otto, *Körperverletzungen*, 11–24, 123–134, 147–148, 158–165, esp. 133–134, 160–162, 165.

36. See David, “Codex Hammurabi”; Grimme, *Das Gesetz Chammurabis und Moses*, 36–43; Hertz, “Ancient Semitic Codes,” 214–221; and Van Selms, “Goring Ox.” David (p. 178) concluded: “To my mind there is even no indication whatsoever that the Biblical legislator has known the C.H. [= LH] and has been influenced by it in any way” and (p. 153) “such parallels cannot possibly upset the thesis that the Old-Israelitic law contained in Exodus xxi sqq. on the one hand and the law of the C.H. on the other are independent of each other after all. It is neither possible to derive one law from the other nor can it be proved in any way whatsoever that both institutions of law are founded on a common original law.” Van Selms (p. 325) observed: “When one studies [the] differences between C. H. and the Book of the Covenant, it becomes quite clear that the Hebrew law cannot be a derivation from the Babylonian code. . . . [Some differences] show that the Israelite conception is more ‘primitive’ than the Babylonian. . . . if we did not know anything about the date of [the two collections] we would certainly put Ex. 21:28–32 a few centuries before C. H. § 250–252.” Van Selms’s study was a primary object of Malul’s critique (see Malul, *Comparative Method*, 84–85, 116–152). Wells (“Covenant Code”) and Westbrook (“Laws of Biblical Israel”) have most recently made an argument for independence because of differences. See also Fensham, “The *Mišpātīm*,” 47–71, 114. For the argument that differences indicate independence between biblical law collections more generally, see Kaufmann, *Religion of Israel*, 166–172 (see the contextualization and critique of Levinson, “Manumission of Hermeneutics,” 284; Stackert, *Rewriting*, 7).

37. Otto, “Town,” 5–7, 20–21; “Bedeutung,” 164–165.

38. Otto, *Wandel*, 9–56 and passim, esp. 40, 56, 71–72; “Aspects,” 182–189. In contrast, 22:15–26 was not composed of individual collections (*Wandel*, 40). Otto sees two different theologies of redaction in 21:2–22:26 and 22:28–23:12 and notes that the addition of 20:24–26 to 21:2–22:26 changed the function of that group of laws (*Wandel*, 50–51). Otto gives a comprehensive history of CC’s laws in his “Bedeutung,” 159–168. For a review and critique of Otto’s schema, see Chirichigno, *Debt-Slavery*, 189–190, n. 4; Crüsemann, *Torah*, 150–151; Osumi, *Kompositionsgeschichte*, 84–85, 91–93.

39. Westbrook, *Studies*, 1, 4, 40, 41.

40. Westbrook, “Nature and Origin”; *Studies*, 1–2. In his latest study, “Laws of Biblical Israel,” he downplays a transfer of legal content to the Roman world.

41. Westbrook, *Studies*, 4, 40; “Nature and Origin,” 92–93; “Laws of Biblical Israel,” 117.

42. Westbrook, “Laws of Biblical Israel,” 112–117.

43. Westbrook, *Studies*, 3.

44. Westbrook, “Nature and Origins,” 97–101. Cf. Otto, *Körperverletzungen*, 17 n. 3.

45. Westbrook, “Laws of Biblical Israel,” 111. On oral tradition in the formation of the Talmud, see Jaffee’s work, summarized in chapter 4, n. 16.

46. Westbrook, “What Is the Covenant Code,” 15–36.

47. Schwienhorst-Schönberger, *Bundesbuch*, 240–268, 415, see especially 255, 268.
48. Schwienhorst-Schönberger, *Bundesbuch*, 262–266.
49. Schwienhorst-Schönberger, *Bundesbuch*, 145, 156–161, 239, 252, 255, 267. For others who see textual influence in Exod 21:35, see chapter 8, n. 12.
50. Schwienhorst-Schönberger, *Bundesbuch*, 135–136, 161–162, 252, 255.
51. Exod 21:12, 18–19, 22aaba, 28–29, 32, 33aß*b, 34aß, 37; 22:3, 9–10*, 13abß; Schwienhorst-Schönberger, *Bundesbuch*, 234 and 236.
52. Exod 21:31, 33aαß*γ, 34aβb–36, 22:4–5, 6–8, 11–12, 13bα, 14.
53. Exod 21:13–17, 20–21, 22aβbβ, 23–24, 26–27, 30; 22:1–2, 9–10* (especially the Yahweh oath), 15–16.
54. Schwienhorst-Schönberger (*Bundesbuch*, 237) finds little Deuteronomistic influence in the casuistic laws (only 21:25).
55. Rothenbusch, *Rechtssammlung*, 394–398, 481–513, 599–600.
56. Rothenbusch, *Rechtssammlung*, 398: “Eine unmittelbare literarische Vorlage aus dem alten Orient, etwa der KH [= LH], kommt dafür nicht in Frage” (“A direct literary source from the ancient Near East, such as LH, is not a consideration”).
57. Rothenbusch, *Rechtssammlung*, 317: “Neben den auffälligen inhaltlichen Parallelen machen die skizzierten komplexen Übereinstimmungen von Ex 21,18–27 und KH § 196–214 einen überlieferungsgeschichtlichen Zusammenhang beider Traditionen m.E. jedenfalls in hohem Maß wahrscheinlich. Das wird sich im folgenden, insbesondere an Ex 21,28–32, weiter bestätigen.”
58. Rothenbusch, *Rechtssammlung*, 329.
59. Rothenbusch, *Rechtssammlung*, 266, 394, 397, 600. On p. 406, he sees the slave laws as part of the basic text of CC.
60. Rothenbusch, *Rechtssammlung*, 394; secondary passages include, for example, 21:26–27, 31, 36; 22:1–2a, 3, 10, plus the participially formulated laws in 21:12–17.
61. Rothenbusch, *Rechtssammlung*, 459.
62. Rothenbusch, *Rechtssammlung*, 453–456, 471–473, 561.
63. Rothenbusch, *Rechtssammlung*, 592–593. For a critique of Rothenbusch, see Levinson, “Is the Covenant Code an Exilic Composition?” 290–291.
64. Jackson, *Wisdom-Laws*, 432–433; “Modelling,” 1771–1788.
65. Jackson, *Wisdom-Laws*, 333–334. He argues that the direct speeches of characters in the narratives represent “credible speech patterns to the audience of the narrator” (p. 433) and are reflections of oral legal traditions. These prove the orality of law (pp. 435–436). He follows Otto about rural content versus urban imposition of Canaanite scribal traditions and forms (p. 436). The reflection of custom for Jackson is not of “trial transcripts” but of individual laws that people would call upon from oral tradition to solve their disputes outside a court situation. He thinks (pp. 436–437) that some of the legal ideas may have been maintained or announced in royal proclamations. He buttresses his argument about royal proclamations with reference to 1 Sam 30:22–25 and Jer 34:8 (see p. 442 n. 69).
66. Jackson, *Wisdom-Laws*, 29–30; cf. pp. 389–395; “Modelling,” 1760–1771. For a wisdom matrix, see also Blenkinsopp, *Wisdom and Law*; Gerstenberger, “Covenant and Commandment,” 49–50; cf. Richter, *Recht und Ethos*.
67. Jackson, *Wisdom-Laws*, 10; see also pp. 23, 46–47, 439, 455. He says (pp. 31–32): “What, then, was the form in which wisdom-laws circulated before they were written down? I doubt that it was in the casuistic form in which we now find them, even if

individual casuistic sentences are detached from the paragraphs in which they presently appear.”

68. Jackson, *Wisdom-Laws*, 281. He allows for influence from Mesopotamian models at various stages (p. 439).

69. Lambert (“Interchange of Ideas,” 312–313) notes: “the *lex talionis* is an innovation with [Hammurabi].... There is no extant corpus of Amorite law... but outside Mesopotamia only Israelite law offers ‘life for life...’ (Exod 21:23–24 etc.). The occurrence of the pair eye and tooth... suggests an oral dictum of great antiquity.... There is of course no reason to suppose that the Hebrew lawgivers were influenced by Hammurabi’s laws, since these laws were not observed in their own time, and survived in Mesopotamia only as a library text, of which no fragments have yet been found in the West. The most reasonable hypothesis is that both Mesopotamian and Palestinian sources drew on Amorite legal traditions....” Frymer-Kensky (“Tit for Tat,” 233) notes that “a growing body of evidence indicates that many of the ideas previously considered Babylonian may have had their origins not in Sumer or Akkad but in the traditions of the West Semites who began to migrate into Mesopotamian en masse around 2000 B.C.E. Although we have no direct evidence concerning the culture of these West Semites, their influence perhaps may be inferred whenever a given cultural phenomenon appears as an innovation in Mesopotamia during the Old Babylonian period (after the migration of the West Semites), whenever this innovation has no clear Sumerian antecedents, and whenever it has clear analogies in biblical thought and institutions.” She suggests that the battle of Marduk with Tiamat, the creation of humans from the blood of a slain god, and the notion of talion are West Semitic ideas. Goetze (“Mesopotamian Laws and the Historian,” 119–120) notes the problems of influence of Mesopotamian law on the west even in the fourteenth century (the Amarna Age) and points to an Amorite-type hypothesis to explain the similarities in CC and LH. For the Amorite hypothesis, see also Chirichigno, *Debt-Slavery*, 192–195; Greengus, “Biblical and Mesopotamian Law,” 66; Mendenhall, “Ancient Oriental and Biblical Law,” 31–32, 36–37; “Amorites,” 202.

70. For this view, see nn. 24, 36, 69.

71. Greengus (“Selling of Slaves,” 10–11) says that the Middle Bronze Age was a more likely candidate than the Late Bronze for the imparting of Mesopotamian legal tradition into the west because of a decline of cuneiform scribal abilities in the Late Bronze.

72. Recent miscellaneous observations allowing for some literary influence include Barmash, *Homicide*, 146, 147, 204; Greengus, “Selling of Slaves,” 10–11; Fitzpatrick-McKinley, *Transformation of Torah*, 54–80.

73. Finkelstein, *Ox*, 19.

74. Finkelstein, *Ox*, 20.

75. Finkelstein, *Ox*, 21.

76. Finkelstein, *Ox*, 5. He speaks of the mediation of the ox laws through a source that is presently unknown on p. 34.

77. See Otto, *Körperverletzungen*.

78. Malul, *Comparative Method*, 159.

79. Houtman, *Exodus*, 3:91.

80. Houtman, *Exodus*, 3:93.

81. Van Seters, *Law Book*; “Cultic Laws”; “Law of the Hebrew Slave”; “Law of the Hebrew Slave: A Continuing Debate”; “Some Observations on the *Lex Talionis*.” Levinson (“Is the Covenant Code an Exilic Composition?”; “The Manumission of

Hermeneutics”) provides the most detailed critiques of Van Seters’s conclusions (see also Otto, “Review of Van Seters”; Wright, “Review of Van Seters”; Ska, *Introduction*, 187–188 n. 6). Levinson nevertheless recognizes some solid contributions from Van Seters’s study, including the argument that cuneiform legal traditions could not have survived orally from the second millennium. To clarify matters for the history of scholarship, my conclusions were drawn independently of Van Seters’s book or his articles leading up to his book.

82. Van Seters, *Law Book*, 57. See Fadhil, “Prolog,” for a possible stela in Sippar in the Neo-Babylonian period (see also chapter 4, appendix).

83. See Levinson, *Deuteronomy*, 6–10, for the date of the basic laws of Deuteronomy and their relationship to CC (and see his book throughout for specific textual arguments). See also Lohfink, “Fortschreibung”; Otto, “Das Deuteronomium als archimedischer Punkt”; *Das Deuteronomium*; “Von Bundesbuch zum Deuteronomium”; Rothenbusch, *Rechtssammlung*, 239–241; Schwienhorst-Schönberger, *Bundesbuch*, 284, 307, 310, 312–313, 320, 330, 415–417. For Deuteronomy’s dependence on CC, see also chapter 13, n. 19.

84. Sparks (“Comparative Study of the Biblical נבלה Laws”) shares Van Seters’s relative dating of CC and D. Sparks (*Ancient Texts*, 423) has also recently observed that “the best explanation for this similarity [between CC and LH] is that the biblical author knew the Code of Hammurabi and intentionally shaped his work so as to mimic the older, more venerated text.”

85. Levinson, “Is the Covenant Code an Exilic Composition?” 288–297. Levinson (“First Constitution,” 1863) also notes that “Israelite authors were well tutored in the topical and formal conventions of cuneiform law. They drew upon the Mesopotamian concept of a royal propounder of law but also radically transformed it in light of their own cultural and religious priorities.... So close is the connection between the two systems of law that even techniques of legal ordering seem to have been carried over, although implemented in different ways to reflect different cultural values.” He adds (p. 1864): “This doubly-shared interest of ancient Israel’s scribes in origin myths and in the prestigious genre of law almost certainly reflects the curriculum of the Mesopotamian scribal school, or e.dub.ba. The detailed points of contact suggest that Israelite scribes had direct or indirect access to certain key components of the cuneiform curriculum.” See also Levinson, “Human Voice,” 29. Morrow (“Is There a Redactor in the House,” 118–19), based on Van Seters’s study and with reference to my first paper, admits that LH may have influenced CC, but following Van Seters he says this probably occurred in the exile (see later chapter 4 and n. 125 there).

86. Wells, “Covenant Code.”

87. Wells (“Sex, Lies,” 46 n. 13) carefully draws a line between a theory of “a shared set of legal traditions across the ancient Near East” and “direct dependence of one system or body of law on another.”

88. Wright, “The Laws of Hammurabi and the Covenant Code.” The more detailed charting of correlations in the casuistic laws in the appendix to chapter 13 largely results from Wells’s questions.

89. Westbrook, “Laws of Biblical Israel.”

90. Westbrook, “Laws of Biblical Israel,” 107.

91. Westbrook, “Laws of Biblical Israel,” 107.

92. Jackson (*Wisdom-Laws*, 16–23) critiques models of literary dependence, with major attention devoted to Van Seters, though he includes a brief treatment of my work

(see pp. 22–23), which was published too late for him to incorporate fully. Jackson engages with my critique of chiasmic structures in a number of places (pp. 202, 446–447, 462). Cf. the brief mention in Propp, *Exodus 19–40*, 306, who leaves the nature of influence open. Van Seters, “Revision,” also provides some critique.

93. Chirichigno, *Debt-Slavery*, 190–195.

94. Wagner, “Zur Systematik,” 176–182.

95. Though here he does not note 21:17 and LH 192–193.

96. Chirichigno, *Debt-Slavery*, 193 (and p. 192).

97. I brought Chirichigno’s observations into Wright, “Compositional Logic,” 93 n. 2.

98. Wagner, “Zur Systematik,” 178, 182.

99. Chirichigno, *Debt-Slavery*, 192, 194 and n. 4, 195 and n. 5.

100. Van Seters, *Law Book*, 96–99, 173.

101. Van Seters, *Law Book*, 87, 99; see chapter 5, n. 14.

102. Other scholars who have noted some sequential correlations in the casuistic laws include Waterman, “Pre-Israelite Laws” (1922), 51 and see pp. 44–52 (his untenable “decalogue” theory obscured a more accurate perception of sequential commonalities); Jepsen, *Untersuchungen* (1927), 58 (he recognized about six of the sequential similarities and attempted to see ordered commonalities in several law collections); Bonkamp, *Die Bibel* (1939), 221–222 (he saw a number of structural parallels between CC and LH, such as the miscarriage law following a general law about assault and the specific ordered correlation of the goring ox laws); Paul, *Studies* (1970), 107 n. 1 (he noted that “there is an interesting correlation between the order of the laws here [Exod 21:12–17] and that of LH which should be studied further”; see also pp. 73–74 n. 5, 102); Schwienhorst-Schönberger, *Bundesbuch* (1990), 62–63, 69 and n. 41 (he saw a few scattered commonalities: 21:12, 18–19 are the inverse order of LH 206–207; 21:20–21 are the inverse of LH 115–116; 21:18–19 followed by v. 22 correlates with LH 206–214); Rothenbusch, *Rechtssammlung* (2000), 249–250, 302, 312, 316, 317, 394–396 (he noted similarity in the overall complex of laws in Exod 21:18–27 and LH 196–214 and that LH and the HtL have laws on blinding and knocking out a tooth in relatively close association). For the untenable observation that CC and Deuteronomy reflect the reverse order of LH, see Pfeiffer, *Introduction*, 212–215.

103. Discussed by Otto, *Körperverletzungen*, 15 n. 3. On issues of method, see broadly, Malul, *Comparative Method*.

104. Morrow, “Cuneiform Literacy,” 206; Tigay, “On Evaluation Claims of Literary Borrowing.”

105. West, *East Face*, 630.

106. This is a major criticism made by Wells, “Covenant Code.”

107. For example, of the fourteen correspondences listed in table 1.1, ten of the topics of comparison (i.e., 1, 2, 4, 5, 7, 8, 9, 11, 13, 14) have substantial verbal, conceptual, and/or inner-structural similarity between laws in CC and LH to associate them topically, as many scholars have recognized hitherto (this will become clear in the body of this study). The four other topics (3, 6, 12, and especially 10) have less similarity than the other cases, but there is still sufficient verbal or conceptual similarity to justify comparison. As for the apodictic laws, their genre is different from that of the prologue and epilogue, and the exhortatory block contains admonition rather than law per se. Moreover, the connections with the apodictic laws are thematic and in general structure. Nevertheless, there are significant points of precise correspondence, and the

thematic correspondences occur in multiple series, a feature that strengthens the perceived correlations.

108. See n. 36.

109. Malul, *Comparative Method*, 149–151. In comparing versions of Gilgamesh, Tigay (“On Evaluating Claims of Literary Borrowing,” 254–255) noted that “peripheral versions of Mesopotamian literary texts . . . may abbreviate [Mesopotamian versions] or even modify them in accordance with their own ideology and local interests. . . . it means that an alleged relationship between a Biblical text or motif and some ancient Near Eastern counterpart cannot be refuted simply by pointing to differences between the two, even if they are numerous.”

110. Levinson, *Deuteronomy*, passim. Lohfink (“Fortschreibung,” 153–154, 159, 162) makes the key observation that from Deut 15:12–18 itself we could not reconstruct the Vorlage of Exod 21:2–11. Deuteronomy has significantly changed the order of elements in its source text, has omitted significant parts thereof, and has otherwise altered significantly what it has taken up.

111. Morrow (*Scribing the Center*, 116) is an example of such skepticism. He says that “in view of the fact that many of the clauses in Exod 21:2–6 have no parallel in Deut 15:12–18, it probably cannot be proven that 15:12–18 is dependent precisely on the law in Exod 21:2–6.” On this issue, see Levinson, “Manumission of Hermeneutics,” 283–284 and n. 6 there.

112. Fishbane, *Biblical Interpretation*. For inner biblical exegesis, see Levinson “You Must Not Add,” 10–11 nn. 20, 21; Stackert, *Rewriting*, 18–19, 27–29, and see the annotated bibliographies in Levinson, *Legal Revision*, 95–181; *L’Herméneutique*, 67–94.

113. Levinson in passing refers to the operations of redactors as “redactional logic” (“Is the Covenant Code an Exilic Composition,” 287, n. 26).

114. For the issue of prestige text, see Levinson, *Deuteronomy*, 13–17; Stackert, *Rewriting*, 209–225, esp. 214–216.

115. For the study of textual dependence and use of sources in general, in addition to Malul and Wells, see Carr, “Method in Determination of Direction of Dependence”; Edenburg, “How (Not) to Murder a King”; Hays, *Echoes of Scripture*, 29–32; Leonard, “Identifying Inner-Biblical Allusions”; MacDonald, *The Homeric Epics*, 8–9; McIver and Carroll, “Experiments to Develop Criteria”; Poirier, “Memory, Written Sources, and the Synoptic Problem”; Sparks, “Enūma Elish,” 627–629; Stackert, *Rewriting*, 18–19 and throughout; Tigay, “On Evaluating Claims of Literary Borrowing”; E. West, “Transformation of RŠyašrnga.”

116. See Stackert, *Rewriting*, 25–26, for the need to employ an eclectic method in the analysis of hermeneutical innovation.

117. In previous works, I have urged caution in drawing conclusions about literary and phenomenological dependence. I still affirm these statements: “By drawing a comparison between the Hittite and biblical [hand-placement] gestures I do not intend to imply that there is some sort of genetic or historical relationship between the two. It is possible this is so. But such a connection could only be established by a broader study of Hittite and biblical ritual forms which shows the similarity to be more than coincidental and by substantial evidence indicating how ritual forms were mediated from one culture to the next” (“Gesture,” 446; also 433–446); “While similarities [between biblical and Hittite analogical ritual] cannot be quickly dismissed, it seems that those we have seen so far are fortuitous, especially now after looking at the psychological and

rhetorical rationale of analogical ritual” (Wright, “Analogy,” 504, also 473–506). See also Wright, *Disposal*, 5–9, and note the caution on p. 8.

Chapter 2

1. The participial laws in 21:12, 15–17 and 22:17–19 are conceptually related to casuistic law. See chapter 6, n. 22. The talion list in 21:23b–25, though divergent in genre, is contextually part of the casuistic formulation of 21:22–23a.

2. The appendix to chapter 13 charts the correlations in more detail, on the basis of the analysis of part II.

3. Wright (“Laws of Hammurabi as a Source,” 73–87) lays out the text of all of the casuistic laws side by side (in translation). Although this could be somewhat revised in view of the evolved state of the argument in the present study, the presentation of the texts in the early article provides a useful supplement to this book. It is not reprinted in this book because part II compares the texts of the laws as needed.

4. For the last item in the list (“habitation”), see the discussion in chapter 5.

5. Jackson (“Modelling,” 1789–1792) puts 21:2–11 (as well as 22:15–16) under the category of “family law” (similarly, Rothenbusch, *Rechtssammlung*, 226–227).

6. For similarities with HtL 10, see chapter 6.

7. This is not a perfect example of “polarity with maximal variation,” as discussed in detail by Eichler (“Literary Structure,” 71–84), because CC does, in fact, include a law about killing a free person. Nonetheless, the compositional-structural principle may have been understood by the editor, allowing him to relocate the law about homicide.

8. LH, as the source of CC, helps clarify the basic sense of חָסַד “calamity.” See chapter 6.

9. See primarily Petschow, “Systematik,” 146–172; also Eichler, “Literary Structure,” 72.

10. HtL 107 also deals with releasing animals into another person’s field and specifically mentions a vineyard, found in CC but not LH.

Chapter 3

1. On the structure of LH and the relationship of the prologue and epilogue to the casuistic laws, see Hurowitz, Inu Anum şīrum; Ries, *Prolog und Epilog*, 18–30. Hurowitz argues (see especially pp. 58–61) that the whole form of LH is based on royal inscriptions and that the laws are really an extended elaboration of one element in such inscriptions. This means that, technically, the underlying form is not correctly represented by the tripartite division prologue-laws-epilogue. He therefore views the terms *prologue* and *epilogue* as imprecise or inadequate (pp. 11–12, 52). Nevertheless, he admits (p. 6) that the A-B-A pattern “seems to be an obvious division” of the text.

2. Chapter 12 also examines *Numeruswechsel* (inconsistency in the number of pronouns and verbs) and other supposed secondary features in the apodictic laws. In-depth reference to secondary literature on the apodictic laws is also found in chapters 11 and 12.

3. Huffmon (“Exodus 23:4–5”) calls Exod 22:17–23:12 a “potpourri.” Pfeiffer (“Transmission,” 99, 100) says the section has “confused structure” and “the borderlines of the main subdivisions are . . . obscured.” Halbe (*Privilegrecht*, 409) says it lacks order. For a solution to the organizational structure of Deut 21–25, see chapter 4.

4. Some analyses have started with the assumption that the repetition of the prohibition against the immigrant in 22:20 and 23:9 forms an inclusion (see Crüsemann, *Torah*, 182; Halbe, *Privilegrecht*, 418–421; Lohfink, “Poverty,” 41; Osumi, *Kompositionsgeschichte*, 61–63). The interpretation of the structure of what lies in between, however, is unclear, though some have tried to visualize a chiasmic form. See the critique in Wright, “Fallacies.”

5. This basic structure was first identified by Carmichael, “Singular Method” (1972), followed by Jackson, *Wisdom-Laws*, 457–458 (see also Jackson, “Modelling,” 1794–1795, 1801–1802; *Semiotics*, 218–222). Houtman (*Exodus*, 3:224, 236) also recognized the connection of 23:9 to verses 10–12 that follow and saw that 23:9–12 all dealt with the poor, but he did not go further in outlining the structure. My observation of the structure was made independently of these scholars. Carmichael subdivides what I identify as the cultic laws into three categories; Jackson reduces these to two. This detail is not necessary. Neither Carmichael nor Jackson correlates the structure with LH, which I outline here. In fact, Carmichael is left to wonder (p. 21): “How the laws there [in string I] came into their present order I do not know. For example, I do not know why a law on reviling God and cursing a ruler should follow a law on lending and pledging.” This study provides a clear and decisive answer to Carmichael’s question.

6. For the “immigrant,” see chapter 11. This translation of the term is from Spina, “Israelites as *gērîm*,” 232.

7. This verb in 22:20 may be secondary. See chapter 12.

8. For the meaning of the seventh-year law, see n. 57 in chapter 11.

9. Tsevat (“Basic Meaning,” 450) says that CC’s “sabbath law is a social law of charity and benevolence.” On pp. 453–454 n. 17, he observes the link between the seventh-year and seventh-day laws.

10. The correlation between the two strings (and, as we will see, their correlation with themes in the exhortatory block of LH) means that the nexus between the cursing law in 22:27 and the agricultural product law in 22:28 is not through an association of cursing in a context of feasting, contra Schwienhorst-Schönberger, *Bundesbuch*, 363–367.

11. The chiasmic structure is recognized in varying degrees of complexity by Crüsemann, *Torah*, 187–189; Houtman, *Exodus*, 3:236–237, 238; Osumi, *Kompositionsgeschichte*, 35–36, 56–57; Otto, *Wandel*, 10, 47–49, 53; *Rechtsgeschichte*, 7–8, 76–77, 179; “Rechtsreformen in Deuteronomium,” 268; “Gesetzesfortschreibung,” 377, 378; Schwienhorst-Schönberger, *Bundesbuch*, 381–382; Welch, “Chiasmus in Biblical Law,” 16. Otto (*Wandel*, 10 and especially 45) sees a larger chiasmic structure in 22:28–23:12, with 23:1–8 as a core. Jackson reproduced the detail of my structural analysis (which was a refinement of Welch’s analysis in his article “Chiasmus”) in his *Wisdom-Laws*, 404–405. Although there are some terminological and thematic correspondences between 22:28–29 and 23:10–12 (e.g., the phrase “thus you shall do,” the numerical pattern $X / X + 1$, and a concern about produce), the string structure as identified here provides a more cogent analysis of the text’s organization, even apart from the conclusion that CC depends on LH. Barbiero (*L’Asino del nemico*, 17–46, 60–71,

esp. pp. 22, 40) believes that 23:1–8 originally had a chiasmic form (see later) and was restructured by the addition of 23:9 to form three parallel sections 23:1–3, 4–6, 8–9. For a critique of other suggestions of chiasmic structure in the final apodictic laws, see Wright, “Fallacies.”

12. Schwienhorst-Schönberger (*Bundesbuch*, 383) and Houtman (*Exodus*, 3:240) note that there is no need to emend דל “poor” to גדל “great/elite (person).”

13. The verb עזב is difficult. See Gerstenberger, “‘āzab,” 588–589; Houtman, *Exodus*, 3:244–245. The phrase “you shall resist forsaking him” (והדלת מעזב לו) may be an addition to, even a correction of, “you must leave [the ass] with him” (עזב תעזב עמו). The latter phrase is more parallel to v. 4, with its infinitive absolute construction. My rendering of v. 5, which follows Gerstenberger’s suggestion, is provisional. Deut 22:4 interpretively renders CC’s verse: “Do not see the ass of your brother or his ox falling on the road and ignore them; you shall raise [it] with him” (לא תראה את המור אהיך או) (שוררו נפלים בדרך והתעלמת מהם הקם תקים עמו before it, since its והתעלמת מ- “you ignore” and עמו “with him” reflect “you resist” and “with him,” elements from the two competing phrases in CC. See further Williamson, “Reconsideration,” 82–85.

14. The correspondence of שקר in v. 7 here with שוא in v. 1 is highlighted by the one or the other of these two terms in the same commandment of the Decalogue (Exod 20:16 // Deut 5:20, both with preceding עד “witness,” a word that appears in Exod 23:1). For the dependence of the Decalogue on CC, see chapter 12.

15. Wright, “Fallacies,” 156–157. I still maintain that scholars must be more circumspect in the analysis of chiasmic structures. But I now recognize that the structure in 23:1–8 and its derivation from a similar structure in LH is one of the most solid proofs of the intentional formation of chiasmus in antiquity.

16. Other subdivisions are possible. Hurowitz (Inu Anum šīrum, 3 n. 5) notes the analysis of Cruveilhier (*Introduction*), which divides the text into a “Titulary (XLVII 1–8), Autopanegyric (XLVII 9–XLVIII 2), Exhortations (XLVIII 2–XLIX 1), and Adjurations (XLIX 2–end).” His “Exhortations” begin at the wronged-man passage, in the middle of my exhortatory block. But the injunctive forms in the epilogue actually begin in his “Autopanegyric.”

17. The prominence of this clause in LH is noted by Yaron (“Social Problems,” 25), who says in it “the king sets out the essential purpose of his compilation of laws.” He further notes that “scholars have recognised the central significance of [this] statement” and compares it with the biblical injunction “love your fellow as yourself” (Lev 19:18) and Hillel’s reformulation of this as “What is hateful to thee, do not do to your fellow” (b. Shab. 31a).

18. The presentation of the text of the apodictic laws in this study differs from the presentation of the text of the casuistic laws because of differences in how the texts are discussed in part II (see chapter 2, n. 3).

19. That the widow and orphan appear together in several biblical passages (see chapter 11, n. 44), thus indicating that this association existed before the creation of CC, does not weaken the association with LH. The correlation of the two terms with LH has its significance in the larger web of similarities between CC and LH. Chapter 12 in fact argues that CC has used a traditional prohibition against oppressing the widow and orphan to “translate” Hammurabi’s phrase about providing justice to these two persons.

20. CADE 72 says that an *ekūtum* may have a father. CDA 69 includes the definition “orphaned” for *ekûm/ekūtum*.

21. CAD E 171 collects examples of *enšum*, which refer to one who is “weak, powerless, of low station.” Most of the examples have this social meaning as opposed to referring to physical weakness.

22. The dependent laws of Deuteronomy also portray the immigrant as impoverished; see chapter 11, n. 44, and chapter 13, n. 19.

23. For the nature of the wrong done here, see Roth, “Hammurabi’s Wronged Man,” 41–45. The phrase *ana lā ḥabālim* also occurs in the prologue at 1:37–39 (see n. 35).

24. On the meaning of the passage, see Roth, “Hammurabi’s Wronged Man,” 41.

25. The meaning of the verb נפש in 23:12 is informed by the neighboring נוח “rest” (cf. Osumi, *Kompositionsgeschichte*, 49).

26. For the contextual connection between 23:9 and 12, see Halbe, *Privilegrecht*, 420; Osumi, *Kompositionsgeschichte*, 49; Otto, *Wandel*, 6.

27. Hurowitz (Inu Anum šīrum, 30) says that Hammurabi’s statue bore the title “King of Justice”; cf. Ries, *Prolog und Epilog*, 20. For the distinction between statue and stela in LH, see Ries, pp. 20–21.

28. The sense of the verb *lištassīma* is not exactly clear. Hurowitz (Inu Anum šīrum, 33) translates “may he read aloud over and over my stela.” Roth (*Collections*, 134) translates “and let him have my inscribed stela read aloud to him.” See also Ries, *Prolog und Epilog*, 55 (he gives two possibilities: “er möge lesen lassen” and “er möge lesen”; he doubts the latter in view of general illiteracy in Babylonia). See *AHw* 1196b and 1197a.

29. Roth (“Hammurabi’s Wronged Man,” 40 and n. 13 there) says that *ana (maḥar) X alākum* is “one of the Old Babylonian expressions of approaching authorities” and says that the meaning is “to appear before a king (to do homage).”

30. Cf. Childs, *Exodus*, 451. Akkadian has the idiom “to see the face of the god” (Childs, *Exodus*, 451; Seow, “Face,” 323; Smith, *Pilgrimage*, 101 n. 77, 103). Smith (*Pilgrimage*, 100–109, 241) discusses “seeing” the deity on pilgrimage and associated problems in text representing this idea (see also Smith, “Seeing God”). Some verses in Psalms, for example, have the deity as a direct object of a verb of perception: Ps 11:7 “For Yahweh is just, he loves just acts, and the upright will see their [his] face (פניו)”; 17:15 “I in righteousness will see your face (פניך)”; 63:3 “Thus in holiness I see you (חזיתך), perceiving (לראות) your strength and glory.” These passages suggest that the verbs in Exod 23:15 and 17 should be G-stem (active), not N-stem (passive). The consonantal texts of Exod 34:23 (יראה כל זכורך את פני האדון) and Deut 31:11 (יראה את פני יהוה אלהיך), with the direct object preposition את, further show that the verb ראה in these verses should be read as G-stems. This evidence, in turn, indicates that the preposition אל in Exod 23:17 was originally את and that the verb ראה in this verse and also v. 15 should be G, not N. Furthermore, as Smith notes, one would expect a preposition ל before פני in Exod 23:15 and 34:20 if the N-stem were correct. This general evidence also suggests that the N-stems in some Psalm verses should also be vocalized as G-stems: Ps 42:3 “When will I come and appear before [emended: see] the face of God (פני אלהים)”; 84:7 “They will come from strength to strength, he will appear before [emended: they will see] God (ירא אל [יראו את] אלהים) in Zion”. Evidence against emendation of these various cases is found in 1 Sam 1:22, whose consonantal text precludes revocalization as a G: “when the boy is weaned I will bring him, and he will appear before Yahweh and dwell there permanently” (עד יגמל הנער והבאתיו ונראה את). See chapter 11, n. 14.

31. The Samaritan הארן “the ark” for האדן “the Lord” is, as Fensham (“Rôle,” 267) says, “an intentional change, or misreading of *r* for *d*.” He notes that יהוה האדן “the Lord Yahweh” appears also in Exod 34:23; Isa 1:24; 3:1; 10:16, 33; 19:14.

32. Lohfink (“Poverty,” 37) connects the two passages that have the root *ḥabālum* when he says: “Suppose an ‘oppressed man,’ or an orphan or a widow, following Hammurabi’s advice, went to Esagila and read the 282 paragraphs of the law code proper. They would not find even a single occurrence of the words ‘poor’ or ‘oppressed.’” Roth (“Mesopotamian Legal Traditions,” 17) also collocates discussion of the *ana lā ḥabālim* passage with the *awīlum ḥablum* passage.

33. On the idiom, cf. Houtman, *Exodus*, 3:247.

34. The description of the behavior of Samuel’s sons whom he appointed as judges (1 Sam 8:3) is similar to Exod 23:2: “They followed after profit and they took a bribe and perverted judgment” (ויטו אחריי הבצע ויקחו שחד ויטו משפט). This verse relies on Deut 16:19: “Do not pervert justice, do not show favoritism, and do not take a bribe because a bribe blinds the eyes of the wise and distorts the words of the innocent” (לא תטה (משפט לא תכיר פנים ולא תקח שחד כי השחד יעור עיני חכמים ויסלף דברי צדיקים). Deuteronomy’s verse, in turn, relies on Exod 23:2 and 6. See Levinson, *Deuteronomy*, 139, for the history of textual dependence. The Greek adds κρίσις “judgment” (= משפט) after להטת in Exod 23:2.

35. The gods called Hammurabi “to make justice appear in the land, to do away with the wicked and evil (person), so that the strong person not wrong the weak” (*mīšaram ina mātim ana šupīm raggam u šēnam ana ḥulluqim dannum enšam ana lā ḥabālim*; col. 1:32–39). LH does not mention the widow or orphan in this passage, as opposed to the beginning of the exhortatory block. This distribution of the mention of underprivileged persons is somewhat similar to that in CC. CC mentions the trio of immigrant, widow, and orphan at the beginning of string I (22:21) of the final apodictic laws, but only the immigrant in string II (23:9). One wonders if the abbreviated formulation in 1:32–39 provided a guide for the abbreviation in CC’s string II, and, further, if the duplication of the motif in the prologue and epilogue was among the factors that led CC to compose two strings.

36. Hurowitz, Inu Anum šīrum, 38–39. His description is not entirely clear. Nonetheless he says of col. 48:59–49:17 (which he entitles “The Blessings”): “There is therefore an inclusio framing the benediction section as well as an over all chiasmic ab // b’a’ structure to this section” (p. 39). He also notes with boldface type the chiasmic relationship of “**aj unakkir** . . . **aj ušassik** . . .” and “**lā ušassik** . . . **lā unakkir**,” features that determine my a- and b-members. Hurowitz sees chiasmus as a central feature in the structure of the prologue and epilogue of LH (cf. p. 8–10, 43–44 and passim). For analysis of chiasmus in OB royal inscriptions, see Hurowitz, “Literary Structures,” 196–197, 204.

37. The language is found toward the beginning of the exhortatory block outside the future-king passage: “to set down law for the land (*dīn mātim ana diānim*), to render verdicts for the land (*purussē mātim ana parāsim*), and provide justice for the wronged, I have written my precious words on my stela” (col. 47:70–72).

38. Hurowitz (Inu Anum šīrum, 32, 49) notes the injunctive mood in the exhortatory block.

39. For the various command forms in the apodictic laws, see Osumi, *Kompositionsgeschichte*, 20–22. Beyerlin (“Paranäse,” 11) describes the initial and final sections of CC as “paranetic,” which correlates with the description of the relevant compared block of the epilogue of LH as “exhortatory.”

40. The epilogue otherwise reflects ethical concerns when it says that Hammurabi was not “negligent toward humankind whom Enlil bestowed” upon him (col. 47:11–16), that he promoted “the welfare of his land” (col. 47:33–34; cf. 49:93–94), and that he set up his laws “to provide justice for the wronged” (*ana... ḥablim šutēšurim*; col. 47:73–75). They are also manifest in the pervasive motif of Hammurabi’s successful administration of justice. The final apodictic section also includes laws about the ethical treatment of animals: the firstborn animal is to stay with its mother seven days (22:29); a wandering animal is to be returned and an overburdened animal given help (23:4–5); animals benefit from produce left in the field in the seventh year (23:11); the seventh day provides rest for animals in addition to humans (23:12); an animal is not to be boiled in its mother’s milk (23:19). See chapter 11 on the theme of poverty.

41. For the portrayal of deity in CC, see Fensham, “Rôle of the Lord.”

42. This passage is important in the analysis of CC’s relationship to the narrative of Exodus in chapter 12.

43. The deities also have weapons. Zababa and Ishtar provided Hammurabi with a “powerful weapon” (*kakkim dannim*; col. 47:22). Nergal’s curse exhibits another weapon: “May he burn his (the king’s) people with his great mighty weapon (*kašūšīšu rabîm*), like a raging fire in a reed thicket, may he have him thrashed with his powerful weapon (*kakkīšu dannim*), break his limbs like a clay figurine” (col. 51:29–39). In CC, Yahweh has a sword (22:23).

44. The space from the fourteenth sequential correspondence (animal rental; 22:13–14 // LH 268–271 = cols. 45:90–46:2) and the start of the final apodictic laws and the exhortatory block (22:20ff. // cols. 47:59ff.) is about one and a half columns of Akkadian text. Given that CC does not replicate everything in LH and that some of the material in this intervening text is actually featured in CC out of sequence (i.e., LH 282 = col. 46:97–102 was used for Exod 21:5–6; the transitional introduction at the beginning of the prologue, col. 47:1–8, also influenced CC’s transitional introduction in 21:1; see earlier), then CC’s jump from 46:2 to 47:59 is not great.

45. See chapter 12 for the second-person plural forms in 20:23 (see also chapter 11 n. 13). For different solutions to the perceived problems of this verse, see Dohmen, *Bilderverbot*, 155–159. The most reasonable reading of the verse is to place a pause between the two objects, thus creating two syntactically complete prohibitions in chiasmic relation (so Hossfeld, *Dekalog*, 180). Dohmen, in contrast, follows the MT division, with 23a as an elliptical expression. Oberholzer (“Text of Ex. 20, 22.23”) also follows the MT verse division and reads אִתִּי “with me” as אִתִּי “me.” A chiasmic form is consistent with CC’s interest in this type of structuring otherwise. The prepositional phrase אִתִּי “with me” may be taken as relational “with respect to me” (cf. על פני in 20:3) or locative “near me” (Dohmen, *Bilderverbot*, 156; Hossfeld, *Dekalog*, 180). A relational interpretation is consistent with the ל preposition plus deity or the people in vv. 23b–25. Verse 23 appears to have influenced the Decalogue command in 20:2–3; see chapter 12 on the relationship of the Decalogue to CC and its narrative.

46. The LXX takes this clause with the foregoing phrase about offering sacrifice and reads a conjunction with the next phrase to create an independent clause: “and I will come to you and bless you” (καὶ ἵξω πρὸς σὲ καὶ εὐλογήσω σε).

47. For a persuasive argument that CC’s first-person verb in 20:24 is original, see Levinson, “Is the Covenant Code an Exilic Composition?” 300–315. Those who argue that it was second person (similar to 23:13b) include Tigay, “Presence of God,” 203–204; Van Seters, *Law Book*, 62; Zakovitch, “ספר הברית,” 60*. On the terminology, see Eising, “זכר, *zākhar*,” 73–77.

48. The idea of calling a name is also found in the prologue and epilogue (1:16–17, 28, 31, 49; 47:40–41; cited in chapter 12 n. 59).

49. That this could be understood as referring to all the deities who appear in the Esagil temple, see chapter 11, n. 36.

50. The noun *egirrûm* can refer to reputation, but it also has a more specialized meaning, referring to oracular utterances of some kind (CAD E 43–45).

51. CAD D 62a; see also 62–63.

52. CAD E 206a (cf. D 65).

53. Roth (*Collections*, 139) translates the plural noun *damqātum* “auspicious omens,” but the meaning need not be this specific (see CAD D 66–67).

54. See CDA 377. AHw 1249b translates *šīr nišī mātim uṭīb* “ich ließ es den Menschen gut gehen” (see note 55). Richardson (*Hammurabi’s Laws*, 300) glosses the term *šīrum* “good health, quality of life.”

55. These include the phrase at the beginning of the prologue that says that Hammurabi was called “to increase the well-being of the people (*ana šīr nišī ṭubbim*)” (col. 1:47–48); the transitional introduction to the casuistic laws (discussed later), which says: “I placed truth and justice in the mouth of the land, I increased the people’s well-being (*šīr nišī uṭīb*)” (col. 5:20–24); the lines before the exhortatory block that summarize the various benefits that he bestowed on the people, which include the claim “I brought about well-being in the land” (*šīr mātim uṭīb*; col. 47:33–34); and the future-king passage at the end of the exhortatory block, which instructs: “let him root up the wicked and evil person from his land; may he bring about well-being for his people (*šīr nišīšu liṭīb*)” (col. 48:93–94). Hurowitz (Inu Anum *šīrum*, 50) notes these occurrences, saying: “at four places in the course of the accomplishments, prayer, and blessings there are statements that Hammurabi or his successors make the people prosper.” He thus recognizes that this is a significant motif in the text.

56. Hurowitz (Inu Anum *šīrum*, 34) translates the Akkadian phrase: “may he *bless* me with his entire heart before Marduk my lord and Sarpanitum my lady” (my italics).

57. Col. 1:60–62 (the Ekur in Nippur); 1:66–2:1 (the Eabzu in Eridu); 2:10–12 (the Esagil in Babylon); 2:20–21 (the Egishnugal in Ur); 2:26–31 (the Ebabbar in Sippar); 2:34–36 (the Ebabbar in Larsa); 2:42–43 (the Eanna in Ur); 2:52–54 (the Egalmah in Isin); 2:60–67 (the Emeteursag and temple of Hursagkalamma in Kish); 3:4–6 (the Emeslam in Kutu); 3:13–15 (the Ezida in Borsippa); 3:43–46 (the Eninnu in Lagash); 3:62–64 (the Eudgalgal in Karkara); 3:68–69 (the Emah in Adab); 4:4–6 (the Emeslam in Mashkanshapir); 4:48–52 (the Eulmash in Akkad); 4:60–63 (the Emesmes in Nineveh). See the observation and summary in Klīma, “Die juristischen Gegebenheiten in den Prologen und Epilogen,” 160 and n. 80.

58. For the distributive meaning of *בכל המקום*, see Gen 20:13; 2 Sam 15:2 (also Deut 11:24) and Levinson, *Deuteronomy*, 32 n. 18. Deut 12:13 with *בכל מקום* “in every place” simplifies the idiom. Zevit (*Religions*, 287) notes the use of the definite article for an indefinite in 1 Sam 26:23; 1 Kings 8:39 (both distributive). Zevit’s observation is in the context of construing *במקום* in Deut 12:14 as referring to a plurality of places. He also argues that the phrase in this verse could have originally been *במקום*, indefinite “congruent with the historical reality of the Israelite tribes until at least the seventh century BCE” (in disagreement with Levinson, *Deuteronomy*, 28–43). This seems unlikely to me in view of Deuteronomy’s lateness and its revisionist dependence on CC. See also Heger, *Three Biblical Altar Laws*, 27; Schaper, “Schriftauslegung,” 120.

59. Nothing in the text makes it appear that these various forms are to be understood as applying to a single altar rebuilt from time to time across generations.

60. The verb *târum* D used here can refer to restoring buildings (*CAD* T 270).

61. On the *gegunnûm* “raised temple,” see chapter 11, n. 78.

62. *CAD* K 163–164. The description of the Ezida temple as “<the dwelling of> the god of kings” (<*šubat* | *ili šarrî*; 3:13–15) would provide further evidence of the concrete nature of the deities in the city list, if the emendation <*šubat*> is correct (Roth, *Collections*, 140 n. 1).

63. See n. 57. Compare the table in Hurowitz, *Inu Anum šîrum*, 74.

64. Deuteronomy (4:44–45; 12:1) and the Holiness Legislation (Lev 26:46; Num 36:13) reflect the language of Exod 21:1; see Schwienhorst-Schönberger, *Bundesbuch*, 301.

65. Niehr (*Herrschen und Richten*, 269) notes the similarity of *šiptam šakānum* to the general language of Exod 21:1 but adds that the Akkadian phrase occurs in a military context (cf. 1 Sam 30:25). Weinfeld (*Deuteronomy and the Deuteronomistic School*, 152–153; see also 154–157) argues that Akkadian *šiptam šakānum* (in various documents, including Mari letters) corresponds conceptually with Hebrew משפט שים, and he ties this with *mīšarum* ideology, i.e., laws that attempt to introduce a “social-economic change.” Cf. Lemche, “Manumission,” 38–40. On the relationship of the idiom in Exod 19:7b, see chapter 12, n. 92.

66. For the term (משפט ים), see Rothenbusch, *Rechtssammlung*, 475–477 (he notes a connection of the term to royal interests and also compares Akkadian *dīnātum* “laws”); Schwienhorst-Schönberger, *Bundesbuch*, 299–301. Hebrew uses משפט וצדקה and צדק ומישור (and the roots and associated substantive from the roots of these words) as word pairs (for the last pair, see, e.g., Isa 11:4; 33:15; 45:19; Ps 9:9; 11:7; 58:2; 98:9; Prov 1:3; 2:9; cf. 8:20). The intersection of the two word pairs points to the conceptual association of משפט with מישור and hence the association of משפט in 21:1 with Akkadian *mīšarum*, cognate with מישור. In the word pair משפט וצדקה, the term משפט has an abstract meaning similar to *mīšarum*. In Exod 21:1, the Hebrew term refers to specific enactments of such justice, as in Akkadian *dīnāt mīšarim*. For the Hebrew word pairs (also in Northwest Semitic languages and the association with Akkadian *kit-tum u mīšarum*), see Niehr, “Constitutive Principles”; Weinfeld, *Social Justice*, 25–44, 179–214; “Justice and Righteousness”; “Justice and Righteousness—משפט וצדקה”; cf. Albertz, “Theologisierung,” 118. Weinfeld (“Justice and Righteousness—משפט וצדקה,” 234) compares the introduction to the epilogue (see later) with משפטים צדיקים “just rules and laws” in Deut 4:8. For *mīšarum*, see Lemche, “*Andurūrum* and *Mīšarum*.”

67. *CAD* K 470b translates “I caused loyalty to be professed in my country” (cf. *CAD* M/1 420b); Roth, *Collections*, 81: “I established truth and justice as the declaration of the land”; *ANET*, 165: “I established law and justice in the language of the land.” *CDA* 277 defines the idiom *ina pī šakānum* as “‘to put’ words ‘into s.o.’s mouth.’” *AHW* 872b, f translates the idiom “in den Mund legen.” Hurowitz (*Inu Anum šîrum*, 27–29, n. 40, cf. p. 46) says that the meaning is “I taught the (people of the) land.” See his note for other interpretations. Elsewhere, Hurowitz (“Spanning the Generations,” 16) views the phrase as referring to Hammurabi’s teaching the law orally: “Teaching the land proper conduct is accomplished by teaching its inhabitants orally and having them memorize or recite the laws of justice and righteousness.”

68. CC does not need to correctly translate LH to be seen as dependent upon it. Exodus 21:1 may be understood as a free rendering of the Akkadian idiom, reading

it as if it were *ina pāni* “before” (cf. LH 21). It may be that native Hebrew idiom (cf. Exod 15:25; 19:7b; Deut 4:44; Josh 24:25) was responsible for this transformation of the Akkadian idiom (unless the other biblical usages themselves are based on that in CC).

69. Hurowitz (Inu Anum šīrum, 24) calls the transition into the epilogue a “title line” and compares it with the transitional introduction at the end of the prologue (cf. pp. 24–25, 46–47, and note especially the structural correlation of the two transitions indicated on p. 59; he labels them G-members in a larger chiasitic form). Ries (*Prolog und Epilog*, 23) says the first lines of the epilogue “wirken . . . wie ein ausführlicher, mit Selbstdarstellung verbundener Kolophon” (see n. 71).

70. For a discussion of *dinātum*, see Landsberger, “Die babylonischen Termini”; Ries, *Prolog und Epilog*, 52–55.

71. Roth, *Collections*, 133; Hurowitz, Inu Anum šīrum, 46, 90–91. Hurowitz notes that the sentence at the beginning of the epilogue “is connected with and *refers to* the laws which precede it” (my italics). He compares a number of biblical passages with explicit deictic references (in colophons): “this is the instruction” (זאת התורה; Lev 8:37), “these are the regulations, laws, and instructions” (אלה החקים והמשפטים והתורות) (Lev 26:46); “these are the words of the covenant” (אלה דברי הברית) (Deut 28:69). He notes (p. 91) that “the formulations [in these verses] are of course different, for the Hebrew verses use a demonstrative pronoun—זאת (this) or אלה (these)—while Codex Hammurabi has none. It is this lack of a connecting pronoun, as well as the fact that on the Louvre Stela the line begins a new column, which may have led the translators astray [when they take it as an introduction to the epilogue]. Nonetheless, the lines are identical in function [as colophons].”

Chapter 4

1. See the earlier critiques of these approaches in Wright, “Laws of Hammurabi as a Source,” 48–49; “Compositional Logic,” 95–96 n. 4.

2. See chapter 1, n. 36 for those who invoke coincidence.

3. The legal principles that may have been shared have been described by Boyer, “De la science juridique et de sa méthode”; Eichler, “Literary Structure”; Kaufman, “Second Table of the Decalogue,” 112 and passim; Petschow, “Zur Systematik und Gestezestechnik”; Wagner, “Zur Systematik”; Westbrook, “Codex Hammurabi.” Wagner gives an insightful analysis of the topical construction of CC (discussed further by Schwienhorst-Schönberger, *Bundesbuch*, 45–51; Osumi, *Kompositionsgeschichte*, 87–90; cf. Crüsemann, *Torah*, 144 n. 180). On the structure of Near Eastern law collections, see Rothenbusch, *Rechtssammlung*, 157–173. Otto identifies three redaction techniques: alternation of cases, framing and with this chiasitic formulation, and composing general laws (“Bedeutung,” 164–165; “Rechtssystematik,” 197; *Körperverletzungen*, 166–169, 181, 184; *Rechtsgeschichte*, passim; “Körperverletzung oder Verletzung von Besitzrechten?” 161–162 and n. 30; *Wandel*, 12–13, 26–27, 31, 66–67, and 12–44 generally; “Town,” 19–20; for Otto’s connection to Eichler and Petschow, see *Rechtsgeschichte*, 13–14.)

4. Mainly Westbrook, discussed in chapter 1.

5. Braulik, “Sequence,” 319–320; Finkelstein, “On Some Recent Studies,” 256; Petschow, “Zur Systematik und Gestezestechnik”; Schwienhorst-Schönberger, *Bundesbuch*, 44–45; Wagner, “Zur Systematik.”

6. Eichler's term; see his "Literary Structure."

7. On oral legal tradition, besides the views of Schwienhorst-Schönberger, Rothenbusch, and Jackson, summarized in chapter 1, see also Greengus, "Some Issues Relating to the Comparability of Laws"; "Filling Gaps"; "Law," 243. For literature on oral tradition in general, see the next several notes.

8. See primarily Jackson, *Wisdom-Laws*, passim, and also Otto's work, summarized in chapter 1.

9. See Jackson, *Wisdom-Laws*, 433–437, 441–445.

10. A chief example of this type of text is Emar 6 16, which parallels certain concerns in the debt-slave law of Exod 21:2–6. In the Emar text, servitude is on the basis of a debt; the creditor gives a wife to the person serving as a pledge (= debt-slave; cf. v. 4); servitude is for life (cf. vv. 5–6); verbal declarations establish legal relationships (cf. v. 5); the declaration "I will not serve you" by the pledge/debt-slave, is nearly the inverse of that in v. 5; and the debt-servant's children are required to stay with the creditor in certain circumstances (cf. v. 4). A major difference is that Bazila, the servant, is in permanent servitude (for the lifetime of his creditor); early release is the exception. One must explore the whole text, of course, rather than just a list of similarities. See Wells, "What Is Biblical Law," 233–236 for a translation and discussion of the text. See chapter 5, n. 112.

11. Jackson partly gets at this issue in his "Original Oral Law."

12. For the distinction between oral tradition and transmission, see Crossan, *Birth of Christianity*, 49–58 (see more broadly, pp. 47–89).

13. For the interruption of Akkadian scribal tradition at the end of the Late Bronze period, see Levinson, "Is the Covenant Code an Exilic Composition?" 288–290; Morrow, "Resistance and Hybridity"; and Van Seters, *Law Book*, 31, as well as much more detailed discussion of the problem in Rothenbusch, *Rechtssammlung*, 486–506 (also Finkelstein, *Ox*, 19; Morrow, "Cuneiform Literacy," 205). Levinson (p. 289) agrees with Van Seters that "there is simply no meaningful way to account for a chain of transmission from second-millennium Mesopotamia to first-millennium Syro-Palestine" and that "it is hard to imagine that the older form-critical or traditio-historical models will withstand [Van Seters's] thorough critique. He demonstrates the untenability of the attempt to see the Covenant Code as a window into the pre-monarchic history of Israel. By identifying the nostalgic or romantic view of history associated with that attempt, he accomplishes for biblical law the same kind of lasting epistemological clarification that he provided in his book on the patriarchal narratives" (p. 290). Levinson (pp. 290–291) critiques Rothenbusch's theory of the maintenance of legal traditions by the Phoenicians (for Rothenbusch, see the summary in chapter 1). Morrow's paper adds a crucial socio-literary critique concluding that "the knowledge of cuneiform writing demonstrated by this scribal network [i.e., western LB cuneiform texts] disappeared at the beginning of the Iron Age" (p. 327) and that the "appropriation of Akkadian texts into native Hebrew literature [began] with the period of Neo-Assyrian domination over Israel and Judah—not earlier" (p. 339).

14. The model of scribal orality described in Carr (*Tablet*, 3–173) is tied to textuality and therefore does not provide a model for the oral transmission of LH (see also Hurowitz, "Spanning the Generations"; Niditch, *Oral World*, 110–117; Schniedewind, *How the Bible Became a Book*, 11–17; van der Toorn, *Scribal Culture*, 14–16; generally, see Ong, *Orality*; Goody, *Literacy*). Carr's theoretical model, however, can help explain how CC's author was able to move from one place of the text to another so as to combine various motifs. See chapter 13, n. 5.

15. Westbrook, “Laws of Biblical Israel,” 111. Jackson (*Wisdom Laws*, 46 n. 4) makes passing reference to Tannaitic oral tradition to replace Alt’s Icelandic model.

16. Jaffee, *Torah in the Mouth*. He notes (p. 70) that “while the occasional claim that Sages memorized their teacher’s words and reported them verbatim is without real foundation, it seems clear that the shapers of Mishnaic and Toseftan traditions valued the ability to report repeated traditions [= *mishnayyot*] in relatively fixed verbal formulas.” He adds (p. 186 n. 25) “that rabbinic tradents valued what Latin rhetoricians termed *memoria ad res* above *memoria ad verbum*.” Various rabbinic texts that appear to refer to verbatim memorization (m. Eduyot 1:3; b. Sukkah 28a) have been misread (pp. 185; 186 n. 25). Oral versions of “texts” and teachings would vary from each other, partly because of the faultiness of memory (pp. 71–72, 132–133, 135). Jaffee gives some clear indication about the nature of the oral tradition when he speaks about the compilation of the Mishnah (pp. 100–101): “these claims about the oral origins and primordial transmission of the tradition refer only to discrete halakhic teachings . . . or to isolated halakhic themes. . . . We find no assertion, for example, that various compilations of Tannaitic teachings—such as the Mishnah—were themselves unwritten or constituted some part of the primordial oral revelation”; “we are under no compulsion, therefore, from either logic or the testimony of the sources, to imagine that compilations such as the Mishnah were composed and edited solely through the mnemonically managed organization and manipulation of unwritten materials” (contra claims of Gerhardsson and Zlotnick). Jaffee proposes a “model of interpenetration or interdependence of oral and written textual formulations. That is, we shall present evidence that the earliest composition of rabbinic oral tradition, the Mishnah itself, reached its present form as its constituent traditions were shaped and revised in a continuous circuit of oral performance and written recension—a circuit impossible to break artificially into an ‘oral substratum’ and a ‘written recension’ or vice versa.” For evidence for a literary substrate, see his pp. 100–125. His various analyses stress that oral material is identifiable by the presence of mnemonic devices (what he calls “mnemonic technology,” p. 109; see pp. 108, 109, 111, 128–132, 136, 138–139). He notes three ways of producing a text: copying, dictation, and from memory (p. 17). In Jaffee’s view, background texts served as a basis for correcting the memory (pp. 140; on p. 17, he calls it a “mnemonic safety device—a storage system for texts already held substantially in the memory”). He says, further, that the notion of oral Torah from Sinai became an ideological concept in the post-Tannaitic age. In the earlier time of the Pharisees, this ideology and tradition did not prevail, and it only appears in incipient form in Tannaitic texts (pp. 84–85). For further discussion and the continuing debate, see Alexander, *Transmitting Mishnah*; Rosen-Zvi, “Orality, Narrative, Rhetoric,” 236–242.

17. The ability of Muslim scholars to memorize even the whole Qur’ān, thus attaining the status of a *ḥāfiẓ* (one who “guards” or “maintains” the Qur’ān), is another example that could be called upon to argue that oral transmission was possible. Nevertheless, in this case memorization is based on and continually informed and corrected by the textual model. See Adams, “Qur’ān,” for a brief description of the phenomenon. One might also appeal to the Rigveda as an example, which was written down in the eighth or ninth century after being transmitted orally for centuries (Goody, *Literacy*, 12; cf. Gough in Goody, *Literacy*, 74; an old but standard introduction is in Lanman, *Sanskrit Reader*, 352–359). Ong (*Orality*, 64–66) says that this example still needs critical examination in view of the theories of Parry and Lord and also questions

some of the descriptions of orality. For the oral tradition lying behind Homeric and other Greek literature, see Rubin, *Memory*, 194–226; Nagy, *Greek Literature* (esp. pp. 145–146 in Sheratt’s essay there on oral tradition’s susceptibility to change); “Oral Poetics”; Ong, *Orality*, passim.

18. Rubin (*Memory*) points out the limits of human memory in remembering oral traditions. He notes (p. 6; cf. p. 196), for example, that one study “has convincingly argued that there are no documented cases of pieces over 50 words long being recalled verbatim in any oral tradition without a parallel written record available to the singers.” The claim of oral performers that they have recited verbatim contradicts empirical evidence; rather, “evidence is that verbatim recall in an oral culture means no more than accurate within the limits of human memory” (p. 7; cf. p. 140). For a discussion of the literature on the limits of human memory in oral tradition, see Carr, *Tablet*, 7, 162.

19. These features are the burden of Rubin, *Memory* (see pp. 8–12 for a summary). On p. 8, he gives a list of features of oral traditions characteristic of oral traditions. Several of these are problematic for a supposed oral LH, including that oral traditions exist generally as single genres (against the complexity of such in LH and CC), have particular (and hence singular) social settings, have entertainment value, have linguistic features that assure stability (rhyme, meter, rhythm, etc.), are sung, tell stories, and have spatial and descriptive imagery.

20. See Rubin, *Memory*; Ong, *Orality*, passim; Goody, *Domestication*, 118–119. Rubin (p. 178) notes that “the process of remembering [which he outlines for oral traditions] looks much like the process of composition. In fact, no distinction is made in the basic way cuing and item selection works.”

21. As Rubin (*Memory*, 122–145) has shown, oral tradition does not operate as a simple chain of transmission but involves an interaffective net of variant performances, which tend to help “correct” other performances or versions and thus ensure stability. Nevertheless, evolution does occur.

22. Rubin (*Memory*, 274–276) talks about annular or ring (i.e., chiasmatic) structure as a way of organizing themes in oral ballads.

23. Israelite or Judean concerns in the apodictic laws include the view of the cult in 20:23–26; 22:27–30; 23:10–12, 14–19 (an altar, the offering types, the festivals); the single deity (20:23; 22:27; 23:13); the chieftain (22:27); the immigrant (22:20–23; 23:9); and some of the laws about justice and ethical behavior (23:1–8). Certain laws, such as those about lending (22:24), a clothing pledge (22:25–26), and rescuing a lost or burdened animal (23:4–5), may be partly inspired by cuneiform law (see chapter 11).

24. Lemche (“Hebrew Slave,” 129–134) comes as close as anyone to arguing that CC depends on a Canaanite law collection or collections. Fensham (“Liability in Case of Negligence,” 284) notes that a “Hittite pronouncement about shipwreck at Ugarit is almost verbally the same as the stipulation in the Code of Hammurapi (CH § 236).” (See his “Shipwreck.”) It is not clear that this demonstrates that mid-second-millennium Syria-Canaan adopted and codified Mesopotamian legal tradition.

25. The West Semitic corpus does include some legal texts, the Marseilles and Carthage Tariffs (KAI 69, 74; cf. Gevirtz, “West-Semitic Curses,” 140 n. 3). But their form and content are different from LH and CC and therefore do not provide evidence of a Canaanite textual bridge between Mesopotamia and the Bible.

26. Greengus (“Biblical and Mesopotamian Law,” 63) notes that a “‘Canaanite’ theory appears to be a reasonable explanation, but then also loses credibility because there is absolutely no evidence for the mediating Canaanite laws and legal culture.” He

then opts for an Amorite theory but notes that textual evidence is similarly lacking (pp. 64–66). He can only talk about incidental laws and background influences.

27. Positing a Canaanite source is seen as a problem by Cazelles, *Code*, 166–168, and Liedke, *Gestalt*, 57.

28. The differences in CC's casuistic laws and motifs compared with LH are of three types: those that are similar to those in cuneiform collections other than LH, those that are consistent with or are variations of cuneiform law (LH or otherwise) but have no attestation in currently known cuneiform law, and those that are found only in CC and are not necessarily consistent with cuneiform law. This last category is where we might expect to find evidence for a mediating text. But it turns out that these elements are identifiable as Israelite custom or are at least consistent with it. They include the laws promoting a single deity (22:19), the mention of a "Hebrew" slave (21:2), altar asylum (21:13–14), the stoning of a goring ox (21:28–29), treating cases with child victims like those with adult victims (21:31), and an oath of Yahweh (22:10). The apparent reference to "gods" in the passage about judicial conviction (22:8; cf. 21:6, 13; 22:6, 10) is not a reference to plural gods (see chapters 5, 6, 9, and 11).

29. For a recent argument that CC's laws do reflect custom, see Wells, "What is Biblical Law?"

30. For idealization in the leprosy law of P, see Wright and Jones, "Leprosy." For utopianism in P (including H), see Haran, *Temples*, 3, 10–11, 112–131, 142–147, 149, 189–204.

31. A dual theory, which ascribes the *substance* of CC to practiced native tradition, inherited from Near Eastern custom by oral tradition or developed independently, but its *organization* to influence from Mesopotamian models in the Neo-Assyrian period (so Otto, summarized in chapter 1), is unlikely. The problem of transmitting the content of CC across cultural boundaries is part of what led Otto to argue for independent genesis of content. He notes the difficulty: "Especially, we have to answer the question of how cuneiform laws found their way to the early Israelite rural country side of the Judaeian and Ephraimite highlands" ("Town," 6, cf. p. 18; similarly *Körperverletzungen*, 171–173). This dual explanation is not parsimonious, especially when the content is so close to the Mesopotamian counterparts. Of the two textual features, one might expect influence to occur primarily in content before form. Another point against this view is that if one subtracts from the casuistic laws of CC every law or motif that has a correlation with LH or another cuneiform collection, correlations that part II lays out in detail, one is left with almost nothing. CC has some unique legal expressions in the casuistic laws, like stoning an ox that gores a person fatally (see n. 28), but these are in the context of laws that otherwise correlate with cuneiform sources.

32. For this date for Deuteronomy's laws, see Levinson, *Deuteronomy*, 6–11; "Hermeneutics of Innovation," 119–131. He reviews and responds to all the major questions about the date of Deuteronomy's basic laws and their relationship to CC. The rest of his *Deuteronomy* book makes one of the strongest arguments for Deuteronomy's dependence upon CC, including dependence on CC's apodictic laws. For Otto and Levinson, Deuteronomy's dependence on Assyrian treaty and the Vassal Treaties of Esarhaddon in particular provides, as Otto refers to it, an Archimedean Point for the study of the Torah, "Treueid," 3–5, 44, esp. p. 5; "Das Deuteronomium als archimedischer Punkt"; "Pre-exilic Deuteronomy"; Levinson, "But You Shall Surely Kill Him!" 61–62; "First Constitution," 1859 n. 18, 1883; "You Must Not Add," 44). Levinson ("Kingship," 527) suggests that "possibly, Deuteronomy stemmed from the

hands of court scribes under Manasseh who were committed to the ideals of Hezekiah's initial cultic reform and centralization. Disillusioned by the situation under Manasseh, they drafted a utopian legal program for cultural renewal." Levinson (*Deuteronomy*, 123 and 145) says that Deuteronomy 13 is Josianic. Otto (*Deuteronomium*, 14) gives the range of 672–612 BCE for the parts of Deuteronomy dependent on Assyrian treaty. Ska (*Introduction*, 106–107, 184) says that de Wette's conclusions about the dating of Deuteronomy are still a basic starting point for Pentateuchal study. See also Levinson, "Is the Covenant Code an Exilic Composition?" 272; Otto, "Gesetzesfortschreibung," 376–377, 380; "Review of J. Van Seters"; Stackert, *Rewriting*, 16–18.

33. Van Seters, *Law Book*, 82–171. For others with this view, see Levinson, *Deuteronomy*, 7 n. 10; "Is the Covenant Code an Exilic Composition?" 273. See also Levinson, "The Case for Revision and Interpolation," 47–48.

34. For a list of passages where Deuteronomy depends on CC, see chapter 13 n. 19. See the last part of chapter 12 for the chronology of CC and D. See also n. 125, later in this chapter.

35. Rothenbusch, *Rechtssammlung*, 398, 403–407, 474–477, 481, 599–600.

36. Crüsemann, *Torah*, 184 and cf. pp. 110–112, 151–152, 165–169, 197; "Auge," 421–423; "Bundesbuch," 28–35. In the last article (pp. 28–29), Crüsemann notes that before the discovery of LH and other law collections, a monarchic date was actually preferred for CC. For this later date for the creation of CC proper, see also Albertz, "Theologisierung," 119; Jackson, *Wisdom-Laws*, 108 and n. 169; Leemans, "Quelque considérations," 412–413; Osumi, *Kompositionsgeschichte*, 140–145, 164–167; Otto, *Körperverletzungen*, 170–171; "Town," 20–21 "Bedeutung," 161–162; *Wandel*, 19; Phillips, *Essays*, 98; Pressler, "Wives and Daughters," 147; Schwienhorst-Schönberger, *Bundesbuch*, 271–272, 276, 311–312; Ska, *Introduction*, 214. Carr (*Tablet*, 165–166) puts the first edition of CC in the eighth century and contextualizes it in the development of Israelite/Judean scribal institutions. Barmash (*Homicide*, 75–76) critiques arguments for a later monarchic CC.

The sociological evidence that scholars draw on for the eighth- or even seventh-century date for the main edition of CC throws doubt on arguments in other scholarship that CC actually reflects an early, premonarchic sociology and situation. Rothenbusch (*Rechtssammlung*, 406) notes that these earlier arguments are mainly from silence (see also Crüsemann, *Torah*, 111). Even Van Houten (*Alien*, 51), who dates the basic text of CC to the time of the Judges, admits that the argument involves claims from silence. Schwienhorst-Schönberger (*Bundesbuch*, 268–276) says that the laws presuppose a settled situation when they speak about a vineyard, house, and planted grain. For the sociological analysis arguing for an early date, see Boecker, *Law*, 141–144; Cazelles, *Études*, 131–145; Jackson, *Wisdom-Laws*, 406–411; Marshall, *Israel*, 151–152, 178–179, and passim; Neufeld, "Prohibitions against Loans," 363–365, 367–372; Westbrook, "Cuneiform Law Codes," 219 (cf. Morrow, "Generic Discrepancy," 136). Jackson (*Wisdom-Laws*, 409 n. 108) protests objections about arguments from silence and claims (pp. 389–395 and passim) that CC's original set of casuistic laws are self-executing and may be considered evidence of an early stage of sociological development. In my view, whatever primitivism is evident in CC can be attributed to CC's intent to create a document attributable to the days of Moses. Wilson ("Role of Law") raises some sociological and chronological problems in the study of biblical law. Fitzpatrick-McKinley (*Transformation of Torah*, 64–72) argues that law does not necessarily reflect society.

37. Crüsemann, *Torah*, 184.

38. Schwienhorst-Schönberger's basic collection is summarized in chapter 1. See also the description of the growth of CC according to Otto, summarized in that chapter.

39. Similarities with passages from the eighth-century prophetic books of Amos, Hosea, Isaiah, and Micah do not prove that CC was in existence when those prophets gave their oracles, assuming that the relevant passages of these books represent material from the time of these prophets. The similarities include the phrase על פשו in Amos 1–2 (Exod 22:8); the issues of poverty, justice, and debt-slavery in Isa 3:15; 10:1–4; Amos 2:6–8; 5:10–12; 8:6; Mic 3:1–4 (cf. Exod 21:2–11; 22:20–26; 23:1–8); sexual activity of father and son with slave girl in Amos 2:7 (cf. Exod 21:7–11); and preyed upon animals in Amos 3:12 (cf. Exod 22:12). For altar asylum in Amos 9:1–4 and CC, see chapter 6, n. 21. For many of these comparisons, see Bach, "Gottesrecht," 28–30; Cazelles, "L'auteur du Code de l'Alliance"; Crüsemann, *Torah*, 156–158, 162–162, 167; Jackson, *Wisdom-Laws*, 467 n. 210. Dion ("Le Message moral," esp. 14, 15–16, 18, 19, 21, 31–34), who believes that CC existed at the time of Amos, nonetheless stresses that there is no clear evidence that Amos used or reflects CC. Against the early prophetic literature as evidence for the early existence of CC, see Levinson, "Is the Covenant Code an Exilic Composition?" 297 n. 41; Osumi, *Kompositionsgeschichte*, 167–177, 182; Rothenbusch, *Rechtssammlung*, 410–414. The correlations with the prophetic texts are very general and do not prove dependence on CC. Rather, the prophetic passages reflect traditional perspectives that may have been influential on some of CC's laws. For law as an operational concept in prophetic literature, see Klopfenstein, "Das Gesetz bei den Propheten."

40. Houtman (*Exodus*, 3:90) notes that "the possibility that certain stipulations made their way into Israel under Assyrian influence in the 8th and 7th century has serious contenders" (referring to Leemans, "Quelques considérations," 412–413, 435–436).

41. For a possible "informant theory," see the conclusion to this chapter.

42. Levinson ("Is the Covenant Code an Exilic Composition?" 295–297) expanded the evidence for knowledge of Akkadian in the Neo-Assyrian period beyond what I gave in my "Laws of Hammurabi as a Source," 58–67.

43. Stone Reliefs at the Ninuruta Temple at Calah: Grayson, *Assyrian Rulers I*, 218 (A.O.101.1 iii 84–92).

44. Monolith Inscription: Grayson, *Assyrian Rulers II*, 23 (A.O.102.2 ii 91–92).

45. Epigraph to the Black Obelisk: Grayson, *Assyrian Rulers II*, 149 (A.O.102.87); various annals texts: Grayson, *Assyrian Rulers II*, 48 (A.O.102.8 26"–27"), 54 (A.O.102.10 iv 11–12), 60 (A.O.102.12 29–30), 78 (A.O.102.16 135').

46. Rimah Stela: Grayson, *Assyrian Rulers II*, 211 (A.O.104.7 7–8); Miller and Hayes, *History*, 347 (cf. 344). For the presence of "dozens of Israelites in Calah" during the period of 795–735 BCE, as envoys, see Eph'al, "The Samaritan(s)," 39–40.

47. Annals: Tadmor, *Inscriptions of Tiglath-Pileser III*, 68–69 (Ann. 13, 10–11); cf. 80–81 (Ann. 14 and 18), 202–203 (Summary Inscription 13, 17'); 2 Kings 15:17–22. On Tiglath-Pileser's campaigns affecting Syria-Palestine, see Becking, *Fall of Samaria*, 1–20.

48. Fragmentary annals text: Tadmor, *Inscriptions of Tiglath-Pileser III*, 140–141 (Summary Inscription 4, 15'–18'); cf. 186–189 (Summary Inscription 9 rev. 4, 9–10).

49. A Nimrud tablet (building inscription): Tadmor, *Inscriptions of Tiglath-Pileser III*, 170–171 (Summary Inscription 7 rev. 11').

50. Babylonian Chronicle: Grayson, *Assyrian and Babylonian Chronicles*, 73 (i 28); Becking, *Fall of Samaria*, 22–25. See 2 Kings 17:1–6. Cf. J. Miller and Hayes, *History*, 386.

51. Display Inscription, lines 23–25: Fuchs, *Die Inschriften Sargons II*, 196–197, 344; Becking, *Fall of Samaria*, 26 (see also the Nimrud prism inscription in Gadd, “Inscribed Prisms of Sargon II,” 179–180, lines 25–41; Tadmor, “Campaigns of Sargon II,” 34; Becking, *The Fall of Samaria*, 28–31; Dalley, “Foreign Chariotry,” 36). The conquest is briefly noted in the Inscription on Palace Doors iv 31–32 (Borger, *Lesestücke*, 60–63; Becking, *The Fall of Samaria*, 27); Display Inscription from Room XIV line 15 (Fuchs, *Die Inschriften Sargons II*, 76, 308; Becking, *The Fall of Samaria*, 27–28); Cylinder Inscription lines 18–21 (Fuchs, *Die Inschriften Sargons II*, 34, 290; Becking, *The Fall of Samaria*, 321); Bull Inscription line 21 (Fuchs, *Die Inschriften Sargons II*, 63, 303; Becking, *The Fall of Samaria*, 33); Aššur Charter line 20 (Saggs, “Historical Texts,” 14–15; Becking, *The Fall of Samaria*, 34–36). Sargon may have used some Israelite deportees in building his palace at Dur Sharruken (Becking, *The Fall of Samaria*, 79). Na’aman (“Historical Background to the Conquest of Samaria”) finds a hypothesis of two conquests, one by Shalmaneser V and one by Sargon, difficult and assigns the conquest to Sargon II.

52. Prism A: Winckler, *Keilschrifttexte Sargons*, 188–189, line 29; ANET 287 (§2); the Nimrud Inscription: Winckler, *Keilschrifttexte Sargons*, 168–169, line 8; ANET 287 (§3); Miller and Hayes, *History*, 404–410.

53. Rassam Cylinder: Frahm, *Einleitung in die Sanherib-Inschriften*, 54–55, 59 (T 4, lines 49–58); Cogan and Tadmor, *2 Kings*, 247–248, 337–339. For the corresponding portions of the Taylor and Oriental Institute Prisms, see Borger, *BAL2*, 73–75; ANET 287–288. On the sources and history of Sennacherib’s third campaign, see Gallagher, *Sennacherib’s Campaign*.

54. Prism A: Borger, *Die Inschriften Asarhaddons*, 60–61 (Nin. A, V 54–VI 1); Cogan and Tadmor, *2 Kings*, 339. See Miller and Hayes, *History*, 424–425.

55. On the historicity of Assyrian annals and related sources, see Kuhrt, *Ancient Near East*, 2:473–478.

56. On the economic and ideological bases of Assyrian expansion, see Gitin, “The Neo-Assyrian Empire and Its Western Periphery,” 77–103. For ideological and Assyria’s explicit reasons for undertaking campaigns, see Oded, *War, Peace, and Empire* (see pp. 2–3 on the underlying economic rationale).

57. For the texts see Horowitz, Oshima, and Sanders, *Cuneiform in Canaan*, with a discussion of NA materials on pp. 19–22. See also the overview in Horowitz, Oshima, and Sanders, “Bibliographical List.” For a statistical summary of the finds (and their implication for a NA rather than a NB dating of CC), see Levinson, “Is the Covenant Code an Exilic Composition?” 295 and n. 39. For some description and bibliography, see also Stern, *Archaeology*, 14–18, 45, 587, 588 (also 332–335, 614–615). It is not clear if an ivory plate with a Hebrew inscription (perhaps from the end of the eighth century) found in Nimrud/Calah is evidence of Israelites living in this city. It could have been brought there by Assyrians (Becking, *Fall of Samaria*, 79–80). In any case, it reflects on the nature of the exchanges between the two cultures.

58. For pictures of the fragments found at Samaria and Ashdod, see Cogan and Tadmor, *2 Kings*, plate 11.

59. Horowitz, Oshima, and Sanders, *Cuneiform in Canaan*, 115 (Samaria 4). See brief descriptions of the various Akkadian texts in the land of Israel in their “Bibliographical List.”

60. Horowitz, Oshima, and Sanders, *Cuneiform in Canaan*, 45 (Ben-Shemen 1).

61. Horowitz, Oshima, and Sanders, *Cuneiform in Canaan*, 40 (Ashdod 2–3, perhaps two different stelae, and Ashdod 4). According to Börker-Klähn, *Alt Vorderasiatische Bildstelen*, Sargon II set up stelae in the west, in Ashdod (#174, p. 202), Larnaka (#175, pp. 202–203), Asharna (by Hama; #177, p. 203), and Samaria (#179, p. 203). Cf. Becking, *Fall of Assyria*, 114.

62. Horowitz, Oshima, Sanders, *Cuneiform in Canaan*, 111 (Qaqun 1). For Esarhaddon's stelae elsewhere in Syria, see Börker-Klähn, *Alt Vorderasiatische Bildstelen*, ##211–219, 222 (pp. 211–215).

63. Ashurnasirpal II set up a stela in the Amanus Mountains commemorating his achievements (Grayson, *Assyrian Rulers I*, 219 [A.0.101.1 iii 89]). Shalmaneser III set up various stelae in Syria-Lebanon and southeast Turkey: at the Amanus Range at the Saluara River: Grayson, *Assyrian Rulers II*, 10 (A.0.102.1 62–63); 16 (A.0.102.2 49–50); at Mt. Atalur = (?) Lallur next to the Anum Hirbe statue: Grayson, *Assyrian Rulers II*, 17 (A.0.102.2 9–10), 25 (A.0.102.3 91–92), 29 (A.0.102.5 3), 64 (A.0.102.14 30–31), 74 (A.0.102.16 8–11), 103 (A.0.102.28 23–24), 105 (A.0.102.29 21–25), 112 (A.0.102.34 7–11); two statues in Que: Grayson, *Assyrian Rulers II*, 58 (A.0.102.11 10'-12'), 78 (A.0.102.16 149'-150'); at Mt. Lebanon: Grayson, *Assyrian Rulers II*, 78 (A.0.102.16 135'-136'); at the city of Laruba: Grayson, *Assyrian Rulers II*, 79 (A.0.102.16 160'-161'). See Börker-Klähn, *Alt Vorderasiatische Bildstelen* on the textually attested examples, #T34₁₄₅–T37₁₄₅ (pp. 186–187). For an example of a text inscribed on a royal statue commemorating campaign events, see Grayson, *Assyrian Rulers II*, 58–62 (A.0.102.12; photo at ANEP, #819).

64. Fragment of annals, Grayson, *Assyrian Rulers II*, 60 (A.0.102.12 28–30); see Miller and Hayes, *History*, 330–331. (Compare the description in Grayson, *Assyrian Rulers II*, 58 [A.0.102.11 10'-12'], 78 [A.0.102.16 149'-150'].) On the rationale behind royal monuments (and a listing of other examples), see Oded, *War, Peace, and Empire*, 157–161.

65. Horowitz, Oshima, and Sanders, *Cuneiform in Canaan*, 113 (Samaria 2); cf. Becking, *Fall of Samaria*, 112–113.

66. Horowitz, Oshima, and Sanders, *Cuneiform in Canaan*, 98–99 (Tel Keisan 1). They note that though this text dates from 750–650 BCE by archaeological context, “the sign forms all appear to be written in a Neo-Babylonian hand with a blunted stylus.”

67. Horowitz, Oshima, and Sanders, *Cuneiform in Canaan*, 61–64 (Tel Hadid 1 and 2). Tel Hadid 1 is the sale of a field. Tel Hadid 2 is a loan, where the sister of the borrower serves as a pledge in place of interest.

68. Horowitz, Oshima, and Sanders, *Cuneiform in Canaan*, 100 (Khirbet Kusiya 1).

69. Horowitz, Oshima, and Sanders, *Cuneiform in Canaan*, 126 (Shephela 1). Horowitz, Oshima, and Sanders, “Cuneiform Inscriptions,” mention a “Qaqun 2” stamp inscription referring to fields, but it is not listed in their book.

70. Horowitz, Oshima, and Sanders, *Cuneiform in Canaan*, 55–59 (Gezer 3 and 4 = Becking, *Fall of Samaria*, 114–118 Gezer 1 and 2).

71. Horowitz, Oshima, and Sanders (*Cuneiform in Canaan*, 20–22) note that “Gezer 3–4 and Hadid 2 include West-Semitic names which most likely belong to members of the local population.” With regard to names, they note (p. 22) that “it is usually assumed that all Babylonians named in the documents are deportees (or their offspring...), but this need not necessarily be the case, particularly given the presence of the Assyrian names. It is possible that at least some of the Babylonians mentioned relocated voluntarily to serve in the Assyrian administration. In this light, we suggest that the Lamaštu

plaque Shephela 1, the votive cylinder Samaria 3 . . . , and the cylinder seal Wingate 1 may have belonged to expatriate Mesopotamians in the service of the crown, or who perhaps lived in the west voluntarily for some other reason.” They go on to suggest that some of the evidence indicates greater social and economic interaction between Assyria and the west as the seventh century progressed.

72. Horowitz, Oshima, and Sanders, *Cuneiform in Canaan*, 112 (Samaria 1). They note other restorations are possible for the name.

73. Becking, *Fall of Samaria*, 112.

74. Horowitz, Oshima, and Sanders, *Cuneiform in Canaan*, 44 (Beer Sheva 1) and 153 (Wingate 1; find site unknown).

75. Horowitz, Oshima, and Sanders, *Cuneiform in Canaan*, 113–114 (Samaria 3); cf. Becking, *Fall of Samaria*, 114. Becking reads the name Nabu-zabi[1].

76. Becking, *Fall of Samaria*, 114. Morrow (“Cuneiform Literacy,” 210) acknowledges Becking’s conclusion. Morrow has less resistance to knowledge of Akkadian in Samerina. He says that Assyrian influence on Judah may have come from contact with “Mesopotamian emigres in the province of Samerina as well as with the Assyrian administration and army stationed in Judah.”

77. Stern, *Archaeology*, 14.

78. Cogan, *Imperialism*, 93–94. His book discusses a wide range of intercultural interactions. His study emphasizes, however, that the Assyrians did not impose their religion upon Israel and Judah (see also Cogan, “Judah under Assyrian Hegemony”).

79. Scribes using Aramaic could be designated ^{LU}A.BA.MEŠ KUR Ára-ma-a-a (so Tadmor, “Aramaization of Assyria,” 453).

80. Oded, *Deportations*, 100–101. A number of the texts to which Oded refers appear in Kwasman and Parpola, *Legal Transactions of the Royal Court of Nineveh, Part I*. The texts that appear in this volume (SAA 6), with the Northwest Semitic names, are: ADD 387=SAA 6, 42–43, text 40 rev. 11: Abda’ (the possible Samarian individual named Sama’, a “horse trainer,” also appears in this tablet’s list; see earlier); ADD 234=SAA 6, 38 text 34 rev. 7: Ahiram; ADD 470=SAA 6, 263–264 text 325 obv. 2: Asqudu; ADD 232=SAA 6, 77 text 89 rev. 9: Dama’; ADD 19=SAA 6, 46 text 43:7: Misu; ADD 412=SAA 6, 20 text 17 rev. 15: Šaluanu (also called the *šābit tuppī* “keeper of the tablet,” i.e., a cuneiform document); ADD 230=SAA 6, 145–146 text 177 rev. 11: Tatī (also called the *šābit egirte* “keeper of the tablet” [CAD E 46b: “depository of the contract”]).

81. Morrow, “Cuneiform Literacy,” 209. He stresses the limited topical scope of the texts to argue that they should not be used to suggest that the scribes at Hamath, and by inference in Judah, had any extensive knowledge of Akkadian. But see later on Morrow’s views.

82. Dalley, “Occasions and Opportunities,” 26–27 (cf. Kuhrt, *Ancient Near East*, 501–502). One can add to the evidence the bilingual (Aramaic and Akkadian) inscription of Tell Fekherye, which shows scribes outside Mesopotamia proper (i.e., on the upper west branch of the Khabur River) working with Akkadian. Though this is dated to the ninth (possibly early eighth) century, somewhat earlier than the window of opportunity suggested for CC by this study, it shows the cross-cultural tendency in cuneiform scribalism. Dalley (“Influence of Mesopotamia,” 79) notes: “Early in the Iron Age scribes for cuneiform and for alphabetic Aramaic worked side by side as they are shown on neo-Assyrian relief sculpture.” After referring to the Tell Fekherye bilingual text and the Rabshakeh episode in 2 Kings, she says: “To suppose a wide

gulf between cuneiform and the alphabetic scripts, or between Akkadian and Hebrew among educated men, is mistaken.” See also Levinson, “Is the Covenant Code an Exilic Composition?” 269. See also n. 92.

83. Barmash (*Homicide*, 204) notes that “certain Israelite scribes, in order to produce business or diplomatic documents that could be used further afield throughout the ancient Near East, must have learned Akkadian, the lingua franca of the ancient Near East, and among the school texts used for training native Akkadian scribes were legal collections and texts composed of legal formulas. It is reasonable to suppose that such material was available in the education of Israelite scribes. Probably not all Israelite scribes had this training, but a percentage did. Some educated individuals, not necessarily scribes by profession, may also have been exposed to this type of training.”

84. For the stages of education, see Carr, *Tablet*, 22–27; Gesche, *Schulunterricht*; Lenzi, *Secrecy and the Gods*; van der Toorn, *Scribal Culture*, 54–67. Gesche (*Schulunterricht*, 23) says that in NA times, the education of scribes was probably similar to what is found in first-millennium Babylon. In another place (pp. 217–218), she says that LH would have been used in the education of advanced scribes at Babylon. Cf. Hurowitz, “Spanning the Generations,” 16; Carr, *Tablet*, 26. At the same time, LH is not an esoteric document, as indicated by its own context and especially the wronged-man passage of the epilogue. It is reasonable to believe that scribes even at an early level of education may have been exposed to it. Carr (*Tablet*, 27) notes that “all students underwent a similar education in the science of cuneiform writing and ideological texts promoting king and temple, while only those scribes destined for a scholarly or temple career progressed to spells and the mastery of a yet higher and more esoteric science of writing” (see also his p. 33). LH was certainly a text that could be used for such ideological education. For an argument for literacy in the Neo-Assyrian period, see Parpola, “The Man without a Scribe.”

85. Display Inscription, lines 177–186: Fuchs, *Die Inschriften Sargons II*, 244–246, 355; cf. Display Inscription from Room XIV lines 59–69: Fuchs, pp. 80–81, 312. An example with a more detailed listing of western participants is from the annals of Ashurnasirpal II. Since this is prior to the time of Assyria’s engagement with Israel and Judah, they are not listed, but their close neighbors to the north are. One can imagine that later, Israel and Judah were invited and expected to attend similar events. The Assyrian king invited various western dignitaries, including representatives from Tyre and Sidon, to celebrate the dedication of his palace at Calah. The Phoenicians were among a total of 69,574 visitors. Ashurnasirpal says that “for ten days I gave them food, I gave them drink, I had them bathed, I had them anointed. (Thus) did I honour them (and) send them back to their lands in peace and joy” (Grayson, *Assyrian Rulers I*, 293 [A.O.101.30 149–154]; his translation).

86. He refers here to the Great Summary (= Display) Inscription, lines 177–179 and Fuchs, *Die Inschriften Sargons II*, 355.

87. Younger, “Recent Study,” 318–319.

88. Frahm, *Einleitung in die Sanherib-Inschriften*, 55, 59 (T 4, line 58); Cogan and Tadmor, *2 Kings*, 339.

89. Parpola, *Correspondence of Sargon II, Part I*, 92 (text 110 rev. 5–9). Compare the administrative text that lists “greeting gifts” of gold or silver from Ammon, Moab, Judah, and Byblos delivered to the Assyrian king (Fales and Postgate, *Imperial Administrative Records, Part II*, 30 [text 33] and p. xx; note also the brief receipt of silver from Judah on p. 43 text 57).

90. Becking, *Fall*, 107–108 (ABL 1201 = Parpola, *Correspondence of Sargon II, Part I*, 170, no. 220), from after the fall of Samaria.

91. Becking, *Fall*, 108–109 (CT 53, 388), from time of Sargon II/Sennacherib.

92. Becking, *Fall*, 111–112 (CT 53, 38 = Lanfranchi and Parpola, *The Correspondence of Sargon II, Part II*, 206, no. 291), from the time of Sargon II. An alternative interpretation is that these place-names refer to laborers from these areas working in Assyria to build Sargon's palace. With regard to the administrative use of Akkadian, Parpola suggests that communication with provincial governors shifted from cuneiform to Aramaic at the time of Esarhaddon, a shift that may be already underway at the time of Sennacherib ("Assyrian Royal Inscriptions," 122–123; cf. Morrow, "Cuneiform Literacy," 208; Tadmor, "Aramaization of Assyria," 451–453). Tadmor ("Aramaization," 453–455) discusses evidence of bilingualism (Aramaic and Akkadian) of scribes. For Aramaic docketts on Neo-Assyrian clay tablets otherwise written in Akkadian, see Frame, "Neo-Babylonian Tablet," 107–110. Such docketts "were probably intended to aid in the retrieval of stored documents by individuals more familiar with the Aramaic script than cuneiform. These docketts attest to the growth of Aramaic . . . and the decline of . . . Akkadian" (Frame, p. 108).

93. On various professionals among the deportees, see Oded, *Mass Deportations*, 99–104. Oded is careful to add that not all foreigners in Assyria were deportees. Some came to pursue professional activities. He notes that a certain Girrêma may have been "an Israelite/Judean who came to Nippur from Assyria for business" (pp. 103–104).

94. Becking, *Fall of Samaria*, 78, interprets this phrase "to the mainland of Assyria."

95. Based on the translations of Dalley, "Foreign Chariotry," 36, and Becking, *Fall of Samaria*, 28–30. For the variant Display Inscription, see n. 85. See the composite text of Cogan and Tadmor, *2 Kings*, 200; for the Prism inscription, see p. 336 (6A). See the Display Inscription lines 23–24. See Fuchs, *Die Inschriften Sargons II*, 196–197, 344–345.

96. Dalley and Postgate, *Tablets from Fort Shalmaneser*, 167–179 (text 99 ii 16–23); the names are also apparently listed in text 108 iii' 33ff. (fragmentary).

97. Becking notes that *ahī*(PAP)-*i-ú* may be a copyist error for *ahī*(PAP)-*ia-ú* "and may be the same person as PAP-*ia-ú* mentioned twice in this archive . . . ; [a person with the name] *hyw* [is] a deportee in Nimrud" (*Fall of Samaria*, 75; cf. p. 85). Eph'al, "Samaritan(s)," 42, says *ia-u-ga-a* and *ahī-i-ú* can be considered Israelite. The names Abdimilkū and Sama are west Semitic. The other names in the Horse List text are probably Assyrian or Babylonian. Becking's judgment that this group is of mixed nationality is probably correct. See also the discussion at Younger, "Deportations," 210–221. See n. 105.

98. Becking, *Fall of Samaria*, 76, agrees with Dalley in this identification.

99. Dalley, "Foreign Chariotry," 41 (see pp. 40–41).

100. A potsherd, found in the building in which the Horse Lists were found, lists west Semitic names in Aramaic script. Some of the names are Canaanite, and probably Israelite specifically (other names reflect other west Semitic nationalities). It may be a list of deportees who served in the Assyrian army (Becking, *Fall of Samaria*, 80–83). Two other short or broken texts (discussed by Becking, *Fall of Samaria*, 77–78) indicate Israelites were in the Assyrian army, including Nadbi-Yahu, a chariot driver.

101. The same passage appears in both Sargon's Cylinder Inscription (lines 72–74; Fuchs, *Die Inschriften Sargons II*, 43–44, 296) and his Small Display Inscription from

Room XIV (lines 49–51; Fuchs, *Die Inschriften Sargons II*, 79–80, 311). See Dalley, “Occasions,” 27, cited as evidence of Assyrian education *within* the land of Israel/Judah. Younger (“Deportations,” 224) notes that for deported peoples from various lands, “the only way to survive [in Assyria] was to find a common language (obviously Assyrian or perhaps Aramaic in this case), intermarry with everyone else, serve loyally the Assyrian king, do the labor required, adopt other religious deities, and be receptive to cultural practices. That the Assyrians instructed some deportees in Assyrian or some common language can be seen in Sargon’s Cylinder inscription.”

102. For the idiom, *pā istēn šakānu(m)*, see CDA 277a. Dalley (“Occasions,” 27) translates “I caused to accept a single voice” with a note indicating that it is not clear if this means “one command” or “one language.”

103. Dalley (“Occasions,” 27) translates “expert in all kinds of knowledge.”

104. Dalley (“Occasions,” 27) translates “to teach them to assimilate (?).”

105. See the evidence presented in Becking, *Fall of Samaria*, 83–93. Younger (“Deportations,” 224), speaking more broadly of West Semitic names in Assyria, says: “It is not coincidental that in the wake of the annexation of large parts of Syria-Palestine and of widespread deportations during the reign of Sargon II, West Semitic names ‘enjoyed a peak of presence and of social significance’ [citing Fales]. Subsequently, as Fales surmises, the importance of West Semitic names decreased somewhat, although the fresh arrivals of new deportees (especially during the reign of Sennacherib) kept the ‘input’ of the West Semitic onomastic component quite high. But the plentiful mixed names show that a certain ‘assyrianization’ was at work. In fact, it is evident that the direction of change is unilaterally toward Assyrian.” On Hebrew names in seventh-century Mesopotamian inscriptions, see Stohlmann, “Judean Exile,” 167–168, and the bibliography there. On Yahwistic names in Neo-Assyrian literature, see Younger, “Yahweh.”

106. See n. 53.

107. Prism A: Borger, *Die Inschriften Asarhaddons*, 53–54 (Nin. A IV 1–22). For Arabian-Assyrian relations, see Cogan, *Imperialism*, 15–21.

108. On the passage, cf. Tadmor and Cogan, “Ahaz and Tiglath-Pileser.”

109. For critical analysis of the passage, see the literature at the end of n. 78 in chapter 11.

110. See Cogan and Tadmor, *2 Kings*, 240–251, for critical analysis and other considerations.

111. Machinist, “The *rab šāqēh* at the Wall of Jerusalem,” 159. See the caution of Becking, *Fall of Samaria*, 78.

112. The story about Manasseh’s deportation to Babylon (2 Chron 33:11) may be a fiction, though based on the custom of the Assyrian kings’ deporting local rebellious kings. If it is based on an actual deportation of Manasseh, it provides another example of the travel of ranking Judeans to Mesopotamia. Perhaps also relevant are the reports that Samaria was resettled by people from Babylon (2 Kings 17:24) and that resettlement continued into the seventh century (Ezra 4:2, 10).

113. Hurowitz, “Hammurabi in Mesopotamian Tradition,” 517–518; Inu Anum šīrum, 62–63 n. 70; Weinfeld, *Deuteronomy and the Deuteronomical School*, 150–151.

114. Gesche, *Schulunterricht*, 219 (see Wright, “Laws of Hammurabi as a Source,” 53 n. 55). Van der Toorn, “Scholars at the Oriental Court,” 39–40, 41, also thinks that the stories in Daniel in general depict the atmosphere of the royal courts of Babylon and Assyria.

115. For an edition, see Parpola and Watanabe, *Neo-Assyrian Treaties*, 28–58.

116. For loyalty, compare Deut 13:1–19 and 17:2–7 with VTE §§8–12, especially §10; for the curses, compare Deut 28:20–44 with VTE §§37, 38a–42, 47–49, 52, 56, 59, 63–64, 85; for not altering the treaty document, compare Deut 13:1 with VTE §4 (lines 57–61); for “loving” the sovereign, compare Deut 6:5; 10:12; 11:1 with VTE §24; for giving him wholehearted commitment, compare Deut 6:5–6 and VTE §34; for teaching obligations to children, compare Deut 6:6–7, 20; 11:19 with VTE §25, 34; for allegiance solely to the sovereign, compare Deut 6:4 with VTE §57 (lines 507–512; this is related to loyalty obligations). See Frankena, “Vassal-Treaties”; Levinson, “Birth of the Lemma,” 614–617; “But You Shall Surely Kill Him!” (esp. pp. 38, 40, 54–62); *Deuteronomy*, 134, 145; “Textual Criticism,” 236–241; “First Constitution,” 1863; “Reconceptualization of Kingship,” 527–528; “The Neo-Assyrian Origins of the Canon Formula”; “Textual Criticism,” 236–241; “You Must Not Add”; Moran, “Ancient Near Eastern Background”; Morrow, “Resistance and Hybridity,” 336–337; Otto, *Deuteronomium*, 2–12, 13–90; “Das Deuteronomium als archimedischer Punkt”; “False Weights,” 130; “Gesetzesfortschreibung,” 379–380; “Rechtsreformen in Deuteronomium XII–XXVI,” 239–243 (this contains a detailed list of correspondences); “Treueid,” 44–46; Steymans, *Deuteronomium* 28, 143–151, 284–312, esp. 311 and 380; Weinfeld, “Traces of Assyrian Treaty Formulae”; *Deuteronomy and the Deuteronomical School*, 117–129; cf. Streck, “Flüche.” For the historical and compositional context of Deut 13, see Dion, “Deuteronomy 13” (pp. 204–205 for consideration of VTE and the date of the chapter). Assyrian treaty influence on the west is not limited to the example of Deuteronomy. The Sefire stelae (mid-eighth century) constitute a treaty text with motifs from Assyrian treaty (cf. Levinson, “Is the Covenant Code an Exilic Composition?” 295–296). For treaty influences broadly on biblical literature, see McCarthy, *Treaty and Covenant*.

117. For a date of Deuteronomy’s laws to the time of Manasseh, see Levinson’s view in n. 32. Morrow (“Sefire Treaty Stipulations,” 97) notes elements in the Sefire texts that are not found in NA treaty but are found in second-millennium treaty formulations; they are “an amalgam of different traditions” (see also Morrow, “Cuneiform Literacy,” 212–213; Weinfeld, *Deuteronomy and the Deuteronomical School*, 91–100). This does not gainsay the evidence of Neo-Assyrian connections specifically. Morrow (“Cuneiform Literacy,” 210–211) says that VTE could have been known in Israel/Judah, though possibly in Aramaic.

118. For Deuteronomy’s possible knowledge of MAL A, see later.

119. Machinist, “Assyria and Its Image.” In the order of his treatment: Isaiah 37:24 (// 2 Kings 19:23); 1:7–8; 10:13; 37:26b (// 2 Kings 19:25); 8:7–8; possibly Isa 10:8; 14:25.

120. Machinist, “Assyria and Its Image,” 729.

121. Machinist, “Assyria and Its Image,” 730–733.

122. Machinist, “Assyria and Its Image,” 732–733.

123. Morrow, “Cuneiform Literacy,” 204.

124. Morrow, “Cuneiform Literacy,” 209.

125. See Morrow, “Is There a Redactor,” 118–119. See also his forthcoming study “‘To Set the Name’ in the Deuteronomical Centralization Formula,” which argues for Akkadian influence on the Deuteronomical idiom but is still skeptical about the scope of Akkadian knowledge in Judah.

It must be stressed that dating CC to the exile and therefore after Deuteronomy does not provide a solution for CC’s similarities with LH and perceived limitations in scribal abilities, in Akkadian or otherwise, at the end of the 8th and into the 7th centuries.

Deuteronomy has a number of laws of motifs in common with LH and CC: the X/X+1 year pattern in the basic debt-slavery prescription plus the accompanying rite determining the relation of the slave to the master with mutilation of the ear (Deut 15:12–18; cf. Exod 21:2, 5–6; LH 117, 282; see chapter 5), a talion law (Deut 19:21; cf. LH 196–201; Exod 21:23–25; see chapter 6), associating the sovereign's name with the cult place (Deut 12; cf. LH cols. 47:93–48:2; Exod 20:24), and a focus on a three classes of impoverished person (Deut 24:17–22; cf. LH col. 47:59–62; Exod 22:20–21; 23:9; see chapters 3 and 11). It is not reasonable to say that these laws or motifs were *coincidentally* present in Deuteronomy when CC supposedly used LH and Deuteronomy as sources in the exile (see the thesis of Van Seters summarize in chapter 1). Moreover, in each of these cases, CC is beholden only to LH; Deuteronomy as an influence is superfluous. These considerations mean that a linear model of textual development is required, from LH to CC to Deuteronomy, and this places CC in the preexilic period. To this may be added the solid evidence and argument proffered by other scholars that in other laws, CC is a source for Deuteronomy (see n. 32, earlier; see also chapters 1 n. 83; 13 n. 19).

126. See Wright, “Holiness, Sex,” 321–322; Dalley, “Influence of Mesopotamia,” 64–68. See Tigay, “On Evaluating Claims of Literary Borrowing,” 250, 252, 255, for some discussion of knowledge of Gilgamesh among biblical writers, even in the postexilic period, as suggested by Eccl 4:9–12; 9:7–9; Dan 4:30.

127. See chapter 11, n. 78.

128. Carr, *Tablet*, 61, offers a standard traditions view of the similarities between Genesis and Atrahasis, Gilgamesh, and Enuma-Elish: “[Mesopotamian] texts like this provide provocative pointers to possible influence of the Sumero-Akkadian tradition on texts written long after that tradition is attested in the Syro-Palestinian area. Yet it is quite unclear how such influence would have taken place or what kind of textual-educational system Israel itself had. Perhaps earliest Israel was influenced somewhat by the last remnants of the Sumero-Akkadian tradition in Canaan, and it is still possible that some later scribal circles in Israel were influenced by elements like treaty formulae that were most pertinent to the sorts of international diplomacy with Assyria in which they were engaged.” On p. 157, he speculates about a “pre-Israelite textual-educational system, one still bearing the marks of past importation-translation of Mesopotamian (e.g., Gilgamesh or Atrahasis) and Egyptian materials.” See also pp. 161–173 of his book. Lambert (“Interchange of Ideas,” 315) says: “in all likelihood the Babylonian material transformed and embedded in Genesis 1–11 reached Syria-Palestine in the Amarna period, became local oral tradition in this area, and in this form eventually reached the Israelites” (this differs directionally and chronologically from his Amorite hypothesis for the talion laws in LH; see chapter 1 n. 69). For the fifteenth/sixteenth century BCE fragment of Gilgamesh from Megiddo (similar to part of the Standard Babylonian Tablet VII), see George, *Gilgamesh*, 1:339–347; Horowitz, Oshima, and Sanders, *Cuneiform*, 102–105. See also Heger, “Source of Law,” 325, on influences from Mesopotamian myth and law on the Bible.

129. The results of this study will have to be considered in connection with the study of scribal schools and education in Israel and Judah. Some may argue that since professional scribal education was extremely limited, even in the Hebrew language, one should not expect scribes to have abilities in Akkadian. Morrow (“Cuneiform Literacy,” 207) says that the nature of the Judean scribal system in this period would not have allowed for “assimilating” cuneiform texts to any significant degree, even if they were available in Judah. But since the Akkadian training responsible for CC may have

taken place in Assyria, it may have been quite independent of the local scribal system. At the same time, the extent to which Mesopotamian motifs find their way into Israelite and specifically Judean literature, as noted here in the cases of Deuteronomy, Isaiah, and Genesis, in addition to the evidence of CC, indicates that CC's use of LH cannot be entirely separated from local scribalism. In any case, CC is tied into the production of literature in Israel and Judah, both in its apparent connection to a basic narrative in Exodus (see chapter 12) and the influences of CC and this narrative upon the soon-to-emerge works of Deuteronomy and the Holiness Legislation (see chapter 13). For works on the scribal institution in Israel and Judah and the related issues of literacy and education (one has to distinguish between "schools" that trained scribes and those that trained the general populace), with the observation that it is in the eighth century that the scribal institution crystallizes there, see Crenshaw, "Education in Ancient Israel" (note p. 614); *Education*, 85–113; Jamieson-Drake, *Scribes and Schools* (note esp. pp. 136–148, 151). See also Carr, *Tablet*; Haran, "Literacy"; Lemaire, *Écoles*; Person, *Deuteronomistic School*, 65–101; Rollston, "Scribal Education"; Schaper, "Exilic and Post-Exilic Prophecy"; Schniedewind, *How the Bible Became a Book*; Tov, "Writing of Early Scrolls"; van der Toorn, *Scribal Culture*. Carr (*Tablet*, 165) and Schniedewind (*Bible*, 64–75) have noted that the Neo-Assyrian Empire may have had particular influence on the nature and development of scribal education in Israel. Clearly, the production of (proto)-biblical texts in the eighth and seventh centuries is an indication of the high level of local professional scribalism generally at this time. For reservations about preexilic scribalism, see Ska, *Introduction*, 173–177 (also a concern in the Scandinavian School, noted by Pury and Römer, "Le Pentateuque en question," 46).

130. Levinson ("Is the Covenant Code an Exilic Composition?" 292–293) builds on this fact in his critique of Van Seters's dating of CC to the exile, a period when fewer copies of LH are attested (see the appendix). Since Levinson wrote, text **x** has been joined to **J** (see later).

131. The basic list of manuscripts (with publication information) is found in Borger, *Lesestücke*, 2–4 and 50, and Roth, *Law Collections*, 251–253, with supplements by Levinson, "Is the Covenant Code an Exilic Composition?" 293. The Roman sigla are from Borger and Roth; the Greek sigla **α** and **ζ** are my own. Manuscript **α** is described in Borger, *Lesestücke*, 50 and Lambert, *Catalogue*, 34; manuscript **ζ** is described in Lambert, "Addenda," 95. Lambert (*Catalogue*) lists three other possible fragments of LH (they are described as "LH ?" with no correlation of content to LH): K 19454 (p. 35); K 19727 (p. 39); and K 21227 (p. 59). I am not including these last tablets in my survey here. I thank Tzvi Abusch for help in finding the information from Lambert.

132. Laessøe ("On the Fragments," 179), based on a more limited number of fragments, concluded that there were at least three copies of the series. The additional fragments now available suggest at least five copies.

133. The variants for the most part can be found in Borger, *Lesestücke*, 5–50; selectively in Richardson, *Hammurabi's Laws* (at the bottom of his Akkadian text; see also 15–19); and earlier in Driver and Miles, *Babylonian Laws*, 1:108–114.

134. See Laessøe, "Fragments," 183–186.

135. Westbrook ("Biblical and Cuneiform Law Codes," 256) notes that "the copies [of LH] are remarkably faithful to the original; certainly no changes whatsoever were made to the substantive law. The reason is that it became a piece of canonical literature, a part of the scribal school curriculum that was copied for its own sake." Others note that the variants are relatively minor with regard to general content, including

Cardascia, “Transmission,” 35–36; Finkelstein, *Ox*, 16b; Richardson, *Hammurabi’s Laws*, 15–19. For analysis of variants, see Richardson, *Hammurabi’s Laws*, 14–19.

136. Laessøe, “Fragments,” 184; cf. Wiseman, “Laws of Hammurabi,” 161. Finkelstein (“Late Old Babylonian Copy,” 42) notes that the laws may have been composed first and then late in Hammurabi’s reign placed in a royal hymn context to provide the prologue and epilogue.

137. On LH as a scribal-canonical text, see Bottéro, *Mesopotamia*, 156–184; Cardascia, “Transmission”; Hurowitz, “Hammurabi in Mesopotamian Tradition,” 503–506; Lambert, “The Laws of Hammurabi in the First Millennium,” 95–97; Leemans, “Hammurabi’s Babylon,” 91, 96; Roth, “Mesopotamian Legal Traditions,” 19–21; *Law Collections*, 73–76; Wiseman, “Laws of Hammurabi,” 162.

138. I had the opportunity to examine and photograph unpublished fragments **k**, **L**, **m**, **n**, **o** and **x** (now physically joined to **J**) in the British Museum in the summer of 2006.

139. For the fragment, see Borger, “Kleinigkeiten,” 365–366. Laessøe (“Fragments,” 179) considers **T** a duplicate to **P**.

140. Lambert, “Addenda,” 95.

141. As observed by Borger, *Lesestücke*, 4.

142. See von Soden, “Duplikate aus Nineve,” 339–340.

143. Lambert, *Catalogue*, 34; for variants of this manuscript against the Stela, see Borger, *Lesestücke*, 50.

144. See my cautions about Hittite connections in chapter 1, n. 117. The similarity of CC’s laws to the HtL may be explained by the influence of Mesopotamian law on Hittite law. For this, see Otto, *Körperverletzungen*, 116–117; “Bedeutung,” 152 n. 64; “Aspects,” 179–182; Rothenbusch, *Rechtssammlung*, 215–220 (esp. 218–219), 395; Westbrook, “What Is the Covenant Code?” 23; *Studies*, 43 (here he says that the “Hittites . . . almost certainly had had the privilege of reading CH”). For cuneiform scribal traditions among the Hittites, including the early period, see Beckman, “Mesopotamians and Mesopotamian Learning.” For possible immigration of Anatolian peoples into Palestine and influence on Israelite culture, see Collins, *Hittites*, 213–218.

145. Tablets A and B belong to the time of Dadusha (Yaron, *Laws*, 19–21; Roth, *Law Collections*, 57–58). A fragmentary student excerpt from LE (Haddad 116) was found at Tell Haddad in 1982, dating to the time of the main LE texts. See al-Rawi, “Assault and Battery,” 118.

146. The fragment is K 10135; see Otto, “Rechtsreformen in Deuteronomium,” 242–243; Postgate, “Assyrian Texts and Fragments,” 19–21 and pl. 12 no.4; Roth, *Law Collections*, 153–154. For the Middle Assyrian identification, see Morrow, “Cuneiform Literacy,” 206, n. 7. Fincke (“Babylonian Texts,” 144) lists K 10135 as a *Babylonian* tablet found at Nineveh.

147. Otto, *Deuteronomium*, 1–2 and n. 5; “Rechtsreformen in Deuteronomium,” 242–243 and n. 24. He notes that MAL A was recovered from a Middle Assyrian library in a Neo-Assyrian context of a gate complex in Ashur between the old palace and the Anu-Adad temple. Morrow, in a review of Otto, similarly notes that MAL A and B were found in Ashur in a Neo-Assyrian context (“Cuneiform Literacy,” 206). He adds (206 n. 7) that the colophons date these Ashur fragments to the MA period and that the ductus and pattern of firing of the Nineveh fragment (K 10135) dates it to the MA period. For the find sites, see Weidner, “Das Alter der mittelassyrischen Gesetzestexte,” 47 on texts A and B, 48–49.

148. Otto, “Rechtsreformen,” 241–242; *Deuteronomium*, 2–3.

149. Cf. Paul, “Biblical Analogues,” 335–339.

150. These phraseological correspondences are noted by Otto, *Deuteronomium*, 2–3. He also notes a structural correlation between MAL A 12–16 and Deut 22:22–29. See also Otto’s extensive discussion of the structure and redaction of MAL A (pp. 91–202 of his study) and of Deuteronomy (pp. 203–378).

151. The tablet writes the verb *iš-ša-ba-a-sú*, but the last sign should be read *si* (cf. Otto, *Deuteronomium*, 113).

152. See the earlier statement at Wright, “Laws of Hammurabi and the Covenant Code,” 246–247 n. 71.

153. Otto, *Deuteronomium*, 216 (and pp. 201–216); “Rechtsreformen in Deuteronomium,” 257–261; “False Weights,” 131–132; “Aspects of Legal Reforms,” 189–192; “Gesetzesfortschreibung,” 379; cf. Otto, *Körperverletzungen*, 141 and n. 2.

154. Rofé, “Family and Sex Laws in Deuteronomy,” 131–132.

155. For a discussion of the order of Deuteronomy’s laws and literature, see Tigay, *Deuteronomy*, 446–459; Levinson, “Carmichael’s Approach,” 232–235 and *passim*.

156. Other laws that at first do not seem related to their contexts can be explained. The seemingly extraneous command not to add or subtract from the command in 13:1 is determined by source. It comes from Assyrian treaty and relates to the loyalty commands in Deut 13:2–19, also derived from Assyrian treaty. See Levinson, “The Neo-Assyrian Origins of the Canon Formula.” Levinson (*Deuteronomy*, 133) also notes that Deuteronomy 12 and 13 constitute a “point and counterpoint.” Loyalty to Yahweh is primarily manifested in observance of rules pertaining to the central sanctuary. The dietary laws in Deuteronomy 14 relate to the rules about cultic and profane slaughter in Deuteronomy 12. The theme of holiness in Deuteronomy 14 is also related to the theme of loyalty in Deuteronomy 13. Firstborn animals in 15:23 are related to the festival pericope that follows. See the discussion of the relationship of CC’s firstborn offerings and festivals in chapter 11 of this study. For the coherence of 17:2–7 with vv. 8–13, see Levinson, *Deuteronomy*, 98–143. On 18:9–22, see Levinson, “First Constitution,” 1872–1874 and *passim*. The section on witnesses and talion (19:15–21) fits the context of homicide asylum and the evaluation of evidence that would occur in that case.

157. See van der Toorn, *Scribal Culture*, 21–22 and later chapter 13, n. 13.

158. The unknown homicide law (Deut 21:1–9, if part of the third-person corpus) was inserted after the laws on killing, homicide, and war in chapters 19–20. It was placed before the captive wife law (21:10–14) because that may have been viewed as beginning a short section on marriage and children. The loved/hated wife law (21:15–17) was placed after the captive wife law because the captive wife law ends with the motif of hatred, found in the captive wife. The rebellious son passage (21:18–21) follows the loved/hated wife law because the loved/hated wife law dealt with children. The limitation on corpse exposure (21:22–23) follows the child rebellion law because the child is executed and is a candidate for exposure. The various laws on adultery and rape (22:13–21, 22:22; 22:23–27, and 22:28–29) were inserted in the various laws on mixing just before the mother incest law (23:1). This law attracted the other laws to this location because it dealt with sexual impropriety. The divorce law of 24:1–14 was presumably placed where it is because it deals with a case of *ערוה דבר* “unseemly behavior,” which is found in the camp purity law in 23:10–15 and also conceptually in the prostitute law of 23:18–19. The divorce law (24:1–4) was delayed until after 23:26, perhaps because the redactor wanted the various laws involving payments (prostitution money, vows, use of a neighbor’s field; 23:18–26) to play themselves out. It was placed before the pledge

laws (24:6, 10–13) since these move in a new direction. The placement of the divorce law brought in its wake the insertion of another short marriage law, about deferment from military service for a newly married soldier (24:5). The kidnapping law in 24:7 may have been put between the pledge laws of 24:6 and 10–13 because of the theme of debt—a creditor’s forced distraint of a child may have been understood as kidnapping (note that 15:12–18 allows for distraint of only a debt-holder, presumably not of dependents). (The leprosy law of 24:8–9 does not fit the context and may be an addition.) The testicle-grabbing law of 25:11–12 may have received its location because of the following apodictic rule not to have “a big stone and a little stone in your pouch” (25:13). The testicle law brought with it the levirate law (25:5–10) because both have to do with endangering the posterity of a man. The law limiting flogging in 25:1–3 may have been placed where it is because it deals with a punishment that is an act of humiliation, a motif of the levirate law. Too, the flogging and testicle-grabbing laws both involve corporal punishment (apart from capital punishment). The only problem is the placement of the flogging law before the ox-muzzling law (25:4); one would expect it to come after. Another explanation for the location of the flogging law is a connection with beating olive trees (24:20). In sum, the placement of the various third-person corpus laws makes sense on a case-by-case basis. It supports the notion that the apodictic laws in chapters 21–25 existed as a body prior to the insertion of the third-person laws. The scattered placement of the third-person laws also indicates that they were inserted by a different hand than the one that composed the underlying apodictic laws (unless the same editor, after the fact, decided to upset his previously well-ordered apodictic laws).

159. Rofé, “Family and Sex Laws in Deuteronomy,” 134–135.

160. A question arising from this proposal is why, if CC’s authors created a side collection of family law based on MAL A, did they omit this and related legislation from LH from CC. Maybe the use of family law in LH 115–195 for debt-slavery diverted them from presenting this material more straightforwardly.

161. Morrow, “Cuneiform Literacy,” 206.

162. See Roth, *Law Collections*, 143–144; Oelsner, Wells, and Wunsch, “Neo-Babylonian Period,” 912.

163. Fincke (“Babylonian Texts,” 112) notes the gaps that exist in the finds from even Ashurbanipal’s library: “the survey on the tablets of Ashurbanipal’s library is inevitably based on the material which has been excavated so far. We do not know how many tablets are either still waiting in Nineveh to be discovered or have already perished and been lost forever. Moreover, the invaders who conquered Nineveh in 612 BC might have destroyed or even carried off an unknown number of cuneiform tablets. . . . It is therefore obvious that the material in the British Museum’s Kouyunjik Collection does not represent the complete number of tablets that were included in the libraries and archives in Ashurbanipal’s time.”

164. Cf. Otto, “Review of J. Van Seters”; Wells, “Covenant Code.” See chapter 1. See the considerations of Van Seters, “Revision,” 10, 23–24.

165. It is possible to invoke an informant theory for the few laws that correspond with other cuneiform collections but not LH. That is, when CC’s author studied LH, scribal teachers may have brought other laws into the discussion that were relevant to one or another law in LH.

166. Rothenbusch (*Rechtssammlung*, 90) notes that one cannot assume that the author knew LE and so posits an unknown Vorlage. Yaron’s response to the stricture of Van Selms about the attestation of LE 53 is relevant (Yaron, *Laws of Eshnunna*,

194 n. 97; Van Selms, “Goring Ox”; see Schwienhorst-Schönberger, *Bundesbuch*, 245–246). Yaron notes that the question is not whether CC knew LE 53 in particular: “There is no reason for regarding LE 53 as an innovation or invention of the lawgiver of Eshnunna. It is merely his reception of a rule which was probably of general, or at least wide application throughout the ancient East.” That is, we do not need to imagine that LE or HtL—or perhaps even MAL—was the particular source for the correspondences of CC with these collections.

167. For the increased presence of Assyrian power in Palestine at the very end of the eighth century, see Na’aman, “Sennacherib’s ‘Letter to God.’”

168. On Ashurbanipal’s library in Nineveh, see Fincke, “Babylonian Texts”; “British Museum Ashurbanipal Library Project”; Frame and George, “Royal Libraries”; Lanfranchi, “The Library at Nineveh”; van der Toorn, *Scribal Culture*, 240–241; cf. Carr, *Tablet*, 18–19. Ashurbanipal began gathering texts for his library as early as 664 BCE (see Frame and George, “Royal Libraries,” 282; see also 277). But Esarhaddon may have already begun collecting texts earlier (Frame and George, pp. 278–279). A number of texts were acquired from Babylon after 648, when Ashurbanipal established himself as king in Babylon (Fincke, “Babylonian Texts,” 122 and throughout; Frame and George, pp. 277, 282). Fincke (“Babylonian Texts,” 139–140; cf. 116; “British Museum’s Ashurbanipal Library Project,” 55–56) notes that Sargon II may have begun a library collection, and Sennacherib may have sent these tablets on to the new capital of Nineveh. We do not need to assume that knowledge of LH was dormant in the Neo-Assyrian period until Ashurbanipal’s project. Ashurbanipal often acquired tablets from preexisting private or temple libraries (see Fincke, “Babylonian Texts,” 124, 125, 126, 135, 137, 138, 140). Much of the text collecting involved gathering texts on writing boards, from which clay tablets could be copied (see Frame and George, “Royal Libraries,” 282–283). The attestation of texts in antiquity would therefore have been much greater than what is left for archaeology to discover. Part of the problem with knowing specifically when in the Neo-Assyrian period Hammurabi’s text was known is that the specific dates and find spots for Kuyunjik tablets remain to be sorted out (see Fincke, “Babylonian Texts,” 115, 141).

169. Hurowitz (“Hammurabi in Mesopotamian Tradition,” 505) notes that “numerous exemplars of LH were discovered at Kyunjik, but not all copies found there were inscribed necessarily at the site by Ashurbanipal’s scribes. This is shown by a reference to *dināti ša Hamm[urabi]*, ‘the laws of Hamm[urabi],’ in a record of tablets sent to the library from various places,” referring to Lambert, “Laws of Hammurabi,” 95–98.

170. Even though Rothenbusch (*Rechtssammlung*, 394, 397, 600) sees CC’s casuistic laws as coming from oral tradition, he thinks it was written in a rather short period and that many of the stylistic or contextual tensions and evidences of development may actually be due to the redaction of older materials. Only a few passages are secondary in his view (e.g., 21:26–27, 31, 36; 22:1–2a, 3, 10, plus the participially formulated laws). Van Seters (*Law Book*, 173), whose exilic dating of CC must be rejected, believes that the whole of Exodus 20:22–23:33 is a single composition. Levinson notes that Eissfeldt and Noth “maintain the coherence of the entire Covenant Code” (“The Case for Revision and Interpolation,” 41).

171. The evidence of this study for the relative unified composition of CC should not be confused with the methodological and exegetical arguments that Westbrook has put forth for a unified approach to the text (“What Is the Covenant Code?” 15–36; but see also his *Studies*, 7–8; see a sample critique by Otto, “Diachronie”). See also n. 46 in chapter 1.

172. Levinson (*Deuteronomy*, 81–82) makes a similar point about the composition of Deuteronomy’s festival laws: “[various] philological problems [in the passage] are better explained as a by-product of the deliberate redactional composition of the festival calendar. As the Deuteronomic authors transform Passover into a normative sacrifice, their technique for doing so involves the recontextualization of originally unrelated lemmas into a new text.” Levinson adds: “the degree of transformation of the lemmas concerned with each observance accounts for the structural and philological difficulties long identified but hitherto not resolved. The authors’ redactional work creates textual ‘fault lines’ where original unrelated lemmas abut.”

173. Borger, *Lesestücke*, 2–5; Roth, *Law Collections*, 251–252; Levinson, “Is the Covenant Code an Exilic Composition?” 293.

174. Cf. Bergmann, *Codex Hammurabi*, 1–37

175. Nougayrol (“Les fragments en pierre II,” 150) sees these first five as coming from a single monument (for the texts, see Nougayrol, “Les fragments en pierre I”).

176. For the variants, see Nougayrol, “Le prologue”; see also the comments by Ries, *Prolog und Epilog*, 18, 25.

177. Finkelstein, “A Late Old Babylonian Copy,” 42.

178. See Finkelstein, “A Late Old Babylonian Copy,” 48.

179. For an apparent translation of the epilogue into Sumerian in the OB period, see Sjöberg, “Was There a Sumerian Version?”

180. Finkelstein (“Hammurapi Law Tablet BE XXXI 22,” 25–27) concludes that this was copied from a stela in Nippur in the Kassite period. This expands evidence for the monumental attestation of LH.

181. Veldhuis (“Kassite Exercises,” 72) gives this an MB date as opposed to Borger’s OB date (cf. Levinson, “Is the Covenant Code an Exilic Composition?” 293 n. 35).

182. Veldhuis, “Kassite Exercises,” 71–72 (cf. Levinson, “Is the Covenant Code an Exilic Composition?” 293 n. 35).

183. Weidner, “Drei neue Fragmente,” 323.

184. Levinson (“Is the Covenant Code an Exilic Composition?” 293 and n. 35) labels these texts “Neo-Babylonian,” seeking to disambiguate my classification of “Late Babylonian” in my “Laws of Hammurabi as a Source,” 67–69. I follow the terminology that labels Babylonian texts (excluding Standard Babylonian) from 1000–625 (or 600) as Neo-Babylonian (e.g., the Neo-Babylonian Laws, n. 162) and texts after this time as Late Babylonian (see GAG § 2; Caplice, *Introduction*, 5; Huehnergard, *Grammar*, xxv). The problem is that it is extremely difficult to give specific dates to the Hammurabi manuscripts from the Neo-/Late Babylonian period. Some of them are clearly Late Babylonian as here defined: **B** (for which Wiseman, “Laws of Hammurabi,” 162, suggests an Achaemenid date); **β** (this has a date to “Art[axerxes] 23/7/10,” according to Leichty, *Catalogue*, 156). Laessøe (“Fragments,” 180) says that his listing of manuscripts on pp. 180–183 is “arranged chronologically,” and he puts “Neo-Babylonian” texts *after* Neo-Assyrian texts. Moreover, in his chart of the textual history of LH (p. 185), he places ms. **W** (VAT 991) chronologically *after* the “Neo-Assyrian groups” and places manuscript **Z** (VAT 1036) even with, hence contemporary with, manuscript **W**. Borger (*Lesestücke*, 2–4) appears to reflect the difficulty in dating these texts, describing mss. **C**, **W**, **Z**, and **s** as “spät, babylonisch,” rather than “spätbabylonisch” (cf. GAG § 2g), in contrast with his labeling of other Babylonian periods as “altbabylonisch” and “mittelbabylonisch.” He also labels text **B** as “späte Kopie, babylonisch.” For the dating of an unpublished prologue text, see the preceding note. I thank Tzvi Abusch

for leading me to Leichty's catalogue and helping me with the problem of dating the Neo-/Late Babylonian texts.

185. The Greek sigla are applied to fragments described in Leichty, *Catalogue* (BM 54795, p. 156; BM 57873, p. 244; BM 59776, p. 293), and Fadhil, "Prolog." Fadhil notes (p. 717) that two copies of the prologue were found at Sippar, but he publishes a transliteration of only Sippar 3/2166 (he does not give the catalogue number of the other text). One of Fadhil's texts must be that referred to in the excavation report "Excavations in Iraq 1985–1986, Sippar (Abu Habba)," in *Iraq* 49 (1987) 249. Pedersén (*Archives*, 194, cf. p. 197) dates the texts of the excavations to which this tablet belongs between 625 and 486 BCE. This 1985–86 tablet is not to be confused with texts **B** and **C**, which were known prior to this time.

186. D. J. Wiseman, "Laws of Hammurabi Again," 162. For the variants, see Hurowitz, *Inu Anum šīrum*, 7 n. 16, 17–24, 67–68; Borger, *Lesestücke*, 7; Ries, *Prolog und Epilog*, 21–25.

187. Cf. Eilers referenced at Laessøe, "Fragments," 183 on BE 35271.

188. Leichty, *Catalogue*, 156.

189. Leichty, *Catalogue*, 244.

190. Sollberger, "New Fragment," 130 (cf. Leichty, *Catalogue*, 293).

191. Sollberger, "New Fragment," 131. He toys with the possibility that this is actually an Ur III text whose textual tradition may have fed into the composition of LH. But he decides in favor of its being "an archaizing text, either copied from a monumental code, or prepared as a model for a monumental code." He notes that its text is not exactly the same as the Louvre Stela (mainly the syntax of the amounts to be paid per day is inverted in LH 275 and 277; a verb is omitted in LH 276).

Chapter 5

1. There is an emotional inversion, too: the male becomes a permanent slave because he *loves* his master; the woman is released because her creditor *hates* her and ends up not supporting her. On the structure, see Jackson's comment on the structure, cited in chapter 11 (p. 306). For the parallel structure, see also Chirichigno, *Debt-Slavery*, 198–199, 245; Levinson, "Manumission of Hermeneutics," 296–297; Rothenbusch, *Rechtssammlung*, 259; Schwienhorst-Schönberger, *Bundesbuch*, 305; Sprinkle, *Book*, 52; Turnham, "Male and Female Slaves," 546–547; Zakovitch, "הדגם הספרותי," 450–453 (xxvi). For a critique of a chiasmic structure proposed for the passage, see Wright, "Fallacies," 155 n. 6. The binary opposition created between vv. 2–6 and 7–11 may be drawn into a larger analysis of CC's tendency to conceptually invert material drawn from its sources.

2. See, for example, Schwendenmann, "Recht," 35–36, for vv. 2 and 7 as principal alternate cases within vv. 2–11.

3. Scholarship generally recognizes the similarity of LH 117 to 21:2–6, e.g., Cazelles, *Études*, 150; Chirichigno, *Debt-Slavery*, 192–194; Houtman, *Exodus*, 3:124; Greengus, "Biblical and Mesopotamian Law," 72–78; Mendelsohn, "Slavery," 84–85; Rothenbusch, *Rechtssammlung*, 238, 265–271; Sprinkle, *Book*, 65; Veenker, "Syro-Mesopotamia," 159 (for others, see the works listed in Chirichigno, 192 n. 1 and 222 n. 2, and Cardellini, "Sklaven"-Gesetze, 245–246 and n. 22). Cardellini ("Sklaven"-Gesetze,

245) notes the similarity to LH 117 but says that v. 2 nonetheless reflects Israelite custom and only vv. 3–4 have Near Eastern (Nuzi) resonances (cf. Schwienhorst-Schönberger, *Bundesbuch*, 312 n. 38). Some scholars stress the differences between LH 117 and CC's law (e.g., Pressler, "Wives and Daughters," 152; Phillips, *Essays*, 110; the latter concludes that "Exod. 21.2–4 owes nothing to non-biblical law"). For Van Seters's view, see n. 14 in this chapter. Rothenbusch (*Rechtssammlung*, 272) notes that as far as he knows, there are no pure parallels to vv. 7–11 in the Near Eastern law collections.

4. For the two possible interpretations of *ittandin*, see nn. 69, 70.

5. The Akkadian idiom *ana kaspim nadānum* is a regular way of describing the act of selling (CAD N 49–50; Meek, "A New Interpretation," 180).

6. On the meaning of the verb קָנָה , see the literature at Schwienhorst-Schönberger, *Bundesbuch*, 310. In view of the dependence on LH, the verb can be translated "buy." Jackson ("Law and Justice," 222; cf. Jackson and Watkins, "Distrain," 411–419) has argued that the verb signifies the creditor's exercising unilateral distraint.

7. So Hossfeld, *Dekalog*, 181–182; Rothenbusch, *Rechtssammlung*, 237; Schwienhorst-Schönberger, *Bundesbuch*, 297, 309, 311; cf. Jackson, *Wisdom-Laws*, 107 and n. 161; Sonsino, *Motive Clauses*, 21. Those who explain the second-person form in v. 2 in this way usually claim that the introduction in 21:1 (which also contains a second-person singular form; see n. 13) is an addition. According to the comparative evidence of this study, the introduction in 21:1 is original (see chapters 3 and 11). Various external or noncontextual explanations have been suggested for the second-person verb in 21:2. Gevirtz ("West-Semitic Curses," 157) cites examples of protases with the second person and apodotes with the third person in Northwest Semitic texts. Morrow ("Generic Discrepancy") argues that the second-person forms in 21:2, 13, 14, 23 and 22:17 stem from a legal formulation or stratum distinct from casuistic law, i.e., the nonroyal prescriptive proclamation of laws, rules, or ethics. For discussion of the mixed form, see Sonsino, *Motive Clauses*, 10–11, 14.

8. Schwienhorst-Schönberger (*Bundesbuch*, 309, 311) suggests that part of the reason for the second-person formulation in 21:2 is its correlation with the seventh-year and seventh-day laws in 22:10–12 as a frame. For this as a redactional frame, and even part of a larger chiasmic structure, see Houtman, *Exodus*, 3:82; Lohfink, "Fortschreibung?" 151–152; Otto, *Wandel*, 35–37, 52–53; "Aspects," 187–188; "Gesetzesfortschreibung," 377. Lohfink notes that Deuteronomy was aware of the thematic connection of the seventh-year laws in CC and therefore placed the seventh-year and the debt-slave laws together in one chapter (Deut 15). Otto (*Wandel*, 35) says the second-person form in 21:2 is connected with the style of 22:20–26. In his redactional system, the frame is secondary, the result of joining materials (21:2–22:26 with 22:28–23:12). He posits (*Wandel*, 52 [cf. 41]) different contextual meanings for the debt-slave laws at different redactional stages. On the connection of the motif of seven years between 21:2 and 23:10–12, see n. 25. For the second-person singular in CC as directed to the community, see McConville, "Singular Address," 23–25.

9. Exceptional second-person forms within the casuistic laws and their rationales include: 21:13–14 (based on the altar law of 20:24–26; see chapter 6); 21:23 (marking a general law; see chapter 6); 22:17 (rationale unclear; perhaps originally a G-stem verb; see chapter 7).

10. The resumptive second-person pronoun with the verb in the apodosis ("he shall work *for you*") in the Samaritan, Greek, Syriac, and Vulgate is a secondary expansion based on the second-person verb (cf. BHS; Cardellini, "*Sklaven*"-Gesetze, 244 and n. 19).

11. For LH 278–282 as an appendix in LH, see Petschow, “Beiträge,” 34 and *passim*. He notes the contextual relationship to LH 7, 9–13, which deal with purchases and also use the verb *šâmum*.

12. Advocates of the first option include Alt, *Origins of Israelite Law*, 93 and n. 28; Otto, *Wandel*, 35; cf. Loretz, *Habiru*, 133. This wording would be close to the parallel case in 21:7 and would echo the wording in 22:2 about an impoverished thief: “if he does not have the means (to pay the fine), he shall sell himself/be sold for the theft” (אין לו וגמכר בגבחתו). This reading is supported further by the context of the rest of the law in 21:2a β -6, which, when it speaks of the master, speaks of him only in the third person. Advocates of the second option include Jepsen, *Bundesbuch*, 56; Rothenbusch, *Rechtssammlung*, 237 (and see n. 35). This requires a change in only one letter in the verb plus the addition of the verbal subject אִישׁ “man.” Levinson (“Manumission of Hermeneutics,” 285–286 and esp. 315; Birth,” 631–633) allows for an original third-person formulation, though he does not specify the exact formulation. He observes that Lev 25:45 (תקנה) demonstrates that the second person was part of the CC text that the Leviticus verse used as a source. Lemche (“Manumission,” 44) says that the second-person formulation in 21:2 over against the third person in the dependent parallel in Deut 15:12 means that CC must have originally had a third person. This is hardly a necessary conclusion, given the freedom of reformulation found in Deuteronomy generally in its use of CC (see Levinson, *Deuteronomy*; Lohfink, “Fortschreibung?”).

13. Some have tied the second person in 21:2 contextually to the second-person verb of the introduction in v. 1: “you shall place” (Chirichigno, *Debt-Slavery*, 189; Sprinkle, *Book*, 61; cf. Sonsino, *Motive Clauses*, 21). The implied pronominal referents cannot be the same in view of the evidence of this study.

14. Van Seters (*Law Book*, 87; cf. “Laws of the Hebrew Slave”; “Law of the Hebrew Slave: A Continuing Debate”) starts his interpretation of vv. 2–6 with the assumptions that “Hebrew slave” means that the individual is already a slave, that the term “Hebrew” is an ethnic designation, and that the implied seller of the slave could only be a foreigner because it is unlikely that a Hebrew would or could sell another Hebrew. Hence the case describes a foreigner selling an already enslaved Hebrew to another Hebrew (the buyer). With this, he concludes that CC’s law “does not parallel the Babylonian law (LH §117).” He says further (p. 99) that “the law of the Hebrew slave (21:2–11) stands . . . outside the rest of the casuistic corpus because it owes nothing directly to the Hammurabi Code. It does not derive from a tradition of casuistic law but is entirely dependent upon Deuteronomy and the Holiness Code.” The law in vv. 7–11, in contrast, does describe a case where “a Hebrew man . . . sells his own daughter” (p. 90). This interpretation of vv. 2–6 is untenable, since CC’s dependence upon LH 117 shows that the cases about a male and a daughter are in fact parallel in their basic sociological outlines. That the male who is purchased is called a “slave” is only an anticipatory or proleptic description of his change of status when purchased. For a definitive critique of Van Seters’s argument, see Levinson, “Effected Object” (and compare passages such as Lev 22:11; Deut 24:5); “Manumission,” 293–304; see also Otto, “Review of J. Van Seters” (*RBL*), 3; “Review of Van Seters” (German version), 275; Wright, “Review of John Van Seters,” 130.

15. See for example, Cazelles, *Études*, 44–45; Childs, *Exodus*, 468; Gray, “The Ḥābirū-Hebrew Problem”; Jepsen, *Bundesbuch*, 76–77; Lemche, “The ‘Hebrew Slave’”; “The Manumission of Slaves”; “The Hebrew and the Seven Year Cycle”; “Ḥabiru”; Lewy, “Origin and Signification,” 1–13; Marshall, *Israel*, 114–115;

Matthews, “Anthropology,” 124, 128; Na’aman, “Habiru,” 286–287; Pressler, “Wives and Daughters,” 151–154; cf. Cassuto, *Exodus*, 265–266.

16. Those who take עברי as an ethnic denomination include Chirichigno, *Debt-Slavery*, 200–218; Freedman and Willoughby, “עברי”; Jackson, *Wisdom Laws*, 80–84; Levy-Feldblum, “The Law of the Hebrew Slave,” 348–351; Phillips, *Essays*, 99–101; Riesener, *Der Stamm* עבר, 115–122; Rothenbusch, *Rechtssammlung*, 233–235; Sarna, *Exodus*, 265–266; Schwienhorst-Schönberger, *Bundesbuch*, 306–307; against the *hab/piru* hypothesis see also Hess, “The Bible and Alalah,” 211. Loretz (*Habiru*) critiques the association of עברי with *hab/piru* and concludes that it refers to a person belonging to the postexilic Jewish community (cf. pp. 128, 181–182). His primary argument is that all of the instances of עברי are postexilic and, in particular, 21:2–6 is to be dated late (for our passage, see pp. 139–146). This late dating of CC cannot be accepted on the basis of the evidence of this study. For critiques of Loretz, see Naaman, “Review of Loretz”; Osumi, *Kompositionsgeschichte*, 162–164. Loretz’s study does provide a valuable review and critique of the *hab/piru* hypothesis. For problems in the hypothesis, see also Greenberg, *Hab/piru*, 91–96.

17. Greengus (“Biblical and Mesopotamian Law,” 74) makes this observation.

18. Schwienhorst-Schönberger (*Bundesbuch*, 307) says that the adjective was added by a redactor when CC was incorporated into the Sinai pericope and under the influence of Deut 15:12 (though the basic text of Exod 21:2–6 is the basis for Deut 15:12–18). He nevertheless sees the adjective as having an ethnic sense and fitting the nationalistic context of the Sinai narrative. CC’s composition, in association with a version of the surrounding narrative, as is argued in chapter 11, supports taking the adjective as referring to ethnicity or nationality.

19. For example, Lemche (“Hebrew Slave,” 129–130) adopts a sociological interpretation of עברי based on *hab/piru* and dates the joining of the casuistic (21:2–22:16) and final apodictic (22:17–23:19) sections to the time of the Judges. This means that for him the casuistic section with the debt-slave law is even older. He believes that CC depends on Canaanite laws or law collections (pp. 132–134).

20. Gen 14:13; 39:14, 17; 40:15; 41:12; 43:32; Exod 1:15, 16, 19; 2:6, 7, 11, 13; 3:18; 5:3; 7:16; 9:1, 13; 10:3; Deut 15:12; 1 Sam 4:6, 9; 13:3, 7, 19; 14:11, 21; 29:3; Jer 34:9; Jonah 1:9.

21. Lipiński (“L’esclave Hébreu”) argues that attestations such as these indicate that, at least in the preexilic period, the adjective describes a condition of enslavement, even if the term does not have a connection to *hab/piru*.

22. Three years is a standard period of liability in LH. According to LH 30, a person who for three years performs *ilkum* obligation in a field, orchard, or house abandoned by another gains the right to continue to perform such an obligation. Hallo (“Slave Release,” 90–92) argues that the edict of Samsu-iluna, Hammurabi’s successor, replaced the regular release of debt-slaves with a less frequent and ad hoc release according to royal decree (similar to the paragraphs in the century-later Edict of Ammisaduqa §§ 20, 21; cf. COS 2:364–265). This was partly due to the impracticality of a fourth-year release, which may have discouraged lending. For the Mesopotamian edicts and institution of debt-release, see Kraus, *Edikt*; Otto, “Soziale Restitution.”

It has been argued that Deut 15:18 reflects knowledge of an original three-year period of service: “for [the debt-slave] has labored for you double the wage (period) of a hireling, i.e., six years” (כי משנה שכר שכיר עבדך שש שנים); so Zakovitch, הדגם הספרותי, 436–436, xxv; Chirichigno, *Debt-Slavery*, 195 n. 2). Zakovitch refers to Isa 16:14 and

IQIsa^a 21:16 (with “three years”), which can be read as referring to a three-year period of labor for a שכיר. (Blenkinsopp, *Isaiah 1–39*, 296, 300–301, 328, follows this interpretation for these passages.) The term שכיר, however, is normally understood to be a *hired worker* who is *paid* for his work (see chapter 10, n. 41). The three-year “contract” for this worker, if this construal of the evidence is right, may be independent of the debt-slavery custom because of the phenomenological differences. For different readings and discussion of Deut 15:18, see Tigay, *Deuteronomy*, 150; Levy-Feldblum, “Law,” 357 and n. 38 there; Tsevat, “Hebrew Slave.”

23. Cardellini, “*Sklaven*”-Gesetze, 245, 249; Chirichigno, *Debt-Slavery*, 223–224; Greengus, “Biblical and Mesopotamian Law,” 74–75; Oosthuizen, “Deuteronomy 15:1–18,” 78–82; Osumi, *Kompositionsgeschichte*, 91, 149–152 (for him, 21:2–11 were added when the second-person singular apodictic laws, which include the seventh-year and -day laws, were added to the casuistic laws; hence the correlation is not accidental); Rothenbusch, *Rechtssammlung*, 238–239, 248 (he says that the original law of 21:2 may have had a different length of time); Schwienhorst-Schönberger, *Bundesbuch*, 313; Zakovitch, הדגם הספרותי, 437–438, xxv. See also the views in n. 8 about a supposed frame between 21:2–11 and 23:10–12. The requirement to eat unleavened bread for seven days in 23:15 is also part of the interest in calendrical sevens in this area of the final apodictic laws. For indenture for seven (not six) years, see Gen 29:18, 20, 27, 30; Judg 6:1 and the discussions in Cardellini, “*Sklaven*”-Gesetze, 245 n. 21; Jackson, *Wisdom-Laws*, 109; Sprinkle, *Book*, 65; Wagner, “Zur Befristung der Sklavenschaft.”

24. Cf. Otto, “Sozial- und rechtshistorische Aspekte,” 104. Though debt-slavery shares the numerical pattern of the seventh-year law, CC probably does not consider these periods to be concurrent. Moreover, it probably does not imagine the seventh-year law to occur in all fields at the same time. See Rothenbusch, *Rechtssammlung*, 239.

25. The formula “six time-units do X and on the seventh time-unit do Y” elsewhere in the Bible is arguably later than CC. It is found in various P/H passages (Gen 2:1–3; Exod 12:15–16; 24:16; 31:15–17; 35:2; Lev 23:3; cf. the seventh-day culminations in Lev 13:5, 6, 27, 32, 34, 51; 14:9, 39; Num 6:9; 19:12, 19; Num 28:25; 31:19, 24) and in Deut 15:12; 16:8. All of these postdate CC. The occurrence in Exod 34:21 is dependent on CC (see see chapter 11, n. 82). The formulation (or at least present *full* formulation) of the Sabbath law of the Decalogue (Exod 20:9–11 // Deut 5:12–13) may be dependent upon CC (see chapter 12). The formula in Exod 16:26 is normally assigned to P (e.g., Childs, *Exodus*, 275; Friedman, *Who Wrote*, 251) but has been assigned to J (so Baruch Schwartz, “The Sabbath in Torah Sources,” paper at the national meeting of the SBL, November 2007; source analysis must also consider the related verses of Exod 16:27, 29, 30). But even if J, this may be later than CC (see chapter 13). Exod 13:6 provides the ostensible foundation for the CC’s command to eat unleavened bread in 23:15 (some emend “seven days” at the beginning of 13:6 to “six days”; cf. Propp, *Exodus 1–18*, 368). Chapter 12 argues, however, that CC’s narrative, including 13:6, was created along with CC. Therefore, 13:6 is not independent of CC. For a similar formula in the firstborn laws, see Exod 22:29; cf. Lev 22:27, 36, 39; Neh 8:18. Outside the Pentateuch, see Josh 6:14–17; Judg 14:17–18; 2 Sam 12:18; 1 Kings 18:43–44; 20:29; Ezek 3:15–16; Esther 1:10. To be considered in an analysis is the (different) idiom in Ugaritic literature (CAT 1.4 vi 24–32; 1.14 iii 3–4, 12–15, v 5–6; 1.17 i 11–15, ii 37–39; 1.22 i 23–25; 1.41 45–47; 1.126 19–21; 1.171 6–7; cf. 1.19 iv 17). One may also compare Gilgamesh XI 128–133, 144–147. On the six/seven pattern, see Cardellini, “*Sklaven*”-Gesetze, 245 n. 21; Loewenstamm, “Seven Day Unit”; McCurley, “After Six Days”; Robinson,

Sabbath, 139; on the graded numerical pattern, see Haran, “דגם המספר המודרך”; “Graded Numerical”; Zakovitch, “הדגם הספרותי.”

26. It is not clear if the conflation of legislation on debt- and chattel-slaves in CC (see chapter 6) is also a stimulus to the longer period of debt-slavery in CC. This conflation has made the case of the debt-slave more severe in other respects (see chapter 6). CC’s debt-slavery law, overall, is more severe than that of LH, including permanent assignment of a daughter to the creditor. Crüsemann (*Torah*, 155), comparing LH 117, notes that “the change to seven years, even if it were based in a sacral temporal rhythm, would have been a significant step backward for the slaves.”

27. For the term *e’iltum*, see Meek, “A New Interpretation,” 180. The term occurs in LH 38, 39, and 119. Its basic meaning from these various laws is “financial obligation.” Veenhof (“Dying Tablets,” 48) says this idiom of debt seizing a person indicates that “the obligation is the real cause of what happens... the physical embodiment of the obligation may be considered a dangerous power, threatening the debtor.” A related matter is whether the aggressive description of a debt seizing a person was responsible in part for the use of קנה “acquire, buy” instead of נמכר “be sold/sell oneself” in v. 2 (cf. 22:2). The verb *šabātum* is used in other texts of creditors taking persons as pledges when debts are due (CAD E 9b–10a).

28. Westbrook, “Slave and Master,” 1637–38, 1643.

29. So Eichler, *Indenture at Nuzi*, 82–83; cf. Meek, “A New Interpretation,” 181. Eichler examines a third type of debt servitude, *mazzazānūtum*, which serves to pay off only the interest on a debt (antichresis). He notes that the Edict of Ammisaduqa §§ 20–21 lists three conditions of economic servitude: selling a wife, sons, or a slave (1) for silver, (2) for *kiššātum*, or (3) for a *mazzazānum* pledge. See also Kraus, *Edikt*, 175–179. Westbrook (“Slave and Master,” 1638) says *kiššātum* involves enslavement for theft, but this is not evident in LH 117. For the relationship of various sorts of debt situations, see Jackson and Watkins, “Distraint,” 417–418. They describe cases of *nipūtum* as involving relatively short-term indenture. Its function “was the pressure it put on the debtor to enter into some other arrangement whereby he might raise the money to pay off the creditor.” Transfers *ana kiššātīm* and *ana kaspīm* were “more rigorous institutions... under which the capital and interest might indeed be acquired or its equivalent in labour rendered.” See also Dandamaev, *Slavery*, 444; Driver and Miles, “Code of Hammurabi, §§ 117–119”; Fleishman, “Authority of the Paterfamilias.”

30. For debt as the cause of enslavement, see Chirichigno, *Debt-Slavery*, 220; Crüsemann, *Torah*, 155 n. 239; Fleishman, “The Law of Exodus 21:7–11,” 47–48; Jackson, *Wisdom-Laws*, 82. Support comes from Deut 15:12–18, which deals with debt-slavery in the context of its laws on relieving loans (vv. 1–11). The language of other biblical passages dealing with debt-slavery allow associating the slaves in Exod 21:2–11 with the making of loans (see 2 Kings 4:1; Prov 22:7; Neh 5:1–13; Baltzer, “Liberation from Debt-Slavery”). For a dissenting view, see Cardellini, “*Sklaven*”-Gesetze, 245–46.

31. See chapter 12.

32. Exod 21:2–6 does not entail a case of selling a kidnapped Hebrew on the slave market. Besides these verses maintaining the general context of LH 117 and being paralleled by 21:7–11, which clearly is not a case of kidnapping and sale on the slave market, CC views kidnapping as a capital offense (21:16).

33. For discussion, see Chirichigno, *Debt-Slavery*, 209–214; Hess, “The Bible and Alalah,” 212; Loretz, *Habiru*, 252–264; Lohfink, “חֲפֹשִׁי, ḥopšî”; Marshall, *Israel*, 116, 121.

34. See also 1 Sam 17:25 in addition to the main debt-slave texts Exod 21:2, 5, 26, 27; Deut 15:12, 13, 18; Jer 34:9–11, 14, 16. The place בית ההפשיט in 2 Kings 15:5 (// 2 Chron 26:21) also appears to refer to a place of separation or detachment (Wright, *Disposal*, 174–176 n. 25).

35. The idiom *andurāram šakānum* “to effect freedom” as found in LH 117 is from royal proclamations of debt release. See Levinson, “Kingship,” 516 and the literature there.

36. It is argued that the verbs יצא “go out” and בוא “come” in vv. 2–3 reflect Akkadian *wašūm* and *erēbum* in Nuzi *tidennūtu* contracts (cf. Cardellini, “*Sklaven*”-Gesetze, 247 n. 30; Paul, *Studies*, 47–48). Chirichigno (*Debt-Slavery*, 215) argues against this association.

37. Two other minor variations may also be briefly noted. CC omits “in the house of their buyer or creditor” as the locale of service. This may partly be a function of reformulating the protasis as “if you acquire,” which implies taking the debt-slave into the creditor’s custody, i.e., at his house. Therefore, it does not need to be mentioned explicitly. Alternatively, this omission may be part of the generalization of the law; the Hebrew debt-slave may work wherever the creditor requires his work. CC also omits the noun *year* in its adverbial phrase “in the seventh.” This is similar to the formulation of 23:11, though that verse does not have the preposition ב “in.” In contrast, the seventh-day law has a full formulation comparable to LH with “on the seventh day” (ביום השביעי; 23:12).

38. Thus while CC rejects LH’s notion of vicarious punishment for crimes (cf. 21:31 and see chapters 6 and 8), it does not reject the use of vicarious labor to resolve a debt.

39. For this attachment, see Pressler, “Wives and Daughters,” 155; Wells, “Sex, Lies,” 48–49.

40. My colleague Bernadette Brooten made me aware of this possibility, which unlocked the door to understanding the logic of the passage. Jackson (“Practical Wisdom,” 81) notes that 21:2–11 is interested in the use of the slaves for “breeding purposes.”

41. For the text see Locher, *Die Ehre*, 128–130 (with commentary on pp. 130–155); Roth, *Law Collections*, 174–175. See Otto, “Körperverletzung oder Verletzung,” 157–159, for detailed notes on the Akkadian text; see Lafont, *Femmes*, 121–131, 145–157 for discussion.

42. For this interpretation, as a Dt of *erēšum* “to ask,” see *AHW* 1433b (“die nicht als Gattin erbeten wurde”); Roth, *Law Collections*, 174, 193 n. 31; Otto, “Körperverletzung oder Verletzung,” 158 (“die . . . noch nicht erbeten wurde”); Driver and Miles, *Assyrian Laws*, 423, 493. Alternatively, it has been interpreted as a Dt of *warāšum*, “to be dirty,” i.e., “who has not been besmirched” (Rothenbusch, *Rechtssammlung*, 390: “nicht beschmutzt worden ist”; Locher, *Die Ehre*, 128: “deren [Scham] nicht beschmutzt worden ist”).

43. There is debate about whether Near Eastern texts (including the Bible) consider women to possess their own sexuality. This raises the question whether the term *rape* in its modern sense is appropriate as a description in cases such as this. Still, the texts make distinctions between forced intercourse and cases in which the woman is described as complicit to some degree, as found here in MAL A 55–56 (paralleled, respectively, by Deut 22:28–29 and Exod 22:15–16; see Pressler, *View of Women*, 35–41; Yaron, “Biblical Law,” 33–34). Hence I use the terms *rape* and *seduction* in this relative and contextual sense. For discussion, see Anderson, *Women, Ideology, and Violence*,

9–10, 86–92; Gravett, “Reading ‘Rape,’” 279–99; Lipka, *Sexual Transgression*, 184–199, 245–246, and passim; Pressler, *View of Women*, 90–92; Washington, “‘Lest He Die,’” 185–213. Rothenbusch (*Rechtssammlung*, 388) notes that the seduction in 21:15–16 deals with subtle convincing that ends in the ostensible agreement of the woman (cf. Gravett, “Reading ‘Rape,’” 294). For other instances of פָּתָה as “seduce” or “persuade,” see Judg 14:15; 16:5; Prov 1:10; 25:15. For discussion of the meaning of the Hebrew verbs תִּפְסַח “grasp,” הִחִיזִיק “hold, seize,” and עָנָה “compel, have sex with” in biblical passages supposedly dealing with rape, see Jackson, *Wisdom-Laws*, 369–371 and nn. 9 and 19 there.

44. One may ask if other legal customs have influenced 21:7–11. For example, in reviewing comparative analyses between the Nuzi *ṭuppi martūti u kallalūti* “document of daughtership or daughter-in-lawship” and the Bible, Eichler (“Nuzi and the Bible,” 117; cf. p. 118; see also Eichler, “Study of Bible,” 87–88) notes that “the law in Exodus 21:7–11 resembles the Nuzi documents in allowing a father to sell his daughter to a purchaser who is responsible for her eventual marriage. However, unlike the Nuzi contracts, her adopted status is never mentioned and she is referred to as a female slave. . . . Yet despite these [various] differences, the Nuzi documents provide glimpses of a socio-legal institution which allowed indigent fathers to provide their daughters with the security of marriage by selling them into adoption for the purposes of matrimony and it may be to such an institution that biblical law is reacting.” For an earlier description of the Nuzi evidence, see Gordon, “Status of Woman Reflected in the Nuzi Tablets,” 149–153. For cautions about using Nuzi parallels, see n. 112.

45. The woman here is described as a “maiden” בתולה, cognate with the *batultum* of MAL A. On the Hebrew term, see Frymer-Kensky, “Virginité”; Locher, *Die Ehre*, 121–192; Rothenbusch, *Rechtssammlung*, 387 n. 682; Wenham, “*B*ṭūlāh*.” Those who compare MAL A 55–56 with Exod 22:15–16 include, for example, Houtman, *Exodus*, 3:208; Otto, “Körperverletzung oder Verletzung,” 157–159; Rothenbusch, *Rechtssammlung*, 390–392.

46. E.g., Houtman (*Exodus*, 3:206) says “the assets of a free Israelite also included his daughters. When this property of his is damaged he is entitled to compensation.” Lafont (*Femmes*, 131; cf. 121–131) stresses the economic character of the Assyrian and biblical seduction laws. Jackson (*Wisdom-Laws*, 379–384) has a similar view but adds that the interest of 22:15–16 is not merely economic. He sees a correlation in terms of the interest of family law with the initial debt-slavery laws, specifically in that 21:7–11 and 22:15–16: “a man may not engage in sexual intercourse with a (free) woman without offering the latter a permanent status.” Rothenbusch (*Rechtssammlung*, 226, 393) also sees a correspondence in the right of a father to give his daughters in marriage in 21:7–11 and 22:15–16. Otto (“Körperverletzung oder Verletzung von Besitzrechten?” 153–157) argues against the property-law interpretation of the placement of 22:15–16. He notes that the parallel law in Deut 22:28–29 is not to be interpreted in terms of property law and observes that Koschacker’s thesis that marriages were arranged as purchases is outdated. Elsewhere, Otto (“Zur Stellung der Frau,” 35) argues that the law has to do with conflict resolution in the community. He connects 22:15–16 with the assault laws of 21:18–21 on structural grounds (“Körperverletzung oder Verletzung von Besitzrechten”; “Aspects of Legal Reforms,” 182–192). For discussion, see also Hiebert, “Deuteronomy 22,” 219; Osumi, *Kompositionsgeschichte*, 139; Paul, *Studies*, 96; Phillips, “Some Aspects,” 349–351 (*Essays*, 111–113); Rothenbusch, *Rechtssammlung*, 389–390; Schwienhorst-Schönberger, *Bundesbuch*, 212.

47. See chapters 6 and 8 of this study.

48. McKeating (“Sanctions,” 63–64 and *passim*) tries to make sense of why adultery laws are not found in CC (or the curses of Deut 27). For CC, the reason can be ascribed to the topical sequence of LH that is being followed. CC was chiefly concerned with the laws from LH 192 to the end. The family laws between LH 115–192, which include adultery laws, were only of concern as they applied to debt-slave matters. See chapter 4 for a theory of an auxiliary collection of family and related laws based on MAL A, created at the time that CC was written, which served as a source for Deuteronomy.

49. See chapters 6 and 7 on the subsidiary position of the final participial laws in 22:17–19. For the view that 22:15–16 are secondary, see, for example, Daube, *Studies*, 74; Otto, “Körperverletzung,” 157–164; Schwienhorst-Schönberger, *Bundesbuch*, 212–213.

50. One can wonder whether a law like MAL A 48 may have been also influential in conceptualizing the marriage of the daughter: “If a man <wants to give in marriage> [So Roth, *Collections*, 173] the daughter of his debtor who is a pledge in his house, he shall ask her father and give her to a husband. . . .” The law goes on to say that if the father is dead, the permission of a brother is to be sought. The debtor-father has the option to redeem (*paṭārum*) her within one month. Rothenbusch (*Rechtssammlung*, 272) briefly compares this with CC’s law. He also compares the less similar laws MAL C+G 2–3. See also MAL A 39.

51. The exact nature of the relationship of the woman to the creditor is debated. Fleishman (“The Law of Exodus 21:7–11,” 48) notes that her status has been described variously as “a maidservant, slave concubine, wife of slave status, and sale for marriage” (see his bibliography). He himself argues (“The Law of Exodus 21:7–11,” 50–64; “Legal Innovation,” 326) that, though it initially describes the woman as a slave, the law intends that her status is “of a free woman with obligation and privileges.” The evidence for him includes the phrase in v. 8 that the woman, if she is designated for a son, is to be treated like a daughter; the verb עָד, which indicates giving in marriage, not in slavery; and the clause saying that she shall not go free like a male slave (v. 7b), which means that her status is in fact not that of a slave, but something other, a free wife. Westbrook (“Female Slave,” 218–219) argues that the relationship is technically not marriage but concubinage, since marriage is not consistent with slave status (pp. 223–234; cf. Rothenbusch, *Rechtssammlung*, 262). For further discussion, see Jackson, *Wisdom-Laws*, 93–102, 378–379; Kessler, “Die Sklavin als Ehefrau”; Rothenbusch, *Rechtssammlung*, 249–251 and n. 92.

52. So Pressler, “Wives and Daughters,” 157, 163–164. Her arguments have been incorporated and developed here.

53. On the difference between אַמָּה (which may reflect more the wifely status of the female slave) and שִׁפְחָה (which may reflect more the labor-property aspect of the female slave), see Jackson, *Wisdom-Laws*, 96 n. 100; Rothenbusch, *Rechtssammlung*, 25; Schwienhorst-Schönberger, *Bundesbuch*, 303 n. 1. Schwartz (“Literary Study,” 244), however, notes that “no study of the relationship of the two words has produced a convincing distinction between their respective senses, and indeed they appear to be semantically equivalent” (see also Schwartz, תורת הקדושה, 330). For פִּלְגֶשֶׁת “concubine,” see Rothenbusch, *Rechtssammlung*, 261–262; Jackson, *Wisdom-Laws*, 96–97 n. 101.

54. See Jackson, *Wisdom-Laws*, 93–102, 378–379; Rothenbusch, *Rechtssammlung*, 249–251 and n. 92.

55. Some who have brought LH 282 into a discussion of 21:5–6 include Hallo, “Slave Release,” 87; Hurowitz, “His Master,” 47–77; Jackson, “Biblical Laws of Slavery,” 94–95; Jirku, *Kommentar*, 94 (table p. 93); Sprinkle, *Book*, 55; Viberg, *Symbols*, 81–82. Hertz’s fine homiletic sensibilities (“Ancient Semitic Codes,” 215) led him to observe: “the Babylonian Code closes with the case of the slave whose ear is to be cut off for desiring freedom; whereas the Mosaic civil law (Exodus, xxi, 2–6) opens with the case of the slave whose ear is to be bored as a mark of disgrace for refusing to go free when his six years of servitude are at an end. Literally, he that is last in the kingdom of Hammurabi, becomes the first object of care in the Hebrew commonwealth.” LH 18, in which a captured escaped slave refuses to identify his owner, is conceptually related to LH 282.

56. For other legal declarations establishing status, see LH 170–171 (Jackson, *Wisdom-Laws*, 94, compares these with 21:7–11). Jackson (*Wisdom-Laws*, 108) says the speech act in v. 5 points to the preexisting orality of the law. This cannot be sustained in view of the evidence of LH 282 as a source.

57. Though ear piercing is found in MAL A40 and A44 (cf. Viberg, *Symbols*, 82–83), these laws are less similar than the near-perfect inverse correlation of Exodus 21:5–6 and LH 282. Hurowitz (“His Master,” 68–77) has compared an Assyrian ritual that involves driving a peg in the mouth of an image of a slave and using a door axis (*manzazu*; cf. מַנְזָזוּ) as a referent for an analogical incantation (see also Viberg, *Symbols*, 86–87 for nail driving). The conceptual and phenomenological links to 21:5–6 seem too remote in my view. Some believe that CC’s law intended that a ring or tag be inserted in the hole, since a piercing itself would be too small to be a visible marker (Hurowitz, “His Master,” 48–49; Matthews, “Anthropology,” 131; Rothenbusch, *Rechtssammlung*, 241–244 and n. 59; Viberg, *Symbols*, 85–86). Job 40:24–28 describes the insertion of a ring in a sea creature’s nose and asking whether it can be made thus a permanent slave (עֶבֶד עוֹלָם). But Rothenbusch rightly notes that it would be odd that CC would only prescribe the preparation and not the more important functional marker of inserting a ring. He says the act is therefore symbolic, perhaps done before witnesses, with no enduring effect. Hurowitz considers a wide range of purposes, including marking ownership and to prevent the slave’s running away. He notes that the early Rabbis saw it as a punishment (pp. 51–52, 65–67; on pp. 64–65, he considers LH 282 and ear mutilation in Akkadian texts). Several believe that the ear-piercing took place at the owner’s home and symbolized the slave’s attachment to the household (Crüsemann, *Torah*, 156 n. 242; Jackson, *Wisdom-Laws*, 114; Sprinkle, *Book*, 55–56). This is an attractive interpretation, but attachment to the owner could be symbolized even if the act took place at a sanctuary doorway. In this case, the piercing can symbolize in a general way the master’s assertion of dominion over the slave (so Falk, “Exodus xxi 6”). The permanent enslavement of the debt-slave required performance before the deity because the deity otherwise sanctions the release of slaves. Malul (“Relationship”) argues that the piercing of the ear was the scarifying of an organ to symbolize adoption into the master’s family, similar to the purpose of circumcision (see Bernat, “Circumcision,” 97–99 for further discussion of the two performances). For other discussion, see Dandamaev, *Slavery*, 229–234; Greengus, “Selling of Slaves,” 6–7 (with a reference to possible slave tattoo in Isa 44:5); Westbrook, “Slave and Master,” 1666–1667.

58. Greengus (“Legal and Social Institutions,” 473–474) says oaths were sworn at temples in Mesopotamian practice.

59. It should not be missed that the homicide law also uses the nonspecific האלהים, though of the cause of the death in a case in inadvertence: “if *the God* causes (him) to fall into his hand” (21:13). For the sanctuary as the place of adjudication, see chapter 9. For the view that the term האלהים refers to household deities or judges, see chapter 9, nn. 75, 76. Rothenbusch (*Rechtssammlung*, 243–246) says that the procedure for the slave takes place at two venues, the sanctuary (= “the God”) and at the owner’s house (= the doorpost).

60. David (“Manumission,” 66–67 n. 14; he says that only one phrase with the verb “he shall bring” can be original); Schwienhorst-Schönberger, *Bundesbuch*, 307–308, 310; Zakovitch (“ספר הברית,” 62*; he says that the phrase the door is based on Deut 15:17). See also Viberg, *Symbols*, 77–80.

61. Levinson (*Deuteronomy*, 114 and n. 44) refers to LE 37 and notes a variant with *bīt Tišpak* “house of Tishpak” over against *bāb Tišpak* “gate of Tishpak” (cf. Yaron, *Laws*, 64–65). Levinson rejects interpreting the apparent redundancy in 21:6 as a Deuteronomistic addition and says “more likely, the Hebrew text preserves two variant readings alongside one another, corresponding [phenomenologically] to the two separately preserved in the cuneiform text [i.e., LE]; one specifying the presence before the divine (at the altar or sanctuary), the other, the location in the gate.” On the meaning of the rite, Levinson (*Deuteronomy*, 112) says: “The liminal ceremony, involving the transition from contractually limited to permanent slavery, requires a liminal context: the gateway of a temple or sanctuary, which marks the transition point between the divine and the human realms.”

62. For עבד עולם, see 1 Sam 27:12; Job 40:28 (of a captured crocodile; see n. 57; cf. Jackson, *Wisdom-Laws*, 110). The term is perhaps influential in the wording of 2 Sam 7:29; Ezek 37:25. לעולם in Lev 25:46 goes with what follows “forever you may work with them” (this is a reflection of CC’s law) and not with אחריו before it to mean “possession forever” (see Levinson, “Manumission,” 308–310; “Birth,” 620, 622–625).

63. CAT 1.14 ii 21–25; cf. i 53–ii 3, iii 33–37; v 34–38; vi 3–8, 17–22. Cf. Chirichigno, *Debt-Slavery*, 243; Fensham, “New Light,” 161 n. 9; Wyatt, *Religious Texts*, 185, n. 37.

64. For עבד and בן אמה together, see Pss 86:16; 116:16.

65. I now minimize the correlation of v. 4 with a law like LU 4 (Wright, “Laws of Hammurabi as a Source,” 16), even though Wells, “Covenant Code,” 95, stresses the similarity. For a comparison with LU 4, see Rothenbusch, *Rechtssammlung*, 271–272. Westbrook (*Old Babylonian Marriage Law*, 66–68) notes a contradiction of LH 175 with an OB contract that assigns the children of a male slave and free woman union to the slave’s master. He solves the problem by assuming that LH 175 is not an absolute rule.

66. For discussion of this law, see Gruber, “Matrilineal Determination,” 440–441.

67. For the view that v. 2 includes females, see Cassuto, *Exodus*, 266–268; Otto, “False Weights,” 142; Pressler, “Wives and Daughters,” 148, 167; Rothenbusch, *Rechtssammlung*, 250; Sprinkle, *Book*, 51. Jackson (*Wisdom-Laws*, 88–89, 102) argues that v. 2 does not include females.

68. Rothenbusch (*Rechtssammlung*, 249) says that v. 2 refers to any male of the household, not just a son. He also says that it may include a female (p. 250) and that the case in vv. 7–11 applies to a female of a certain type. Crüsemann (*Torah*, 156) notes that male slaves were generally young, even between eight and twelve years old, and refers to 2 Kings 4:1–7; Neh 5:2, 5.

69. So Borger, *Lesestücke*, 119; AHw 702b [bottom]; Metzler, *Tempora*, 82; Kraus, *Edikt*, 178. A Gtn-preterit makes sense in view of LH 118, which continues LH 117

and lists slaves as candidates for debt-servitude. The verb in the protasis there is also *ittandin*, and the householder of LH 117 should be its subject with the slaves (written logographically without indication of Akkadian case) as objects. LH 119 further supports seeing all the *nadānum* verbs in 117–119 as transitive. Those who translate *ittandin* transitively include Richardson, *Laws*, 369; Roth, *Collections*, 103; Rothenbusch, *Rechtssammlung*, 266–267; CAD K 459–460.

70. So Huehnergard, *Key*, 95, who translates: “If financial difficulty has seized a man and he sold his wife, his son, and his daughter, or he has been sold into debt servitude....” He lists *ittandin* as the N-perfect in his *Grammar*, 359, 360. LH 117–118 are included as readings for the chapter in which this grammatical description appears. Support for interpretation as an N-perfect is in the specific context in which *ittandin* appears in LH 117 and 118, where it is used with the adverbial *ana kiššātim* “for debt-servitude.” The clearly transitive verbs *iddin* (G pret.) and *ittadin* (G perf.) in LH 117 and 119 are used, in contrast, with *ana kaspim* “for silver.” A problem with the N-stem is that it requires a change in conceptual subject between the verbs *iddin* and *ittandin* in LH 117 (an objection noted by Driver and Miles, *Babylonian Laws*, 1:207; see also their *Laws*, 2:47, 49 and n. n). Older, unacceptable interpretations include taking the verb as a Gt present (so Driver and Miles, *Babylonian Laws*, 1:207; 2:47, 29; in a separate analysis, they conclude that the debtor is not liable in his own person [“Code of Hammurabi, §§ 117–119,” 75]), rejected by Meek (“A New Interpretation,” 181; *ANET*, 170 n. 90), who takes it as an Ntn-preterit; he translates: “If... he has been bound over to service”). See also chapter 6, n. 68.

71. One may wonder if the intent to include both father and son is part of the reason the verb was changed to the second-person form of קנה “to buy.”

72. Bernadette Brooten raised this question with me in discussions about the text.

73. Otto (*Wandel*, 35–37) sees vv. 2–4ba as the kernel, with v. 4bβ and vv. 5–6 as additions. Phillips (*Essays*, 96) sees vv. 5–6 as an amendment. Rothenbusch (*Rechtssammlung*, 233, 247–248, 265, 271) sees vv. 2–6 as a unity, though v. 2 stands out as a general rule and could have been originally or traditionally independent. Schwienhorst-Schönberger (*Bundesbuch*, 304–306) sees vv. 2–6 as a basic unity with a few Deuteronomistic additions (see nn. 18 and 60). He nonetheless conceptually separates vv. 2–4, the primary case, from vv. 5–6, a contrasting case. Cardellini (“*Sklaven*”-*Gesetze*, 244–251) sees an entirely different development: vv. 3–4ba are original, since in his view they have clearer Near Eastern (Nuzi) connections than the other verses. Verse 6abα (an ancient cultic ceremony) was added to this. Verses 2, 5, and 6bβ, along with v. 4bβ (a redactional tie), were subsequently added. He claims that v. 2 has a uniquely Israelite complexion in the seventh-year motif and the use of the term “free” (חפשי), in addition to its exceptional use of the second-person verb. Verse 5 presupposes the context of v. 2.

74. The verb יצא “to go out” of the woman going free in v. 11, because of its use in the rest of the debt-slave laws (vv. 2, 3, 4, 5, 7), refers clearly to her release as a slave. In LH 172, the cognate verb *wašūm* is used of a woman’s leaving her husband’s house in divorce (see divorce terminology in Holtz, “To Go and Marry,” 243 and pp. 242–251).

75. LH 8, 116, 117–118, 139–140, 196–201, 202–205, 206–208, 209–214, 215–217, 218–220, 221–223, 230–232.

76. Cf. CAD L 34–35, and see the verb *la’ābum*, CAD L 6. Notions of revulsion, even fear, are associated with the latter. For biblical צרעת, see Wright and Jones, “Leprosy.” Westbrook (*Old Babylonian Marriage Law*, 77–78) says that the mention of

this disease may be only an example of a disease that could lead to a potential dissolution in marriage and compares LLI 28.

77. Rothenbusch (*Rechtssammlung*, 259–260) ties vv. 10–11 to v. 9 by interpreting לֹא יִקָּח לוֹ אִם אֲחֵרֶת יִקָּח לוֹ as meaning “if he (the father/creditor) takes another (woman) for him (i.e., his son).” By this interpretation, the father is the one responsible for providing the trio of benefits in v. 10 and who releases the woman in v. 11. This would introduce a case that seems overly specific and nuanced within a limited set of laws on daughter debt-slavery.

78. In addition to Masoretic *qēre*, this reading is found in the LXX, Vulgate, and Targum Onkelos.

79. Those who follow the *kētiv* include Cazelles, *Études*, 48; Cardellini, “*Sklaven*”-*Gesetze*, 253 n. 53; Crüsemann, *Torah*, 158; Osumi, *Kompositionsgeschichte*, 107; Rothenbusch, *Rechtssammlung*, 221, 252–254; Schwienhorst-Schönberger, *Bundesbuch*, 314 n. 43; see the discussion Jackson, *Wisdom Laws*, 85–86. Schenker (“Affranchissement”) argues that the *kētiv* is probably correct because redemption (v. 8) should be possible only if the woman has not yet been designated for anyone. If she is married (cf. v. 9), she is not redeemable. Denial of the right of freeing the woman in such a case is consistent with vv. 5–6, which implicitly precludes dismissal of the male slave if he marries his slave wife. Following the *kētiv* does not undermine the conclusion that CC has borrowed from LH, but it does require a different description of the compositional logic at some points. Wagenaar (“Annulment”) emends the phrase in question to אֲשֶׁר לֹא יָדָעָה “whom he has not yet known” (see n. 96). De Boer (“Some Remarks,” 165, 166) renders the phrase “if she ceases to please her master, who therefore does not keep her. . . .”

80. Fleishman (“The Law of Exodus 21:7–11,” 53) understands the phrase to refer to an “infringement of his legal obligation,” i.e., a contractual break. Chirichigno (*Debt-Slavery*, 249–250) similarly argues that it refers to an objective or technical breaking of the marriage contract prior to consummation (cf. Paul, *Studies*, 54 and n. 7; “Threefold Maintenance,” 48 n. 6). Hoftijzer (“Ex. xxi 8,” 391) translates: “If she does not please her master, who is not taking the decision about her to let her be redeemed, he shall not be able to sell her to a foreign community when he is breaking the relation (owner-slave girl) with her.”

81. So David, “Manumission,” 68 n. 18; Jackson, *Wisdom Laws*, 90–91. For בָּגַד in marriage contexts, sometimes with the sense of sexual impropriety, see Jer 3:8, 11, 20; 9:1; Hos 5:7; Mal 2:10, 11, 14, 15, 16; Prov 23:28; for treacherous and conspiratorial behavior, see Judg 9:23; 1 Sam 14:33; Isa 21:2; 24:16; 33:1; 48:8; Jer 5:11; 12:1, 6; Hos 6:7; Hab 1:13; 2:5; Ps 25:3; 59:6; 73:15; 78:57; 119:158; Prov 2:22; 11:3, 6; 13:2, 15; 21:18; 22:12; 25:19; Lam 1:2 (less clear Job 6:15). Chirichigno (*Debt-Slavery*, 248–250) says that the cases of בָּגַד in Judg 9:23; Lam 1:2; Isa 21:2 and 33:1 refer to “the breaking or violation of human agreements or treaties.” They actually involve much more than this: the betrayal of Abimelech by the people of Shechem is caused by the deity and involves violence (cf. Judg 9:23–25); the allies of Judah do not simply betray her, but also become her enemies (Lam 1:2); the betrayers in the Isaiah passages are also destroyers and are violent (שָׂדֵדִים). On the root בָּגַד, see also Rothenbusch, *Rechtssammlung*, 253 n. 113.

82. Some have thought that the requirement of redemption in v. 8 assumes that she is a virgin, as opposed to v. 11, where there is no redemption necessary because she is a wife (see Chirichigno, *Debt-Slavery*, 247–249, and various responses to the supposed

problem in Carmichael, *Laws of Deuteronomy*, 57–59). This interpretation cannot be sustained because the condition for the woman's release in v. 11 is not her vaginal status, but that she is not being sustained by the creditor-husband as required by v. 10. The theoretical inverse corollary of v. 11 is that if the creditor has been properly providing support, the woman could be freed only by a redemption payment. That is the rule of v. 8.

83. Chirichigno, *Debt-Slavery*, 248; Jackson, *Wisdom-Laws*, 85–86, 90; Pressler, “Wives and Daughters,” 158 n. 26.

84. Other possible reasons are that she does appear to be a virgin (cf. Deut 22:13–14), she is not as beautiful as desired (cf. Gen 29:17), her family is objectionable (cf. Gen 28:8), or something indefinable (cf. Deut 21:15–17). Cf. Jackson, *Wisdom-Laws*, 92–93 n. 80.

85. So Cazelles, *Code*, 48–49; Chirichigno, *Debt-Slavery*, 249; de Boer, “Some Remarks,” 162; Jepsen, *Bundesbuch*, 2; Pressler, “Wives and Daughters,” 158–159 n. 27; Sprinkle, *Book*, 53; Wagenaar, “Annulment,” 227–228. For those who take נכר as an actual foreigner, see Marshall, *Israel*, 115; Phillips, *Essays*, 107; Rothenbusch, *Rechtssammlung*, 254 n. 117; Westbrook, “Female Slave,” 220; (this argument generally views the term in contrast to עברי). Schwienhorst-Schönberger (*Bundesbuch*, 314–316) sees v. 8b as a post-Deuteronomic addition, and given Deuteronomy's interest in foreigners, the “foreign people” in CC's law must mean non-Israelites. For a discussion of the alternatives, see Houtman, *Exodus*, 3:128; Jackson, *Wisdom-Laws*, 93 n. 82.

86. For the Gtn present/durative of *našûm* meaning “permanently bear” in LH 3 and 13, see Abusch, “He Should Continue to Bear.” The phrase *adi baḥat* “as long as she lives” in LH 148 and 178 supports the idea that the Gtn of this root in LH indicates permanence (Abusch, private communication).

87. In the past ענה has generally connected with an ענה root (for these roots, see Stendebach, “*ānâ* I” and Gerstenberger, “*ānâ* II”; *BDB* 773; *HALOT*² 855). It is not clear that it can be connected with the word עת “time,” the adverb עתה “now,” and the adjective עתי “ready,” because their roots are not clear (see Kronholm, “עַתְּ, ‘*ēt*,” 436–437). Levine (“On Exodus 21,10,” 144, 150) has recently argued that the noun in CC means “her opening, vagina” and refers (metonymically) to “sexual intercourse.” Given how husbands might react to hated wives and given that the wife might be unapproachable for physical or psychological reasons, requiring sexual intercourse seems an unlikely legality.

88. As enumerated in *HALOT* 799–800.

89. See *HALOT* 800. These include: (1) Deut 33:28, emended (see BHS), parallel to שכן, and (2) Isa 13:22, in the context of the roots רכץ and שכן in v. 21. The connection to this root is accepted by Stendebach, “*ānâ* I,” 229; von Soden, “Zum hebräischen Wörterbuch,” 159–160.

90. Schwienhorst-Schönberger (*Bundesbuch*, 314 n. 44) notes that most take the term as referring to “habitation” (for this view Crüsemann, *Torah*, 157; see also the works cited in Rothenbusch, *Rechtssammlung*, 260 n. 149). Houtman (*Exodus*, 3:129–130) takes it to refer to sexual intercourse. North (“Flesh,” 206) concludes that the threefold list refers to “her physical satisfaction, her honorable standing in the harem, or her right of parenthood.” Levine (“On Exodus 21,10,” 141) argues against the meaning “domicile,” saying that no ancient translation follows this interpretation; the law assumes that she is living in the husband's household, from which she goes free if *other* needs are not met, hence there is no need to mention housing; and that the existing

biblical Hebrew nouns for habitation require an emendation by prefixing a *mem*. None of these objections is decisive. For other interpretations see the next n.

91. The triadic list of support is found also in LLI 27; LE 32; MAL A 36. See also CAD I 167b-168a. See the discussion in Paul, “Threefold Maintenance Clause”; *Studies*, 56–61. Rothenbusch (*Rechtssammlung*, 222, 260–261), following the context of cuneiform texts (see later), takes עָנָה in the list to mean “oil” (with a question mark). Sprinkle (*Book*, 54) extends this in meaning to “cosmetics.” Oren (“שֶׁאֵרָה כְּסוּתָהּ וְעִנְתָּהּ”), who connects the term with lists in LLI 27 and Hos 2:7, proposes an emendation to עִנְגָה meaning “self-adornment,” referring to oils a woman uses to adorn herself. Jackson (*Wisdom-Laws*, 92) leaves interpretation open, referring to either “residence” or “oil/cosmetics.” Jacob (*Exodus*, 626–628) uses “oil” in the Akkadian lists to interpret עָנָה as “regular provisions.”

92. Those who argue that it refers to three laws include Chirichigno, *Debt-Slavery*, 253; Fleishman, “The Law of Exodus 21:7–11,” 56–57; Houtman, *Exodus*, 3:130; Sprinkle, *Book*, 54, and see the references collected at Rothenbusch, *Rechtssammlung*, 259–260 n. 144. For critique of this view, see Jackson, *Wisdom-Laws*, 117–119; Rothenbusch, *Rechtssammlung*, 259–260. It would be an odd coincidence if it referred to the stipulations in vv. 8, 9, and 10 when v. 10 just listed *three* means of support.

93. For LH 142, see Locher, *Die Ehre*, 270–313.

94. For discussion, see Lafont, *Femmes*, 184–186, 209–214.

95. Paul (“Threefold Maintenance Clause,” 48 n. 3) compares יָדַע to *uddûm* (*idûm* D) in MAL A 43, used of assigning a wife for a son (for the meaning “assign,” see CAD I 32).

96. This indicates, in addition to the considerations brought before, that the verb in v. 8 is not to be emended to יָדַע “know,” i.e., “have intercourse with,” even though LH 155–156 use a similar verb for intercourse in their later context, *lamādum* “to learn.” See Wagenaar’s view n. 79.

97. See Westbrook, “Female Slave,” 236. For other interpretations of משפּט הבנות, see Jackson, *Wisdom-Laws*, 92 n. 74; Niehr, *Herrschen und Richten*, 183; Paul, *Studies*, 55; “Threefold Maintenance Clause,” 48–49 (Paul’s evidence is rejected by Pressler, “Wives and Daughters,” 159) Wagenaar, “Annulment,” 228–229.

98. המשפּט הבנות “according to the law for daughters” may be a cross-reference to its source not entirely different than כאשר צויתך “as I have commanded you” in 23:15, which refers to Exod 13:6; see chapter 12. This external referencing raises the interesting question of whether CC seeks to replace or simply modify its source. See the incisive discussion of the general issue in Stackert, *Rewriting*, 209–225.

99. Crüsemann (*Torah*, 157–158) notes Amos 2:7, which criticizes a father and son having intercourse with the same girl (נַעֲרָה) who is “probably a slave who has been turned into a sort of ‘family whore.’ The law in Ex 21:7ff. was intended to prevent precisely this practice. The female slave should be brought into a single, permanent sexual relationship.”

100. So Otto, *Wandel*, 35–37; he says vv. 7–11 were added to parallel v. 2. Noth (*Exodus*, 178) says that vv. 7–11 come to define the law about the slave wife implied in vv. 3–6.

101. Those who say that CC has family law only in 22:15–16 or in 21:15, 17 are technically not correct (e.g., Niehr, *Rechtsprechung*, 43–46; he says the family law such as it appears in CC belongs to a later stratum). CC manifests several of the interests

of the family law of LH 127–191, but in the context of the debt-slave legislation (see chapter 3). Boecker (*Recht und Gesetz*, 120) uses the apparent lack of family law in CC as a criterion for dating; CC’s laws arose in a time when marriage and family law was taken care of by the *paterfamilias* and therefore was not a matter of law.

102. For CC’s familiarity with LH 278–281, see earlier in this chapter. CC may have also been familiar with LH 15–17, since they are next to LH 14, a stimulus for Exod 21:16 (see chapter 7).

103. Casuistic laws in CC that mention only a male when a woman is conceptually or theoretically included are: 21:12–14 (homicide, both victim and assailant); 21:15, 17 (the rebellious child; but see the table for male and female parents); 21:16 (kidnapping; victim and kidnapper); 21:18–19 (fighting and injury; both victim and assailant are male); 21:20–21 (killing slave; assailant/owner is male, but see the table for the victims); 21:22–25 (miscarriage and talion; only male assailants); 21:26–27 (injury of slave; male-owner assailant, but see table for victims); 21:28–32 (ox goring; male owner, but for victims see the table); 21:33–34 (negligence: pit owner and animal owner are males); 21:35–36 (ox goring ox; both owners are male); 21:37–22:3 (animal theft and burglary; thieves and human victims are males); 22:4–5 (field grazing and burning; male agents); 22:6–8 (deposit; males in all roles); 22:9–12 (animal loss: males in all roles); 22:13–14 (animal rental: males in all roles).

104. For this tendency, see Malul, *Comparative Method*, 144–145. He notes that HtL mentions females and males in several of its laws.

105. The intentional mirroring between 21:2–6 and 7–11 (cf. n. 1) can be associated with the issue of gender inclusiveness.

106. The solution for why CC began with LH 117 that I gave in Wright, “Laws of Hammurabi as a Source,” 47–48 n. 42, must be rejected. Some have suggested implicitly in their structural analyses that the slave laws begin the casuistic laws because of a correlation with 23:10–12, the seventh-year and -day laws (Halbe, *Privilegrecht*, 423–424, 460–461; Rothenbusch, *Rechtssammlung*, 19; and see n. 8). While we cannot claim that this is part of a larger chiasmic structure in CC, these thematic correlations move in the right direction in explaining why CC’s casuistic laws begin with debt-slavery. Rothenbusch (*Rechtssammlung*, 299–300) adds that CC appears to have had a particular interest in the subject of slaves, given their appearance in Exodus 21:2–11, 18–32. Carmichael (*Origins*, 77–87; *Spirit*, 5) explains the placement of the slavery law first by its correlation with the Jacob’s working periods of seven years for Laban (Gen 27:20, 30). His theory of the narrative generation of laws in CC and other collections does not hold up under scrutiny (cf. Levinson, “Carmichael”).

107. Cassuto, *Exodus*, 266; Kaufman, “Structure,” 116; Paul, *Studies*, 52, 107; Sprinkle, *Book*, 62; cf. Chirichigno, *Debt-Slavery*, 186–190; Jackson, *Wisdom-Laws*, 103–105; “Practical Wisdom,” 82. Some connect this specifically with imitation of the Decalogue that begins with slavery in Egypt. Jackson (*Wisdom-Laws*, 103 n. 142) observes that Deut 15:13 openly refers to the Exodus tradition to rationalize its debt-slave law (he compares Jer 34:13–14; see also his pp. 104–105). For the relationship of the Decalogue to CC, see chapter 12.

108. Some argue that 21:2–11 are secondary: Jackson, *Wisdom-Laws*, 106 n. 158, 107–108; Osumi, *Kompositionsgeschichte*, 149–153; Schwienhorst-Schönberger, *Bundesbuch*, 310–311 (he sees the slave law of 21:2–11 being added by the same redactor who added the altar law in 20:24–26*, i.e., his *Gottesrechtsredaktor*). In contrast, Rothenbusch includes them as original (see the summary of his view in chapter 1).

109. For a discussion of this view and literature, see Chirichigno, *Debt-Slavery*, 186–195. Lemche (“Hebrew Slave,” 135–134) has argued, in view of his Canaanite hypothesis, that originally the debt-slave law appeared elsewhere in the collection (perhaps with vv. 26–27) and was moved at a later stage of editing to the beginning of the casuistic laws.

110. Chapter 6 speculates that the lengthening of the period is to be understood as offering some respite, not against LH, but in the context of harsh native Israelite/Judean customs.

111. See Kaufman, “Deuteronomy 15”; “Social Welfare System”; Levinson, “Manumission”; Stackert, *Rewriting*, 113–164—all contra, for example, the direction of dependence argued by Japhet, “Relationship.” For the realization of Deuteronomy 15’s law in practice according to Jeremiah 34, see Chavel, “Let My People Go”; Sarna, “Zedekiah’s Emancipation.”

112. Comparisons of the debt-slave laws with other Near Eastern customs and texts are less precise than those described with LH in this chapter. For Emar 6 16, see chapter 4, n. 10. Otherwise, most attention has been given to Nuzi texts (Mendelsohn, “Slavery in Nuzi”; Paul, *Studies*, 45–61; and compare Eichler, *Indenture at Nuzi*). Chirichigno (*Debt-Slavery*, 92–97, 99–100) offers critique of comparison with Nuzi customs as various points. For other cautions about Nuzi material for the stories of Genesis or law, see Eichler, “Nuzi and the Bible,” 111–119 (and see n. 44 earlier); and generally, Maidman, “The Rise and Fall of the Patriarchal Age.” Traditions from Israelite/Judean culture, which are tied to the larger legal culture and heritage of the ancient Near East, may have been influential in CC’s creative revision of its Akkadian sources. Hence a study of this larger complex of traditions in the ancient Near East can still aid in the analysis of CC.

Chapter 6

1. Those who recognize the similarity of vv. 18–19 and LH 206 include, for example, Cazelles, *Études*, 150–151; Chirichigno, *Debt-Slavery*, 192–193 and n. 1 on p. 193; Fensham, “Transgression and Penalty,” 27–29; “Das Nicht-haftbar-sein,” 22–23; Houtman, *Exodus*, 3:154; Rothenbusch, *Rechtssammlung*, 312–317; Schwienhorst-Schönberger, *Bundesbuch*, 58; Veenker, “Syro-Mesopotamia,” 160. The correlation of vv. 20–21 with LH 208 is generally not recognized. The homicide law of vv. 12(–14) has been compared to LH 207, and Schwienhorst-Schönberger (*Bundesbuch*, 226–227; also pp. 215, 231) has come the closest to the observations of this study in noting that v. 12 and vv. 18–19 are contextually tied to each other (so also Osumi, *Kompositionsgeschichte*, 111). Schwienhorst-Schönberger (*Bundesbuch*, 69 and n. 41 there) further notes that v. 12 and vv. 18–19 have the reverse order of LH 206–207. He correlates this with a reversal of topics in vv. 20–21 over against LH 115–116 (see later in this chapter).

2. When speaking of interactions between persons (assault, deposit, theft, borrowing), CC generally uses אִישׁ “man” as the primary agent and רֵעוֹ “his fellow” as the counterpart (21:14, 18, 35; 22:6, 7, 8, 9, 10, 13, 25). Akkadian idiom generally uses the noun *awīlum* “man” for both, with the agent primarily in the nominative and the counterpart in the accusative or genitive following a preposition. Besides the correlation in 21:18 and LH 206, observed here, a close correlation of idiom is found between Exodus 22:6 and 9 and LH 124: “if a man gives to his fellow silver or goods for safekeeping”

(כִּי יִתֵּן אִישׁ אֶל רֵעֵהוּ כֶּסֶף אוֹ כְּלִים לְשִׁמּוֹר) 22:6; cf. v. 9) and “if an *awīlum* gives to an *awīlum* silver, gold, or anything else for safekeeping” (*šumma awīlum ana awīlim kaspam ḥurāšam u mimma šumšu... ana maššarūtīm iddinma*). See the related question raised at n. 54 in chapter 10.

3. CC may have chosen a verbal formulation for the description of fighting in v. 18 in anticipation of the miscarriage law, which also uses a verb, though a different root (see later on the miscarriage laws).

4. The burglary law in 22:1–2a is similar in that its final location is different than its generative context. See chapter 9.

5. Many see v. 12 as secondary. Some say that this existed with vv. 15–17 as a separate group of laws that was eventually added to a shorter casuistic collection containing vv. 18–19 and other assault laws (Otto, *Wandel*, 31–32; Rothenbusch, *Rechtssammlung*, 226; see chapter 1, which summarizes the views of Otto and Rothenbusch). A few see v. 12 as original and conceptually coordinated with vv. 18–19 (see n. 1). Schwienhorst-Schönberger (*Bundesbuch*, 39–42, 213–234), who is of this view, believes that vv. 15–17 (participial laws) were added to v. 12; these laws were then augmented by vv. 13–14. Most believe that vv. 13–14 are secondary (Crüsemann, *Torah*, 150; Fensham, “Das Nicht-haftbar-sein im Bundesbuch,” 19; Jackson, *Wisdom-Laws*, 120–121, 147, 390; Osumi, *Kompositionsgeschichte*, 122; Otto, *Wandel*, 31–32; Patrick, *Law*, 73). Zakovitch (“ספר הברית,” 62*) says that vv. 13–14 were added to the participial laws of vv. 12, 15–17 to harmonize with homicide laws in Deuteronomy 19 and Numbers 35 and that the “place” refers to a city of refuge, not the altar. Brin (*Studies in Biblical Law*, 32–33) says that not only are vv. 13–14 from a different source than v. 12 but also that v. 14 originally preceded v. 13 before incorporation into CC (for a critique, see Stackert, “Asylum,” 36–37 n. 31; *Rewriting*, 45 n. 34). On the supposed redactional development, see also Anbar, “L’influence deutéronomique.”

6. Compare also Lev 24:17: “if a man strikes any human being he shall be put to death” (אִישׁ כִּי יִכֶּה כָּל נֶפֶשׁ אָדָם מוֹת יוּמָת).

7. Schwienhorst-Schönberger (*Bundesbuch*, 40), for example, says that v. 12 does not seem to have premeditated murder in mind (cf. Otto, *Wandel*, 33). Jackson (*Wisdom-Laws*, 122–123, 131), Barmash (*Homicide*, 147–150), and Schenker (“Analyse,” 210–211) argue against the notion that v. 12, taken by itself, means that unintentional homicide was punishable by death. Verses 13–14 merely unfold the implicit meaning of v. 12. See the terse formulations of Lev 24:21 (and v. 17) and Exod 20:13 // Deut 5:17 (see n. 10). Verse 12 in CC must be considered a similar abbreviated formulation, especially being originally part of a short list of laws formulated in participial form, as I will argue later. It is a mnemonic trigger whose implications an audience and authorities would be able to call to mind and explicate.

8. Compare the C-stem participial formulation in Jer 26:15: “if you kill me....” The ox law in 21:29 uses a C-stem, though a suffixing form, for the animal killing a person.

9. Similar to Gen 9:6: “He who sheds the blood of a man, by man shall his blood be shed.” See Jackson, *Wisdom-Laws*, 148–149, on this and other related participial formulations.

10. As in Leviticus 24:21: “One who strikes a person (fatally) shall be put to death.” Compare also D’s denunciation: “Cursed be he who strikes (fatally) his neighbor in secret” (Deut 27:24).

11. On the issue of intent in the law, see Barmash, *Homicide*, 116–153.

12. Cardascia (“Le caractère volontaire,” 178–179) says that intentional homicide was punished by death, according to the implications of various laws in LH and LE.

13. The interpretation of *ימות יומת* as “he *may be* put to death,” meaning that capital punishment is not necessary (Houtman, *Exodus*, 3:86–87, 97, 138; Jackson, *Wisdom-Laws*, 131–132, 390; Osumi, “Brandmal,” 6), is overly subtle. This reflects reading the law as deriving from practical procedure and its application, rather than as an ideal expression couched in rhetorical language.

14. Compare Exod 18:11; Deut 1:43; 17:13; 18:20; Jer 50:29; Neh 9:10, 16, 29.

15. Cf. 1 Sam 24:12, where it means “to plot.” The noun *צדיה* in Numbers 35:20, 22 refers to mental action. Barmash (*Homicide*, 23; see also p. 117) correctly notes that the verb “stresses the aspect of planning and watching for an opportunity to entrap, rather than the aspect of hiding.” For *ערמה* “deceit,” see Sprinkle, *Book*, 85 n. 2.

16. Schwienhorst-Schönberger (*Bundesbuch*, 40–41) observes that some take the difference in the place of refuge, *מקום* “place” in v. 13 and *מזבה* “altar” in v. 14, as evidence that the verses are compositionally separate. He rejects this as a criterion for redactional development.

17. For a discussion of the institutionalization of asylum and homicide adjudication, see Barmash, *Homicide*, 20–70; Jackson, *Wisdom-Laws*, 131, 141–147. This has to be reexamined in the context of CC’s essential unity (i.e., vv. 13–14 are not an addition and hence not a historical development) and, more important, CC’s academic and ideological character, which indicates that it is not a pure reflection of actual practice (see the end of this chapter).

18. Viberg, *Symbols*, 120–126.

19. Contra Barmash, *Homicide*, 72–74; cf. her “Narrative Quandary,” 15.

20. Jackson (*Wisdom-Laws*, 162) sees a reverse relationship between the narrative and legal texts. As a later addition, in his view, vv. 13–14 may be a reaction to the stories in 1 Kings, “to justify Solomon’s action in relation to Joab (and at the same time to stress that the killing must not take place at the altar itself).”

21. Jeffrey Stackert (“The Divine Avenger in Amos 9:1–4”; paper at the November 2007 SBL meeting, San Diego) argued convincingly that asylum imagery informs this passage. In private communication, he said that he does not see textual dependence between the CC and the Amos passage and therefore could not answer the question about relative chronology. On the relationship of CC to early prophetic works, see chapter 4, n. 39. Other biblical passages that have been viewed as reflecting sanctuary asylum include Pss 15:1; 17:8; 27:5; 57:2; 59:17, 18; 61:5; 144:2; Neh 6:10–13.

22. Alt and others in his wake have classified the participial laws as a form of apodictic law (Alt, “Origins,” 109–110; Gerstenberger “‘Apodiktisches’ Recht,” 16–20 and passim; *Wesen und Herkunft*, 25; Liedke, *Gestalt*, 101–153, esp. 138; Otto, *Wandel*, 63–64; Rothenbusch, *Rechtssammlung*, 21; see also Schulz, *Todesrecht*, 83–84). Though this might be possible upon a strict analysis of the syntax (the participle is generally the subject of a verb phrase that has injunctive force, e.g., “a striker shall be put to death”), the participial laws can be analyzed from a conceptual grammatical point of view as realizations of an underlying casuistic complex, with protasis and apodosis. Several have commented on the similarity of the participial form with casuistic laws and have even classified it as casuistic (Gese, “Beobachtungen zum Stil,” 148–150; Houtman, *Exodus*, 3:84; Jackson, *Wisdom-Laws*, 54–57, 147–148; Liedke, *Gestalt*, 117, 119–120, 142–143; Schotroff, *Fluchspruch*, 107–112; Schwienhorst-Schönberger, *Bundesbuch*, 228; Sonsino, *Motive Clauses*, 1–39; “Forms,” 252–253; Sprinkle, *Book*,

74; Weinfeld, “Origin of Apodictic Law,” 63; cf. Gilmer, *If-You Form*, 18). Lev 24:17 shows the similarity of the participial laws to casuistic laws: *וַיִּשָׁחַד כִּי יָמַת כָּל נֶפֶשׁ אָדָם* “if a man strikes any human mortally, he shall be put to death” (noted by Herrmann, “Das ‘apodiktische Recht,’” 94). Fleishman (“Offences,” 7 n. 1) observes that the laws on child rebellion in vv. 15 and 17 are in content similar to the casuistic law in Lev 20:9 and that the laws in vv. 12, 15–17 have penalties unlike purely apodictic laws. That CC can use the participial form in vv. 12, 15–17 to embody motifs from a casuistic source indicates that it sees a correspondence between the forms (see chapter 7). For further observations on the participial form and genre considerations, see Blenkinsopp, *Wisdom and Law*, 93; Houtman, *Exodus*, 3:82–84; Knierim, “Problem of Ancient Israel’s Prescriptive Legal Traditions,” 9–14; Osumi, *Kompositionsgeschichte*, 22.

23. Some who posit in one way or another a preexisting participial series include Alt, “Origins,” 111–112, 144 (“Ursprünge,” 235–237); Crüsemann, *Torah*, 144–151; Houtman, *Exodus*, 3:84; Otto, *Wandel*, 31–34; “Aspects,” 182–183; cf. Rothenbusch, *Rechtssammlung*, 20. Wagner (*Rechtssätze*, 16–31, esp. 19–21), using the variety of *מִתּוֹת יוֹמָת*-laws in the Bible as a database upon which to draw, posits an original ten-member series with laws on homicide, parent striking, kidnapping, parent cursing, adultery with a fellow’s wife, lying with father’s wife, lying with daughter-in-law, male homosexuality, marrying a woman and her mother, and lying with a beast. See the contrasting view of Schwienhorst-Schönberger in n. 5.

24. On the phrase *מִתּוֹת יוֹמָת* “he shall be put to death,” see Liedke, *Gestalt*, 127–130; Milgrom, *Studies*, 5–8; and works in the previous note. For a discussion of the wording of death sentences, see Bovati, *Justice*, 360–363.

25. The two exceptional verbs in CC’s participial laws (היה D-stem with negative particle and חרם C-stem) are found in Deut 20:16–17: “However, from the towns of these people that Yahweh your God is giving to you as a heritage you shall not let live any life. Rather, you shall exterminate them. . . .” *רַק מְעַרֵי הָעַמִּים הָאֵלֶּה אֲשֶׁר יְהוָה אֱלֹהֶיךָ נָתַן לְךָ בַּחֲלָה (לֹא תַחִיָּה כָּל נֶפֶשׁ מֵכִי הַחֲרָם תַּחֲרִימֵם . . .*

26. Others have compared this list with the participial and other laws (Alt, “Origins,” 120–122; Liedke, *Gestalt*, 102, 116, 143–146; Schottruff, *Fluchspruch*, 120–129; Schulz, *Todesrecht*, 61–71; Sonsino, *Motive Clauses*, 3, 22; Wagner, *Rechtssätze*, 32–39). For the late date of Deut 27:14–26 in the context of the chapter, see Na’aman, “The Law of the Altar,” 154–155.

27. The Decalogue (in Exodus 20 and Deuteronomy 5), though not formulated participially, is relevant here. It is a short list with a broad topical scope. It may have originally consisted of brief commands without elaborations or rationales (cf. Greenberg, “Decalogue Tradition”; Weinfeld, “Decalogue”; cf. Levin, “Der Dekalog am Sinai,” 170–171). For the relationship of the Decalogue to CC, see chapter 12.

28. Gen 26:11; Exod 19:12; 31:14, 15; Lev 20:10; Num 35:16–18, 21.

29. For other cases of the phrase “he shall be put to death” *מִתּוֹת יוֹמָת*, see Gen 2:17; Lev 27:29; Num 15:35; 26:65; Judg 21:5; 1 Sam 14:39, 44.

30. Because the participial source had penalties with the infinitive absolute construction, one may ask about the extent to which this influenced other such constructions in CC (in the casuistic laws 21:20, 28, 36; 22:2, 5, 13; for other examples, see chapter 12, n. 30).

31. A briefly formulated participial source may explain why the homicide law of v. 12 does not include a woman alongside a man. For CC’s tendency toward gender

inclusiveness, see chapter 5. Note the inclusion of father and mother in vv. 15, 17 (but only a male victim in v. 16); see chapter 7.

32. I do not speculate about a *Sitz im Leben* for the native participial source (for discussions, see Gerstenberger “‘Apodiktisches’ Recht,” 16–20; Jackson, *Wisdom-Laws*, 147–149; Otto, *Körperverletzungen*, 140–142; Schwienhorst-Schönberger, *Bundesbuch*, 214–216, 220–225, 228–230; Sonsino, *Motive Clauses*, 1–39). A form-critical estimate of these laws, however, may influence a judgment about the original scope of the presumed participial source. For example, if it grew up out of the context of family law, then certain laws may be imagined as excluded from the original list.

33. Cf. Houtman, *Exodus*, 3:145; Schwienhorst-Schönberger, *Bundesbuch*, 40 (and n. 7 there).

34. Exod 21:2, 7, 18, 20, 22, 26, 28, 33, 35, 37; 22:4, 5, 6, 9, 13, 15.

35. Exod 21:3, 4, 5, 8, 9, 10, 11, 19, 21, 23, 27, 29, 30, 32; 22:2, 3, 6, 7, 11, 12, 14, 16. See Jackson, *Wisdom-Laws*, 347–349; Osumi, *Kompositionsgeschichte*, 94–101, both with tables summarizing the stylistic distribution; see also Chirichigno, *Debt-Slavery*, 196–198; Gevirtz, “West-Semitic Curses”; Levinson and Zahn, “Revelation Regained”; Liedke, *Gestalt*, 31–39; Wee, “Hebrew Syntax”; Wenham, “Legal Forms.” This כִּי/אִם patterning has to be considered part of CC’s native style because it is not part of Akkadian sources, even though a similar stylistic distinction occurs in the Hittite Laws (cf. Hoffner, *Laws*, 12; also MacKenzie, “Formal Aspects,” 34–35). The style appears in other, though later, legal collections of the Bible. See, for example, Lev 1:2, 3, 10, 14; 3:1, 7, 12 (Lev 3 is a continuation of Lev 1); 4:2, 3, 13, 22 (with אֲשֶׁר), 27, 32; Deut 20:10, 11, 12; 21:10, 14; 22:13, 20; 22:23, 25.

36. NAB takes it pronominally: “He, however, who did not hunt a man down...” Jackson (*Wisdom-Laws*, 148–149, 160; cf. 437–438 nn. 42, 47), building on observations by Yaron (*Laws*, 105–106, 109–110) about the correlation of relative formulations in law (*awīlum ša* “a man who”) with conditional formulations (*šumma awīlum* “if a man”), comes close to saying that אֲשֶׁר is a relative pronoun. He compares the parallel formulation between the parent-cursing laws of Exod 21:17 (participle) and Lev 20:9 (relative pronoun יִקְלַל אִישׁ אִישׁ אֲשֶׁר יִקְלַל אִישׁ אִישׁ). Liedke (*Gestalt*, 106, 113, 116, 140–141) sees the relative form (אִישׁ אִישׁ “a person who...”) as an expansion or extension of the basic participial form.

37. אֲשֶׁר occurs in positive formulation in Deut 27:15 alongside the other laws in the series with participles: “Cursed is the man who makes an image or idol...” (... יַעֲשֶׂה פֶסֶל) (אֲרֹר הָאִישׁ אֲשֶׁר יַעֲשֶׂה פֶסֶל). The reason for the suffixing verb in Exodus 21:13 (צִדָּה), instead of a prefixing verb, is its relation to v. 12: “if he *had not plotted*” prior to his striking described in v. 12. The imperfect in v. 14 (כִּי יִזַּד) “if he acts deliberately”) resumes the normal verbal aspect of CC’s casuistic formulation.

38. Stackert (*Rewriting*, 43–47), correcting and building on Otto (“Aspects,” 195). Stackert (pp. 31–57) provides a detailed analysis of the transformation of Exod 21:12–14 in Deut 19. For Deuteronomy’s dependence on CC here, see also Otto, *Deuteronomium*, 253–256. That Deut 19 uses Exod 21:12–14 shows that whole of CC’s homicide law is pre-Deuteronomic. This demonstrates further that the altar law in Exod 20:24–26 is earlier than Deuteronomy, since 21:12–14 depend on that law. The priority of CC’s altar law is also visible in Deuteronomy’s dependence on it for its laws about cultic place (see Levinson, *Deuteronomy*). Hence one cannot argue that Exodus 21:13–14 postdates Deuteronomy’s laws, contra Anbar, “L’influence deutéronomique,” 165–166; Jackson, *Wisdom-Laws*, 121; Zakovitch, “Book of the Covenant,” *59–64. See also Stackert, “Asylum,” 27–28 n. 9 (*Rewriting*, 36–37 n. 10).

39. See Waltke and O'Connor, *Syntax*, §§ 19.1d and 19.3c.

40. Schwienhorst-Schönberger (*Bundesbuch*, 40) says that the use of כִּי in v. 14 may indicate that the writer understood this verse as a case contrasting with what precedes.

41. In other laws, important data are left unsaid but implied by context, such as the death of victims in 21:21 and 22:2a (see Jackson, *Wisdom-Laws*, 177–178).

42. For the connection to the altar laws, see Ruwe, “Zusammenwirken,” 197–198; Schwienhorst-Schönberger, *Bundesbuch*, 41–42, 296–297; Stackert, *Rewriting*, 36–37.

43. “I will place” (21:13); מִזְבְּחִי “my altar” (21:14); compare “you make for me” תַּעֲשֶׂה לִּי “you make for me”; אֲבֹרָא אֵלֶיךָ וּבִרְכַתִּיךָ “I will come to you and I will bless you” (20:24); תַּעֲשֶׂה לִּי “you make for me” (20:25); מִזְבְּחִי “my altar” (20:26).

44. “I will appoint for you” (21:13); תִּקְחֵנּוּ “you shall take him” (21:14); compare “you make for me” תַּעֲשֶׂה לִּי “you make for me”; וּזְבַחַת “you shall offer”; עֲלִיתִיךָ “your burnt offerings”; “your well-being offerings” יְשֻׁמֶיךָ “your well-being offerings”; צֹאֲנֶיךָ “your flock animals”; בָּקָרֶיךָ “your cattle”; “I will come to you” אֲבֹרָא אֵלֶיךָ “I will come to you”; וּבִרְכַתִּיךָ “I will bless you” (20:24); תַּעֲשֶׂה לִּי “you make for me”; וְתִחַלְלֶנּוּ “you lift up your chisel”; חָרַבְךָ הַנֶּפֶת “you profane it” (20:25); לֹא תֵעָלֶה “do not go up”; עֲרוֹתֶיךָ “your nakedness” (20:26).

45. Exod 21:13; 20:24. CC’s “place” is not a larger area such as a town or city, contra Barmash, *Homicide*, 76–78. For arguments against Barmash’s interpretation, see Jackson, “Homicide,” 369–370; Stackert, *Rewriting*, 34–38.

46. מִזְבְּחִי “my altar” (21:14); compare מִזְבְּחֵי אֲדָמָה “altars of earth” (20:24); and מִזְבֵּחַ אֲבֹנִים “altar of stones” (20:25).

47. Verses 18–19 provide a counter case to v. 12. Verse 18 uses the verb הִכָּה “strike” for the assault with the result וְלֹא יָמוּת (“and he does not die”). This contrasts with v. 12, which says “one who strikes (מַכֶּה) a person and he dies (וּמָת). . . .” The phrase הַמַּכֶּה וְנִקְחָה “the striker is absolved” in v. 19 also complements contrastively מוֹת יִזְמַת “he shall be put to death” in v. 12. The content of v. 12 must be present in mind for vv. 18–19 to make sense.

48. It is not certain that the term אֲגָרִי means “fist”; see Houtman, *Exodus*, 3:154; Fensham, “Transgression and Penalty,” 27. Other interpretations (noted by Houtman) include clod of earth, club, broom, shovel, or rake (note the verb גָּרַף in Judg 5:21, meaning, perhaps, “sweep, wash away”; so Arabic جرف, which is also the root for nouns meaning “rake” or “trowel”). Houtman thinks that a tool or object may be intended, and Schmitt (“Ex 21, 18 f,” 14–15) suggests at least an iron implement. If אֲגָרִי is an object, then intentionality becomes more evident, though Fensham would see assault even with an instrument as unintentional. Childs (*Exodus*, 448; cf. Sprinkle, *Book*, 89) compares the nominal mishqal in אֲצִבֵּעַ “finger” and אֲזִרְעֵי “arm” to support the interpretation of אֲגָרִי as a body part. For Sprinkle, even the use of a hand shows intentionality here. In contrast, Rothenbusch (*Rechtssammlung*, 275 n. 208) and Jackson (*Wisdom-Laws*, 178–180) deny that the “stone” indicates intention. The Samaritan lacks the phrase “with a stone or a fist,” as well as “with a rod,” in v. 20. It also has the verb מוֹת “to die” instead of נָקַם in vv. 20–21. The Samaritan appears to be interpretive.

49. This is similar to the phrase “the hand sins” (*kessar wastai*) in HtL 3–4, used to show inadvertence (cf. Hoffner, “On Homicide in Hittite Law,” 297). Hammurabi’s laws speak of acts of the god: “if a man hires an ox and the god strike it and it dies” (*šumma awīlum iḡurma ilum imḥassuma imtūt*; LH 249); “if in a pen a divine stroke occurs” (*šumma ina tarbašim lipit ilim ittabšī*; LH 266). Both of these laws were known to and influential in CC (22:9–10, 13–14; see chapter 10; cf. Fensham, “Role,” 264–265; Jackson, *Wisdom-Laws*, 123 and n. 18). Jackson (*Wisdom-Laws*, 123–125, 159–160) suggests that the clause in v. 13 be translated “or God directed his hand” (cf. 21:15,

16, 17; 22:4), so that the law refers to three modalities: accidental homicide (the act of God), spontaneous unpremeditated homicide (did not plan), and intentional homicide. It is not clear if CC intends these fine distinctions; LH does not recognize them. The main categories of homicide or injury in both law collections are: inadvertent (cf. v. 13; LH 206–207), negligent (vv. 28–32; LH 250–252), and intentional (v. 14; and, e.g., LH 196–201, 202–205), combined with the directness or indirectness of the assault. See the later discussion on the talion laws.

50. Scholars are split on the matter. For example, Crüsemann (*Torah*, 160) says vv. 18–19 are concerned with intentional injury, whereas Rothenbusch (*Rechtssammlung*, 227, 298) says they involve inadvertence. See also n. 48.

51. For these laws and the issue of shame, see Roth, “Mesopotamian Legal Traditions,” 24–37.

52. For שבת, see Schwienhorst-Schönberger, *Bundesbuch*, 57. It does not mean “in his place,” as suggested by HtL 10 (cf. Fensham, “Exodus XXI 18–19,” 335). For discussion of whether the root is שׁב or שבת, see Fensham, “Exodus XXI 18–19,” 334; Houtman, *Exodus*, 3:155; Jackson, *Wisdom-Laws*, 181 n. 44.

53. Jackson (“Exodus 21:18–19”) believes that the overall form of vv. 18–19 is anomalous in the context of Near Eastern casuistic law. The verses have a split-protasis form, where a main condition is introduced (v. 19) followed by a conditional clause that refers to a further specific circumstance (v. 18). The problem with vv. 18–19 is that split protasis formulations usually have two secondary cases: “If (major condition), and if (minor condition) or if (alternative minor condition)” (compare LH 8). This leads Jackson to emend vv. 18–19 so that they describe two cases (see his p. 805; also *Wisdom-Laws*, 177). The lack of a normal split protasis in vv. 18–19 may be explained by the source. LH 206–208 actually entail a split protasis form, with *three* subconditions. LH 207–208 are clear subcases to 206, and each begins with *šumma* “if.” In the first law of the series, LH 206 also contains a subcondition in the phrase *simmam ištakanšu* “he injures him.” Though this lacks *šumma*, it is a subcondition, set off by the appearance of a perfect form in the preceding main conditional clause: *šumma awilum awilam ina risbatim intaḥašma* “if a man strikes a(nother) man in a fight.” The perfect verb normally marks the end of the description of operative legal conditions. In other words, LH 206 could have been written *šumma awilum awilam ina risbatim intaḥaš šumma simmam ištakanšu*... “if a man strikes a(nother) man in a fight—if he injures him. . . .” CC’s split protasis reflects this conceptual structure. The reason that CC does not have a second (or third) alternative minor protasis is because the homicide law has been moved to the beginning of the assault laws. This reordering of the text led CC to write vv. 20–21 (= LH 208) with an independent casuistic form.

54. For the meaning of נקה, see Schwienhorst-Schönberger, *Bundesbuch*, 55.

55. As Jackson (*Wisdom-Laws*, 174) says: “The phrase therefore becomes understandable only on the supposition that the victim of the assault, though initially he made a sufficient recovery to walk abroad independently, subsequently dies.”

56. See Jackson, *Wisdom-Laws*, 173, who keenly poses the question about what happens in the case of a permanent injury (cf. Jackson, “Exodus 21:18–19,” 799).

57. So Schwienhorst-Schönberger, *Bundesbuch*, 55–56; it is also the time when liability for blood guilt ends (p. 54)

58. Hoffner, *Laws*, 23–24. A later version of the law (HtL IX) specifies the payment due the physician.

59. Hoffner (*Laws*, 24) translates “incapacitates him.”

60. The Hittite law differs from CC and LH 206 in not contextualizing the injury in a fight and also requiring a payment (six shekels) to the victim, beyond payment for therapy and lost wages.

61. In the Old Babylonian period, the commoner (*muškēnum*) was probably free but tied by obligations to the palace. As a free person, he could own movable property as well as slaves. See Finkelstein, “Ammiṣaduqa’s Edict,” 96–99; *Ox*, 33; Klíma, “Im ewigen Banne der *muškēnum*-Problematic?”; Kraus, *Edikt*, 144–155; see also Dandamaev, *Slavery*, 643–646. In the later periods, the term becomes a general term for the poor. Buccellati (“Note,” 98) says that the *muškēnum* is one “who has been provided with the means to go beyond subsistence level through a mechanism that yields a revenue for the king at the same time that it provides the beginning of a capital for the individual himself.”

62. CC also omits the cases of the commoner and slave in its miscarriage law, as found in LH 211–212, 213–214). See later for the reason.

63. For disciplining a slave by beating in wisdom literature, see Prov 29:19 (and see van der Ploeg, “Slavery,” 76).

64. The second law begins with the unusual dual conjunction אֵן אֵן “but if.” See Schwienhorst-Schönberger, *Bundesbuch*, 63.

65. Those who have compared 21:20–21 to LH 115–116 include Cardellini, *Sklaven-Gesetze*, 344; Jackson, *Wisdom Laws*, 251–252; “Slavery,” 96; Rothenbusch, *Rechtssammlung*, 317–319; Schwienhorst-Schönberger, *Bundesbuch*, 68–69; Westbrook, *Studies*, 90–91, 100. Rothenbusch (p. 319) agrees with Jepsen (*Untersuchungen*, 59–60), that the dissimilarities between LH 116 and Exod 21:20–21 are too great to speak of dependence.

66. Schwienhorst-Schönberger, *Bundesbuch*, 68–70, 312.

67. The poetic counterpart of Hebrew מַחַשׁ is מַחַשׁ; see Held, “*maḥaš*,” 169, 170–171; various examples include Hab 3:13; Ps 18:38–39 (// 2 Sam 22:39); 68:22; 110:6.

68. This may have relevance for the grammatical analysis of the verb *ittandin* in LH 117; see chapter 5, nn. 69, 70.

69. My translations of the verb נָקַם in the two verses, with different subjects, reflect the different verbal stems. The N-stem as found in v. 20 only takes the victim as the subject elsewhere in the Bible (Judg 15:7; 16:28; 1 Sam 14:24; 18:25; Isa 1:24; Jer 15:15; 46:10; 50:15; Ezek 25:12, 15; Esther 8:13). I follow this for the subject in v. 20. The G-passive (vocalized in the MT as a C-passive) as found in v. 21 may take either the victim or the assailant as a subject (cf. Gen 4:15, 24; the reason for this apparent inconsistency is that the victim or assailant may be the object of the G-active form and thus be realized as the subject of the passive; cf. Lev 19:18; Josh 10:13; 1 Sam 24:12; but see Lipinski, “נָקַם *nāqam*,” 1–2 on Josh 10:13). The different verb stem may be a way of shifting the verbal subject in v. 21.

70. Schwienhorst-Schönberger (*Bundesbuch*, 67) wants to read v. 21 so that it agrees more with LH 115. Thus he takes the verb עָמַד to mean that the slave can physically stand and is well enough to do his/her normal work. He also takes the phrase “because he is his silver” (כִּי כֶסֶף הוּא) to agree conceptually with the last phrase of LH 116 (*ina mimma šumšu mala iddinu itelli*, “he shall forfeit as much as he gave as a loan”) to mean “denn dies (d h. diese Angelegenheit, nämlich, daß der Sklave frühzeitig stirbt) ist sein Geld (,das ihm dadurch verloren geht).” He adds that one may translate it freely as “denn um sein Geld geht es hierbei.” Rothenbusch (*Rechtssammlung*, 319) resists correlating the forfeiture clause in LH 116 with the biblical phrase. Schwienhorst-Schönberger

adds (p. 78; cf. pp. 66–70) that the goal of v. 21 is to protect the creditor from unjustified complaints from the slave's family, should he die a natural death. This interpretation strains the contextual flow of vv. 20–21 and cannot be accepted, given the consideration in n. 71, next.

71. The meaning of the phrase *עמד יום או יומים* יעמד, literally, “and he *stands* for a day or two,” is not entirely clear. A number of researchers take it quite literally to mean “if he is on his feet/is able to stand in a day or two” (Chirichigno, *Debt-Slavery*, 173–177; Rothenbusch, *Rechtssammlung*, 222, 298–299 n. 319; Schwienhorst-Schönberger, *Bundesbuch*, 64–66; see the previous note). This interpretation is suggested mainly by the case described in vv. 18–19, where the victim who takes to his bed gets up, with the result that the assailant is exonerated should the victim consequently die. Both have verbs of rising or standing (*קום* and *עמד*), and the clause about the patient's rising or standing is followed by a clause of exoneration. This interpretation resolves the tension between v. 20 and 21: the assailant does not get off when the slave remains incapacitated and then dies. He only is absolved when the slave physically stands. Yet several considerations indicate that the phrase in v. 21 refers only to the slave's remaining alive, not standing: (1) The phrase *ומת תחת ידו* “and he dies under his hand” in v. 20 must mean immediate or relatively immediate death. The distinctive contrasting datum in v. 21 is the reference to time, “a day or two,” not also to what may be indicated by the verb *עמד*. (2) The verb *עמד* can have a meaning of “to remain, endure,” and in connection with time periods described in terms of days. In Jer 32:14, documents are to be put in an earthenware jar so that they “will *last* many days” *יעמדו ימים רבים*. In Deut 10:10, Moses says, “I *remained* on the mountain like the first days, that is, forty days” *עמדתי בהר כימים הראשונים ארבעים יום*. For *עמד* meaning “to remain, endure,” see also Gen 45:9; Isa 66:22; Ezek 22:14; Ps 19:10; 102:27; 111:3, 10; 112:3, 9. (3) The phrase *הוא כי כסף הוא* “because he is his silver” does not make sense in this interpretation. If the slave were able to stand, then the situation would be like v. 19, which deals with a free person. Therefore, the reason for exoneration should have nothing to do with slave ownership, but with the break in the chain of definitive causality between beating and death. (The death of the slave after his “enduring a day or two” must be assumed for the law to make sense when it says that there is no vengeance, just as in the case of v. 19; Schwienhorst-Schönberger and Chirichigno rightly say that he dies; Rothenbusch, *Rechtssammlung*, 302, says that he lives.) (4) The requirement that the slave *stand* within *two days* does not make sense against vv. 18–19. This places more stringency on the slave's situation than that of a free person in v. 19, which prescribes no time limit. (5) This interpretation further suggests problematically that there is some liability when the slave stays incapacitated for three or more days and then stands. The law would thus not cleanly define the boundary and nature of liability. See further Jackson, *Wisdom-Laws*, 242 n. 8.

72. Cardellini, *Sklaven-Gesetze*, 259, 262 (note the table), 265–266; Chirichigno, *Debt-Slavery*, 146, 178.

73. Some observe that in the Near East, owners do not have the right to kill their own chattel-slaves (Heinisch, “Sklavenrecht,” 206; Neumann, “Bemerkungen zur Freilassung von Sklaven,” 224–225).

74. The most reasonable interpretation of this phrase is to take the *הוא* pronoun to refer to the slave and the suffix pronoun on *כסף* to refer to the owner. See Schwienhorst-Schönberger's unique interpretation of the phrase in n. 70. Westbrook (*Studies*, 89–100) takes the phrase to mean “it (i.e., the revenge) is his money (i.e., the debt).” Jackson

(*Wisdom-Laws*, 244–245) says the phrase is an addition by a late hand who misinterpreted vv. 20–21 as referring to chattel slaves.

75. For various views about what slaves are intended here and in vv. 26–27 and 32, see n. 78.

76. Schwienhorst-Schönberger, *Bundesbuch*, 75.

77. Jackson has responded to my argument (*Wisdom-Laws*, 240–241, n. 4; see Wright, “Compositional Logic,” 135). He believes that it is easier to consider the slave in v. 32 just a chattel-slave.

78. Houtman (*Exodus*, 3:156, 181; *Bundesbuch*, 175) allows for both types of slaves in vv. 20–21, 26–27, 32. Jackson (*Wisdom-Laws*, 248 n. 46) says that the laws would not include both debt- and chattel-slaves together, given the wide differences in their general phenomenology. This is true if the laws reflect real practice, Jackson’s general view. But if the laws are idealistic and academic, social reality need not be reflected. Most conclude that vv. 20–21 and 26–27 concern debt-slaves and that v. 32 concerns chattel-slaves (Cardellini, *Sklaven-Gesetze*, 258–268, 343–347; Jackson, *Wisdom-Laws*, 168–169, 249, cf. 244–245; Rothenbusch, *Rechtssammlung*, 298, 302 n. 331, 323–324, 334; Schwienhorst-Schönberger, *Bundesbuch*, 62, 66–67, 68–70, 74–77). Chirichigno (*Debt-Slavery*, 145–185, with a critique of Cardellini on pp. 178–182) says that the slaves in vv. 20–21, 26–27, 32 are chattel-slaves. One of Chirichigno’s objections (p. 181) to Cardellini’s view is its inability to explain why debt-slaves would be discussed in different ways in two different sections of CC (i.e., 21:2–7 and then 21:20–21, 26–27, 32). Rothenbusch explains the difference between the description of slaves in v. 32 versus vv. 20–21, 26–27 by concluding that vv. 28–32 and vv. 18–27 come from independent traditions. The source analysis of this study makes this explanation impossible. The apparent difference in slaves v. 32 versus vv. 20–21, 26–27 is due to CC’s making fewer modifications to the source law of v. 32 (LH 252; see chapter 8).

79. Deut 5:15; 15:15; 16:12; 24:18; 24:22; cf. 6:12, 21; 8:14; 13:6, 11, and see chapter 13, n. 19.

80. Given these several considerations, one cannot simply claim that CC’s laws are an ethical improvement over Mesopotamian law and custom. For example, Paul (*Studies*, 69) says of vv. 20–21: “This law is without precedent in all other ancient Near Eastern collections, where the case of a slave being killed by his master is never mentioned. The biblical law introduces a new evaluation of the intrinsic worth of a slave, i.e., he is considered a human being in his own right. There is a concern here for the interest and protection of the slave as a person; hence, he is not treated merely as chattel of value solely to his master.” Jackson (*Wisdom-Laws*, 252–253) warns against such interpretations of CC’s laws.

81. For this meaning for the root, see the study by Chirichigno, *Debt-Slavery*, 148–169. For other analyses, see Bovati, *Justice*, 55–59; Fensham, “Nicht-haftbar-sein,” 24–25; Otto, *Körperverletzungen*, 126–127 n. 1; Peels, *Vengeance of God* (summary 265–267); Schwienhorst-Schönberger, *Bundesbuch*, 70–74 (and 60, 66); Sprinkle, *Book*, 100–101. The vast majority of cases of the root נָקַח clearly refer to the death of the person suffering vengeance. Proverbs warns an individual about committing adultery, since the aggrieved husband will not accept a ransom or bribe but “will not spare on the day of vengeance” (6:32–35). Elisha is told to anoint Jehu and tell him that he is to destroy Ahab’s dynasty. Thus the deity “will take vengeance for the blood of my servants the prophets and the blood of all the servants of Yahweh from the hand

of Jezebel” (2 Kings 9:7). Though Cain is only exiled for killing his brother, “anyone who kills Cain will suffer vengeance sevenfold” (Gen 4:15), probably referring to executing seven members of the assailant’s household, similar to the execution of seven descendants of Saul for their ancestor’s killing treaty-protected Gibeonites (2 Sam 21). Lamech poetically glories that vengeance on one who kills him will be eleven times Cain’s tally (4:24). Samson takes violent and lethal revenge on the Philistines for killing his former wife and father-in-law (Judg 15:6–8) or for their blinding (and imprisoning) him (16:28). The murder of Ish-bosheth was presumably to provide David vengeance against the former king Saul (2 Sam 4:8). The root נקם is used in other personal, military, theological, national, international, and even eschatological contexts referring to violent and lethal reprisal (Lev 26:25; Num 31:2–3; Deut 32:35, 41, 43; Josh 10:13; Judg 11:36; 1 Sam 14:24; 18:25; 24:13; 2 Sam 22:48 = Ps 18:48; Isa 1:24; 34:8; 47:3; 59:7; 61:2; 63:4; Jer 5:9, 29; 9:8; 11:20; 46:10; 50:15, 28; 51:6, 11, 36; Ezek 24:8; 25:12, 14, 15, 17; Mic 5:14; Nah 1:2; Ps 58:11; 79:10; 94:1; 99:8; 149:7). While some instances of the verb lack details about the lethality involved (Lev 19:18 [but cf. Nah 1:2]; Jer 15:15; 20:10, 12; Ps 8:3; 44:17; Lam 3:60), none of the attestations clearly means just “punish” and none refers to a monetary penalty.

82. Compare Houtman, *Exodus*, 3:157–159.

83. So Schwienhorst-Schönberger, *Bundesbuch*, 71–74; Westbrook, “Biblical and Cuneiform Law,” 91, 99. Rothenbusch (*Rechtssammlung*, 297, 319) and Jackson (*Wisdom-Laws*, 246–247) reject this interpretation. Houtman (“Eine schwangere Frau,” 389, 392) argues for vicarious talion in 21:23–25 (i.e., the wife of the one causing the injury is to suffer the punishment; see later on miscarriage).

84. Lev 19:18aα (לא תקם ולא תטר את בני עמך) would appear to give primary support to this thesis. Westbrook (*Studies*, 98–99) after arguing for a redefinition of the verb נטר translates it: “Do not take vicarious revenge; do not slaughter the sons of your people.” Milgrom (*Leviticus 17–22*, 1651) rejects this because “it is incongruous with the sensitively nuanced ethical prescriptions that dominate chap. 19. Furthermore, it is difficult to conceive that the priestly legist would say that one of the rungs of the ladder of holiness is refraining from embarking on a murderous rampage.” Milgrom (p. 1594) translates vv. 17–18: “You shall not hate your brother (Israelite) in your heart. Reprove your fellow openly so that you will not bear punishment because of him. Rather, you shall not take revenge or nurse a grudge against members of your people. You shall love your fellow as yourself: I YHWH (have spoken).” The context of the verses is hatred, not vicarious vengeance.

85. So also the view of Finkelstein, *Ox*, 32–35. Yaron (“Evolution,” 83) notes that the notion of individual responsibility is not new with the Bible and refers to a passage in the edict of Telipinu: “So now, if some prince sins, he shall pay with (his) own head while you shall not commit evil against his house and his son” (Proclamation of Telipinu §32; translation from *COS* 1:197).

86. Rothenbusch (*Rechtssammlung*, 297 n. 315), in arguing against an interpretation of vicarious punishment, notes that if נקם referred specifically to vicarious punishment, v. 21 would not make sense because it would seem to allow for a penalty other than vicarious punishment to be imposed.

87. Jackson (*Wisdom-Laws*, 248) says that נקם refers to vengeance but that a monetary ransom could be paid according to his interpretation of capital punishment requirements in CC. But he says this option obtains even in cases that prescribe capital punishment explicitly.

88. Presumably chattel-slaves would be foreigners and would have been acquired by purchase on the slave market, capture in war, kidnapping, sale of minors, or the sale of oneself apart from the context of debt-slavery. Sale and capture would be legal mechanisms that would allow permanent enslavement. Thus there is no contradiction between the treatment of the (foreign) immigrant and foreign chattel-slaves. For CC, their etiologies may determine and justify their distinct treatment despite their legal conflation otherwise. See Houtman, *Exodus*, 3:112–113; Matthews, “Anthropology of Slavery,” 121–124; Marshall, *Israel*, 115; Mendelsohn, “Slavery,” 1–33; van der Ploeg, “Slavery,” 78; Pressler, “Wives and Daughters,” 150–151.

89. Cf. Rothenbusch, *Rechtssammlung*, 298. It is not clear if CC contemplates a system of legal administration that would take responsibility for prosecuting the punishment. The “you” in the phrase “you shall take him from the altar to die” in the homicide law (v. 14) does not necessarily refer to such an administrative body. Neither does the “you” in the talion law (v. 23b; see the discussion later). These second-person forms refer to the audience of the law collection in general, as do the second-person forms in the apodictic laws.

90. On intentionality in the laws, see Rothenbusch, *Rechtssammlung*, 227–232; Schenker, “Die Analyse der Intentionalität im Bundesbuch”; *Versöhnung und Widerstand*.

91. Time of death, in a different sense, is a criterion for judging culpability in the case of killing a burglar (22:1–2a).

92. See the discussion of the root in *CAD A/2* 422–424.

93. Rofé (“Family and Sex,” 134–135) says that “this law [21:22–25] constitutes an alien element in its present context . . . where it stands between two similarly-formulated injunctions concerning the beating of slaves (21:20–21; 21:26–27).” The evidence of CC’s source now solves the problem that troubled Rofé.

94. Those who recognize the similarity of the texts include Cazelles, *Études*, 152; Chirichigno, *Debt-Slavery*, 193; Jackson, *Wisdom-Laws*, 209 n. 1; Paul, *Studies*, 70–73; Rothenbusch, *Rechtssammlung*, 312–317; Schwienhorst-Schönberger, *Bundesbuch*, 96–98. For comparative discussion, see Lafont, *Femmes*, 345–382.

95. See originally Jackson, “Problem”; updated in his recent *Wisdom-Laws*, 209–239 (with a similar view, see also Cardascia, “La place du talion dans l’histoire du droit pénal,” 171; House, “Miscarriage or Premature Birth”; Weingreen, “Concepts of Retaliation”). For a critique of Jackson’s original paper, see Loewenstamm, “Exodus XXI 22–25.” Schwienhorst-Schönberger (*Bundesbuch*, 94–96; “Auge um Auge,” 164) notes that early birth where the baby survived in antiquity would have to be close to term and therefore doubts that this was punishable. He also notes that Near Eastern laws are generally concerned with the death of the baby (see later). For another argument against the interpretation of premature birth, see Sprinkle, “Interpretation,” 248–251. The Greek’s rendering is somewhat similar to Jackson’s in that it understands תִּסֵּא to refer to the child’s state of development. In v. 22, “there is no תִּסֵּא” is interpreted “if her child (is) amorphous” (τὸ παιδίον ἀντῆς μὴ ἐξεικονισμένον), whereas in v. 23, “if there is תִּסֵּא” is taken to mean “but if it is completely formed” (ἐὰν δὲ ἐξεικονισμένον ᾖ; see Isser, “Two Traditions”). The latter verse refers to the stillbirth of a full-term child; the mother has not died. Targum Onkelos and Pseudo-Jonathan translate תִּסֵּא with “death” (מָוֵת), and Neofiti translates it as “accident” (לְ[ח]וֹלָה). The Vulgate reflects a meaning consistent with LH.

96. Other Near Eastern miscarriage laws support this understanding of the basic laws of CC. These speak of the death of the child and then the mother. For comparison, see Otto, *Körperverletzungen*, 25–117; “Town,” 7–14; Rothenbusch, *Rechtssammlung*, 303–307. LLI d-e read: “[I]f... [strikes] a ma[n’s] daughter and causes [her to lose] her fetu[s], he [shall weigh out] 1/2 mana [of silver]. If [she] dies, that man shall [be killed].” (For the text with some variations in reading, see Roth, *Collections*, 26–27; Rothenbusch, *Rechtssammlung*, 303 [following Otto, *Körperverletzungen*, 46–50].) The case of a slave woman follows in law f, but is abbreviated, dealing only with the child’s death. The first half of MAL A 50 reads: “[If a man strikes [the wife of a man and causes] her [to lose her fetus... the wif]e of a man [... as he treated her they shall treat him. For her fetus he shall provide life recompense. If that woman dies, they shall kill the man. For her fetus he shall provide life recompense.” (The last half of the law treats a case where the husband has no other son. For the text of the relevant MAL laws, see Roth, *Collections*, 173–174; Rothenbusch, *Rechtssammlung*, 305–306.) MAL A 53 deals with self-abortion broken down into two similar cases: “If a woman causes her own abortion... they shall impale her on wood spikes and not bury her; if she dies when causing her abortion, they shall not bury her...” Other miscarriage laws in MAL A (i.e., 21, 51–52) and also HtL 17–18 deal only with the loss of the fetus. These correspond to the first case found in Hammurabi’s and CC’s laws. SLEx 1–2 deal with different degrees of contact, which relate to intention: “If he jostles the daughter of a man and causes her to miscarry her fetus, he shall weigh and deliver 10 shekels of silver. If he strikes the daughter of a man and causes her to miscarry her fetus, he shall weigh and deliver 20 shekels of silver” (Roth’s translation, *Collections*, 43; cf. Rothenbusch, *Rechtssammlung*, 304). It is doubtful that *מסן* should be taken to mean “intent.”

97. Westbrook “Lex Talionis”; *Studies* 69–70, 80. Berlin (“Meaning of *pll*”) essentially accepts Westbrook’s interpretation, which influences her interpretation of *בפללים*, and Lafont (“Ancient Near Eastern Laws,” 114; cf. *Femmes*, 375) says “Westbrook’s theory is very convincing.” For critique of Westbrook, see Jackson, *Wisdom-Laws*, 214, 224–225, 228–229; Rothenbusch, *Rechtssammlung*, 292–293, 294; Schwienhorst-Schönberger, *Bundesbuch*, 107–109 (but note the nuance on p. 126); Sprinkle, “Interpretation,” 244–246.

98. The term also appears in Sirach 31:22; 34:22; 38:18; 41:9. These instances can be rendered “catastrophic/unexpected death.”

99. Houtman, *Exodus*, 3:168 (“fatal accident”); Osumi, “Brandmal,” 15; *Kompositionsgeschichte*, 113–114 (death of the mother); Otto, *Körperverletzungen*, 119 (“Todesfolge”). See n 100.

100. Because of the context of vv. 24–25, a number of scholars broaden the meaning of *מסן* to mean serious injury. Schwienhorst-Schönberger (*Bundesbuch*, 89–93, 117–119) says that it is a broad type of calamity (“Unglück”) that can include death but is not limited to this. Rothenbusch (*Rechtssammlung*, 295, cf. 286–295) says that *מסן* either refers to just the death of the woman (in which case the core of the original miscarriage law would be vv. 22–23a, whose final apodosis was later replaced with the talion formula in v. 23b) or more broadly to a serious injury (“schwerer Schaden,” p. 222) up to and including death (in this case, the whole of v. 23 is secondary, along with the talion law, on the assumption that an original law, following Near Eastern parallels, would have described only the death of the woman, not her injury). Differently, Sprinkle (*Book*, 92–93; “Interpretation,” 245–246) argues that the word is cognate with

Akkadian *asûm* and has a medical meaning of “injury requiring attention of a physician, serious injury.”

101. Collins (“Notes on the Text”) emends נֹל “not” in v. 22 to לוֹ “to him,” referring to the child. She finds the wording of v. 22 difficult because “the person who is harmed must be identified as ‘not the-person-who-has-not-suffered-harm’” (p. 293).

102. So Jepsen, *Untersuchungen*, 35 n. 2; Rothenbusch, *Rechtssammlung*, 286–287, n. 268 (end).

103. Crüsemann, *Torah*, 160; Schenker, “Drei Mosaiksteinchen,” 374–378; *Versöhnung und Widerstand*, 41–51; *Recht und Kult* 97–101. For Schenker, v. 22 deals with an internal injury (to the woman) and vv. 23–25 with external physical injuries. Talion (which he understands to be literally performed according to vv. 23b–25) is not possible in the first case. Both vv. 22 and 23 talk about permanent injuries. For critique, see Houtman, *Exodus*, 3:170.

104. Schwienhorst-Schönberger, *Bundesbuch*, 97–98; “Auge um Auge,” 164–165. For discussion of various views about the phrase, see Jackson, *Wisdom-Laws*, 215–261 n. 22.

105. Cardascia (“Le caractère volontaire,” 180–181), in contrast, says that it is not clear that LH 210 refers to a case of intentional striking.

106. So Schwienhorst-Schönberger, *Bundesbuch*, 102, 109–116; Sprinkle, “Interpretation,” 236–237; Weingreen, “Concepts of Retaliation,” 4–5; cf. H.-W. Jüngling, “Auge für Auge,” 30. Paul (*Studies*, 67–68) views it as intentional. It is tempting to see in the biblical miscarriage law a case of *reckless-direct* homicide, to be added to the four categories of assault summarized at the end of the next section of this chapter on talion, perhaps a level above negligent-indirect homicide. What appears to set the biblical miscarriage law apart from simple accidental homicide is that the men are involved in an activity that is violent in nature and thus liable to cause injury to bystanders. Therefore, they have greater liability than in normal cases of inadvertent homicide. Nevertheless, the fatality in the miscarriage law accords with the basic criterion of inadvertence described in vv. 12–14. Furthermore, cases where inadvertent homicide is likely to occur are similarly dangerous situations. For example, to exemplify inadvertent homicide, Deut 19:5 describes a case where a man “goes with his neighbor into the forest to chop wood and his hand wields the axe to cut the wood and the head slips off from the shaft and hits his neighbor and he dies.” Fuller (“Exodus 21:22–23,” 175, 180) believes the miscarriage law involves unintentional *negligent* homicide.

107. So Houtman, *Exodus*, 3:168; Otto, *Körperverletzungen*, 124.

108. The datum of a fight in v. 22 by itself might lead one to conclude that the law involves more than inadvertence (see n. 106). Rather than indicating responsibility, the fighting may be a way of portraying inadvertence over against its source of LH 209–210. In other words, CC’s law cannot be read in a vacuum but must involve consideration of its source. On fighting in laws, see Ziskind, “When Two Men Fight.”

109. Otto (*Körperverletzungen*, 130; cf. “Town,” 17) sees the fighting in vv. 18 and 22 as parallel and, in fact, sees the two verses as part of the most original part of the bodily assault laws, vv. 18–19, 22 (see pp. 134–135).

110. This is the same term used once for the action of a goring ox (21:35; otherwise, the verb is נָגַג). Contrary to Daube (*Studies*, 107–108), this verb does not indicate an attack that is necessarily hostile or deliberate. See Schwienhorst-Schönberger, *Bundesbuch*, 113–114 n. 170.

111. Schwienhorst-Schönberger (*Bundesbuch*, 112–114) argues that the woman is the wife of one of the men as part of an argument against the claim that the miscarriage

law is purely a literary tradition (e.g., Finkelstein, *Ox*, 19 n. 11). For a recent study of the Deuteronomy law, see P. E. Wilson, “Deuteronomy XXV 11–12.” If MAL A has been influential on CC and if the author(s) of CC created a side-collection of family law that included a version of MAL A 8 later taken up in Deut 25:11–12 (see chapter 4), then MAL A 8 may have had some sort of background influence on Exod 21:22. This would complement the similar explanation proposed in chapter 4 for the relationship of the laws on rape (Deut 22:28–29) and seduction (Exod 22:15–16), which reflect MAL A 55–56.

112. Schwienhorst-Schönberger, *Bundesbuch*, 110–111 sets out the basic difference: “ריב bezeichnet hier ein Streiten, aus dem heraus eine handgreifliche Auseinander-s[el]tzung (נצה) erwachsen kann (Ex 21:18), aber nicht erwachsen muß. נצה (Nif.) hingegen bezeichnet ein Streiten, bei dem geschlagen (נכה) wird. Es meint eine handgreifliche Auseinandersetzung, eine Schlägerei, bei der es zum Totschlag kommen kann (2 Sam 14,6).” For נצה, see Exod 2:13; Lev 24:10; Deut 25:11; 2 Sam 14:6. See also Jackson, *Wisdom-Laws*, 180 n. 38. We can add that ריב in 21:18 does not refer to a confrontation in a judicial setting, but an extrajudicial argument that escalates into the fight.

113. So Schwienhorst-Schönberger, *Bundesbuch*, 111. For him, the two verbs are not evidence of two redactors. A formal difference between the verbs is the *nun-paragogicum* in v. 18 versus its lack in v. 22. Dohmen, *Bilderverbot*, 163–168, does not see this as a decisive indication of separate authorship. See chapter 12, n. 24.

114. Rothenbusch (*Rechtssammlung*, 293) says that the description of fighting in v. 22 may be secondary. If one compresses the chronology of composition, he is right: after conceiving the law in relationship to LH 209–210, CC expanded the context from LH 206 (and v. 18). Loewenstamm (“Exodus XXI 22–25,” 357) argues that the inconsistency of number in v. 22 is due to conflating two originally separate laws, one on talion (plural formulation) and one on miscarriage (singular formulation). For critique of Loewenstamm, see Jackson, *Wisdom-Laws*, 211–214. Jackson’s own view (*Wisdom-Laws*, 220–221) is that the verb of punishment was originally plural and that both men were responsible for the child’s birth or injury. Later, a Deuteronomic editor changed it to a singular because of an interest in individual responsibility. Collins (“Notes on the Text,” 296–299, 301) emends to the awkward and unlikely *ʾl]neš baʾāšer yēʾānēš* “a fine on-whomever will be punished (the husband of the woman will assign on him).”

115. For Otto, the lack of the inclusion of slaves in the talion laws becomes a decisive sign that the biblical miscarriage law (originally just 21:22 in his view) is not based on cuneiform tradition. He says (“Town,” 16): “Exod. 21:22–23 also knows of no distinction between laws concerning the free woman and those concerning the slave, although this distinction is one of the main characteristics of the cuneiform laws. . . . there is no reason why such a distinction should be suppressed by the redactor of the collection of injury-laws in Exod. 21.18–32” (cf. Otto, *Körperverletzungen*, 125–126). The LH source thesis of this study explains this gap in CC. CC selectively used LH and did not seek to replicate every legal detail of LH. After the talion law, CC did in fact move on to slaves, but in the context of talion (vv. 26–27, based on LH 198, 199, 201). See later.

116. E.g., one hundred shekels, imposed on a man who falsely accuses his wife of not being a virgin (Deut 22:19), one hundred talents of silver and a talent of gold, imposed by Pharaoh Neco (2 Kings 23:33; 2 Chron 36:3), and income that the elites collect to buy wine (Amos 2:8). In Proverbs, the verb and noun have a more general meaning of “punish” or “punishment” (Prov 17:26; 19:19; 21:11; 22:3; 27:12).

117. Speiser, “The Stem *PLL*” (critiqued by Jackson, *Wisdom-Laws*, 223–224). For others who follow an interpretation “by assessment/reckoning,” see Houtman, “Eine schwangere Frau,” 387; *Exodus*, 3:163. See the making of a reckoning or judgment (פלילה) in Isa 16:3.

118. For the singular noun with this meaning, see in Ps 58:9; Job 3:16; Qoh 6:3.

119. For the interpretation “by mediation/mediators,” see Bovati, *Justice*, 175–176; Niehr, *Rechtsprechung*, 57–58; Rothenbusch, *Rechtssammlung*, 276–277; Schwienhorst-Schönberger, *Bundesbuch*, 122. Jackson (*Wisdom-Laws*, 222–223, 396) says it refers to formal adjudication (note the mediation of Phineas in Ps 106:30 described by the D-stem verb and, phenomenologically, the mediation of elders in Deut 22:19). Other interpretations have been suggested: “before witnesses” (Otto, *Körperverletzungen*, 119–121); “as/being the culpable party” (Berlin, “Meaning of *pll*,” 347, cf. 346; she follows Westbrook’s understanding of אסוף and interprets the root פלל to mean “be accountable, responsible, liable”). See further discussion at Houtman, *Exodus*, 3:162–163; Jackson, *Wisdom-Laws*, 222–227; Liedke, *Gestalt*, 44–45; Sprinkle, “Interpretation,” 246–248. Gerstenberger (“פלל” *pll*,” 574) will only go so far as to say that the term “might have a juridical sense.”

120. Rothenbusch (*Rechtssammlung*, 317) notes the similarities of the laws and says: “Neben den auffälligen inhaltlichen Parallelen machen die skizzierten komplexen Übereinstimmungen von Ex 21,18–27 und KH § 196–214 einen überlieferungsgeschichtlichen Zusammenhang beider Traditionen m.E. jedenfalls in hohem Maß wahrscheinlich. Das wird sich im folgenden, insbesondere an Ex 21,28–32, weiter bestätigen.” He also notes (pp. 302, 312, 316, 317) that only LH and HtL have both laws on blinding/knocking out a tooth and miscarriage in relatively close association. Several scholars observe that the law of talion is unique to LH in cuneiform collections (Chirichigno, *Debt-Slavery*, 194; Lambert, “Interchange of Ideas”; Rothenbusch, *Rechtssammlung*, 278; it is found in the Roman Twelve Tables 8.2; see Jüngling, “Auge für Auge,” 2–4). For the talion laws in an Amorite theory, see chapter 1, n. 69. The derivation of the talion law from LH 196–201 precludes a thesis that the laws come from Israel’s nomadic past (as claimed by Wagner, *Rechtssätze*, 14). Sarna (*Exodus*, 126) says that the “talion list is a citation from some extrabiblical compendium of laws.”

121. For the meaning of the Hebrew terms חבורה, פצע, and כויה, see Houtman, *Exodus*, 3:170–171; Kugelmass, “Lex Talionis,” 154–161; Osumi, “Brandmal,” 16–18. The injuries in v. 25 are qualitatively different than those in v. 24 and are not listed in the later reiterations of the talion law in Deut 19:21 (נפש, עין, ויד, רגל) and Lev 24:18, 20 (שן, שבר, נפש). Therefore, many see at least v. 25 as secondary. The laws in Deuteronomy and Leviticus, however, may be focusing on injuries that are grave or permanent (see the prohibition against showing compassion in Deut 19:21 and where “arm” and “leg” appear to refer to amputations [cf. Deut 25:12]; note the concern about a “irremediable defect” מום in Lev 24:19–20). Thus they left the lighter and possibly curable injuries in v. 25 out of their lists. The inclusion of שבר in Lev 24 is consistent with the verb *šebērum* in LH 197–199 for bone breakage, but we should probably not think that this text had access to LH for its term; it is merely a coincidental realization of the intent of “hand” and “leg” in CC (Daube, *Studies*, 113; cf. Otto “Die Geschichte der Talion,” 106). Leviticus is probably viewing this as breakage that results in a permanent disability. See the section of this chapter later on the unity of CC’s passage.

122. פצע and חבורה occur together as a word pair in Gen 4:23; Isa 1:6; Prov 20:30 (Jackson, *Wisdom-Laws*, 207–208 n. 189; Osumi, “Brandmal,” 17–24; Westbrook,

Studies, 40). Akkadian *simmum* could therefore have easily generated the use of both of these terms together. Schwienhorst-Schönberger (*Bundesbuch*, 119, 237–238) says that v. 25 is from the hand of a redactor that is tying CC to the Pentateuchal narrative (Gen 4:23).

123. This is parallel to opening up the skull at the temple (LH 215–220) and therefore is a surgical procedure.

124. See Osumi, “Brandmal,” 24–25. Osumi imagines that the “burn for the burn” is performed by using hot iron or coals and pertains to a slave. Thus v. 25 is tied to the context of slaves that follows in vv. 26–27 (see also Osumi, *Kompositionsgeschichte*, 117). He also sees פצע and תבירה as possible punishments that may be performed on recalcitrant children or on slaves. Carmichael (*Origins*, 119–129; *Spirit*, 107) sees the list of injuries being performed at the same time to mutilate a corpse. The passage, he says, echoes the story of Tamar, who was to be burned as a punishment, in Genesis 38. These views read much more into the legal context than is there.

125. So Schwienhorst-Schönberger, *Bundesbuch*, 76, for the order of head to foot.

126. For Jackson (*Wisdom-Laws*, 194, cf. 207), the talion laws are not expressly concerned with intent. According to his interpretation of the laws being applied in a context of self-help, literal talion or the possibility of paying a “ransom” would be worked out on an ad hoc basis. His interpretation depends on dissociating the talion law from its presumed secondary context of miscarriage.

127. Deut 19:21 apparently and Lev 24:17–22 clearly take the talion laws literally (though Lev 24:18, 21 use the נפש תחת נפש formula of animals to refer to their replacement).

128. Schwienhorst-Schönberger (*Bundesbuch*, 75, 101; “Auge um Auge,” 166–167) also makes this argument about the verb (cf. Doron, “A New Look,” 24, 26; Sprinkle, *Book*, 94; “Interpretation,” 237–240; Weingreen, “Concepts of Retaliation,” 5–6). Schwienhorst-Schönberger notes the use of the verb שלם in the ox law of 21:36–37, which clearly refers to payment and which uses תחת replacement formula found in the talion laws. The reason the talion law does not use the verb שלם is that this verb in the ox law refers to *replacing* the lost animal with another animal, whereas נתן in the talion laws means to *pay the equivalent*. Rothenbusch (*Rechtsammlung*, 284) believes that the talion laws would have been carried out by the payment of material compensation. He finds little evidence that literal talion was routinely performed (cf. pp. 278–284, 291, 300). Several, however, take the talion law to require literal capital or bodily punishment. Crüsemann (“Auge,” 413–15, 419; *Torah*, 148–149; cf. Osumi, “Brandmal,” 3–4) does and argues that CC’s law corrects an earlier practice of paying a fixed sum for injuries, has a social justice function of protecting the poor from demand of payment, and guards against the rich getting off with a payment that is easy to pay. Osumi (“Brandmal,” 6) says that as written, it intends literal talion but could have been actualized by payment. Brin (“Development,” 60 and n. 2) says that the plain meaning of giving a life for life can only mean the death penalty; hence the law in 21:23b contradicts 21:13, which says that there is no death penalty for inadvertent homicide. Loewenstamm (“Exodus XXI 22–25”) argues that since v. 23 does not prescribe the payment of the fine for killing the child as in v. 22, “life for life” must mean the death penalty. This might be true unless “giving life for life” includes payment for the child as well as the mother. Loewenstamm also claims that the shift from third to second person indicates a grave penalty, i.e., capital punishment. This is to be explained differently (see later). Finkelstein (*Ox*, 258) says that the requirement of literal talion in Exod 21:24–25 characterizes the injury as a crime, not a tort.

For those who say that CC's talion law should be understood literally, the wording of 1 Kings 20:39 is decisive: "your life will be for his life, or you shall weigh out a talent of silver" (והיתה נפשך תחת נפשו או ככר כסף תשקול). But observe that this passage does not use the verb *תחת* or CC's broader idiom. The verb is also missing in 2 Kings 10:24 (איש אשר ימלט מן האנשים אשר אני מביא על ידיכם נפשו תחת נפשו the person that escapes from the people that I am putting into your power, his life will be for his life"; note also the use of pronominal suffixes in these cases). The wording "you shall give life for life" is actually an awkward way of describing a punishment for a perpetrator; if taken literally, nothing indicates that he should give his *own* life (cf. Isa 43:3–4; see n. 133). Jackson (*Wisdom-Laws*, 193, 198–199, 232) says that passages such as 1 Kings 20:39 point to literal talion but says (p. 233) they are ultimately not decisive, and concludes (pp. 211, 233–234) that the original miscarriage law "life for life" referred to giving a person as a substitute. Otto (*Körperverletzungen*, 122–123, 135, 137; cf. "Town," 16) has a mixed view: "life for life" in v. 23b refers to capital punishment, even for inadvertent homicide, whereas the list in vv. 24–25, which is an addition, refers to equivalent payments. Houtman ("Eine schwangere Frau," 389, 392) uniquely suggests that "life for life" in v. 23b means that the household of the person who caused the death is to suffer similarly and thus refers to vicarious punishment (e.g., the death of a woman from the household of the assailant). On talion laws generally, see Barmash, *Homicide*, 153–177.

129. Compare LH 101, 106–107, 112–113, 120–121, 124–126, 138–140, 217, 221–225, 228, 234, 238, 239, 242–243, 247, 248, 251–252 [// Exod 21:29, 32], 258–261, 264, 267, 271, 273–274, 276–278. Schwienhorst-Schönberger (*Bundesbuch*, 102) compares the broader Akkadian idiom of X (object) *kīma* X + *nadānum* ("giving X in place of X"), which agrees with the Hebrew idiom.

130. Cardascia (*Les Lois Assyriennes*, 240 and note c) translates "pour le fruit de son sein il compensera vie (pour vie)" and notes that the plural *napšāte* "à le sens abstrait de 'vie.'" For the meaning of the penalty in the Akkadian laws, see Cardascia, pp. 242, 244; Driver, *Assyrian Laws*, 111–112.

131. For those who see a similarity in MAL's miscarriage laws and CC in regard to the motif of talion, see Jackson, *Wisdom-Laws*, 211, 231–232; Jüngling, "Auge für Auge," 17–19, 37; Wells, "Covenant Code," 18. MAL A 21, 51, 53 also deal with miscarriage or abortion but do not incorporate talion conceptions (for translation and notes on MAL A 21, 50–53, see Otto, *Körperverletzung*, 79–95; "Körperverletzung oder Verletzung von Besitzrechten?" 159–161; "Town," 7–14).

132. Cazelles, *Études*, 152; Wells, "Covenant Code," 18.

133. Josh 2:14; 1 Kings 20:39, 42; 2 Kings 10:24; Isa 43:3, 4 (cf. Job 16:4). For the relation of 1 Kings 20:39 and 2 Kings 10:24 to Exodus 21:23, see Schwienhorst-Schönberger, *Bundesbuch*, 99–100 and see n. 128. The wording of Isa 43:3–4 is close to Exod 21:23b in using the verb נתן "to give" with תחת נפש "in the place of life": נתתי כפרך מצרים כוש וסבא תחתך. . . . ואתן אדם תחתך ולאמים תחת נפשך Egypt, Ethiopia, and Seba in exchange for you. . . . I have given a people in exchange for you and nations in exchange for your life." This is not in a context of capital punishment, but ransom. The nations/peoples being given replace Israel as either captives or objects of punishment.

134. Gen 44:4; 1 Sam 25:21; 2 Sam 16:12; Jer 18:20; Ps 35:12; 38:21; 109:5; Prov 17:13 (cf. 1 Sam 24:20).

135. Jackson (*Wisdom-Laws*, 189–190, 196) notes that talion plays a role in various texts in the Bible (see examples there; cf. Judg 1:7; 15:10–11; Prov 24:29; see also Nel,

“Talion Principle”; Westbrook, *Studies*, 45–46). That ancient Israel had a notion of measure-for-measure punishment or retribution does not demonstrate, however, that CC’s talion law does not depend on LH. It merely points to the confluence of the native traditional views with a specific foreign literary stimulus. In fact, it may be argued that it is just this specific confluence that was a factor in the creation of CC’s *general rule* of talion (see later).

136. Those who see vv. 23b–25 as a general law include Barmash, *Homicide*, 158–159; Childs, *Exodus*, 471–472 (he says that all of vv. 23–25 is a general law and that v. 23a does not deal with miscarriage but is associated with v. 22 by the catchword וְטָרַח); Otto, *Rechtsgeschichte*, 179 (vv. 23b–25 have a formulation that is developed beyond what one finds in Old Babylonian law); Rothenbusch, *Rechtssammlung*, 278, 285, 293–294, 296, 300, 405 (he also sees 21:37–22:3 and 22:8 as general rules and notes distinctiveness of these rules against the cuneiform material [p. 397]); Sarna, *Exodus*, 126 (“the list is actually a general statement of legal policy”). Sprinkle (“Interpretation of Exodus 21:22–25,” 239, 251; *Book*, 95) sees the second person in 22:23 as a “personalization,” i.e., Israel addressed through the individual. Loewenstamm (“Exodus XXI 22–25,” 359; *Comparative Studies*, 524) sees a rhetorical thrust in moving from third person to second person, impersonal to personal. Osumi (“Brandmal,” 14–15) says that the second person has the function of recalling the capital punishment principle in v. 12. Sprinkle, Loewenstamm, and perhaps Osumi hover around the point that I am making. Houtman (*Exodus*, 3:168), in contrast, says that it is not a general rule “but specifically applied to the woman injured in a brawl, that is, to a person belonging to some else, her husband.”

137. Crüsemann (“Auge,” 414) says the abrupt use of a second-person verb is original to the context and its purpose is to emphasize the strict rule that the person be put to death (though he believes that the rest of the talion rule in vv. 24–25 is secondary).

138. Morrow (“Generic Discrepancy”) follows Westbrook (“Lex Talionis,” 66) in seeing the second-person verb as referring to the community as a whole or its representatives but connects it form-critically with a stratum of nonroyal prescriptive formulation. Gilmer (*If-You Form*) explains the second person from the influence of wisdom tradition, where the laws were spoken to those responsible for the juridical process (similarly Buss, “Civil and Criminal Law,” 59; it addresses the “reacting community”). Schwienhorst-Schönberger (*Bundesbuch*, 122–127, cf. p. 311) says that the second person here and in vv. 13–14 addresses the authorities active in judicial administration; it is also part of the style of this (secondary) layer of CC.

139. Houtman, *Exodus*, 3:168; Jackson, *Wisdom-Laws*, 210–211; Schwienhorst-Schönberger, *Bundesbuch*, 117–118; Rothenbusch, *Rechtssammlung*, 285.

140. Houtman (*Exodus*, 3:152) says that vv. 18–19 deal with temporary injury; “in case of permanent injury the *talionic* principle kicks in (21:23–25).”

141. The conceptual relationship of talion to vv. 18–19 is evidenced in the speculation of some scholars that the talion law originally followed v. 19 (see Cazelles, *Études*, 56).

142. It is not clear if CC rejects bodily mutilation, parallel to its rejection of vicarious punishment. The child rebellion laws (21:15, 17) do not provide evidence of CC’s possible aversion to bodily mutilation, when they prescribe capital punishment instead of mutilation as found in the LH 192–193, 195 (cutting out of the tongue, excision of the eye, or amputation of the hand). CC prescribes capital punishment presumably because the native participial source contained a parent-cursing law with a capital penalty (v. 17). This provided the penalty for parent striking (v. 15 contra LH 195). Homicide

implicitly and kidnapping explicitly were capital crimes in LH (cf. LH 14; 116, 210; cf. vv. 12, 16). For flogging, see table 4.1 in chapter 4 and the implications of the discussion there.

143. The table in Wright, “Homicide,” 77–78, gives a more extensive summary, including a slave as a victim and also data from the goring ox and burglary laws.

144. Jackson (*Wisdom-Laws*, 161) notes that “the object of Adonijah in going there is not permanent refuge, but an opportunity to negotiate.”

145. Houtman (*Exodus*, 3:138) says “it is more likely that Exod. 21[12–14] creates room for *talks between the victimized*, the relative of the victim, *and the asylum seeker*, with a view to the normalization of relationships. That this was done by giving some form of material restitution is not impossible (cf. Exod. 21:30, 32).” He does not recognize that the talion law (which he interprets rather literally; see nn. 128, 140) provides the concrete legal basis.

146. See Stackert, *Rewriting*, 54, 82–86.

147. For the impurity of bloodguilt, see Barmash, *Homicide*, 94–115; Wright, “Two Types,” 187–188 (cf. “Spectrum,” 159 n. 1); “David Autem Remansit;” “Deuteronomy 21.”

148. The killing of a slave in 21:20 would be a case of category (1) but with variability of penalty as in category (2). Killing a burglar at night (22:1–2a) is a case of category (1), but since it is self-defense, it is reduced in penalty to a category (4). For the rejection of a category of *reckless-direct* homicide, see n. 106. See the chart summarizing this data in Wright, “Homicide,” 77–78.

149. The argument of this section, along with that which follows, indicates that CC’s miscarriage and talion laws cannot be analyzed as deriving from a reworking of the talion laws of Deut 19, Lev 24, and the testicle seizing law of Deut 25:11–12, as well as the miscarriage law in LH 209–210, as argued by Van Seters (*Law Book*, 98, 109–118; “Some Observations on the Lex Talionis”). The major motifs of CC can be explained on the basis of LH, and the talion laws in Deut 19 and Lev 24 develop from CC. If one dates the talion laws in Deuteronomy and Leviticus earlier than CC, one is left without an explanation of the similarity of the talion laws in Deuteronomy and Leviticus to Hammurabi’s talion laws, and one has to say that CC’s correlations with LH are only coincidental.

150. It is not clear that vv. 26–27 are part of a larger chiasmic structure as described in Jackson, “Literary Features”; “Modelling Biblical Law,” 1779; *Studies in the Semiotics of Biblical Law*, 218; cf. Chirichigno, *Debt-Slavery*, 196. See the critique at Wright, “Fallacies,” 158.

151. The dependence of vv. 20–21 and 26–27 on LH indicates that their position may not be due to an intent to provide a structural frame to the talion laws (contra Schwienhorst-Schönberger, *Bundesbuch*, 48, 61; cf. Rothenbusch, *Rechtssammlung*, 300).

152. For comparison of the two sets of laws, see Chirichigno, *Debt-Slavery*, 192; Rothenbusch, *Rechtssammlung*, 312–317.

153. While CC may be abbreviating a longer list of possible injuries to a slave (it does not mention breaking a bone of a slave as does LH 199; cf. Abusch, “Ishtar’s Proposal,” 146–147 n. 7; Schwienhorst-Schönberger, *Bundesbuch*, 76–77), it may be choosing to deal with only permanent injuries and therefore those that require the release of a slave. Schwienhorst-Schönberger says that vv. 26–27 specify the eye and

tooth to prohibit hitting the slave in the face. He says that the text does not need to specify an arm or leg because it is unlikely that a creditor would injure a limb, which is necessary for the slave to do his or her work.

154. Given the source analysis of this study, vv. 26–27 should not be considered the original continuation of vv. 20–21, as suggested by Jackson, *Wisdom-Laws*, 240–241.

155. Schwienhorst-Schönberger, *Bundesbuch*, 60.

156. As in LH, the penalty for injury to a slave (release) is not the same as for a free person (talion payment). But it is not clear if setting a slave free, in the case that this is a debt-slave, is a savings over the payment due for an eye or tooth. This would depend on the amount of the loan that is being forfeited when the slave is injured. It may be that in some cases, the amount of the loan forgiven would be greater than the going price for an eye and tooth. A judgment about this matter is complicated by the possibility that an eye and tooth bring different prices, as found in LH 198 (where a commoner's eye or bone is worth sixty shekels) versus LH 201 (where a commoner's tooth is worth only twenty shekels).

157. For example, Otto (*Wandel*, 28–29, 30–31, 62) sees vv. 18–19 and 22 (without נתן בפללים) as original. The aforementioned phrase was then added to v. 22, along with v. 23. Eventually, vv. 24–25 and the slave laws of vv. 20–21 and 26–27 were added. In the present passage, the talion law is the center of the structure (see also Otto, *Körperverletzungen*, 134–137, 168; “Die Geschichte der Talion,” 101–107, 118; “Town,” 19; “Aspects,” 183, 185). Schwienhorst-Schönberger (*Bundesbuch*, 52–58, 62, 75–76, 78–81, 116–117, 119, 234) says that vv. 18–19, 22aαba is the basic text. The Divine Law Redactor added vv. 20–21, 22aβββ, 23–24, 26–27. Note that according to this, the talion law in v. 24 comes from the same hand as the second miscarriage law in v. 23. Schwienhorst-Schönberger (pp. 62–63) uses LH as part of the reason for removing vv. 20–21 since, as he reads it, miscarriage (LH 209–210 = vv. 22–23) directly follows assault (LH 206–208 = vv. 18–19). He does not realize that vv. 20–21 actually correspond with LH 208. Rothenbusch (*Rechtssammlung*, 285, 296, 300) sees 21:18–19 and 22–23* as an original unit to which 21:23b–25 were added. This core was then expanded by the slave laws of vv. 20–21 and 26–27. Jackson (*Wisdom-Laws*, 172–254, esp. 177, 185–186, 188, 207, 211, 233–239) gives a complex analysis. In brief, he says that the earlier sections of this part of CC consisted of vv. 18–19 (with the payment clause of v. 19 originally at the end of v. 18) and the slave laws of vv. 20–21, 26–27. The miscarriage law in vv. 22–23 (referring to premature birth and then the death of the baby) may have grown up under the influence of Deuteronomic law, to which v. 24 was then attached. Verses 22–24 were then inserted as a unit before vv. 26–27. Verse 25 was eventually added, reflecting the priestly concern with bodily blemishes (e.g., Lev 22). נתן בפללים in v. 22 and כי כספו הוא in v. 21 (the latter reflecting slave concerns in Lev 25) are later insertions. Other views about the growth of the talion laws include: Carmichael, “The Biblical Laws of Talion (1986),” 27–28; “The Biblical Laws of Talion (1985),” 113–114 (vv. 23b–25 are a Deuteronomic formulation); Crüsemann, “Auge um Auge” (vv. 22–23 are original, v. 24 is an expansion; Crüsemann, *Torah*, 149); Jüngling, “Auge für Auge,” 16–17, 19, 31, 35 (vv. 24–25 are an addition but pre-D); Kugelmass, “Lex Talionis,” 138–170 (vv. 23–25 is a priestly addition extending the theological perspective of Lev 24:19–20); Lemaire, “La peine,” 16 (the talion law is probably a postexilic gloss); Liedke, *Gestalt*, 101 (refers to Alt, noting the very ad hoc formulation of the talion list, which points to its secondary character); Osumi, “Brandmal,” 26–29;

Kompositionsgeschichte, 113, 116–117, 119–121, 152–154 (vv. 24–27 are an addition, but as such they are a unity; they were inserted along with 21:2–11, coming from the hand that wrote the second-person singular stratum of the apodictic laws). In an early paper, Alt (“Zur Talionsformel”) argued that the deviant form of the talion law over against casuistic and apodictic forms and the second-person verb derive from a cultic *Sitz im Leben*, on the basis of a comparison with a Punic-Latin text. For theories about a two- or three-phase development of the components of the talion laws in 23b, 24, and 25, see Schwienhorst-Schönberger, *Bundesbuch*, 80–82 (also p. 61).

158. Cf. Greenberg, “Asylum”; Jackson, *Wisdom-Laws*, 120–171; McKeating, “The Development of the Law on Homicide”; Milgrom, “Sancta Contagion”; Rofé, “History of the Cities of Refuge”; see also the literature in Stackert, *Rewriting*, 33–34 n. 3. See the skepticism about historical reconstruction of the history of asylum in Stackert, “Asylum,” 49. Ruwe’s study (“Das Zusammenwirken”) stresses the intertextual relationship of the asylum legislation in the Hexateuch, and he says, for example, that the laws of Numbers 35 in the Persian period do not reflect asylum practice of that time (p. 191). For the utopian character of the laws in Deut 19 and Num 35, see Haran, “Studies in the Account of the Levitical Cities [Parts I and II]”; Houtman, “Der Altar als Asylstätte,” 361–365.

159. For the history of the principle of talion, see n. 120 and Barmash, *Homicide*, 174–175; Cardascia, “La place du talion dans l’histoire du droit pénal”; Diamond, “An Eye for an Eye”; Greengus, “Biblical and Mesopotamian Law,” 67–72; “Law,” 248; Houtman, “Eine schwangere Frau,” 392–394; Marshall, *Israel*, 132–134; Rothenbusch, *Rechtssammlung*, 278–284, 300–301. Kim (“Lex Talionis”) argues that the biblical law depends on both LH and on native legal tradition developing in Israelite villages. Native tradition, he believes, is identifiable in the contrasts with LH.

Chapter 7

1. For some who compare these laws, cf. Fleishman, “Offences,” 9; Houtman, *Exodus*, 3:149; Jacob, *Exodus*, 640. Rothenbusch (*Rechtssammlung*) leaves vv. 15–17 outside his comparative analysis of the rest of the casuistic laws because he considers them secondary. This is a significant lacuna in view of the correlations with LH.

2. The laws in the two collections should not be read to mean that the striking causes death or even injury. LH makes death or injury clear when this occurs from striking (LH 206–207), and some laws in LH are concerned with striking only as an act of humiliation (LH 202–205). In CC, 21:12 specifies death as the result of striking, whereas v. 15 does not. Further, cursing parents is penalized (v. 17), without a concern for the result. See Fleishman, “Offences, 9–10”; Schwienhorst-Schönberger, *Bundesbuch*, 225. The Mekhilta (Lauterbach. *Mekhila*, 1:64) says that the biblical law requires the striking child to cause a wound (חבורה) on the parent. Fleishman (“Offences,” 10–17) explores the reasons and contexts for striking a parent. He notes and discusses several examples of striking in order to humiliate a person, including 1 Kings 22:2; Mic 4:10; Jer 20:2; 37:15; Job 16:10; Neh 13:25 (compare Isa 50:6; Lam 3:30).

3. The *girseqûm*, a male, may have a position in the palace (*muzzaz ekallim*; LH 187). The *sekretum* is a type of priestess or woman dedicated to the temple. She is listed in some laws (cf. LH 178–180) alongside other similar women, the *ugbabtum* (LH 110,

127, 178) and *nadītum* (cf. LH 40, 110, 137, 144–146, 178–182). These latter women might live in a cloister (*gagûm*), are prohibited from entering a tavern (or specifically drinking beer) at the threat of being burned as a punishment, and have certain marriage and economic privileges (the relationship of secondary slave wives, regarding the sale of land, divorce settlements). None of these three women is said to bear children. A *nadītum* may marry but is not described as bearing children, only “providing” or “producing” children for her husband (Š-stem of *rašûm* or *bašûm*; LH 137, 144, 145). The production of children comes through her giving her husband a slave wife (LH 144, 146; contrast 145). Only the *sekretum* is mentioned as an adoptive parent (LH 187, 192–193). Note that LH 178, which mentions an *ugbabtum*, *nadītum*, and *sekretum*, was influential in forming the law about the three means of sustenance that a man must provide his slave wife in 21:10–11 (see chapter 5). This demonstrates that CC may use a law with a specific Mesopotamian sociological tenor for its own broader purposes. The *girseqûm* and *sekretum* in LH 192 are not married to each other any more than the *ugbabtum*, *nadītum*, and *sekretum* mentioned in other laws are related. A focus on a single parent in adoption is found in LH 185–186, 190–191 (a man in general) and 188–189 (a craftsman). The parent figure spoken of in each law is the chief legal guardian. It is therefore interesting that various males (a father, a craftsman, and a *girseqûm*), as well as a *sekretum*, may individually adopt children.

4. The child here, as well as in CC’s laws, has to be considered a minor, still part of the parent’s household and economically dependent. A hint at the youth of the child is found in LH 186, which addresses a case of a child seeking to return to his parents early on at the time of adoption.

5. This is identical to the declarations of rejecting a father or mother in Ana ittišu 7 III 23–28, 29–33, cited in Fleishman, “Legal Continuation,” 56–57. In those cases, the child’s head is shaved, and he is sold as a slave for rejecting the father, and his head is half shaved and he is expelled from the house (i.e., disinherited) for rejecting the mother (Fleishman notes that rejection of the mother is thus less serious; “Legal Continuation,” 58). See also the formula in SLEx 4’, similar to the Sumerian version of the declaration in Ana ittišu. In the Sumerian law, the child does not inherit but is sold into slavery. See Fleishman’s study for a discussion of various Mesopotamian texts about parent rejection.

6. For “hatred” as a legal and not merely an emotional category, see Wells, “Sex, Lies,” 57–61. He discusses the Akkadian verb *zêrum* “to hate” and LH 142 in particular, which he says refers to inchoate marriage (betrothal) prior to the consummation of marriage (p. 59 n. 58 and pp. 66–68 and nn. 82, 85). The verb *ahâzum* in that law therefore means “to fully marry.” See also Westbrook, *Old Babylonian Marriage Law*, 14–16, 45–47. The context, however, indicates that she is living *with her husband*, implying that the marriage has already been consummated. For *zêrum* in divorce contexts (compared to Hebrew שָׂנֵא “to hate”), see Otto, “False Weights,” 135 n. 29, and the literature cited there.

7. This “mirror punishment” is related to talion; see Haase, “Talion and spiegelnde Strafe.”

8. Fleishman (“Offences,” 18) notes three understandings of קָלַל: cursing (1) that leads to harming parents, (2) as merely verbal abuse, and (3) that marks the rejection of the parents’ authority. He reviews biblical, Ugaritic, and Akkadian evidence of the Semitic roots *qll* and its counterpart *kbd* (for Near Eastern evidence, see also “Offences,” 28–37; “Legal Innovation,” 317–319). He concludes that *qll* indicates the

rejecting of the authority of the parents, whereas *kbd* indicates accepting this authority (see Fleishman, “Offences,” 36–37; “Legal Innovation,” 315–319). Deut 21:18–21 may build on Exod 21:17, but “the purpose of the law in Deuteronomy xxi 18–21 was to reduce significantly the scope of the delinquent behavior against parents punishable by death. It did so by means of the apodosis (vv. 18–20) that determines that disobeying one’s parents is punishable by death only when the son refuses to cease behavior that is defined as gluttony and drunkenness” (Fleishman, “Legal Innovation,” 319, cf. 327). For another discussion of קלל, see Sprinkle, *Book*, 77–79.

9. This example is discussed by Fleishman, “Offences,” 23–28; “Legal Innovation,” 317. The passage about a rebellious son in Deuteronomy 21:18–21 also gives an indication of the behavior that might be understood by the verb קלל even though that verb is not used and the son is not described as uttering any particular words (for this passage, see Fleishman, הוריים וילדים, 244–293; also Bellefontaine, “Deuteronomy 21:18–21”).

10. An emendation is not absolutely necessary; קלה (II) and קלל are associable as opposites of כבד; see Fleishman, “Offences,” 17–18.

11. Fleishman (“Legal Continuation,” 61) says: “We cannot deal here with the question of whether the rights and obligations of an adopted child were identical to those of a biological child. The basic assumption of our study is that in principle, the legal status of adoptive and biological children were the same, and that the adoptive child had the same privileges and obligations as a biological one, and therefore had the same obligations vis-à-vis his parents as a biological child.”

12. The conjunction וּנְמַצָּא marks an alternative, “or” (Brin, “Development,” 62–63; “Uses of אָ,ׁ,” 25–26). See the discussion of 22:4 at n. 37 in chapter 9. Westbrook (*Studies*, 119) takes the conjunction as marking consecution, where the person in whose hand the slave is found is the *buyer* of the kidnapping victim (he compares LH 6). This reading of 21:16 is too subtle. The law gives no clear indication that it now deals with a third party. This inconsistency is introduced from replicating the cases in 21:37 and 22:3, which in turn derive it from LH; see later.

13. The LXX puts the kidnapping law after the two child rebellion laws. This is a secondary smoothing of the context, not entirely different from what is sometimes found in modern translations that shift text order for sense (cf. NEB on 22:1–4 [= BHS 21:37–22:3]). Fleishman (“Offences,” 7) notes that the order of 21:15–17 (including the kidnapping law) may be due to the seriousness of the cases. Schwienhorst-Schönberger (*Bundesbuch*, 233) explains the odd position by viewing vv. 15–17 as a redactional expansion to an original v. 12, which sought to create a parallel to 21:37 + 22:3. Both sets of laws deal with killing a human/animal victim (21:12; in 21:37, this is “slaughtering” the animal), selling the victim (21:16; 21:37), or being caught with the victim in one’s possession (21:16; 22:3).

14. For a discussion of Akkadian wet-nurse laws, see Fleishman, הוריים וילדים, 55–66 (including LE 32).

15. For comparison, see Houtman, *Exodus*, 3:150. Rothenbusch (*Rechtssammlung*) does not deal with 21:16 and LH 14 together in his study.

16. LH 185 and 186 describe a *ṣeḥrum* (spelled syllabically) being taken in adoption (lit., “for sonship” *ana mārūtīm*). This child does not become a “son” (*mārum*) until sometime later in his relationship with his adoptive father, until which time he is called a *tarbītum* “a rearling.” LH 188 refers to a craftsman taking a DUMU/TUR “for raising” (*ana tarbītīm*). This should probably be read TUR = *ṣeḥrum* since raising is preliminary to adoption in LH 185–186. Moreover, LH 189, a follow-up to 188,

says that if the craftsman does not teach the child his trade, “that rearing (*tarbūtum*) shall return to the house of his father”; i.e., he is not a *mārum*. LH 190 confirms this as it talks about a father eventually not recognizing a *ṣeḥrum* (spelled syllabically), presumably of the previous laws, as his son. LH 191 seems to use the logogram to mean *ṣeḥrum* when it says that if a man takes a *ṣeḥrum* (spelled syllabically) in adoption but after having other children decides to disinherit the child, “that DUMU/TUR shall not leave empty-handed” (DUMU/TUR *šū rēqūssu ul ittallak*). Since he is not yet a “son” *mārum*, the sign should be read in this law as TUR = *ṣeḥrum*. This interpretation of the logogram in these laws is followed by Roth, *Collections*, 119–120; Richardson, *Hammurabi’s Laws*, 102; similarly CAD T 225b for LH 188. Borger (*Lesestücke*, 37–38) reads all cases in these laws as DUMU = *mārum* (so also Huehnergard, *Grammar*, 263, 305, 384, 415, 453 and *Key*, 59, 73, 101, 113, 127; Finet, *Le Code*, 107–110 regularly renders the logogram as “infant” but syllabic *ṣeḥrum* as “petit” or “nouveau-né”). Incidentally, the case at hand shows the value of the thesis of this study for the philological analysis of LH. That is, if on the basis of other evidence LH is taken as a source for CC, the apparent substitution of LH 14 for LH 194 in Exod 21:16 becomes evidence that scribes in antiquity read the DUMU/TUR sign in the cases and laws just described specifically as TUR = *ṣeḥrum*.

17. No doubt that even apart from a native participial source, CC’s society would have had sanctions against kidnapping. Wells (“Covenant Code,” 24) argues that CC’s law therefore does not need to depend on LH. But he does not address why the position of CC’s kidnapping law just happens to fit the position of LH 194. That CC’s society had rules against kidnapping does not preclude dependence on LH for raising the topic as a point of legislation and for its location in the composition. Wells includes a discussion of other Near Eastern texts referring to kidnapping (p. 24).

18. One must contend with the possibility that the Decalogue is partly based on CC (see chapter 12).

19. Sprinkle (*Book*, 76) says that CC’s kidnapping law implicitly or primarily involves a child and that stealing the child is a crime against the parents; this explains its placement with the child rebellion laws.

20. Albertz (“Hintergrund und Bedeutung des Elterngelobts”) has argued that biblical laws about the treatment of parents usually imagine older, even mature, children and are thus concerned about providing care to elderly parents (see also Houtman, *Exodus*, 3:148–149; Schwienhorst-Schönberger, *Bundesbuch*, 217–218, 220; Sprinkle, *Book*, 77–78). For a review of the Nuzi documents requiring care for the elderly, see Fleishman, הוריות ויילדים, 210–232. Fleishman (“Legal Continuation, 60, cf. 64) says that disinheritance in LH 168–169 has to do with a child’s not supporting his parents. On filial duties in the Ugaritic Aqhat text (*CAT* 1.17 I 25–33, 42–48; II 1–9, 14–23), which relate to an older child, see Wright, *Ritual in Narrative*, 48–69.

21. Brin (“Development,” 61–63; *Studies*, 24–28) sees the phrase as compositionally secondary.

22. See the views of Osumi, Otto, Sprinkle, charted in Wright, “Fallacies,” 158–159, discussed and critiqued in the earlier pages of that article. Rothenbusch (*Rechtssammlung*, 591) also says that the participial laws form a frame.

23. Morgenstern (“Book of the Covenant, Part III,” 148) makes a similar conclusion. He, however, calls them “pseudo-*ḥuqqim*” as opposed to the true *ḥuqqim* of 21:12, 15–17. His analysis, the details of which can be severely questioned, nevertheless leaves the door slightly open for developing the thesis that 22:17–19 were not part of the

original participial source (for which I argue) and were fashioned as an appendix in the image of 21:12, 15–17. Chamberlain (“Exodus 21–23,” vi, 129–133) sees 22:17–19 as a late insertion modeled after the participial laws of 21:12–17.

24. Cf. Patrick, *Old Testament Law*, 84; Sprinkle, *Book*, 162 n. 1.

25. The Hittite Laws contain various laws pertaining to magic and sorcery (HTL 44b, 111, 163, 170), but these are not similar to v. 17.

26. Dalley (“Influence of Mesopotamia,” 70–71), for example, compares Exod 22:17 and LH 2.

27. Schwienhorst-Schönberger, *Bundesbuch*, 330 (“Das—abgesehen zunächst einmal von Ex 22,17—erstmalige Aufkommen des Wortes in der Mitte des 7. Jh. und die im AT mehrfach bezeugte Rückführung auf nichtisraelitische Kreise machen die These plausibel, daß die mit כִּשְׁף bezeichnete Tätigkeit bzw. Berufsgruppe nicht zu einer alten genuin israelitischen Tradition magischer oder divinatorischer Praktiken gehört, wie etwa Efod, Urim und Tummim, sondern wahrscheinlich erst unter dem Einfluß der assyrischen Kultur in Israel Eingang fand”). He adds that כִּשְׁף in 22:17 may be the oldest attestation of the root in the Bible and that Deuteronomy picked up the concept and developed it (Deut 18:9–13).

28. Van der Toorn, *From Her Cradle*, 113; noted by Anderson, *Women*, 82 (see also her comment on p. 34). For females and males in sorcery, see Houtman, *Exodus*, 211, 212.

29. See also n. 32.

30. For bestiality in the Bible, see Houtman, *Exodus*, 3:212–213. Phillips (*Essays*, 53 n. 16) notes that the animal is not put to death in 22:18 because it is not envisioned as having committed a crime, as opposed to the ox in 21:28–32 (for animal liability in the immediate narrative context, see 19:13). He briefly discusses the development of the conception of the guilt of passive partners in illicit sexual activity in Deuteronomy and the Holiness Code. Lev 20:15–16 requires the death of the human and the animal. See also Fensham, “Liability,” 88–89.

31. See Hoffner, “Incest, Sodomy and Bestiality”; Schwienhorst-Schönberger, *Bundesbuch*, 326–328.

32. Schwienhorst-Schönberger (*Bundesbuch*, 322–329) ties the prohibition of bestiality to magical practices in the larger Near East, where animals were used analogically (and perhaps concretely) in rites to boost sexual potency. He cites a salacious Neo-Assyrian ritual text to this effect (pp. 323–324). His contextual point is that 22:17–19 deal with a series of magical-cultic acts and thus cohere. Houtman discusses the possibility that a sorceress is conceptually associable with the notion of seduction (following Ehrlich) and hence is juxtaposed to a law on bestiality (*Exodus*, 3:211–212).

33. Krebs, “Zur kultischen Kohabitation mit Tieren.” Schulz (*Todesrecht*, 61) notes that 22:17–19 constitute a series that legislates against idol worship of various sorts, with intercourse with a bovine being a type of cultic practice. (See the previous note.)

34. Zakovitch (“Ancient Variants”) notes various passages in which אֱלֹהִים alone may refer to “other gods” (Exod 18:11; Ps 82:1; 95:3; 96:4; see also Exod 15:11; Ps 86:8). Schulz (*Todesrecht*, 58–59) questions Alt’s reconstruction of the original law as: זָבַח לְאֱלֹהִים אֲחֵרִים מוֹת יוֹמָת “One who sacrifices to other gods shall be put to death.”

35. See Nelson, “*herem*,” for the meaning of the term. He notes that this and other “key examples have nothing whatsoever to do with war,” noting also Lev 27:28–29; Ezra 10:8.

36. For this original reading, see Lohfink, “הָרָם *hāram*,” 181. See the discussions at Fensham, “Rôle,” 265–266; Schwienhorst-Schönberger, *Bundesbuch*, 317 (with bibliography). Schwienhorst-Schönberger (*Bundesbuch*, 322; following Otto, *Wandel*, 5, cf. 6) believes that v. 19b comes from a Deuteronomistic redactor (cf. 1 Sam 7:4). But he notes that one can seriously consider it coming from his Gottesrechtsredaktor stratum, which is pre-Deuteronomic (see the summary of his view in chapter 1). Zakovitch (“Ancient Variants,” 58–59) argues that the MT is original and that the Samaritan has added אהרים and dropped the superfluous בלתי ליהיה לבדו.

37. Zakovitch (“Ancient Variants,” 59) compares the two texts. For the interchange of כי אם and בלתי, see Gen 42:15 and 43:5; Num 14:30 and 32:12.

38. It has been claimed that 22:19 is the center of CC and is balanced by the cultic laws at the beginning and end of the work (cf. Blenkinsopp, *Wisdom and Law*, 94–95; Halbe, *Privilegrecht*, 413–421). In addition to 22:19 actually being a miscellaneous regulation, as argued in this chapter, see the structural critique in Wright, “Fallacies,” 144.

39. These laws may have been arranged by increasing seriousness (cf. Houtman, *Exodus*, 3:211; Schwienhorst-Schönberger, *Bundesbuch*, 318; Sprinkle, *Book*, 162–163). Schwienhorst-Schönberger compares the intensification of cases in the disloyalty laws of Deuteronomy 13 and concludes there is a traditional historical connection between the descriptions in the two books and that Exod 22:17–19 may have even inspired Deut 13. Levinson (*Deuteronomy*, 123) notes that the apostasy laws in Deut 13 are in part a development of 22:19.

40. Otto (*Wandel*, 5–6) says that 22:17–19 in their basic formulation do not reflect Deuteronom(ist)ic influence. Schwienhorst-Schönberger (*Bundesbuch*, 322, 328) sees 22:18 as priestly and dependent on Deut 27:21 and Lev 20:15.

41. Schwienhorst-Schönberger (*Bundesbuch*, 22–28, 232) argues that they are an introduction to 22:20–23:9 and that the participial laws in 21:12–17 are an introduction to 21:18–22:16.

Chapter 8

1. See chapter 1 for a review of various studies in which the goring ox laws play a prominent role.

2. A sample of those who compare the two sets of laws includes Cazelles, *Études*, 152–153; Eichler, “Study of Bible,” 89–94; Finkelstein, *Ox*; Houtman, *Exodus*, 3:175–176; Malul, *Comparative Method*; Rothenbusch, *Rechtssammlung*, 327–335. See also the studies cited later.

3. See Wright, “Compositional Logic,” 98–102 (note the chart there); “The Laws of Hammurabi and the Covenant Code,” 233–234.

4. Schwienhorst-Schönberger, *Bundesbuch*, 129–162. His overall redactional model is summarized and critiqued in Crüsemann, *Torah*, 145 n. 189.

5. So also Phillips, *Essays*, 61. Otto (*Körperverletzungen*, 157), however, says that this phrase refers to vv. 28–30 as a whole. Westbrook (*Studies*, 57–61) argues that v. 31 refers only to v. 30 and that it means that the amount to be set for the ransom in the case of a child victim is to be the same as that of an adult (cf. Wells, “Covenant Code,” 104–105 n. 51). In this context, we should note that the preposition plus pronoun לו “for him” in v. 31 cannot refer to the ox, otherwise the law would lack a clear *raison d’être*. The reference to the male victim alone in the pronominal reference parallels v. 28, which

says “and he dies” after referring to the victim as either a male or female. Compare also the use of the verb עשה “do” and the noun משפט “law” with the preposition ל in reference to a legal patient for whom a legal obligation exists in 21:9.

6. Otto (*Körperverletzungen*, 158) thinks that v. 30 was added first, then v. 31. Otherwise, one would expect v. 30 to follow v. 31. See also Otto, *Wandel*, 29–30.

7. Otto, *Körperverletzungen*, 156; see also Brin, “Development,” 64–70; *Studies in Biblical Law*, 28–32.

8. For this conjunction see Liedke, *Gestalt*, 34. Otto (*Körperverletzungen*, 157) says this conjunction is a “formgeschichtlich abweichende Einleitung.” Phillips (*Essays*, 55, 60–61) sees the deviant conjunction as a sign of later authorship. Brin (*Studies in Biblical Law*, 89–103) notes that the conjunction is used for extending applicability and clarification and may be an indication of a secondary expansion and compares 21:6, 18.

9. Otto, *Körperverletzungen*, 156–158.

10. Other scholars have identified secondary elements in 21:28–32. Daube (*Studies*, 86) and Jackson (*Essays*, 145, 150) see v. 31 as an addition. Otto (*Körperverletzungen*, 153–164) sees vv. 28–29, 32 as an original unity to which v. 30 and then v. 31 have been added (though on pp. 157 and 163, he appears to see v. 32 as somewhat secondary, along with v. 31; cf. Otto, *Wandel*, 29–30). Rothenbusch (*Rechtssammlung*, 320–321, esp. n. 404, 327) is not entirely clear about the redactional development that he assumes took place in vv. 28–32, but apparently he does not necessarily see vv. 30–32 as secondary. Seebass (“Zum Sklavenrecht,” 182 and n. 20) sees vv. 28–32 as a whole “aus dem man nichts herausbrechen darf.” Osumi (*Kompositionsgeschichte*, 119–121) also sees vv. 28–36 as a unity (and even vv. 12–36 represent more or less a unity).

11. Malul (*Comparative Method*, 151) notes similarly (and almost tautologically): “If one were to excise from the biblical laws of the goring ox the section which contain these differences [e.g., stoning, prohibition of eating the flesh, death penalty; see p. 148], one would be left with basically the same laws as those appearing in the Mesopotamian law corpora—while making due allowance, of course, for the necessary syntactical, grammatical, and lexical changes dictated by the process of adapting the material.” Schwienhorst-Schönberger (*Bundesbuch*, 135–136), after undertaking his literary critical analysis of 21:28–32, notes the similarity to LH 250–252 to justify seeing the stoning and prohibition elements as traditionally secondary. In this, he recognizes that cuneiform tradition (and maybe even sources) were used for CC (pp. 161–162, 252, 255).

12. Eichler, “Study of Bible,” 94–97; Finkelstein, *Ox*, 19 (he says there must be “some kind of organic linkage”); Houtman, *Exodus*, 3:91; *Bundesbuch*, 28; Malul, *Comparative Method*, 141–142; Schwienhorst-Schönberger, *Bundesbuch*, 145, 159, 156–161, 239, 252; Van Seters, *Law Book*, 121; Westbrook, “Biblical and Cuneiform Law Codes,” 253, 256–257; Yaron, “Goring Ox,” 398–399 (similarity is due to “reception of a rule which was probably of general, or at least wide, application throughout the ancient East”); cf. Morrow, “Generic Discrepancy,” 136. For reservations about dependence, see Rothenbusch, *Rechtssammlung*, 329.

13. This sets the context for the whole of LH 250–252. For Finkelstein (*Ox*, 24) the notice of walking through the street in LH “implies that the ox was ‘walking along’ under the proper control by its owner (or whoever was in charge of it), so that the ensuing accident was not the result of negligence on the owner’s part. The further implication is unavoidable that the death was due to the victim’s own carelessness.”

14. On the Akkadian denominative adjectival form, see Malul, *Comparative Method*, 140 n. 54; GAG § 560 and § 55m.

15. Houtman, *Bundesbuch*, 173.

16. Cf. Paul, *Studies*, 80 n. 5.

17. Malul (*Comparative Method*, 143–144) notes several passive verbs in CC (21:15, 20, 21, 22, 28, 30, 31, 36; 22:1, 3, etc.) and says that “the passive mood occurs usually in verbs describing the activities of the authorities, which are supposed to discuss the matter, judge it, and execute the punishment. It seems as though the editor of the Book of the Covenant preferred for an unknown reason to use the passive mood upon the active mood of the verbs when describing the activities of the local authorities, and if so, the difference between ‘and it has been testified to its owner’ of the Book of the Covenant and ‘the city quarter notified him’ of the Mesopotamian laws is not coincidental; it is rather intentional and falls in line with the general context.” Jackson (*Wisdom-Laws*, 273, cf. 396, 402) says that passive verbs are consistent with the thesis that the basic casuistic laws are self-executing and in no need of an institution. I wonder if the passive voice is part of CC’s ideological response against institutions in LH, from kingship on down to the local *bābtum*. CC has deinstitutionalized the material from its sources.

18. Malul, *Comparative Method*, 147; Paul, *Studies*, 80–81 n. 6. LE 54 has only one verb: “he did not restrain (it)” *lā u-<šē>širma* (cf. Yaron, *Laws*, 77; Roth, *Law Collections*, 54). For a discussion of presumed problems associated with the verb שמר “control, watch,” see Jackson, *Essays*, 121–130; *Wisdom-Laws*, 270–272. Given the source connections to LH, an emendation to ולא שמי(ד)נו “and he does not destroy it” following the LXX (in both vv. 29 and 36) cannot be accepted (even Rothenbusch, *Rechtssammlung*, 331 n. 440, who does not recognize LH as a source, rejects this emendation on the basis of similarity to Near Eastern law; cf. Sprinkle, *Book*, 104 n. 1).

19. Elsewhere in CC, mitigating factors do not require execution of responsible parties (e.g., lack of intention, 21:13–14; slave status of the victim and delay of death, 20:20–21). Cf. Paul, *Studies*, 81–82. Rothenbusch (*Rechtssammlung*, 320 n. 401) sees v. 30 as an expression of ransom that was theoretically possible elsewhere within the context of the casuistic laws (as implied in v. 23).

20. Seebass (“Sklavenrecht,” 181) says that ransom is allowed here (and only here) “weil die Sühne für den Tod am gesteinigten Rind bereits erfüllt war.” If one looks at the killing of the ox as an expression of vengeance rather than “Sühne” (see later; this distinction may be more a matter of nuance than exclusive definition), then Seebass’s basic logic can still apply.

21. See Seebass, “Sklavenrecht,” 182.

22. Jackson, *Essays*, 122; Houtman, *Bundesbuch*, 174.

23. For the sense of these terms, see Houtman, *Bundesbuch*, 178–179; Otto, *Körperverletzungen*, 159–160; Phillips, *Essays*, 63; Schenker, “*köper* et expiation,” 32–46 (cf. *Versöhnung*, 55–59). Num 35:31 also uses כפר of what one is not to accept in cases of intentional homicide, though here, as Schenker (“*köper* et expiation,” 37–39) points out, it is an illegal payment and thus similar to a bribe. There it has the functional meaning of silver paid to the family to prevent prosecution of blood vengeance. That meaning suits CC’s context. Houtman (*Exodus*, 3:177) notes that from the point of view of the victim’s family, the ransom is indemnification.

24. Otto (*Körperverletzungen*, 156) answers the question why v. 29 remains in the text unaltered by the addition: “Die Todessanktionsformulierung in Ex 21,29

bleibt unvermittelt daneben stehen, weil sie Aufschluß über die Rechtsgrundlage der Auslösung eines verwirkten Lebens und also über die Höhe der Zahlungsforderung gibt.” This actually shows how apt the addition of v. 30 is.

25. Jackson, *Wisdom-Laws*, 286; Westbrook, *Studies*, 57–58.

26. Yaron, *Laws*, 146–149. He notes that LE 54, the equivalent of LH 251, uses only *awīlum*; therefore, *mār awīlim* must have the same meaning.

27. I agree with Greenberg (“Postulates,” 20–27) that this is a reaction to vicarious punishment (cf. Malul, *Comparative Method*, 145–146; Paul, *Studies*, 82–83). It may be that the statement of this principle in Deut 24:16 makes explicit what is implicit in CC.

28. Frymer-Kensky (“Tit for Tat,” 233) compares 21:31 with LH 230–231 in particular. Jepsen (*Bundesbuch*, 36) compares 21:31 to LH 230 and even goes so far as to speculate that “Es ist wohl möglich, dass eine dahingehende Bestimmung [i.e., like LH 230] durch den heutigen Worlaut des Gesetzes [i.e., v. 31] verdrängt ist.” Cazelles (*Études*, 59) also compares v. 31 with LH 230.

29. The א “or” here is not simply an alternative to אִם “if.” It is chosen because it idiomatically sets up an option between two conditions: “Whether it gores a son or daughter . . .” (cf. Cazelles, *Études*, 59; Waltke and O’Connor, *Syntax*, 654–655).

30. Malul (*Comparative Method*, 132–133) notes how unique this law is in the Bible, a feature that draws attention to its similarity to LH: “the law of an ox goring a slave is the only case in the Old Testament which deals with another person’s slave; usually the Old Testament deals with injuries inflicted upon a slave by his own master. Furthermore, the juxtaposition of a law dealing with injuries suffered by a slave with a law dealing with injuries suffered by a free person is quite common in the ancient Near Eastern law, but occurs no more in the Old Testament, apart from [Ex 21:28–32]. . . . Finally, only in the case of a slave gored by an ox does the Old Testament allow the payment of monetary compensations. . . . The picture is clear: only in the case of the laws of the goring ox does the Old Testament deviate from its usual way of dealing with slaves; the deviation, surprisingly enough, admirably fits the ancient Near Eastern picture. What is more natural, then, than to relate these two facts to each other and come to the conclusion that the biblical laws of the goring ox were influenced by their Mesopotamian parallels?”

31. CC is not averse to abbreviated dependent formulations as found in LH. An example is Exod 21:23 אִם אֶסֶן יִהְיֶה “if there is other injury,” which assumes v. 22. This more or less follows the abbreviated formulation in LH 210, dependent upon 209 (see chapter 6).

32. It is not my concern to enter into the question of whether the term or concept “negligence” best describes these laws (or in the laws compared from cuneiform sources). See the discussion of Jackson, *Wisdom-Laws*, 318–319 and n. 17 and Fensham, “Liability in the Case of Negligence,” 286. Jackson’s questioning of the notion of negligence in these laws leads him to question my connecting vv. 33–34 with LH 229–230 (see also his p. 315 n. 8). Notwithstanding his objection, the two sets of laws still can be associated through a general conception of negligence. His alternative description is succinctly put in a comment on Exod 22:5 (*Wisdom-Laws*, 328; my italics here): “If we are seeking some unarticulated general basis of liability, *enterprise liability*—one who takes the benefit of an enterprise also assumes its risks—is, in the biblical text, more plausible than negligence, albeit that the typical cases here envisaged may well be accompanied by lack of care.” If one objects to “negligence” as the category for

comparing 21:33–34 and LH 229–230, one could easily shift to “enterprise liability” for comparing the two laws.

33. Gilgamesh VI 119–124 (George, *Gilgamesh*, 1:626–627). For subjective falling in other cases, see CAD M/1 241b–242a.

34. HALOT 116.

35. BE 17 21:27 cited in CAD B 342b (CAD’s translation); see also AHw 606a for a Neo-Assyrian example of falling *ana būre* “into a pit/well” (ABL 142 Rs. 1).

36. See Eichler, “Literary Structure,” 72; Petschow, “Systematik,” 146–172; cf. Wagner, “Systematik.”

37. Deut 22:8 has a law somewhat similar to LH 229–230 (as well as LE 58) that includes house construction and falling: “When you build a new house, you shall make a parapet for your roof so that you do not bring bloodguilt on your house when one falls (כי יפל הנפל) from it.” Here the victim falls like the animal that falls into a pit.

38. Jepsen (*Bundesbuch*, 36) sees vv. 33–36 as an appendix to vv. 28–32 (though they anticipate the subject of what follows in CC). Rothenbusch (*Rechtssammlung*, 227, 324–327) believes that vv. 33–34 are an insertion into an older ox law consisting of vv. 28–32, 35–36. Noth (*Exodus*, 183) sees vv. 33–34 as loosely attached. Otto (*Wandel*, 12–31; *Körperverletzungen*, 154–155; *Rechtsgeschichte*, 151–153) says that 21:18–32 and 21:33–22:14 (the latter a group of *ישראל*-laws of which vv. 35–36 are an integral part) were originally independent collections (see also Schwienhorst-Schönberger, *Bundesbuch*, 47).

39. Schwienhorst-Schönberger, *Bundesbuch*, 143–145, 147.

40. See the critique by Rothenbusch, *Rechtssammlung*, 337. On the meaning of בעל הבור “pit owner/owner of the pit,” see Jackson, *Wisdom-Laws*, 314–315.

41. See Jackson, *Wisdom-Laws*, 319–321.

42. Daube (*Studies*, 138–139) also sees the phrase as secondary, “inserted in an age when restitution in kind had become obsolete and superseded by monetary restitution” (cf. Rothenbusch, *Rechtssammlung*, 336). Daube’s study of the instances of D-stem שלם indicates that it in all other places means restoration in kind (pp. 141–144; see also the study of the term by Cazelles, *Études*, 60–61).

43. Houtman, *Bundesbuch*, 185; Paul, *Studies*, 84. Paul says specifically: “In both cases the verb *šlm* (Heb. פיעל, corresponding to the Akk. D-stem) is used absolutely without a direct object and is followed by an explicative case employing the verb ‘to restore/replace’ (Heb. ישיב; Akk. *iriab*).” For *šullumum*, see CAD Š/I 209, 226–228.

44. CAD Š/I 228.

45. The D-stem of *šalāmum* (CAD Š/I 226–229) is used of restoring animals (LH 267; lost through disease caused by negligence), lost items (LH 125), and property of a bride (LH 138, 149, 156). The verb *rābum* (CAD R 53–55) is used of replacing slaves or animals in kind (X *kīma* X [= X תהה X]; LH 219 [cf. 231], 245–246, 263), multiple replacement of animals or stolen items (8, 265), and replacing other lost property (LH 23, 53–54, 125, 232, 236–237, 240).

46. LH 50 (also 51) uses the D-stem of *tārum*, a synonym of השיב, of repaying silver to a merchant who made a loan to a field owner: the field owner “returns (or pays) silver and its interest to the merchant” (*kaspam u šibassu ana tamkārīm utār*). For the Akkadian verb, see CAD T 262.

47. See also LH 44, which has a case of one renting a field “for cultivation” (*ana teptūtim*, literally, “for opening/breaking up,” from the root *petūm*) in a context of negligence.

48. Houtman (*Bundesbuch*, 185) notes that LH 53–55 are similar to Ex 21:33–34 in dealing with negligence. On LH 53–56, see Haase, “Wasserrecht.”

49. Marshall (*Israel*, 105–106) notes the similarity to the biblical law but says “that it does not address the issue of injured oxen or asses.”

50. The mention of a pit/cistern in CC’s law may thus not necessarily reflect local, Palestinian circumstances (for this view, see Cazelles, *Études*, 59–60; Rothenbusch, *Rechtssammlung*, 350, 352; Schwienhorst-Schönberger, *Bundesbuch*, 274). Jackson (*Wisdom-Laws*, 314) says the pit in CC is most likely a waterhole, befitting the context of animal husbandry.

51. Even apart from the cuneiform evidence, one could question Schwienhorst-Schönberger’s conclusions about the original shape of vv. 33–34. The owner of the pit could be responsible even if someone else uncovered the pit, or the writer could have the owner in mind as the one who uncovered the pit (cf. Cazelles, *Études*, 60).

52. See Wright, “Compositional Logic,” 121 n. 67 for a table that summarizes the linguistic similarities of vv. 33–34 to Akkadian idiom.

53. Crüsemann (*Torah*, 145–146) notes that the two main sections 21:12–36 and 21:37–22:16 dovetail together; 21:33–34 anticipate the next section and 22:1–2a reflect back on the issue of homicide in the previous section.

54. See n. 12.

55. Wagner (“Systematik,” 179): “Andererseits fügt sich § 9’ [vv. 33–34] elegant zwischen § 10’ [vv. 35–36] und § 11’ [v. 37] ein. Wie es zu den jetzigen Ordnung gekommen ist, ist nicht deutlich.” Daube (*Studies*, 75–101) explains the order by viewing vv. 35–36 as an addition that is placed at the end of the section it modifies. Schwienhorst-Schönberger (*Bundesbuch*, 156, 147) also sees vv. 35–36 as an addition to the basic original text. Rothenbusch (*Rechtssammlung*, 227) questions Daube’s background evidence and conclusion (also Sprinkle, *Book*, 106–107). He sees vv. 35–36 as part of the original unit before the addition of vv. 33–34. Otto explains the location of vv. 35–36 by seeing v. 33 as beginning an originally independent collection (see n. 38); therefore, the position of vv. 35–36 is not related to the position of vv. 28–32. Sprinkle (*Book*, 107–108, 112–114) argues that the arrangement of vv. 28–36 arises out of a “semi-chiastic” structuring (vv. 35–36 // vv. 28–32; similarly Osumi, *Kompositionsgeschichte*, 119–121; see Wright, “Fallacies”).

56. See Wright, “Compositional Logic,” 97–102.

57. This approach is reasonable, given the lack of evidence. Levinson (“Deuteronomy 13:7a,” 236–241) operates similarly in his analysis of Deuteronomy’s apostasy regulations (Deut 13) and Assyrian treaty.

58. It is not clear if LE requires the selling of the ox or only dividing its value, with the owner retaining possession of the animal (cf. Jackson, *Essays*, 108–109, 131; Schwienhorst-Schönberger, *Bundesbuch*, 150–152; Yaron, *Laws*, 292 n. 124). If LE 53 assumes a sale, CC can be seen as making this explicit.

59. נגף is a more general term; see Preuss, “נגף”; Rothenbusch, *Rechtssammlung*, 329–330; Schwienhorst-Schönberger, *Bundesbuch*, 150–151. It is doubtful that this term in v. 35 implies a significantly different type of attack than that described in vv. 28–32 (contra Daube, *Studies*, 86, 88).

60. For Otto (*Wandel*, 24–25; *Rechtsgeschichte*, 135, 138), the various words for striking or injury and the alternation of cases between free person and slave set 21:18–32 apart as a unit. In my view, these are not features imposed redactionally but transferred in large part from LH. Incidentally, the use of הכה “to strike” in the Samaritan in

21:28, 31, 32 is part of its later and secondary generalization of the topic, which is also manifested in the addition of *או כל בהמה* “or any animal” in v. 28 and the replacement of שור “ox” with *בהמה* “animal” in 21:28, 29, 32 (cf. Fishbane, *Biblical Interpretation*, 170; Houtman, *Bundesbuch*, 171–172;).

61. CC also uses synonymous terminology for fighting, *ריב* in v. 18 and *נצה* in v. 22 (which stand alongside the synonyms for striking that are used in the two verses, *הכה* and *נגף*, respectively). See chapter 6.

62. Fensham, “Rôle of the Lord,” 262 n. 3; Schwienhorst-Schönberger, *Bundesbuch*, 159; HALOT 669. Malul (*Comparative Method*, 142 n. 55) makes a similar conclusion: “Knowing that the regular Hebrew verb for denoting the ox’s attack is *נגה* and not *נגף*, which expresses a different idea, and knowing also that the etymological parallel of *נגף* occurs in the Akkadian sources, it stands to reason to conclude that in front of the biblical editor there might have been a copy of a Mesopotamian law corpus in which appeared the law of an ox goring another, and which probably was different from the copy standing in front of the (same or another) editor in which only the laws of oxen goring persons appeared, and for the sake of completeness he added the law of the ox goring another in the place where it appears now. He, however, did not bother to make the needed change in the verbs (*נגף* and *נגה*) and left the Akkadian verb in the Hebrew text (possibly inadvertently)... The interpretation suggested here... is a literary-historical one, based on the assumption of the literary nature of these laws.” One of the implications of Malul’s discussion of the verb (*Comparative Method*, 140–143) is that *נגף* would not be a natural choice for describing the situation of an ox goring. It makes perfect sense, however, if it is seen as reflecting the etymologically equivalent and phonologically similar Akkadian *nakāpum*.

63. The full and defective spellings of *מתמולמתמל* in vv. 36 and 29 are not necessarily signs of distinct authors (so Schwienhorst-Schönberger, *Bundesbuch*, 154), just as the full and defective spellings of *ברבור*, both in Schwienhorst-Schönberger’s original text of vv. 33–34 (at n. 39), are not an indication of distinct authors (even Schwienhorst-Schönberger cannot claim the latter as evidence; *Bundesbuch*, 143 n. 57).

64. Rothenbusch notes the similar, almost literal, repetition of 22:7 in 22:10 (*Rechtssammlung*, 366). This may point to a broader compositional technique or tendency.

65. On *נודע* being a sign of a later addition, cf. Cazelles, *Études*, 62. Given CC’s sometimes imprecise and creative rendition of Akkadian, it is hard to know if *נודע* over against *הועד* really sets out a legal difference (e.g., that v. 36 does not require official notification as opposed to v. 29, which does; so Daube, *Studies*, 86; Sprinkle, *Book*, 114–115).

66. If the source that CC used was like LE and included a law like LE 54 (parallel to LH 251), which has *ušēdīma*, then the argument here must be slightly reformulated.

67. So Schwienhorst-Schönberger, *Bundesbuch*, 147–148; cf. Jackson, *Essays*, 152 (for him, v. 36 is a “scholastic addition”).

68. For the emendation, see Finkelstein, *Ox*, 20, n. 1.

69. See nn. 10, 38, 55. In addition to the views there, Jackson (*Essays*, 145–152) sees v. 35 as original but v. 36 as an addition.

70. Cardascia (“Le caractère volontaire,” 190) wonders whether killing the ox was intended by LH 250–252.

71. I do not enter into the possible difference in value between the two animals and whether one animal owner might in some cases make out better than the other (discussed in detail with mathematical calculations in Jackson, *Wisdom-Laws*, 276–279,

287–290). The text is not apparently interested in this real-life question (cf. Houtman, *Exodus*, 3:184).

72. Cf. Schwienhorst-Schönberger, *Bundesbuch*, 148, who sees letting the ox live as a problem.

73. Noted by Otto, *Rechtsgeschichte*, 155 n. 1; cf. *Körperverletzungen*, 160. Jackson (*Wisdom-Laws*, 135, 256–266; see also his *Essays*, 108–121) argues that the law does not see the ox as a guilty party and that the stoning may not have been intended to kill the animal. The rule that its flesh not be eaten, if original, means for him only that if the animal happens to die by stoning, then it is not to be eaten. Houtman (*Exodus*, 3:174) says that animal is not “a responsible creature against which legal steps can be taken.” Stoning is to get rid of a dangerous animal (p. 175).

74. Fensham (“Liability,” 88, cf. 85) speaks of the killing of the ox as exacting vengeance: “It might have been only a natural action of vengeance to kill a vicious animal which killed one of the relatives of a family or which caused considerable damage to someone’s property by killing a slave” (p. 88).

75. One can wonder if a law like LE 58 was also influential in the expansion of penalties. According to this law, which concerns negligence, when a buckling wall falls (*maqātum*) and kills someone, but the owner had been warned by authorities, “it is a capital case, subject to royal decision” (*napištum šimdat šarrim*). Rothenbusch (*Rechtssammlung*, 333) notes that the difference in the penalties in LE 53–55 and 58 may have to do with the animal (as opposed to a building) having an independent will, which mitigates the owner’s responsibility somewhat. A law like LE 58—a negligence law dealing with “falling” near goring ox laws—could have also been an impetus to the creation of the negligence law of Exod 21:33–34, which deals with falling. For some comparative analysis, see also Jackson, *Essays*, 128.

76. Cf. Rothenbusch, *Rechtssammlung*, 320 n. 401.

77. Bone, for example, would be used for awls, needles, pins, spatulae, spindles, whorls, decorations, and pendants. See Anderson-Stojanovic, “Leather,” 339–340; Borowski, *Every Living Thing*, 59, 63–65; Irvin, “Clothing,” 38–40; Liebowitz, “Bone,” 340–343; Wapnish, “Bone,” 335–340. Van de Mieroop (*History*, 88) summarizes the use of animals among pastoralists in reference to the Amorites: “The life of pastoralists revolved around their flocks. Throughout the Near East millions of sheep and goats were herded for what is called their renewable resources: especially wool and hair, and when dead, skins, bones, horns, and tendons. Meat consumption was limited, so relatively few animals were slaughtered.”

78. A careful reading of Exod 22:30 indicates that only eating *the meat* (בשר) of the animal torn by beasts is forbidden. Presumably the bones, skin, and so forth—everything but the flesh—of this particular animal may be used for nondietary purposes by humans.

79. Thus 22:30 does not necessarily contradict 21:34–36 (cf. Schwienhorst-Schönberger, *Bundesbuch*, 268). Houtman (*Exodus*, 3:235–236) argues that the ox in 21:34–35 is not considered טרפה and thus could be eaten. On the relationship of Deut 14:21 to Exod 22:30, see n. 15 in chapter 12.

80. Jackson and Houtman connect the prohibition of eating to the manner of killing the animal (Jackson, *Essays*, 116; Houtman, *Bundesbuch*, 178; *Exodus*, 3:175, 179). For Jackson, however, the prohibition of eating is incidental to the act of stoning (prescribed for other reasons), whereas I see stoning as specifically prescribed to disallow alimentary use of the animal. It is similar to the use of the verb ערף for killing the cow in Deut 21:4, which precludes the animal from being considered a sacrifice (see Wright,

“Deuteronomy 21:1–9,” 390–392). Westbrook (*Studies*, 87–88) says that stoning in Exod 21 in part prevents the ox from being considered a sacrifice.

81. See primarily Greenberg (“Postulates,” 15), wherein he says: “A beast that destroys the image of God and must give a reckoning for it. . . . The religious evaluation inherent in this law is further evidenced by the prohibition of eating the flesh of the stoned ox. The beast is laden with guilt and is therefore an object of horror”; see also pp. 13–20; cf. Greenberg, “More Reflections,” 2, 9–17; and also Eichler, “Study of Bible,” 91–94; Finkelstein, *Ox*, 26–28, 70; “Goring Ox,” 269; Heger, “Source of Law,” 336; Paul, *Studies*, 79, 81, 82; Phillips, *Essays*, 49–73; Sarna, *Exploring Exodus*, 179–180; Seebass, “Sklavenrecht,” 181 n. 14; Sprinkle, *Book*, 123–128. Jackson (*Wisdom-Laws*, 259–260) notes how Finkelstein’s approach to this problem is cosmological, whereas Greenberg’s approach is theological. It seems to me, apart from the considerations raised in the main part of the present chapter, that an ethical interpretation of CC’s goring ox laws does not make sense when CC requires the execution of a rebellious child (21:15, 17) but not of one who kills a slave (21:21, 32). Furthermore, saying that LH manifests “a system motivated entirely by economic presuppositions,” as opposed to CC (Paul, *Studies*, 82), misjudges the data, especially in view of CC’s treatment of slaves as property (e.g., 21:20–21, 32 and even in 21:2–7, 26–27). For critique of Greenberg, see Jackson, “Reflections,” 8–38; *Wisdom-Laws*, 166–171, 259–263 (cf. Blenkinsopp, *Wisdom and Law*, 98; Haas, “Die He Shall Surely Die,” 70). For a discussion of Greenberg’s school of thought, see Rothenbusch, *Rechtssammlung*, 29–38. Westbrook (*Studies*, 5–6) resists Greenberg’s approach in part because it turns the silence of the biblical collections into an expression of legal principle. Walzer (“Legal Codes,” 340) qualifies conclusions made by Greenberg. He says that in content there is not much difference between biblical and Near Eastern collections, but “it seems to be true that the rhetorical stress on social justice that marks the biblical codes has no precedent elsewhere.” This itself has to be qualified now in view of the stimulus for the ethical content of the apodictic laws in CC (see chapters 3 and 11–12). See Loewenstamm, “Laws of Adultery,” for a critique of drawing ethical implications from law collections. For another, more qualified analysis of the differences of the application of capital punishment and its reflection of religious ideology, see Good, “Capital Punishment.”

82. See Wright, “Homicide, Talion, Vengeance.”

83. This argument indicates that ransom in CC’s goring ox laws is an academic creation suited to that particular legal case. Hence it is doubtful that CC intended ransom to be a regular remedy in other cases of homicide (contra Jackson, *Wisdom-Laws*, 133–138, 390).

84. Finkelstein, *Ox*, 21.

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86. For the stoning of the ox in Exodus 21 as the father of the biblical idea of the accountability of animals, see Jackson, *Essays*, 118–120 (see his recent observations on the relationship of Gen 9 in *Wisdom-Laws*, 266; see also Fensham, “Liability,” 88). Greenberg (“Asylum,” 129) asserts that the idea in Gen 9 “is no late conceit, but a principle that animated the earliest lawmakers of Israel.” Sprinkle suggests that the final editors of the Pentateuch may have “expressed [i.e., modified] the regulation on the goring oxen in such a way as to reflect the ideology of Genesis 1 and 9” (*Book*, 127–128). Thus he solves the chronological problem of CC’s implicitly reflecting P’s ideology.

87. For the Holiness Legislation’s being later than the Priestly material, see chapter 13, n. 21.

Chapter 9

1. Schwienhorst-Schönberger, *Bundesbuch*, 162–187; Westbrook, *Studies*, 125, 128. Westbrook says that the fine “is the ransom for his [the burglar’s] freedom, to be negotiated between himself and the victim of his attempted burglary.” Schwienhorst-Schönberger (pp. 183–185), arguing against Westbrook, says that v. 2a is not so much about killing a burglar at day caught in the act but about the opportunity for the householder to accuse the person of theft. The repayment in v. 2b is not for the break-in but for an accomplished theft, as the last part of v. 2b indicates (“he shall be sold for his theft”).

2. For v. 2b as part of the animal theft law, see Levinson, “Case for Revision,” 51; Rothenbusch, *Rechtssammlung*, 342–343; and see a number of others at Schwienhorst-Schönberger, *Bundesbuch*, 163 n. 4. Jepsen (*Bundesbuch*, 37) sees the original burglary law as consisting of 22:1–2a, but with v. 2b as secondarily misplaced and expanded. Otto (*Wandel*, 19–20; *Rechtsgeschichte*, 74–75) sees 22:2ba (i.e., only שלם ישלם) as the original continuation of 21:37 with the rest of v. 2 as an expansion. For him, vv. 1–2a were added at a later stage, and v. 3 added even later. (He also sees the traditional development of multiple payment as consisting originally of twofold payment, as in 22:6, 8, which was then later increased for sale or slaughter of animal in 21:37; see Otto, *Wandel*, 20–21, and Rothenbusch’s response, *Rechtssammlung*, 347, especially his point that 22:8 does not refer to animal theft per se and therefore is not in contradiction to 21:37.) Jackson (*Wisdom-Laws*, 291–292) sees vv. 1–2a as a topical unit but says that only 22:3 is secondary.

3. HtL 57–67 have multiple (thirty-, fifteen-, twelve-, ten-, seven-, and sixfold) repayment for animal theft, with distinctions made in species and earlier and later stages of legislation.

4. See Schwienhorst-Schönberger, *Bundesbuch*, 171–172. Note the lesser status of flock animals compared with bovines in the sacrificial prescriptions of Leviticus 1 and 4.

5. Cf. Levinson, “Case for Revision,” 48–52; Rothenbusch, *Rechtssammlung*, 344. For resumptive repetition as a sign of editorial reworking, cf. Levinson, “You Must Not Add,” 1–2 n. 1.

6. The penalty is payment of sixty kors of grain (18,000 silas = 18,000 liters) for every bur of land (= 18 ikus = 6.8 hectares = 16.01 acres). The theoretical severity of this penalty can be seen in comparison with wages paid for certain agricultural services: an agricultural worker/farmer (*ikkarum*) and a herdsman (*nāqidum*) of cattle and flock animals are to be paid 2,400 silas (= 2,400 liters) of grain per year (LH 257). The penalty in LH 255 suits the context of the theft of grain. The connection of the penalty to the illicit hiring out of the cattle is not clear. Perhaps the cattle are used for plowing and cultivating the field; since they are hired out, the man cannot produce the expected crops.

7. The law does not seem to be concerned about whether the thief might be sold to the animal owner or to a third party (for discussion, see Rothenbusch, *Rechtssammlung*, 345; Schwienhorst-Schönberger, *Bundesbuch*, 180; Westbrook, *Studies*, 126). For a case of enslavement for theft, cf. Gen 44:10. The law is also not concerned about the correlation of the amount of the penalty due and the time worked. In the context of CC, the thief would serve for six years and then be released (21:2; cf. Jackson, *Wisdom-Laws*, 301–302). This is one of several cases where CC has not worked through the full implications of its laws.

8. The N-stem verb נמכר in 22:2b may be the stimulus for the N-stem in Deut 15:12 and Lev 25:39, the primary verb for sale into debt-slavery in those later collections, as opposed to קנה in 21:2 or the G-stem of מכר in 21:7. Jackson (*Wisdom-Laws*, 299–300) says that נמכר in 22:2b is to be construed with a permissive sense: “he *may* be sold for his theft.” This interpretation is only necessary when the law is viewed as deriving from or prescribing real legal practice.

9. Cazelles (*Études*, 153) compares LH 8 with 21:37 + 22:2b–3. He sees a common tradition but not necessarily textual dependence, given the differences.

10. Rothenbusch discusses LH 53–58 in the context of 22:4–5 (*Rechtssammlung*, 345, 352–355).

11. Some have argued that CC is more ethical than cuneiform law in prescribing a thief’s sale (22:2b) rather than his execution as in LH 8 (so Cassuto, *Exodus*, 281–282; Paul, *Studies*, 86; for discussion, see Schwienhorst-Schönberger, *Bundesbuch*, 181 and n. 75). This judgment fails to consider LH 54.

12. Rothenbusch (*Rechtssammlung*, 345–346) thinks there may be a humanitarian reason in limiting slavery to only the case with the greatest penalty and not extending it to the lesser fine.

13. Those reading the biblical law as a reflection of real law have struggled with the issue of the meaning of the legal tests in 21:37 and 22:3 (also 22:1–2a; compare Daube, *Studies*, 89–96, Jackson, *Wisdom-Laws*, 293–302). For example, is it sufficient for the animal to be in the possession of another person (22:3) for that person to be convicted of theft? Likewise, is merely having killed or sold a stolen animal a sufficient indication of theft? LH 9–13 have been brought into the discussion to show that, in contrast, a person’s mere possession or further sale/destruction of a stolen item may not be sufficient to establish that person as a thief. The difficulty of CC’s laws may not be due to their reflection of a different scheme of tests for determining who is a thief, and they may not be general principles that entail a more complex range of tests such as found in LH 9–13. These may be cases where CC has taken motifs from its sources but has not gone further to address real-world implications. This is consistent with CC’s idealism, for example, in conflating debt- and chattel-slaves and in adapting debt-slavery to a seven-year pattern. This means that the terseness in the formulation of the rules in 21:37 and 22:3 is not from CC’s author not being explicit about what was in his mind; he may not have even considered the problems that classical and modern interpreters have raised. To put it another way, asking these questions of CC may be misconstruing its genre, much like asking scientific questions of Genesis 1–2. For possession as evidence of theft in narratives, see Gen 30:32–33; 31:30–37; 44:9–16 (44:16–17 use the idiom מנצא ביד; cf. 31:32; 44:9–10; Jackson, *Wisdom-Laws*, 298–299). Jackson suggests that the narrative of Genesis 44 alludes to CC.

14. For “finding” (מצא) in Deuteronomy’s laws, see Deut 17:2; 18:10; 21:1; 22:14, 17, 20, 22, 23, 25, 27, 28; 24:1, 7. On the idiom, cf. Jackson, *Wisdom-Laws*, 397.

15. Schwienhorst-Schönberger (*Bundesbuch*, 172–174) notes that the mention of only a bovine and ovine in 21:37, as opposed to the mention of a bovine, ass, and ovine in 22:3, is because in v. 37 the animal is imagined as being slaughtered, i.e., for food, which would exclude an ass by native custom. Note the native diet concerns in 21:28; 22:30 (see chapter 8 on the reason for stoning the ox and prohibiting its flesh).

16. Houtman, *Exodus*, 3:192; Jackson, *Theft*, 130–132; Schwienhorst-Schönberger, *Bundesbuch*, 171.

17. Otto (*Wandel*, 21) notes the contradiction between 21:37 and 22:8 in this matter, especially since v. 8 includes a case involving animals. On Rothenbusch's response to this matter, see n. 2.

18. For arguments about the evolution of the animal theft laws and concepts, see Daube, *Studies*, 74, 89–90; Jackson, *Theft*, 42–53, 132–133; Otto, *Wandel*, 21; for a survey, see Rothenbusch, *Rechtssammlung*, 346–347. Schwienhorst-Schönberger (*Bundesbuch*, 162–187, esp. 163–167, 168–171) sees 21:37 and 22:3 on the same compositional level (similarly Rothenbusch, *Rechtssammlung*, 347–348). Westbrook (*Studies*, 118–119) solves the contradiction between the amounts in 21:37 and 22:3 by saying that the latter law speaks of one who purchased the stolen animal, not the original thief of 21:37. For critiques of Westbrook, see Rothenbusch, *Rechtssammlung*, 348–350; Schwienhorst-Schönberger, *Bundesbuch*, 166–168, 182–184.

19. See Schwienhorst-Schönberger, *Bundesbuch*, 169–170.

20. Houtman, *Exodus*, 3:187. Marshall (*Israel*, 108–109) argues: “Some have questioned the reason for the reduced penalty, conjecturing that since the animal is still alive, this crime is less morally wrong. This conjecture lacks support, especially since the fact that the animal was still alive may simply be because the thief could not get rid of the animal. The law's origin likely lies in the thief's voluntary release of the animal plus an additional gift of appeasement.” For various interpretations, see Schwienhorst-Schönberger, *Bundesbuch*, 168–175; Sprinkle, *Book*, 136–137.

21. It is not clear whether these examples of inversion should be related to Seidel's Law, where a later biblical text, when citing an earlier one, reverses the order of the citation. Levinson has identified the operation of Seidel's Law in legal texts, specifically in Deuteronomy as it cites and revises CC, but also in its use of Assyrian treaty materials (*Deuteronomy*, 18–20, 34–35, 90–91, 118–119, 139; “You Must Not Add,” 34; “Du solst nichts hinzufügen,” 172–173; “Manumission,” 321; “Deuteronomy 13:7a,” 239; “The Birth of the Lemma,” 622 n. 11, 625; “Human Voice,” 54). Levinson speaks not only of Seidel's Law proper but also of the “reordering of sources,” which may involve chiasmic or quasi-chiasmic formulation.

22. Those who compare the two sets of laws include, for example, Cazelles, *Études*, 153–154; Rothenbusch, *Rechtssammlung*, 352–355.

23. I have followed the vocalization of the MT in translating אהר בשדה as “in another person's field.” It could be revocalized and understood as “in another field” without significant change in legal force. One of the reasons for entertaining the unusual formulation in the MT is the mention of “the field of another” in HtL 106 (variant reading), which deals with destroying crops by fire (the text is cited in the next section of this chapter). Jackson (*Wisdom-Laws*, 323 n. 37) follows the emendation because one would otherwise expect the reading רעהו בשדה “the field of his fellow,” consistent with idiom elsewhere in CC.

24. Some modern translations construe the verse to refer to burning (NEB, REB, NAB).

25. See generally Heineman, “Early Halakhah”; Ringgren, “בער.”

26. See Schelbert, “Exodus XXII 4”; Zakovitch, “Ancient Variants,” 60–61.

27. Observed by Zakovitch, “Ancient Variants,” 61–62. If Judges 15 depends on CC, the mention of both כרם וזית (vineyards and olive groves) may reflect these two localities in the produce abandonment law of Exod 23:11.

28. For “sending” (שלח) of “fire” (אש; direct object), see Ezek 39:6; Hos 8:14; Amos 1:4, 7, 10, 12; 2:2, 5; Lam 1:13.

29. NAB, which takes v. 4 to refer to fire destroying a field, sees v. 5 as a conceptual continuation. It begins v. 5: “If the fire [of v. 4] spreads further, and catches on to thorn bushes....”

30. Cf. HALOT 145–146; Ringgren, “בער.”

31. So Houtman, *Exodus*, 3:192–193; Jackson, *Wisdom-Laws*, 322; “Note on Exodus 22:4”; Rothenbusch, *Rechtssammlung*, 338–340 (with translation, p. 224); Schwienhorst-Schönberger, *Bundesbuch*, 187–192; Toeg, “סוגיית המבעה”; Zakovitch, “Ancient Variants,” 60. Schwienhorst-Schönberger (p. 188) says that the interpretation of v. 4 as having to do with grazing is quite certain. He notes that the C-stem verb *הבעיר* verb means to “let feed” in 1 Kings 16:3 and that the D-stem verb in Isa 3:14 has the object *כרם* with the meaning “consume” (see also Isa 5:5; 6:13).

32. Zakovitch, “Ancient Variants,” 60.

33. The original languages of the plusses are: *ישלם משדהו כתבואתה ואם כל השדה יבעה*; ἀποτείσει ἐκ τοῦ ἀγροῦ αὐτοῦ κατὰ τὸ γένημα αὐτοῦ ἐὰν δὲ πάντα τὸν ἀγρὸν καταβροθήσῃ. For the verb *יבעה* (usually emended to *יבער*) see Jackson, *Wisdom-Laws*, 322–323 n. 35. Translations that accept the plus include NEB, REB, JB, NJB.

34. See also Cazelles, *Études*, 65; Houtman, *Bundesbuch*, 194–195 (cf. *Exodus*, 3:195); Osumi, *Kompositionsgeschichte*, 128–131; Rothenbusch, *Rechtssammlung*, 341. Jackson (*Wisdom-Laws*, 325) calls the plus a “legal monstrosity” and argues that it grew up from a two-pronged interpretation of the term *מיטב*. Bickerman (“Two Legal Interpretations,” 104) examines the plus of the Greek (and Samaritan) in light of legal traditions at the time of its formulation and concludes that “from a juristic point of view, the Septuagint clause is a clear interpolation” (see also the follow-up by Rabinowitz, “Exodus XXII 4”). Toeg (“סוגיית המבעה”) argues that the Samaritan and LXX plus is an addition that explains the elevated rate of compensation prescribed by MT.

35. For the conjunction with an alternative sense in biblical law, see Brin, *Studies in Biblical Law*, 101–103; “Development,” 62; “Uses of או,” 25–26; Houtman, *Exodus*, 3:151.

36. Otherwise, this could be formulated with a clear alternative conjunction, as in 21:37: “and he slaughters it *or* sells it” (וּטְבַחוּ אוּ מְכָרוּ). For 21:16, see chapter 7.

37. Several take the second phrase as epexegetical (Houtman, *Bundesbuch*, 193–194; Sprinkle, *Book*, 139; NJPS). JB and NBJ construe the first phrase incipiently and generally, “puts out to graze,” which the second phrase then defines. The RSV and NRSV translate the second phrase as an alternative. Jackson (*Wisdom-Laws*, 323–324) gives an interpretation that effectively straddles the two options. He notes that “there are two clauses within the protasis of the norm [of v. 4], which appear according to the standard translations to be tautologous—an unacceptable result, given the economy of expression which is a feature of the drafting of the *Mishpatim* as a whole.” He thus sees two clauses referring to different grazing arrangements, and translates: “When a man causes a field or a vineyard to be grazed, and sends his grazing animal into a different field.” The first case deals with a case where there is a contract made for grazing. He says this has a correlation with LH 57, which speaks of grazing contracts. The second clause defines the specific wrong in that the owner—intentionally—has sent his animals into another field whose use has not been contracted.

38. For the issue of intentionality in vv. 4 and 5, see Otto, *Wandel*, 22; Rothenbusch, *Rechtssammlung*, 339 n. 467, 340; Schwienhorst-Schönberger, *Bundesbuch*, 189, 190. Otto, for example, views v. 4 as dealing with an intentional case and v. 5 with an unintentional case.

39. So Jackson, *Wisdom-Laws*, 324.

40. For discussion and literature on the term מִיִּטֵּב, see Rothenbusch, *Rechtssammlung*, 341 n. 476. The dispute is often around whether it refers to the best produce or best part of the field. Jackson (*Wisdom-Laws*, 325 and his n. 49) interprets מִיִּטֵּב simply as “produce,” though he notes the other attestations of the term support interpretation as “the best.” His interpretation of the term is connected with his overall approach to interpreting the laws in such a way that they might be self-prosecuted, without the involvement of an outside judicial body (see p. 326). Houtman (*Exodus*, 3:194) takes the term to mean the “yield” of the field.

41. For the definition of the measures involved, see n. 6.

42. The text of the Hittite Laws is from *KBo* 6.12 i 17–25, with restorations from duplicates or logical restoration, following Hoffner, *Laws* 101–103.

43. For the agricultural terms in CC, see Schwienhorst-Schönberger, *Bundesbuch*, 190–192.

44. The variant reading is in texts **b** and **i** in Hoffner, *Laws*, 102–103.

45. See n. 23.

46. Rothenbusch (*Rechtssammlung*, 350) takes כֶּרֶם “vineyard” in v. 4 as an indication of local custom. The present textual comparison opens that to question.

47. Those who observe the similarity between these groups of laws include Cazelles, *Études*, 154; Otto, *Wandel*, 19; Rothenbusch, *Rechtssammlung*, 370–379. Perhaps more important, Rothenbusch (pp. 379–382) brings LH 262–267 into a comparison. Houtman (*Exodus*, 3:199–200) compares many of the laws that will be noted in the discussion here (LH 9–11, 120–126, 244–249, 264–265; LE 36–37). See n. 53.

48. On the meaning of מִלֵּאכָה and -וּ שְׁלַח יָד בּוֹ, see Milgrom and Wright, “מִלֵּאכָה”; Rothenbusch, *Rechtssammlung*, 366; Schwienhorst-Schönberger, *Bundesbuch*, 199. For the nature of this activity, see later.

49. For the difference between *ḥabātum* and *šarāqum*, see Westbrook, *Studies*, 23.

50. For an analysis of the various instances of מִצָּע, see Bovati, *Justice*, 248–249.

51. Other relevant cases of *šabātum/našbutum* in LH include: seizing property (personal, human) in the “hand of” someone (LH 9, 19); catching fleeing humans (LH 17, 109); catching someone in adultery/incest (LH 129, 130, 131, 132, 155, 158).

52. Though v. 6 follows the condition of LH 22, it does not prescribe execution. The case in LH 22–23 may presume assault against the victim. In CC, possible violence against a theft victim is implicit in the burglary law of vv. 1–2a.

53. Rothenbusch (*Rechtssammlung*, 370–379) examines LE 36–37 in connection with LH 124–125 (cf. Fensham, “Das Nicht-haftbar-sein,” 28). Jackson (*Wisdom-Laws*, 356–358) discusses LH 125, LE 37, and the biblical law.

54. For a variant text with *bīt Tišpak* “house of Tishpak” instead of *bāb Tišpak* “gate of Tishpak,” see Yaron, *Laws*, 64–65; cf. Levinson, *Deuteronomy*, 114 and n. 44.

55. CAD L 100.

56. For discussion of these laws, see Westbrook and Wilcke, “Liability”; Petschow, “Beiträge.”

57. Jackson (*Wisdom-Laws*, 342; see further Jackson, *Theft*, 239–240) and Wells (*Laws of Testimony*, 143) take it as a reference to a person since the property is missing. The problem with this interpretation is that it does not fit the context of v. 8, which has been speaking about lost items.

58. The term also occurs in LH 240.

59. Rothenbusch (*Rechtssammlung*, 364) notes the similarity to LH 9.

60. Those who see v. 8 as a general law include Otto, *Wandel*, 17, 67–68; *Rechtsgeschichte*, 179; *Körperverletzungen*, 168, 182 (though Otto sees it as an addition); Rothenbusch, *Rechtssammlung*, 362. Crüsemann (*Torah*, 145–147, 164) sees it as an “axiomatic regulation” or “basic principle,” and Jackson (*Wisdom-Laws*, 470 n. 237) calls it a “generalizing addition.” Houtman (*Exodus*, 3:201) says: “22:8 talks more generally about cases in which someone betrays another person’s trust” (my italics).

61. See Schwienhorst-Schönberger, *Bundesbuch*, 211.

62. Schwienhorst-Schönberger (*Bundesbuch*, 211) argues that the topic of animals in v. 8 is a function of reflecting an earlier basic law that included only vv. 9*, 10bβ, 13a, and 13bβ, which dealt with the death or injury of an animal. Westbrook (“Deposit Laws,” 396) asks: “Why are asses and the like suddenly brought into the discussion [in v. 8]?” (cf. Wells, *Laws of Testimony*, 142). The answer is clear now: it is from the influence of the topical sequence of LH that CC follows.

63. Otto (*Wandel*, 15–16) argues that the original version of v. 7 did not contain a judicial procedure but simply had a requirement that the custodian pay for the loss: אַם לֹא יִמָּצֵא לְבַעְלֵי * “If the thief is not found, he (the house owner) shall pay to its (the property’s) owner.” This restoration is due to the expectation that the original text in vv. 6–14 had three cases, each introduced by כִּי followed by two cases, each introduced by אַם, and which had simple repayment or nonrepayment stipulations. His original text includes vv. 6, 7aα [plus the restored apodosis], 9a, 11, 12, 13, 14a. See the discussion at Schwienhorst-Schönberger, *Bundesbuch*, 196–197, 205.

64. Levinson (*Deuteronomy*, 116; see also pp. 110–116) notes that the term אֱלֹהִים (ה) in the casuistic laws of CC correlates with judicial activities done *ina mahar ilim*. He also notes that שְׁבַעַת יְהוָה (22:10) correlates with *nīš ilim*. He adds (his n. 48) that the phrase should not be interpreted “an oath before the Lord” but “an oath (*by the life*) of Yahweh” (my renderings). See also Levinson, “First Constitution,” 1876 n. 91; “Deuteronomy’s Conception of Law,” 105–106, n. 56.

65. CAD B 125, 127–130.

66. CADE 4–7.

67. Fensham (“Rôle of the Lord,” 264, cf. 271) says: “it is significant that the general name *hā’ēlōhīm* is used in Israelite law exactly as in Mesopotamian law. The Israelites, of course, understood clearly that it refers to his God, Jahwe, but in spite of this the proper name was not used instead of the general appellative. In this way, an old form, which had been used for centuries, has been preserved.”

68. For the sanctuary as the place of adjudication, see Fensham, “New Light,” 160–161; Levinson, *Deuteronomy*, 110–116; “Kingship,” 520; Loretz, “Nuzi-Parallelen,” 167–175; Matthews, “Anthropology,” 130; Otto, *Wandel*, 36; Rothenbusch, *Rechtssammlung*, 246–247 and n. 80; Schwienhorst-Schönberger, *Bundesbuch*, 202, 309. Chirichigno (*Debt-Slavery*, 231–242), after a discussion of the alternatives and their weaknesses, concludes that the sanctuary must be metonymically indicated by the term “the God” in the slave law. Comparative evidence about declarations in Akkadian sources at temples (e.g., LE 37) plays a role in his and others’ conclusion that the sanctuary is the locus of the procedure.

69. Schwienhorst-Schönberger (*Bundesbuch*, 202) notes the verbs of movement in vv. 7 and 8. For him, their lack in v. 10 indicates that it is secondary (see his p. 198).

70. Gordon compares the idiom of approaching the deity to Nuzian *ana ilāni qarābu* “to approach the gods” (“אֱלֹהִים,” 143).

71. Other biblical passages that speak about movement to have a case adjudicated include Deut 17:8–9; 2 Sam 15:2 (cf. vv. 4, 6); 1 Kings 3:16; Job 9:32; 2 Chron 19:10. See the passages in Bovati, *Justice*, 212–213, 218–221. See chapter 12, n. 92 on language of movement in a context of judgment in Exodus 18.

72. For the term פשע *pašā'*, see Jackson, *Wisdom-Laws*, 343; Ringgren and Seebass, “פשע *pašā'*,” 139–140. Jackson notes three other passages that use the term in a legal context to refer to a wrong or crime (Gen 31:36; 50:17; Prov 28:24) and that each of these occurrences has a family context, concluding that “the term thus appears to connote a special relationship between the parties to the dispute.” This specification is not necessarily warranted. For the term, see also Rothenbusch, *Rechtssammlung*, 362–363

73. For *ḥabālum*, see Roth, “Hammurabi’s Wronged Man,” 41–45 (with summary on pp. 44–45). An element that seems to lie behind this term and פשע is the *intentionality* of the wrong so caused. This fits the oppression described in 22:20–21 and 23:9 and the beginning of the exhortatory block that speaks of doing the act of *ḥabālum* to the three disadvantaged members of society.

74. See Gordon, “אלהים,” who compares the Nuzi custom of an oath of the gods, referring to idols. It is not possible to argue that at an earlier stage of the text the term was understood as a plural, since there was no discernible earlier stage of the text prior to the creation of CC in dependence upon LH. It is doubtful that divine images in connection with teraphim, used for oracular consultation (Judg 18:5, 14 [with פסל], 18 [with מַסְכָּה], 20 [with פסל]); 1 Sam 15:23; 2 Kings 23:24 [with גִּלְוִיִּים]; Ezek 21:26; Zech 10:2), should be used to interpret the term אלהים in our passages, even though Exod 22:7, 8, 10 involve oracular confirmation (see later).

75. Adherents of this view include, for example, Crüsemann, *Torah*, 156 n. 242; Draffkorn, *Ilāni/Elohim*; Houtman, *Exodus*, 3:116–121, 126–127, 197–198; Jackson, *Wisdom-Laws*, 113, 397; Phillips, “Some Aspects,” 357 (= *Essays*, 119); van der Toorn, *Family Religion*, 233–234; Zevit, *Religions*, 275 (cf. 274–276). The main contextual support for this interpretation is the ear piercing in 21:6, when understood as symbolically fixing or tying the slave to the owner’s sphere, i.e., his household. This, however, is not necessarily the meaning of the rite. Sprinkle (*Book*, 57, 145–146) inconsistently takes אלהים in 21:6 as figurines of ancestors (with the doorpost being that of the house) and the אלהים in 22:7, 8, 10 as “God.”

76. Targums Onkelos, Pseudo-Jonathan, and Neofiti read דִּינִיָּא (“judges” in 21:6; 22:7, 8. The Syriac has “judges” (*dyn'*) in all three cases. The Greek has πρὸς τὸ κριτήριον τοῦ Θεοῦ “to the judgment place of God” in 21:6, though ἐνώπιον τοῦ Θεοῦ “before God” in 22:7, 8 [= 8, 9]. LH 9 shows that deposition before the god involved the adjudication of judges. One may presume this for CC’s laws as well. But the term אלהים(ה) itself does not mean judges. Exodus 18 also shows a human judge involved alongside revelation from deity (see chapter 12, n. 92).

77. For Houtman (*Exodus*, 3:197, 202), the plural form shows that it cannot refer to Yahweh (rejecting Loretz, “Ex 21,6; 22,8 und angebliche Nuzi-Parallelen”). The Samaritan has made the reading easier with a singular ירשיעניו “*he* (Yahweh) convicts him.” Draffkorn (*Ilāni/Elohim*,” 217) emends the singular verb in 1 Sam 2:25 אלהים יפלוו “God will judge him” to a plural, “the gods judge,” to show plural deities in judgment (see also BHS on the passage). For plural deities in a context of judgment, see Psalm 82 and my note, Wright, “Blown Away,” 217–218, n. 13. On the basis of this, it is possible to imagine a plural for אלהים(ה) in CC, if it were not for the other evidence being considered here.

78. Primarily, Gen 20:13; Josh 24:19; 2 Sam 7:23, but see also Gen 31:53; 35:7. Note also the plural/singular interplay in Exod 32:1, 8 (cf. Sprinkle, *Book*, 146). Levinson (*Deuteronomy*, 113, n. 43) concludes that “the anomalous plural form [in 22:8] therefore seems to reflect morphological conformity between the verb or adjective and the plural ending of אלהים but need not imply that the given phrase is plural in meaning” and translates the phrase in Exodus 22:8 “he whom God indicts shall pay.” While we may not want to interpret this as an honorific plural, CC is fond of this usage for humans. The plural of בעל “master” is used of an animal owner (21:29, 34, 36; 22:10, 11, 13, 14) and the plural of אד(ו)ן “master” of a slave owner (21:4, 6, 8, 22).

79. The Greek has a second person here: καὶ οὐ δικαιοῦσαι τὸν ἄσεβῆ “you shall not justify the wicked.” It adds a motivation for this: ἔνεκεν δώρων “because of gifts.” The Greek appears to reflect a secondary smoothing to fit the context of the surrounding laws and assimilates the context to the next verse on bribes (δώρα there). The Greek has also changed the motive particle כִּי “because,” which introduces the phrase in MT to a simple conjunction.

80. The reference to the “wicked” in the phrase of 23:7 correlates with the “wicked” in its partner verse (23:1), and these instances correlate with the mention of “wicked” persons in the future-king passage of the exhortatory block.

81. One may also wonder if the plural in 22:8 is also an attempt at archaizing. See the plurals in Gen 31:53 and 35:7, of the ancestral “God.”

82. For various views, see Jackson, *Wisdom-Laws*, 338, 479; Seebass, “Noch einmal zum Depositenrecht,” 22–26.

83. So HALOT 61a. For positive examples, see Song 7:13; Esther 4:14. An alternate interpretation, hard to sustain on the basis of the lack of other attestations, is to take אֵל as equivalent to the conjunction כִּי marking indirect speech (so Sprinkle, *Book*, 147; he translates p. 144: “the houseowner . . . is to draw near to God . . . , swearing *that* he made no trespass against his fellow’s property” [my italics]; he says the two conjunctions might have been viewed as interchangeable in this syntactic context because they are interchangeable as conjunctions introducing protases in the context of the CC).

84. See Jackson, *Wisdom-Laws*, 331–344, 401; “Modelling,” 1809 (and 1807–1816); cf. Houtman, *Exodus*, 3:198; Schwienhorst-Schönberger, *Bundesbuch*, 202–203. Some modern translations of v. 7, for example, follow this interpretation: RSV “the owner of the house shall come near to God, to show whether or not he has put his hand to his neighbor’s goods”; NRSV “the owner of the house shall be brought before God, to determine whether or not the owner had laid hands on the neighbor’s goods”; NEB “the owner of the house will have to appear before God for it to be ascertained whether or not he has laid hands on his neighbour’s property.”

85. It is not the concern of this study to determine what oracular means were used to make judicial and extrajudicial (e.g., military) decisions, as indicated by the idiom to “inquire of God/Yahweh” (שאל באלהים/ביהוה) or “seek Yahweh/(the) God” (דרש/בקש) (את יהוה[ה]אלהים), or to solve associated conundrums of the nature of the Urim and Thummim, the ephod, and teraphim, all associated with divination. It should only be noted that many questions posed to the deity are yes-no questions or questions that might be delimited by a series of yes-no or multiple-choice questions, as in the cases of Achan and Jonathan (Judg 1:1; 18:5; 20:18, 23; 1 Sam 14:37–38; 1 Sam 10:22; 23:2, 4, 9–12[n.b.]; 28:6; 30:7–8; 2 Sam 2:1[n.b.]; 5:19). This study also cannot enter into the sociology of who would have been responsible for such divination: judges (?), priests (Deut 33:8; Num 27:21; Judg 18:4–5; 20:27–28; 1 Sam 14:37; 22:9–10, 13, 15; 23:9;

30:7–8; Hos 3:4?), prophets (1 Sam 9:9; 1 Kings 22:5, 8; 2 Kings 1:2, 3, 6, 16; 3:11; 8:8; 22:13, 18; Jer 21:2; Ezek 20:1; 2 Chron 18:4, 7; 34:21), or judge-prophet-priest Moses (Exod 18:15; 33:7). Judgment and prosecution of a case are imagined to occur before or in association with the deity (Exod 18:15; Job 5:8). See de Vaux, *Ancient Israel*, 349–353.

86. Modern translations displaying this interpretation in v. 7 include NJPS, JB, NJB, NAB, NEB.

87. Jackson (*Wisdom-Laws*, 338) would dissociate v. 10 from the interpretation of v. 7 because, in his view, they are from different hands and periods. This cannot be accepted in view of basic influence from LH on both verses. Westbrook (“Deposit Laws,” 391–392), who views the laws of 22:6–12 holistically, says that v. 10 refers to an oath, whereas v. 7 refers to an oracular judgment. Cf. Wells, *Laws of Testimony*, 142. Rothenbusch (*Rechtssammlung*, 356–357) discusses the suggestion that a requirement of replacement is missing in v. 7 and may have fallen away. He concludes that the procedures in vv. 7 and 8 are different (oath versus ordeal; p. 357 n. 545). Verse 10 is like v. 7 and does not require payment. See also Rothenbusch, *Rechtssammlung*, 357 n. 546.

88. Frymer-Kensky, *Judicial Ordeal*, 131–184, 481–535. The accused may not have died in the ordeal (see her pp. 530–534). Compare the *punishment* of being cast into the river or water in LH 129, 133b, 155. For biblical ordeals, see Num 5:11–31; 16:5–11, 16–19, 35.

89. Compare similar language in Zeph 3:2 and Num 27:5.

90. Judg 1:1; 18:5; 20:18, 23, 27; 1 Sam 10:22; 14:37; 22:10, 13, 15; 23:2, 4; 28:6; 30:8; 2 Sam 2:1; 5:19, 23; 16:23; 1 Chron 14:10, 14.

91. On the relationship of 22:8 to Exod 18:13–27, see chapter 12, n. 92.

92. HtL 93–95 (cf. 96–97) deal with burglary. These do not feature capital punishment, and nothing is said about a house owner killing the burglar. For comparative analysis of LE 12–13, see Rothenbusch, *Rechtssammlung*, 351–352. Cazelles (*Études*, 153) compares the biblical law with LH 21.

93. The two roots in the two languages (חתר and *palāšum*) are essentially synonymous. Apart from the use of the noun in Jer 2:34, which references CC (“you did not find them digging in” לא במחתר מצאתים), the Hebrew root חתר is used for digging into houses (Job 24:16) or through a wall (Ezek 8:8; 12:5, 7, 12). It is used cosmically of digging into the underworld (Amos 9:2). In a transferred sense, it is used of rowing—“digging”—through water with oars (Jonah 1:13). The Akkadian verb *palāšum* means generally to “perforate” or “pierce” and includes the specific meaning of “making a breach” in a wall or house. A *pilšum* “breach” is what is made by the action, as in LH 21. A *mupalliš bīti* is a “burglar” (CAD M2 209).

94. LE 12 is similar to LE 13. It speaks of a person who is seized “in the field of commoner in the sheaves.” LE 12, like LE 13, also makes a distinction in the time when the person is found. If he is found at midday, he is fined; if at night, he is put to death.

95. Note Gen 31:39, which refers to stealing an animal at day or at night.

96. Jackson, *Wisdom-Laws*, 26, 310. He notes that 22:1 assumes that burglary would normally take place at night, and he compares Job 24:14, 16 (cf. p. 309–310). Therefore, there is no reason to consider 22:2a to be an addition to a basic law consisting only of 22:1. The source analysis here also points to the unity of 22:1–2a.

97. Evidence does not allow for an explanation of the similarity between the burglary law in the Roman Twelve Tables, dated to c. 450 BCE but whose laws are actually known only by their scattered citation by various later Latin writers. The burglary laws

(8. 12–13) state: “¹²If a thief commits a theft by night, if the owner kills the thief, the thief shall be killed lawfully (*si nox furtum faxsit, si im occisit, iure caesus esto*).¹³By daylight... if a thief defends himself with a weapon... and the owner shall shout. (*luci... si se telo defendit, ... endoque plorato*)” (translation Johnson, Coleman-Norton, and Bourne, *Ancient Roman Statutes*, 11; Latin text, Riccobono, *Fontes Iuris Romani Antejustiniani: Pars Prima: Leges*, 57–58). These are homicide laws like CC’s law. They include the difference between night and day killing. The order of the laws is the same as in CC. The similarity may be coincidental. Westbrook (*Studies*, 41; cf. 71–72; see also Westbrook, “Twelve Tables,” 103) has argued for a genetic connection of the Roman laws to the ancient Near East (but see chapter 1, n. 40). Jackson (*Wisdom-Laws*, 192 n. 109) allows this as a possibility but is less certain than Westbrook. For a critique and bibliography, cf. Otto, *Körperverletzungen*, 17–18 and n. 3. For a discussion of these laws in connection with the biblical burglary law, see Wells, “Covenant Code,” 26. For an introduction to the Twelve Tables in general, see Knoppers and Harvey, “The Pentateuch,” 114–118.

98. Schoneveld (“Le Sang,” 339–340) has argued that בַּדָּם “blood on” is different from לְדָם “blood for.” The former means that the blood is on the murderer; i.e., bloodguilt has attached itself to him, and he is liable to death. The latter means that the victim has blood, meaning that blood vengeance is to be exacted for him. This is followed by Houtman, *Exodus*, 3:189–190; Jackson, *Wisdom-Laws*, 310 n. 79; Schwienhorst-Schönberger, *Bundesbuch*, 175–176, 184; and similarly Milgrom, *Leviticus 17–22*, 1456–1457. For other discussion, see Barmash, *Homicide*, 98; Sperling, “Bloodguilt.” For blood guilt as pollution, see Wright, “Deuteronomy 21:1–9,” 394–395 and n. 24 there. A related issue is the pronominal referent of עָלָיו “on him” in v. 2. Houtman (*Exodus*, 3:190) believes it refers to the animal owner or keeper. Although pronominal referents can shift without clear contextual notice, all the personal pronominal referents in v. 1 refer to the burglar; hence the referent here should be the burglar.

99. Schwienhorst-Schönberger (*Bundesbuch*, 177) argues that v. 2a does not refer to a burglar caught in the daylight in the act but finding a thief in the day time who had broken in at night. He had already committed the theft. Rothenbusch (*Rechtssammlung*, 343) says that the victim of the theft (the householder) may simply be given more latitude at night since possibilities for aid are limited.

100. For its intrusiveness, see Otto, *Wandel*, 19–20; Rothenbusch, *Rechtssammlung*, 342; Schwienhorst-Schönberger, *Bundesbuch*, 162–168. Daube (“Civil Law,” 400) in another context has referred to the *ordo difficilior* of a text as a sign of originality (noted by Levinson, *Deuteronomy*. 109 and n. 27). Not every difficult reading, however, can be considered original, especially when other logical considerations for the revision or relocation of materials can be observed or imagined. For Daube’s view on the position of the burglary laws, see the next note.

101. One could alternately place the burglary law after v. 7. But v. 8 makes better sense as a sequel to v. 7. Placing the burglary law after v. 8 distances it too much from the context of vv. 6–7. Budde (“Bundesbuch,” 106) and Jepsen (*Bundesbuch*, 37 n. 3; cf. Baentsch, *Bundesbuch*, 42) argue that the original location of 22:1–2a was after v. 3 (so the RSV). This puts the law closer to its present position and may allow for an easier explanation of accidental relocation. Daube (“Codes and Codas,” 74–99) sees 21:37 and 22:1–2a as original. Verses 2b and 3 were added as supplements to this basic block of laws following his principle of end position supplementation. Thus the odd position

of vv. 1–2a is an artifact of redactional development. See Westbrook, *Studies*, 112–113, who points out flaws in Daube’s argument.

102. 21:37 does not state a locale for *במהחתר*, which appears suddenly in the context of 22:1. The use of the definite article in *במהחתר*, if this is thought to point to a previous context (see n. 1), makes better sense after v. 6. The comparative analysis makes it unlikely that *מהחתר* refers to tunneling into an animal pen (the view of Jackson, *Theft*, 49–51, 155–156; Schwienhorst-Schönberger, *Bundesbuch*, 185–186).

103. Even though vv. 1–2a are not exactly suited to their present position, their topic does generally relate to the context of 21:37 + 22:2b–3. There are conceptual and terminological correlations: *גנב* “steal/thief” (21:37 and 22:1); *נמצא* “be found” (22:3 and 22:1); *אין לו* “he does not have” (22:2b and 22:1 and cf. 2a).

104. The dependence of CC on a wide range of theft laws, including robbery laws, has implications for Jackson’s analysis of the categories of theft, robbery, and brigandage in CC and biblical law (cf. *Wisdom-Laws*, 303–312). CC may not have explicitly encoded every type of theft in its laws, but it appears to have considered such in its use of LH. The use of the robbery laws of LH 22–23 may have influenced the use of the verb *צדה* in the homicide law (21:13), if this concretely refers to lying in wait (but see chapter 6), and the verb *נשבה* in 22:9, if this means “driven away” by human agency.

105. See Levinson, *Deuteronomy*, 116, on the alternating structure of vv. 6 and 7, compared with LE 36 and 37.

106. Otto (*Rechtsgeschichte*, 68–78) argues that the placement of the law about lethal sanctions (22:1–2a) in the middle of laws about payment for theft in 21:37 and 22:2b–3 is similar redactionally to the placement of the burglary laws of LE 12–13 in the middle of tariffs in LE 7–11 and 14(–15). See also Schwienhorst-Schönberger, *Bundesbuch*, 187 (and compare Rothenbusch, *Rechtssammlung*, 352 n. 529).

107. Marshall, *Israel*, 88–89, 92; Mazar, *Archaeology*, 485–489; Shiloh, “Four-Room House”; Stager, “Archaeology of the Family,” 11–12. Jackson (*Wisdom-Laws*, 297 n. 21) explains the juxtaposition of 21:37 and 22:1–2a by the construction of sheepfolds out of mud or rough stonework. Zevit (*Religions*, 557 n. 153) says that *מהחתר* “may refer to a subterranean (or at least an unconventional) entranceway into a structure. The verb need not imply undermining a house or knocking down a wall, but simply the removal of obstacles to provide easy and direct access.” This seems unlikely in the comparative context. It may be that a law like LH gap¹e (= Richardson § 68+b) influenced the position of the burglary law. This law deals with a field through which there is access for a burglar to dig into a house. Exodus 21:37–22:3 may use such an association of field and house to first describe a case of outdoor theft of an animal, complemented by a case of house burglary.

108. Given the foregoing reasons for placing the burglary law with the animal theft law, it is not clear why it was specifically placed after 21:37 and not after 22:3. It may have to do with legal chronology. The apprehension of the thief in the break-in and his being killed would occur in the course of events before a thief’s paying the fivefold or fourfold penalty (22:2b) or the animal’s being found in his possession (22:3). Therefore, the burglary law is placed at the first breathing point in the animal theft series. It is not placed before 21:37 because it needs that first law for context. Rothenbusch (*Rechtssammlung*, 344) says the placement of the burglary law may be to give it emphasis by making it more visible. Sprinkle (*Book*, 131–132) says that the burglary law is placed after the fourfold or fivefold penalty in 21:37 to indicate that despite

this severe fine, “the thief’s life is not forfeit unless due to a compounding threat to the owner of a break-in by night.”

109. For views on the strata in the animal theft and burglary law (21:37–22:3), see n. 2. As for the crop destruction laws (22:4–5), Otto (*Wandel*, 22) sees the verses as a unit that was later combined with the other precollected units that constitute 21:33–22:14. Schwienhorst-Schönberger (*Bundesbuch*, 192, 234; see further in this note) believes vv. 4–5 are an addition, made at the same time that vv. 6–8 were added. Hence v. 9 originally followed from v. 3, confirmed by their both talking about an ass or a flock animal. Of course, this contiguity can be explained as resulting from dependence on the sequential template that CC follows. It is precisely in vv. 4–8 that CC significantly deviates from the template by means of cross-referencing to other laws dealing with other topics than animal theft or injury.

The deposit laws (22:6–8) are usually considered in connection with the unit 22:6–14. Within this block, Otto (*Wandel*, 14–19, 60; “Die rechtshistorische Entwicklung des Depositenrechts,” 154–158; “Diachronie”) sees 22:6, 7a α^* , 9a, 11, 12, 13, 14a as original (for his reconstruction of the original apodosis of v. 7a α^* , see n. 63). This original text has a homogeneous style with three main cases, each with two subcases. Verses 7a $\beta\beta$, 8, 9b, 10 are an addition from one editor. After being constituted as a unit, 22:6–14 was taken up by the redactor who brought together the various יְשׁלֵם -laws (see also Otto, “Interdependenzen,” 353; for critique, see Osumi, *Kompositionsgeschichte*, 126). Schwienhorst-Schönberger (*Bundesbuch*, 205–207, 210–211, 309) says the original law consisted of vv. 9a (without בְּהֵמָה וְכֹל בְּהֵמָה), 9b α , 10b β , 13a, 13b β . This dealt only with animals given for deposit or borrowed and that die or are injured. This topic gave rise to the group of laws on deposit in vv. 6–8 (a unity in and of itself), to which stratum also belong vv. 11–12, 13b α , and 14. (One of his points is that “silver” in CC, as in v. 6, appears only in late layers of CC.) The rest of the material in vv. 6–14 (i.e., וְכֹל בְּהֵמָה in v. 9a, as well as 9b β –10b α , which includes the “oath of/to Yahweh”) is a third layer. He says that vv. 6–8 are a rather late addition, dependent on Deut 17:8–13 and 1:17. Rothenbusch (*Rechtssammlung*, 367–370) says that Otto’s and Schwienhorst-Schönberger’s identification of strata in vv. 6–14 is too fine. He thinks that vv. 9–14 could have been reformulated in connection with vv. 6–7; he believes that v. 10 was formulated on the basis of v. 7. Jackson (*Wisdom-Laws*, 470; cf. Jackson, *Theft*, 101) sees vv. 6–8 as secondary, with vv. 6–7 from a Deuteronom(ist)ic editor and v. 8 from a priestly editor. He says that vv. 6–8 are not original since their dealing with silver and objects interrupts the larger context of animals, the judicial procedure for the bailee in vv. 6–8 is different from that of the shepherd in vv. 9–12, and the term מְלֹאכָה has the meaning “property” only in a late text (2 Chron 17:13; in earlier texts, it refers to animals: Gen 33:14; 1 Sam. 15:9; its early use is found in Exod 21:10). Verse 8 is apparently later than 6–7 because it generalizes and diverges from casuistic form. Several view v. 8 as secondary (see the list in Rothenbusch, *Rechtssammlung*, 357 n. 546). For the primary character of vv. 6–8, see chapter 10 at n. 4. Seebass (“Noch einmal zum Depositenrecht,” 28) argues that 22:6–13, 14b is a compositional whole, with v. 14a added for clarification.

110. Another potential sign of stratification in the larger collection is the contradiction between v. 7 (where a custodian is not liable when a theft occurs) and v. 11 (where a shepherd must pay when an animal is stolen). This contradiction is explained in chapter 10.

Chapter 10

1. Rothenbusch (*Rechtssammlung*, 379–382) compares 22:6–12 with LH 262–267; Jackson (*Wisdom-Laws*, 349–350 n. 96) briefly compares vv. 9–12 with LH 266; Fensham (“Das Nicht-haftbar-sein,” 30; “Rôle,” 266) compares vv. 9–10 with LH 266 and v. 10 with LH 267.

2. For the infinitive of רעה, see Gen 37:12; 1 Sam 17:15; 2 Sam 7:7 (// 1 Chron 17:6); Ps 78:71. For רעה and שמר used together of animals with נתן, see Gen 30:31.

3. Schwienhorst-Schönberger (*Bundesbuch*, 204) says this last item is secondary.

4. Schwienhorst-Schönberger, for example, argues that vv. 6–8 are secondary; see chapter 9, n. 109.

5. Cf. in Exod 9:3; Deut 2:15; Jackson, *Wisdom-Laws*, 349–350 n. 96.

6. For the verb שבה, see Rothenbusch, *Rechtssammlung*, 359. Jackson (*Wisdom-Laws*, 345, 359; cf. 305–306) considers the verb secondary on the basis of logic: how can the person in v. 10 “take” it if the carcass is not available? Schwienhorst-Schönberger (*Bundesbuch*, 200) considers the verb secondary since it does not appear in v. 13.

7. Jackson (*Wisdom-Laws*, 305–306) translates “driven away” and says it is a case of brigandage with a human agent; Houtman (*Exodus*, 3:203) says that “theft by a gang of robbers is to be distinguished from theft by a single individual (see 22:11).” Sprinkle (*Book*, 150–151) says נשבה refers to rustling, “an act of *force majeure*,” as opposed to גנב, simple theft. Theft, therefore, is the result of negligence; rustling cannot be stopped. Cazelles (*Études*, 70) notes: “il ne s’agit pas d’un vol mais d’une razzia . . . ; le vol est le fait d’un ou deux individus, la razzia le fait d’un collectivité, d’un tribu par exemple, et le gardien est impuissant.” Another solution, of course, is to emend the text to remove the problem, as Jackson does (*Wisdom-Laws*, 344–359, with the emended text on p. 354–355).

8. Wildberger (*Isaiah 1–12*, 241) observes on the passage: “One knows: It [a lion] will pounce upon its prey right away and haul it off so that it can swallow it down in a safe place.”

9. Cassuto, *Exodus*, 287. Jackson (*Wisdom-Laws*, 346–348) discusses these biblical passages and their relevance for v. 9. The verb שבר in both of these passages refers to injury, not death. In particular, note that the verb in 1 Kings 13:26 needs the companion verb המית “kill” to indicate that the result of lion attack was death. The verb in v. 28 indicates that the lion had not even injured the prophet’s accompanying ass, let alone killed it. Thus the event indicated by the verb נשבר in Exod 22:9, to the extent that it entails predatory attack, is distinct from the event indicated by טרף in v. 12. The latter verb means the prey has been killed. NJPS renders the verb in 1 Kings 13:26, 28 most suitably as “maul.” Jackson (p. 348) believes in the end that נשבר in the context of CC refers to accidental injuries, as opposed to animal attack, which is left for Exod 22:12.

10. The term may have also been chosen because of its phonological resonance with נשבה. The two terms are nearly a word pair and conceptually and phonologically belong together. See the use of the two verbs together in Isa 61:1; Ezek 9:6.

11. Schwienhorst-Schönberger (*Bundesbuch*, 199–200) says that the Yahweh oath cannot refer to the death or injury of the animal, only its disappearance (נשבה). But the term “put forth the hand on” שלח יד בו can involve violent actions, and thus the death or injury of the animal fits well under its umbrella (Gen 37:22; 1 Sam 24:7, 11; 26:9, 11; 2 Sam 18:12; Dan 11:42; Neh 13:21).

12. The LXX has the equivalent of אלהים (ὄρκος... τοῦ θεοῦ “oath of God”) instead of Yahweh. Houtman (*Exodus*, 3:203) notes that this does not mean that “Yahweh” is not original.

13. Schwienhorst-Schönberger, *Bundesbuch*, 194, 195, 200–201, 210. He says that it is the insertion of an orthodox redactor. He believes (p. 202) that v. 10 is simply an oath in contrast to a divine judgment in vv. 7–8. For various views about the redactional development of 22:9–13, see chapter 9, n. 109.

14. Roth’s numbering (*Law Collections*, 99); = Borger, *Lesestücke*, §75+e; Richardson, *Hammurabi’s Laws*, §5.15 (pp. 70–71); ANET §96 (pp. 169–170).

15. D of *ep̄sum*. For this verb, cf. see LH 47.

16. See Schwienhorst-Schönberger, *Bundesbuch*, 203–204, for various interpretations. He concludes that the owner accepts the oath. Jackson (*Wisdom-Laws*, 345, 354) does not think that the oath can be the object because this would be legally redundant. He emends the text so that it refers to the animal keeper’s retention of the carcass. Whatever redundancy is perceived here, this is largely to be attributed to following LH. Westbrook (“Deposit Laws,” 400–402) makes the unlikely argument that ולקח בעליו means “the owner took,” referring to the owner’s having taken the animal and that is one reason it is missing in the first place. For a critique, see Jackson, *Wisdom-Laws*, 350 n. 97.

17. So, for example, the Mekhilta Nezikin 16 (Lauterbach, *Mekhila*, 3:124) says the owner takes the carcass to dispose (טפל “take care of”) of it. Jackson (*Wisdom-Laws*, 351) finds it difficult that the owner should be given possession of the animal, since in other laws, the one who killed an animal retains it and pays a fine (21:33–34, 36). Again, to the extent this is an inconsistency, it is a function of sources.

18. So Schwienhorst-Schönberger, *Bundesbuch*, 205, 210 (and see chapter 9, n. 109).

19. CAD P 425–426 says that this may refer to a cattle disease and notes a possible connection with *peššû* “crippled, deformed” (CAD P 327–328). It occurs only in OB texts. CAD (p. 426) notes that the noun, however, seems to refer to a “contagious disease”; this judgment appears to be based on the use of the verb *šubšûm* in LH 267. The noun *pissatum* appears next to *haliqum* “stray (animal)” in other texts. These constitute two situations for which a shepherd is responsible for replacement. AHW 856–857 lists the noun under *peššû* “lahmend, hinkend.” For the adjective *peššû*, CDA 273 gives “of sheep, damaged by neglect.” Roth, *Law Collections*, 130: “mange(?)” Richardson, *Laws*, 258: “disease”; Szlechter, *Codex*, 168, 171: “le tournis” (“staggers”).

20. CAD P 426 *pissatu* B, related to the verbal root *pasāsum* “to erase” (CAD P 218–221; AHW 838; CDA 268). CDA 275 under *pissatu* gives the meaning “erasure,” saying that it derives from *pasāsu*.

21. Note that despite the apparent contradiction, Schwienhorst-Schönberger puts v. 11 on the same compositional level as vv. 6–8 (*Bundesbuch*, 207–208, 210; see chapter 9, n. 109).

22. So Schwienhorst-Schönberger, *Bundesbuch*, 207–208.

23. On the issue, see Jackson, *Wisdom-Laws*, 356–357 n. 124. It has been argued that animals, as opposed to property kept in a house, would have been kept outside and would have required greater vigilance to protect them. Hence their loss would have involved negligence (see Paul, *Studies*, 93, which uses LH 267 as an illustration of negligence in connection with 22:11).

24. Despite the possible influence of the Israelite four-room house, in which animals were kept, on the position of the burglary laws in 22:1–2a (see chapter 9 at n. 107).

25. Another explanation of the contradiction between v. 11 and vv. 6–7 is to suppose that the respective custodians received different amounts of compensation. If an animal keeper received more than an in-house bailee, then he would have more responsibility for guarding the property. See the discussions at Houtman, *Exodus*, 3:204; Rothenbusch, *Rechtssammlung*, 358.

26. See also LH 105, 236, 237.

27. Schwienhorst-Schönberger (*Bundesbuch*, 207) says that v. 11 breaks the “tight context” of the original text he proposed, consisting of vv. 9a*, 9ba, 10bβ, 13a, 13bβ (see chapter 9, n. 109).

28. An avenue not developed in v. 11 is what happens if the thief is found. We assume that in such a case, the thief would pay the fine prescribed in the animal theft law of 21:37 + 22:2b–3. On the assumption that the owner would not receive both the payment from the thief and the custodian, CC would not require payment from the custodian if the thief were found. This means that v. 11 only refers to a case where the thief has not been found, as in v. 7.

29. For critical issues relating to the reading of this verse, see Jackson, *Wisdom-Laws*, 348–349 n. 89, especially that הטרפה “torn flesh” may go with the first verbal clause in the verse and is in apposition to the objects mentioned there: “he will bring it, i.e., the torn carcass, as a witness.” See also Fensham, “‘d in Exodus xxii 12’; Houtman, *Exodus*, 3:204; Sprinkle, *Book*, 151. Note that טרפה in 22:30 may be a gloss.

30. Fensham (“‘d in Exodus xxii 12,” 338) compares LH 266.

31. Rothenbusch (*Rechtssammlung*, 384–386) brings LH 244–249 into comparison with CC.

32. Gen 37:31–33, bringing Joseph’s cloak to his father, reflects this custom (Jackson, *Wisdom-Laws*, 349). For Near Eastern practice, see Jackson, *Wisdom-Laws*, 348–350 nn. 90, 96; 352–354.

33. So, for example, Cassuto, *Exodus*, 288; Childs, *Exodus*, 476; Dillmann, *Exodus*, 264–265; Houtman, *Exodus*, 3:205; Propp, *Exodus 19–40*, 252; RSV/NRSV; NEB/REB; JB/NJB; NAB.

34. So the LXX; Jackson, *Wisdom-Laws*, 362–363; Noth, *Exodus*, 185; Rothenbusch, *Rechtssammlung*, 361.

35. See Jackson’s description, cited in the main part of the chapter, later. Crüsemann (*Torah*, 165) describes the case as one of a poor person renting his animal to a rich person and renders “if he were a hired worker, only the hiring fee is due,” adding that this “suggests that harm to the animal was included in the wage agreed upon.”

36. So Crüsemann, *Torah*, 165; Noth, *Exodus*, 185. Houtman (*Exodus*, 3:205–206) objects because the wages would not cover the loss of the animal.

37. A third option in this series could be listed: “he (the owner) gets to keep his (the hired person’s) wage.” This is an unlikely option.

38. So Cassuto, *Exodus*, 288; Childs, *Exodus*, 476; Houtman, *Exodus*, 3:205; Sprinkle, *Book*, 154; cf. Dillmann, *Exodus*, 265; NAB (“this was covered by the price of its hire”); RSV note (“it is reckoned in its hire”).

39. NJPS (“he is entitled to the hire”); NJB (“he will get the cost of its hire”); cf. JB (“he shall settle for the price of its hire”).

40. Ehrlich, *Mikrâ Ki-Pheshutô*, 1:181. He says even though the animal dies early in the period of rental, the renter needs to pay for the entire time. Some stand between the last two options: NEB/REB (“only the hire shall be/is due”); NRSV (“only the hiring fee is due”).

41. Exod 12:45; Lev 19:13; 22:10; 25:6, 40, 50, 53; Deut 15:18; 24:14; Isa 16:14; 21:16; Mal 3:5; Job 7:1, 2; 14:6.

42. See n. 45.

43. Jackson, *Wisdom-Laws*, 363.

44. For objections to taking שכיר as “hired worker” see Childs, *Exodus*, 449, 476.

45. See the discussions of Rothenbusch, *Rechtssammlung*, 360; Fuhs, “שָׂאָל *šā'al*.” Rothenbusch says that שָׂאָל could mean “to rent.” He also says that the differentiation of שָׂאָל and שכר in the Mishnah (Baba Mesi’a 8:1) is a late distinction. His discussion therefore assumes that vv. 13–14 deal with animal rental. Houtman, in contrast, takes שָׂאָל to refer to borrowing (*Exodus*, 3:205).

46. Cf. Childs, *Exodus*, 444; Jackson, *Wisdom-Laws*, 362.

47. Childs (*Exodus*, 476) notes the problem.

48. Propp (*Exodus 19–40*, 252) suggests a related interpretation: “in addition to the rental fee, there was a security deposit, to be refunded upon the ox’s safe return but in this case forfeited, so that it is included in the hire.”

49. Rothenbusch (*Rechtssammlung*, 360) compares LH 271.

50. LH 271 is similarly concerned with payment, though it does not use this specific term.

51. Rothenbusch (*Rechtssammlung*, 384–386) compares LH 244–249 to vv. 13–14.

52. This is not unrelated to the issue of beating and killing a slave in 21:20–21. A slave, like a beast of burden, must be beaten to get him or her to work.

53. On the parallelism of vv. 6, 9, and 13, see Rothenbusch, *Rechtssammlung*, 355–356, 363.

54. See chapter 6, n. 2.

55. The lack of animals as objects in 22:13 reminds one of CC’s failure to clearly describe the daughter sold for debt-slavery in 21:7 as a wife or to mention in the protasis of the ox law in 21:36 that a victim had been killed. CC’s revisions sometimes introduced infelicities into its text.

56. It has been argued that HtL 76 and 78 distinguish between renting and borrowing (Jackson, *Wisdom-Laws*, 360, referring to Neufeld). While law 78 does deal with rental (with the verb *kussaniya*), law 76 deals with seizing because of debt (verb *appatariya*). Puhvel (*Dictionary*, 1:98) defines the latter verb as “seize (as pawn to compel payment of debt), take in pledge, distraint; make seizure, levy distress, exercise distraint.” He regards as “improbable alternative suggestions” translations such as “lend, lease, hire, borrow” (p. 99). *HW² A 170* translates the verb “(Tiere) sich aneignen, requirieren, beschlagnahmen.” Neufeld’s translation of HtL 76 (“If anyone *borrow*s an ox, a horse, a mule (or) an ass and it dies with him on the spot, he shall bring it and shall give (the price of) its hire”; my italics), which Jackson cites, cannot be relied upon for comparative analysis. See Hoffner, *Laws*, 82, 84.

57. For those who believe v. 14b is secondary, see chapter 9, n. 109.

58. See Schwienhorst-Schönberger, *Bundesbuch*, 210.

59. Schwienhorst-Schönberger (*Bundesbuch*, 197–198, 210) sees this criterion as secondary, mainly because he seeks to create from vv. 13–14 a concise law that would balance the concise law that he proposed as original from vv. 9–12. See chapter 9, n. 109.

60. Rothenbusch (*Rechtssammlung*, 227–232) analyzes the issue of intent in the laws on injury to persons and damage or loss of property. He notes (p. 403): “. . . spielt die Verschuldenshaftung bzw. die Differenzierung von vorsätzlicher oder unvorsätzlicher

Schädigung in der kasuistischen Rechtssammlung des Bb [CC] eine dominierende Rolle, ja kann vielleicht als Hauptcharakteristikum der Sammlung überhaupt betrachtet werden.”

Chapter 11

1. No doubt this shift was enabled by the possibility of metaphorically conceiving of deity as a king in Israelite-Judean theology more broadly. See Brettler, *God Is King*.

2. For the notion of Privilegrecht, see Halbe, *Privilegrecht*, passim; cf. Osumi, *Kompositionsgeschichte*, 60. Schwienhorst-Schönberger (*Bundesbuch*, 285 and passim) attributes most of the first-person speech, as well as divine sanctions and rationales in CC, to a “Gottesrechtsredaktor,” a redactor focusing on law proclaimed with the divine voice (see chapter 12, nn. 15, 25, 27, 32, 37). Gerstenberger (“‘Apodiktisches’ Recht,” 15) represents a standard view: “Die Entwicklung hat in Israel zu einer späten Theologisierung und Jahwisierung eines ursprünglich recht pragmatisch-neutralen Fallrechtes geführt. Die Jahwerede im Bundesbuch gehört ebenso wie die Gottesrede im Deuteronomium und ‘Heiligkeitgesetz’ zum späten Redaktionsstadium der alten Gesetzessammlungen für die normale Torgerichtsbarkeit. Diese Stilisierung zeigt aber einen grundlegenden Ortswechsel hinsichtlich des Textgebrauchs an. Die Jahwerede ist eine rhetorische Form, die nur als mündlicher oder Lesevortrag vor einer versammelten Gemeinde denkbar ist.” See also Gerstenberger, *Wesen und Herkunft*, 28–30, 55–57, as well as Albertz, “Theologisierung”; Fensham, “Extra-biblical Materials,” 57–60; Otto, *Wandel*, 49, 58, 69–75.

3. On the ideology of the first person in the prologue and epilogue, see Levinson, “First Constitution,” 1864–1865; Otto, “Bedeutung,” 166–168 (he says Yahweh took over the functions of OB kings in pursuing justice for the marginalized); Yaron, “Evolution,” 89–95. See n. 41 later.

4. The ultimate reason for the prohibition of images in CC, such as a supposed lack of divine statues among nomadic peoples (so Dohmen, *Bilderverbot*, 178), is not a concern of this study. The immediate reason for the prohibition in CC is a reaction to the royal and religious customs portrayed in LH.

5. For why CC does not have a transitional introduction to its final apodictic laws parallel structurally to the introduction to the epilogue, see chapter 3.

6. For this as it applies to the figure Moses, see Lenzi, *Secrecy and the Gods*, 361–373; cf. Houtman, *Exodus*, 3:94–95.

7. Here pseudonymy entails not only ascription to divine authorship (“theonymy,” according to Levinson, *Deuteronomy*, 34 n. 22; cf. Levinson and Zahn, “Revelation Regained,” 307) but also the fiction of revelation to Moses as prophetic mediator of the content of the revelation. For the ideology of pseudepigraphic reformulation, see Levinson, *Deuteronomy*, 6, 34, 47–48, 150; “You Must Not Add,” 12–19, 43–44; “First Constitution,” 1871 and n. 63; “Human Voice,” 38, 40; “Hermeneutics of Innovation,” 157–161; “Du sollst nichts hinzufügen,” 162–167; *L’Herméneutique*, 24–30; *Legal Revision*, 22–33.

8. This is not to say that kings did not decree or legislate. Occasionally, biblical narrative presents David as being able to overturn law or legislation. Barmash (*Homicide*, 32–34) discusses the assertion of the king’s will in 2 Sam 14:1–17. The story of the failed

conveyance of the ark in 2 Samuel 6 also has David inventing improved ritual practice (see Wright, “Music and Dance”). Barmash (*Homicide*, 20–70) studies examples of the Israelite or Judean king acting in the context of judicial procedures. Cf. Walzer, “Legal Codes,” 341–342.

9. See chapter 4 and n. 116 there.

10. The translation is from Parpola and Watanabe, *Neo-Assyrian Treaties*, 33–34.

11. Levinson (“Deuteronomy 13:7a,” 237) notes that “Deuteronomy’s authors inverted the loyalty oath by wielding the genre against its imposers and transforming it into an oath of loyalty to Israel’s divine sovereign, Yahweh.” Levinson also observes broadly (“First Constitution,” 1863) that Israelite writers “drew upon the Mesopotamian concept of a royal propounder of law but also radically transformed it in light of their own cultural and religious priorities. They transformed precedent by making the royal legislator of biblical law the nation’s divine monarch, Yahweh. In that way, the ancient Babylonian generic convention of the royal voicing of law ironically provides an important legal and intellectual source for the distinctively Israelite concept of divine revelation.” See also Heger, “Source of Law”; Leemans, “Ḥammurapi as Judge”; Otto, “Treueid,” 44–46. For the Mesopotamian king as lawgiver in LH, see Ries, *Prolog und Epilog*, 40–51; Whitelam, *Just King*, 207–220.

12. For *šalmum* in Akkadian texts, see Livingstone, “Image,” 448–450; CAD § 78–85. Some scholars have seen a polemic in CC’s altar law, but against Canaanite cult customs (cf. Schwienhorst-Schönberger, *Bundesbuch*, 287, 295 n. 48).

13. Dohmen (*Bilderverbot*, 154–179, esp. 178–179) says v. 23 is connected conceptually with v. 24, a view shared by Houtman, *Exodus*, 3:99–100. Dohmen says that the original kernel consisted of v. 23b (originally with second-person singular references instead of the present plural) and 24aa and that these constituted the introduction to CC. This original wording “formuliert die konstitutiven Elemente des Kultes negativ und positiv” (p. 179). For discussions of Dohmen’s view, see Otto, *Wandel*, 5; Schwienhorst-Schönberger, *Bundesbuch*, 292. Heger (*Three Biblical Altar Laws*, 28–29) sees a contrast between vv. 23 and 24 but attributes this to a redactor. Osumi (*Kompositionsgeschichte*, 83, 189) rejects Dohmen’s interpretation. Phillips (“Fresh Look,” 41; *Essays*, 27) notes that “the prohibition of metal images and the command to build an earthen altar are part and parcel of one idea—the purification of Israel’s sanctuaries to a much simpler and primitive form.” Tigay (“Presence of God”) argues for the coherence of 20:23–26. Schmitt (“Altargesetz,” 273–275) argues that vv. 22–23 cohere as a unity and that if v. 22 is an addition to the context, so is v. 23. Boecker (*Recht und Gesetz*, 118) separates v. 23 from vv. 24–25 as formally and contextually independent parts. It is not clear that v. 22 in fact is an addition (see chapter 12 n. 83). For the chiasmic structure of v. 23, see chapter 3 n. 45. See, too, chapter 12, n. 13.

14. Zevit, *Religions*, 280; “Earthen Altar,” 55–56. He compares Naaman’s load of dirt in 2 Kings 5:17. Others have viewed the altar as consisting of clay brick (Conrad) or a staged podium altar (Zwickel), noted by Schmitt, “Altargesetz,” 270. Related to this theme, Zevit recently argued (in a paper at the national meeting of the Society of Biblical Literature, Boston, Nov 2008) that the motif of “seeing God” in CC and elsewhere in the Bible (23:15, 17; see chapter 3, n. 30) should be understood from a phenomenological point of view as emotionally *experiencing*, not physically seeing, the deity in connection with his cult symbol. In CC the focus of the experienced manifestation would be over the altar. This would then be consistent with CC’s rejection of images in 20:23 and connected with the deity’s self-proclamation in 20:24 and theophany in Exod 19.

15. Compare Gen 12:7; Josh 22:21–34, where the altars serve to evoke memory.

16. For an important related passage in the curse section of the epilogue, see chapter 12 on CC's relationship to the narrative of the book of Exodus.

17. On the originality of the first-person verb in CC, see chapter 3, n. 47.

18. See n. 21.

19. Chapter 3 speculated about different meanings for these two brief prohibitions.

20. The exculpatory “oath by Yahweh” (שבועת יהוה) in 22:10, which refers to an oath in whose utterance the divine name would be spoken, entails name pronouncement at the sanctuary, though this is not connected with a festival or sacrificial performance. See chapters 9 and 10.

21. The verb הזכיר with direct object שם meaning to “memorialize/proclaim a name,” with a meaning similar to name memorialization in LH, is found of humans in 2 Sam 18:18 and Ps 45:18. According to the first passage, Absalom sets up a “pillar” (מצבת) in the Valley of the King, because, as the text represents him to say, “I have no son to memorialize/proclaim my name (ביעבור הזכיר שמי)”; so he called the pillar by his name (יד אבשלם) (ויקרא למצבת על שמו), and it has been called Monument of Absalom (יד אבשלם) to the present time” (2 Sam 18:18). In Ps 45:18, the biblical psalmist or divine voice says of the king: “I will memorialize/proclaim your name in all generations” (אזכירה שמך בכל דור) (דור). The adverbial here is similar to *ana dār* “forever” in the LH passage (for more on this passage, see chapter 12, n. 58).

Other passages are less relevant. The verb הזכיר with direct object שם is used for declaring loyalty to deity (Isa 26:13) and naming a human (Isa 49:1). Other instances of הזכיר in connection with deity have the preposition ב- plus שם “name” and refer to invoking divine aid (Ps 20:8; perhaps Amos 6:10 belongs here; cf. Wolff, *Joel and Amos*, 283) and mentioning or calling upon gods (Josh 23:7, see the main discussion; Isa 48:1). Otherwise, the verb הזכיר is found with deity as direct object for remembering the god (Isa 62:6) or with the ל- preposition in a context of praise (Isa 12:4; 1 Chron 16:4; for הזכיר as a verb of praise, see Isa 63:7; Ps 71:16; 77:12). For name announcement in Exod 3:15 and similar language in Ps 135:13, see chapter 12, n. 58. For some discussion of CC's name proclamation idiom, see Schwienhorst-Schönberger, *Bundesbuch*, 398–399. Because of the uniqueness of CC's idiom, it is difficult to use the exilic or postexilic date of some of the passages just cited to date Exod 20:24 and 23:13b as late, as argued by Hossfeld, *Dekalog*, 185 (he in particular compares Josh 23:7, which for him is DtrN). See Eising, “זכר *zākhar*,” 73–77.

The idiom קרא בשם יהוה “call on the name of Yahweh” and similar formulations overlap to some degree with the foregoing idioms (cf. Isa 12:4) but are not strictly equivalent to הזכיר [ב]שם. See Gen 4:26; 12:8; 13:4; 21:33; 26:25; Exod 34:5; 1 Kings 18:24 (cf. 25–26); 2 Kings 5:11; Isa 12:4; 41:25; 64:6; 65:1; Joel 3:5; Zeph 3:9; Ps 116:4, 13, 17; Zech 13:9; Pss 79:6; 105:1; 1 Chron 16:8; cf. Ps 99:6; 1 Chron 21:26; 2 Chron 6:33. The most comparable is Exod 33:19, where the deity says that he will make his goodness pass before Moses and “I (Yahweh) will call out/proclaim (in) the name Yahweh before you” (וקראתי בשם יהוה לפניך). In the fulfillment, Yahweh calls out his name twice (cf. 34:5–6). On the phrase in the material attributed to J in Genesis, see the end of chapter 13.

22. Weinfeld, *Deuteronomy and the Deuteronomist School*, 84 n. 1; 321 (point 4); cf. Boling and Wright, *Joshua*, 524, 526. See the previous note.

23. Levinson, “Is the Covenant Code an Exilic Composition?” 314; see generally pp. 302–315.

24. Levinson, “Is the Covenant Code an Exilic Composition?” 315.

25. Rothenbusch (*Rechtssammlung*, 554) compares Yahweh’s descent in theophany in the surrounding narrative to his coming in 20:24.

26. See Fleishman, “Offences,” 23, for the synonymy of ארר and קלל. Exod 22:27 has terminological and conceptual correlations with the law about cursing parents in 21:17 in the central casuistic laws (cf. Schwienhorst-Schönberger, *Bundesbuch*, 367).

27. See the discussions of Fensham, “Rôle,” 265; Jackson, *Wisdom-Laws*, 425 n. 193; Marshall, *Israel*, 151–153; Schwienhorst-Schönberger, *Bundesbuch*, 361–364; Speiser, “Background”; van der Ploeg, “Les chefs,” 48–51.

28. Using this term for dating CC is problematic, even according to standard analyses, which see the apodictic laws as late additions to the basic casuistic laws.

29. Levinson (“Is the Covenant Code an Exilic Composition?” 296) says “the non-mention of a monarch may simply reflect the literary model [in LH] after which the casuistic laws of the Covenant Code are patterned, as well as the desire to present Yahweh as the divine monarch who proclaims law.” For the king in the administration of justice in the Near East, see Jackson, “‘Law’ and ‘Justice’”; Yaron, “Social Problems”; and n. 11 in this chapter.

30. For the use of נשיא as a polemic substitution for מלך “king,” see Ezek 12:10; 19:1; 21:17; 22:6; 45:16, 22; 46:2–3, 8–9. 1 Kings 11:34 uses נשיא of the king, though not in a derogatory sense. The antimonarchic tendency in Deuteronomy 17 (cf. Levinson, “First Constitution,” 1853–1888) leads one to wonder whether Deuteronomy read CC’s portrayal (or lack thereof) of the local king as inherently unsympathetic.

31. Cf. Levinson, *Deuteronomy*, 22.

32. Rofé, “Qumranic Paraphrases,” 163–174 (summarized in Zakovitch, “Ancient Variants,” 57).

33. For the term אלהים in these verses, see also Houtman, *Exodus*, 3:231–233. Despite the focus on divine name in 20:24 and 23:13b (and as we see in chapter 12, the apparent connection of the revelation of Yahweh’s name in Exod 3:15 with CC), Yahweh’s name only appears four times in CC, with only two of these instances in the apodictic laws (22:10, 19; 23:17, 19). But Hammurabi’s name appears only six times total in LH (cf. Richardson, *Hammurabi’s Laws*, 334).

34. It is doubtful that the appearance of אדן “lord, master” toward the end of CC (23:17) plays against the appearance of the term, used of human owners, in the casuistic laws (mainly at the beginning of the casuistic laws: 21:3, 4, 5, 6 [bis], 8, 32). The term בעל “lord, owner,” cognate with Akkadian *bēlum*, also appears in the casuistic laws and is used of owners of animals (21:28, 29 [bis], 34, 36; 22:10, 11, 13, 14), a woman (i.e., a husband; 21:3, 21), a house (22:7), and a pit (21:34).

35. For a general study of the concept of deity blessing humans, see Mitchell, *Meaning of Brk*, 29–78.

36. The *šēdum* and *lamassum* in the passage may have been concretized as figures guarding the temple (Wyatt, “Calf,” 181; see the citations in CAD L 65a). Thus they are distinguishable from the “gods that enter the Esagil.” The protective demons, the gods that enter, plus the “brickwork” of the temple, provide a rather comprehensive list of supernatural entities. All these assure the omens or reputation of Hammurabi before the chief gods. On the cosmic-theological significance of brickwork, see Edzard, “Deep-Rooted Skyscrapers,” 18–21.

37. AKA 87 vi 92 as cited in CAD E 269a.

38. ABL 65 r. 4 as cited in CAD E 269b.

39. ABL 735 r. 5 as cited in CAD E 260b.

40. Thompson, *Esarhaddon*, pl. 18 vi 10 as cited in CAD E 260a.

41. On the primacy of this theme in LH, see Fensham, “Widow, Orphan, and the Poor,” 130–132. The protection of widows and orphans is a common theme of Near Eastern literature and was expected of kings in the ancient Near East (cf. Levinson, “Kingship,” 515–516; “First Constitution,” 1878–1879). Westbrook (*Studies*, 15) notes that the royal duty of protecting the poor has been taken over in the Bible by the deity. For analysis of CC’s laws on poverty, see Hamilton, *Social Justice*, 82–83; Schwantes, *Das Recht der Armen*, 53–83. Otto (“Ausdifferenzierung eines altisralitischen Ethos aus dem Recht”) traces the supposed redactional development of concerns about the poor.

42. See chapter 3, n. 16.

43. See Yaron at chapter 3, n. 17.

44. For the listing of the immigrant, widow, and orphan together, see Deut 10:18; 14:29; 16:11, 14; 24:17, 19, 20, 21; 26:12, 13; Jer 7:6; 22:3; Ezek 22:7, 29; Zech 7:10; Mal 3:5; Pss 94:6; 146:9. While some believe the collocation of the trio in CC derives from Deuteronomy’s usage (e.g., Krapf, “Traditionsgeschichtliches”), the relationship must actually be the reverse (see the discussion later and chapter 12, nn. 2, 4). Lev 19:33–34 also depends on CC (even though it mentions only the immigrant, and not the widow and orphan; see chapter 13, n. 22). Other biblical passages list just the widow and orphan together (Isa 1:17, 23; 9:16; 10:2; 49:11; Ps 68:6; 109:9; Job 22:9; 24:3; Lam 5:3). The association of these two alone is part of long-standing tradition. The association is found, outside the Bible, in the early Reforms of Uru-Inimgina (c. 2351–2342): “Uru-inimgina made a compact with the divine Nin-Girsu that the powerful man would not oppress the orphan (or) widow” (translation from COS 2:408). On these socially marginalized individuals, see Galpaz-Feller, “The Widow”; Gowan, “Wealth and Poverty in the Old Testament”; Hiebert, “Biblical Widow”; Houtman, *Exodus*, 3:221–223; Lohfink, “Poverty”; Osumi, *Kompositionsgeschichte*, 197–198; van der Toorn, *From Her Cradle*, 134–140; “Torn between Vice and Virtue”; Van Seters, *Law Book*, 131; Weiler, “Zum Schicksal der Witwen und Waisen”; Zobel, “Das Recht der Witwen und Waisen.” See chapter 12 for the possible influence of an unknown source or tradition for the foundation of CC’s prohibition against oppressing a widow and orphan in 22:21.

45. This interpretation is attractive in the context of this study because it would provide a stronger tie to the “Hebrew slave” at the beginning of the casuistic laws (21:2), i.e., the immigrant, though a foreigner in Judah, would be still be a Hebrew. Jackson (*Wisdom-Laws*, 248 n. 47), who accepts the interpretation that the גַּר is an Israelite/Judean who has been separated from his tribal land (so Van Houten, *The Alien*, 18–20; “Remember That You Were Aliens,” 227 n. 11), says that “with inter-tribal trade, [the גַּר] could well be an Israelite debt-slave.” For other studies and observations about the immigrant, see Bennett, *Injustice Made Legal*, 38–48; Bultmann, *Fremde*; Crüsemann, *Torah*, 182–183; Marshall, *Israel*, 148–149 (and 146–151 more broadly on the poor); Osumi, *Kompositionsgeschichte*, 164–167; Spina, “Israelites as *gērīm*.”

46. See the excursus “‘Egypt’ in Hosea” in Wolff, *Hosea*, 145–146, for a discussion of passages about (northern) Israel and the Exodus tradition (cf. especially Hos 2:17).

47. It cannot be argued that the Egypt rationales in 22:20 and 23:9 are secondary and that before this addition the term גַּר had a different meaning in CC, referring to immigrant Israelites from the north. The rationales must be considered original. See chapter 12.

48. Crüsemann (*Torah*, 186) notes that the term נֶשֶׁה is negative, whereas the term לֹהֵ is positive (cf. 2 Kings 4:1–2). See also Osumi, *Kompositionsgeschichte*, 54–55. Hossfeld and Reuter (“נֶשֶׂא *nāšā*” 59) conclude that the root refers to “a particularly unscrupulous, profit-oriented form of lending directed specifically at one’s needy fellow citizens.” On interest laws in the Hebrew Bible, see Gamoran, “Biblical Law against Loans on Interest”; Kapelrud, “נֶשֶׂא,” 63–65; Kessler, “Das hebräische Schuldenwesen,” 181–184; Klingenberg, *Zinsverbot*, 13–56; Lipinski, “*Nešek*”; Loewenstamm, “נֶשֶׂא”; Neufeld, “Prohibitions against Loans”; Osumi, *Kompositionsgeschichte*, 198–200; Stein, “Laws of Interest.” It is not important for us to decide here exactly what type of interest is intended in CC, though נֶשֶׂא of 22:24b is usually seen as an amount subtracted in advance from the loan amount (as opposed to תְּרִבִּית or מְרִבִּית in other passages, which are amounts added to the principal). Other Pentateuchal interest laws include Deut 23:20–21 and Lev 25:35–38. The first passage reflects the full version of 22:24 (with v. 24b). It takes the root נֶשֶׂא and turns it into a Leitwurz, using it seven times, similar to Deuteronomy’s emphatic use of the root שָׁמַט in 15:1–11, based on the single use of the root in Exod 23:10–11. The Holiness Legislation passage (Lev 25:35–38) was also created in view of CC’s law, since that chapter otherwise knows the laws of CC (compare Lev 25:2b–7 with Exod 23:10–11). Lev 25:35–38 shares with CC the idea that it is the poor specifically who are not to be charged interest (as opposed to Deuteronomy). Yet Leviticus 25 also appears to know Deuteronomy’s law because it refers to “brother,” “silver,” and “food,” found in Deuteronomy’s law. The passage in the Holiness Legislation is further secondary to Deuteronomy because it nuances between נֶשֶׂא and תְּרִבִּית, whereas D uses only נֶשֶׂא. Thus there is a linear development: Exod 22:24 to Deut 23:20–21 to Lev 25:35–38. A study of the meaning of נֶשֶׂא and תְּרִבִּית must take into consideration this textual evolution. On the interest prohibition, see also Ezek 18:8, 13, 17; 22:12–13 (which correlate roughly with the Holiness Legislation stage of evolution); Ps 15:2; Prov 28:8; Neh 15:1–13.

49. “My people” (אֶת עַמִּי) in 22:24a may be an addition that intends to generalize the law beyond loans to the poor. The Greek has “to your brother” (τῷ ἀδελφῷ) instead of the equivalent of “my people.” For the view that the loans are consumption or subsistence loans, see Gamoran, “Biblical Laws on Loans on Interest”; Hejcl, *Zinsverbot*, 93; Houtman, *Exodus*, 3:219; Marshall, *Israel*, 144.

50. Kessler, “Das hebräische Schuldenwesen,” 183–184. He notes that a pledge may be a person (Job 24:9; cf. Neh 5:2), a means of production necessary to life (a hand mill or millstone, Deut 24:6; animals, Job 24:3; fields, houses, and vineyards, Neh 5:3), or a garment “als wichtiges Gebrauchsgut” (p. 183). For clothing as pledge, see Deut 24:12–13, 17; Amos 2:8; Prov 20:16; 27:13; Job 22:6, 24:9–10. For other passages about pledge taking, see Deut 24:10–11; Ezek 18:16.

51. For a discussion of the interest laws in a Near Eastern context, see Hejcl, *Zinsverbot*, 91–97. He stresses the uniqueness of the biblical laws and therefore their lack of connection to Mesopotamian custom.

52. Other loan and interest laws appear in LH 48–51, gap¶a (= Borger, *Lesestücke*, 66), gap¶1 (= Richardson, *Hammurabi’s Laws*, §5.2), gap¶1t-y (= Borger, *Lesestücke*, 70+d, 71+d, 72+d, 72+e, 73+3, 74+e; Richardson, *Hammurabi’s Laws*, §§5.9–14). A system appears in LH: the interest rate on silver loans was 20% and the rate on grain was 33½% (Maloney, “Usury and Restrictions on Interest-Taking,” 10, 20; Marshall, *Israel*, 143–144; Szelechter, “Le prêt,” 19–22; Yaron, “Evolution,” 86). Maloney concludes (p. 10): “Hammurabi’s compilation of laws clearly seeks to better the condition of the debtor by limiting profits on loans and by checking the usurer’s greed through

a series of detailed enactments.” Marshall’s math for production of crops leads to the actual rate of 1% for grain, “hardly an exorbitant amount” (unless a crop fails).

53. See Lindenberger, *Ancient Aramaic and Hebrew Letters*, 109–110 and discussion 107–108; Naveh, “A Hebrew Letter,” 135–136.

54. See the next note.

55. Otto (*Wandel*, 38, 40–43) believes that CC at one the major redactional stage consisted of 21:2–22:26. The redactor of this level also added the phrases about Yahweh’s hearing the cry of the poor, which reflect royal associations. He says (pp. 50, 53) that, in contrast, divine king motifs are absent from 22:28–23:10, a sign that this block was originally distinct from what precedes. This difference is actually a function of the different parts of LH that were used. For the tradition of connecting king to justice in West Semitic tradition, see Niehr, “Constitutive Principles.”

56. The prayer of the wronged man starts: “Hammurabi, the lord, who is like a begetting father to his people . . .” (col. 48:20–22). See also the passage, cited toward the beginning of this chapter and that precedes the exhortatory block, which describes the benefits that Hammurabi achieved (col. 47:9–58). Also to be compared are the various epithets of Hammurabi that are enumerated in the prologue and that describe his gracious acts (col. 1:50–5:13).

57. Stackert (*Rewriting*, 129–135) has convincingly argued that the law refers to leaving produce in a field, not leaving the field fallow. The feminine singular object pronouns on the verbs at the beginning of 23:11 refer to תְּבוּאָה “produce,” and the verb שָׁמַט means “drop, let fall, strip off.” Deuteronomy 15:1–11 completely revises the conception of שָׁמַט. Its emphatic repetition of the term is indicative of this transformation. The Holiness School (Lev 25) in turn revises the conception of שָׁמַט, replacing Deuteronomy’s use of the term with the alliteratively similar root שָׁבַח and interpreting the CC law as a fallow law.

58. So Houtman, *Exodus*, 3:252; C. Wright, “What Happened Every Seven Years,” 130–131.

59. The seventh day here is not called a שַׁבָּת, nor is the language of sanctification or a death penalty for work associated with it. Levin (“Der Dekalog am Sinai,” 171–173, esp. 173 and n. 15 there) has argued that it is the Decalogue that identifies the “Sabbath” with the seventh day of rest, an identification not yet made in Exod 34:21, upon which the Decalogue relies, according to his argument, and which itself relies on 23:12. Prior to this identification and in the monarchic period, the “Sabbath” was the day of the full moon (referring to 2 Kings 4:23; Isa 1:13; Hos 2:13; Amos 8:5). For the relation of the Decalogue to CC, see chapter 12. For attempts to deal with the history of the “Sabbath,” see Andreasen, *Old Testament Sabbath*; “Recent Studies of Old Testament Sabbath”; Bettenzoli, “La tradizione del *šabbāt*”; Hasel, “New Moon and Sabbath”; Robinson, *Origin and Development*.

60. Houtman (*Exodus*, 3:257) observes that the listing of persons in the seventh-day law “is not meant to be restrictive, but is used as an example.”

61. Beyerlin (“Paränese”) has argued that the laws of 20:24–26 and 22:20–23:19 are primary and that the casuistic laws of 21:1–22:29 have been inserted into their midst (followed by Halbe, *Privilegrecht*; summarized by Otto, *Wandel*, 74–75). Pfeiffer (“Transmission,” 101) has similarly argued that the casuistic body was inserted late into the apodictic “collection of ritual and humanitarian prescriptions,” and more particularly, the ritual laws were the primary kernel of CC, to which humanitarian laws were added.

62. Jackson, *Wisdom-Laws*, 107–108; also 439.

63. Crüsemann (*Torah*, 156) says that 21:2–6 is not for the protection of the poor, “but a regulation that in the majority of cases must have forced male slaves into permanent slavery.”

64. Hanson (“Theological Significance,” 116–131) struggles with the contradiction between passages in CC that display a discriminatory tendency (e.g., laws about slaves and women) versus those that promote the ethical treatment of the poor. He notes the majority of discriminatory laws are in the casuistic section, and the ethical laws are in the apodictic sections (pp. 117–118). His solution is to attribute the contradictions to a protracted oral and literary process that created CC.

65. This perspective is already stressed in the prologue of LU, and LH reflects this tradition. See Klíma, “Die juristischen Gegebenheiten in den Prologen und Epilogen,” 159–160; Otto, “Bedeutung,” 153–155; Westbrook, *Studies*, 11–13. Otto notes that the weak person, widow, and orphan are primarily concerns in the prologue and epilogue. Within Hammurabi’s casuistic laws, a widow appears only in LH 177, and there are no laws with the weak person (*enšum*) or orphan girl. See also n. 44.

66. On the protection of the poor in the Bible in general, see Amos 2:7; 4:1; 5:11; 8:6; Pss 72:13; 82:4; 113:7; Prov 14:31; Job 31:16; Brin, *Studies in Biblical Law*, 74–89; Houtman, *Exodus*, 3:240; and nn. 41, 44, 65 in this chapter.

67. It is not clear that the prohibition on boiling a kid in its mother’s milk is originally ethical in orientation. Labuschagne (“You Shall Not Boil”) says that it sought to prevent cooking a firstborn animal in its mother’s milk, which when first coming in had a reddish color and hence was like eating blood, to which there was an aversion (e.g., Gen 9:4; Lev 7:26–27; 17:10–14; Deut 12:16, 23; 15:23). Milgrom (“You Shall Not Boil”) says it grows out of the principle of not mixing death and life. Sasson (“Seething a Kid”) argues that the law means not to prepare a kid in the “fat” of its mother and thus prohibits slaughtering a young animal with its mother (realized as a general law in Lev 22:28).

68. Cooper (“Plain Sense,” 17–18) has argued that the rule in 23:5 means that one must in fact leave alone the burdened animal of an enemy and that 23:4–5 “are concerned with the proper character and venue of reciprocity. . . . one has every right to behave vengefully towards an enemy. But the best way to achieve satisfaction is not to commit a crime against his innocent beast.” Magonet (“Ownership,” 165) argues that 23:4–5 have to do with outlining the nature of interpersonal relationships, including those with enemies, in the broader context of 23:1–9. Huffmon (“Exodus 23:4–5,” 273, 276) observes that these verses imply similar treatment of an animal belonging to one who is *not* an adversary.

69. Noted by Marshall, *Israel*, 154, n. 58. Barbiero (*L’Asino del nemico*, 92–104) compares 23:4–5 with wisdom literature and notes similarities to Prov 24:17–18; 25:21–22, and various passages in the Egyptian Instructions of Amenemope and other Near Eastern wisdom works. These similarities have to do with attitudes toward and treatment of enemies, not about lost or suffering animals.

70. See Gen 16:7–13; 21:17–21. Deut 10:18; Isa 1:23; 9:16; 10:2; Ezek 22:7; Mal 3:5; Pss 68:6; 94:6; 146:9; Prov 15:25; 23:11. See the discussion in Houtman, *Exodus*, 3:223–224.

71. See nn. 3, 11, 41, 55 in this chapter.

72. For this frame, see Crüsemann, *Torah*, 113; Halbe, *Privilegrecht*, 413–424; Houtman, *Exodus*, 3:81, 95; Schwienhorst-Schönberger, *Bundesbuch*, 22–28, 232; Sprinkle, *Book*, 37; Wright, “Fallacies,” 144.

73. Deut 27:2–8 and Josh 8:30–35 reflect directly or ultimately the altar law in CC. The first passage is composite, with a basic command to erect stones that are to be plastered and on which obligations are written, vv. 2–4, 8, and an inserted command to build a stone altar in the fashion prescribed by CC in vv. 5–7. Josh 8:30–35 conflates the composite elements of Deut 27:2–8 in its description of the fulfillment: it has Joshua building only an altar, on whose stones the instruction is written. Thus the similarity of a cult object with law obligations written on it in Joshua 8 to Hammurabi’s law stela appears to be coincidental. See Anbar, “The Story about the Building of an Altar”; Heger, *Three Biblical Altar Laws*, 4, 38–56; Hossfeld, *Dekalog*, 183; Na’aman, “The Law of the Altar”; Nihan, “Torah”; Zevit, *Religions*, 277–278; “Earthen Altar.” See chapter 12, n. 77.

74. Heger (*Three Biblical Altar Laws*, 59, 63, 72, 75–76) notes that the altar of 20:24 has no form or dimensions but is simply a pile of earth, low to the ground (cf. Robertson, “Altar of Earth,” 18–21). Zevit (*Religions*, 278–280; cf. 199) similarly conceives of it as piled earth or stones, but perhaps about 75–90 cm high, with a surface area of 3.1–4.0 meters, and with a ramp to mount it. He notes (p. 280) that “the dumping of earth to the minimum implicit height would tend to produce a structure more round or oval than square,” and that “undressed stone, of course, could have been manipulated to produce a squarish structure with rounded corners.” He also compares various archaeologically attested altars (pp. 159, 169). See also the review of various ideas about the connection of this prescription with archaeological finds in Osumi, *Kompositionsgeschichte*, 156–161, 180–181.

75. For the use of hewn stone in the building of Solomon’s temple and palace, see 1 Kings 5:31–32; 6:7 (which reflects the spirit of CC’s law); 7:9–11. Olyan (“Why an Altar of Unfinished Stone”) argues that natural stones are considered whole and hence legitimate and holy, a view accepted by Zevit, *Religions*, 278, but rejected by Heger, *Three Biblical Altar Laws*, 54–57.

76. Jacob’s and Laban’s pile of stones is a “witness” (עד) between them (Gen 31:44, 46, 48, 50). The altar that the trans-Jordan tribes built in Joshua 22 is also a “witness” (עד; cf. v. 27, 28, 34), though its form is not described. It appears to be a more formally built structure, described as “a visibly large altar” (זִמְבַּח גָּדוֹל לְיִרְאָה; v. 10).

77. Dohmen (*Bilderverbot*, 171–175) views the altar of earth as a holdover from nomadic times that assures the proper manipulation of blood as a *Lebenselement* that belongs to the deity alone. Heger (*Three Biblical Altar Laws*, 58, 61, 72, 75–76, 77–87, 391) similarly sees in CC’s law the reflection of nomadic society, a temporary altar erected at any place that the divine presence might be perceived.

78. It is not clear if the prohibition of stairs is connected in some way with the ziggurat. The term *zigguratum* is not used in LH, but the associated term, *gegu(n)-nûm*, is. In the list of beneficial acts performed on behalf of the various city cults in the prologue, Hammurabi is the one “who establishes the foundations of Sippar, who dressed in green the *gegu(n)nûm*-shrine of Aya” (2:24–28). The term *gegu(n)nûm* often appears in apposition to *zigguratum* in other literature (*CAD* G 70a). The Tower of Babel story, which probably refers to the Etemenaki ziggurat in Babylon, provides evidence of knowledge of ziggurat form more or less contemporary with CC, if the story is from the Neo-Assyrian period rather than the Neo-Babylonian period (see chapter 13 on dating the material attributed to J in Genesis post-CC). The ziggurat in Babylon was known in the Neo-Assyrian period (e.g., Sennacherib destroyed part of the Etemenanki in a campaign against Babylon, and Esarhaddon rebuilt the structure: see passages

cited at CAD Z 130b; cf. Edzard, “Skyscrapers,” 13–17). Because the biblical story is about primordial history, it can thus speak about custom in Babylon, which has cultural precedent in Mesopotamian tradition over Assyria, even at a time when Assyria was dominant. For a discussion of the redaction, Near Eastern context, and meaning of Genesis 11:1–9, see Abusch, “Two Passages,” 3–5; Hiebert, “Tower of Babel”; Rose, “Nochmal: Der Turmbau Babels”; Seybold, “Der Turmbau zu Babel”; Uehlinger, “Bauen wir uns eine Stadt”; *Weltreich und “eine Rede”* (Uehlinger’s detailed study leans away from a connection of the original version of the story with the ziggurat but nonetheless argues that the story is a response to Neo-Assyrian concerns; for detail on ziggurat issues, see his pp. 181–253). Other possible evidence of knowledge of the ziggurat form in the Neo-Assyrian period in Judah is the wedding-cake structured altar described in Ezekiel 43:13–17 (see Wright, *Disposal*, 149–155), if this reflects to some extent the form of the altar in the Jerusalem temple prior to its being destroyed by the Babylonians. Ezekiel’s altar may or may not be connected with Ahaz’s altar in 2 Kings 16 (cf. Wright, *Disposal*, 154–155, n. 21). For the latter structure, see the considerations of Cogan, *Imperialism*, 73–77; Cogan and Tadmor, *2 Kings*, 192–193; Rothenbusch, *Rechtssammlung*, 465, 578–580; Smelik, “New Altar”; Weinfeld, *Deuteronomy and the Deuteronomistic School*, 182.

79. The passage on the appeals court in Deut 17:8–13 is similar in general tenor and context to the wronged-man passage. Levinson (“First Constitution,” 1877) describes Deuteronomy’s requirement in terms similar to a festival: “In the process of establishing the central sanctuary as the High Court, Deuteronomy also radically revises the traditional form of cultic justice. The changes involve the locus of cultic justice, access to which now requires *pilgrimage* to the central Temple” (my italics). Levinson’s description shows that it is possible to associate a description of judicial review at a sanctuary with the concept of pilgrimage.

80. For estimates of the original text, see chapter 12 n. 37. Wagenaar (“Post-Exilic Calendar Innovations”) understands חֹדֶשׁ הָאִיָּוִיב “month of Aviv” to mean “suitable time in the season of ears.”

81. The wronged-man passage has enveloping phrases: “let a wronged man who has a case come before the statue of me, the king of justice” (*awilum ḥablum ša awātam iraššū ana maḥar šalimya šar mišarim lillikma*), paralleled by “let him pray this before Marduk my lord” (*annitam liqbīma ina maḥar Marduk bēlīya*). This correlation was noted by Hurowitz (Inu Anum šīrum, 33–34) in connection with a broader structural analysis. It is just in these phrases that we find travel to the cult and ceremonial performances. Osumi (*Kompositionsgeschichte*, 37) observed a chiasmic structure in 23:14–17 in which vv. 14 and 17 are parallel members.

82. Here it should be noted that CC does not depend on the festival and other laws in Exod 34:10–26. I allowed for this in an early paper (Wright, “Compositional Logic,” 112 n. 42), influenced by the view of scholars such as Crüsemann, *Torah*, 109–143; Halbe, *Privilegrecht*, 449–450, 483–493; Osumi, *Kompositionsgeschichte*, 10, 70–80, 149, 152; Otto, *Wandel*, 50; Schwienhorst-Schönberger, *Bundesbuch*, 389–390, 404–405; Wilms, *Bundesbuch*, 187. These scholars say that CC was influenced by that pericope or a source lying behind both texts. This analysis must be rejected. The text of Exod 34 derives from CC. See the decisive arguments and observations of Bar-On, “Festival Calendars” (on Bar-On, see Levinson, *Legal Revision*, 156–158; *L’Herméneutique*, 87); Blum, “Das sog. ‘Privilegrecht’ in Exodus 34,11–26”; *Studien*, 68–69, 293–295; Carr, “Method”; Rothenbusch, *Rechtssammlung*, 417, 441–448, 468,

546, 586; Houtman, *Exodus*, 3:262–263; Levin, “Der Dekalog am Sinai,” 171–174 (Levin says of Halbe’s work: “Daran hat der vielhundertseitige Versuch von J. Halbe, *Das Privilegrecht Jahwes* . . . nichts ändern können”); Levinson, *Deuteronomy*, 9, 66 n. 42, 69–70; “Goethe’s Analysis of Exodus 34”; Schmitt, “Das sogenannte jahwistische Privilegrecht”; Wagenaar, *Origin and Transformation*, 68–72. Exod 34:10–26 is often ascribed to J in source analyses (see Baden, “Rethinking,” 193–198 for a cogent argument of source divisions in Exod 34). If so, then 34:10–26 is evidence of J’s dependence upon CC and its narrative (see chapter 12). Chapter 13 suggests that J’s motif of name invocation is also evidence of its dependence on CC and its narrative.

83. Labuschagne (“You Shall Not Boil a Kid,” 13–14) connects the laws in 23:18–19 distributively with the preceding festivals: commands 1 and 2 (v. 18) with the Feast of Unleavened Bread, command 3 (v. 19a) with Feast of the (Summer) Harvest, and command 4 (v. 19b) with the Feast of Gathering.

84. Marshall (*Israel*, 142–143) says that one should read the human firstborn law in 22:28b literally and that it requires human sacrifice.

85. For firstborn laws, see Brin, *Studies in Biblical Law*, 166–281.

86. On the lack of בְּשֵׁה in the LXX, Peshitta, Vulgate, Targum Onkelos, Targum Pseudo-Jonathan, see Houtman, *Exodus*, 3:235 (the omission may be due to an intention to generalize the law). Zakovitch, (“ספר הברית,” 63*) rejects Budde’s explanation of dittography in CC based on בֶּשֶׁר and claims that the original text included בְּשֵׁה but not טרפה (but he relates the wording of Exod 22:30 to Lev 17:5).

87. Schwartz (“Israel’s Holiness,” 50) says the phrase means “not ‘people of holiness’ but ‘people which constitute a *qodeš*,’ people which are God’s exclusive possession. . . . His *segullah*.” See chapter 12, n. 15.

88. On bribes, see Houtman, *Exodus*, 3:249–250.

89. This answers Jackson’s question (*Wisdom-Laws*, 458) about whether the two strings were only later broken up by 23:1–8. They are all part of the same original compositional structure. Jackson sees the string structure as “a complex literary device, one more akin to the complex chiasmus.” He only needs to incorporate the chiasmus of 23:1–8 to appreciate just how truly complex the structure is. For further discussion of the structure, see Jackson, *Wisdom-Laws*, 403–406; “Modelling,” 1803–1804.

90. For the notion of the inalterability of law texts and treaties, see Levinson, “You Must Not Add,” 6–7; “Neo-Assyrian Origins of the Canon Formula.”

91. McKay, “Exodus XXIII,” 321, his translation. See also the summary by Marshall, *Israel*, 154 and elaboration by Sprinkle, *Book*, 178–179.

92. Most view vv. 4–5 as an addition. Besides Schwienhorst-Schönberg and Otto in the next notes, see also Bultmann, *Fremde*, 171 and n. 191; Wellhausen, *Composition*, 90.

93. Schwienhorst-Schönberger, *Bundesbuch*, 378–388, esp. 388.

94. His reason is that the topic of a bribe in v. 8 is similar to Deut 10:17; 16:19; 27:25, and verse 9 is similar to the Deuteronomistic elements recognizable in 22:20.

95. Otto, *Wandel*, 8, 47–49, 53.

96. He says that 23:4–5 influenced Deut 22:1–4. Other original constellations have been proposed: Richter (*Recht und Ethos*, 122, cf. 121–125): 23:1a, 6* (i.e., לֹא תִטֵּה מִשְׁפַּח, לָא, 8a, 9a, and 22:21* (i.e., [אלמנה ויתום לא תענה], 7a, 8a, 9a); Morgenstern (“Book of the Covenant, Part IV,” 96): 22:21 + 20a, 24a, 25; 23:1, 2, 6 + 3, 7a, 8a + 9a.

97. Rothenbusch (*Rechtssammlung*, 291) sees 23:13 as a superscription to the final cultic laws in 23:14–19. It functions in a way similar to 20:24, placing a law about

mentioning divine name before cultic laws in 20:25–26. Otto (“Gesetzesfortschreibung,” 288) sees 23:13 as forming a frame with 21:1.

98. Part of the reason why the sanctuary in CC appears as a virtual singularity may be the literary source, where the Esagil is the only cult place of concern in the exhortatory block, even though the prologue speaks of multiple cult places to which Hammurabi devoted his care and attention.

Chapter 12

1. For the view that the apodictic laws are secondary to a basic collection of casuistic law, see the models of Otto, Schwienhorst-Schönberger, Rothenbusch, and Jackson, summarized in chapter 1, and also Crüsemann, *Torah*, 147; Fensham, “Extra-biblical Materials,” 57–60; Halbe, *Privilegrecht*, 391–505; Hanson, “Theological Significance,” 114; Lewy, “Dating”; Osumi, *Kompositionsgeschichte*, 29–30 (and passim); cf. Patrick, *Old Testament Law*, 66; and chapter 11, n. 2. See also the next notes. Clearly, the present source analysis of the apodictic laws requires rethinking arguments about the *Sitz im Leben* of apodictic law. For earlier discussions, see Alt “Origins”; Beyerlin “Paranäse”; Bright, “Apodictic Prohibition”; Gerstenberger, *Wesen*; “‘Apodiktisches’ Recht”; Mendenhall, “Ancient Oriental and Biblical Law,” 30; Morrow, “Generic Discrepancy,” 138–146; Weinfeld, “Origin of Apodictic Law.” Rost (“Bundesbuch”) struggles with why apodictic laws appear only in the outer portions of CC—why the casuistic laws were not expanded with apodictic elements. Toeg, 94–80 מתן תורה בסיני, has an exceptional view of CC’s development: the altar laws of 20:23–26 were added to supplement the Decalogue, and then the rest of CC was added incrementally.

2. Chamberlain (“Exodus 21–23,” v–vi, 134–159) argues that the apodictic laws are post-Deuteronomistic (so, too, Houtman, *Exodus*, 3:85). Schwienhorst-Schönberger believes the language about oppression and the immigrant is Deuteronomistic (*Bundesbuch*, 332–334, 347, 350; see also Otto, *Wandel*, 6). Those who believe the bulk of the apodictic laws are pre-Deuteronomistic include Beyerlin, “Paranäse,” 9, 14–17; Crüsemann, “Bundesbuch,” 35; Hanson, “Theological Significance,” 114; Lohfink, “Gibt es eine deuteronomistische Bearbeitung”; “Poverty,” 38–39; Osumi, *Kompositionsgeschichte*, 156, 161–162, 183–217 (even the second-person plural elements are pre-Deuteronomistic and reflect Jerusalem temple tradition before the exile); Rothenbusch, *Rechtssammlung*, 453–456, 459, 592–593 (for him the final redaction of CC is *not* Deuteronomistic). Levinson (*Deuteronomy*, 12) summarizes the matter: “. . . a number of scholars reject the claim of substantial Deuteronomistic revision of the Covenant Code. Of course, most scholars concede the existence of secondary material within the Covenant Code and the validity of diachronic analysis for discerning editorial activity. That is not the issue. The crux is whether these expansions presuppose the specific language, legislation, and theology of Deuteronomy. Detailed analysis shows that the expansions do not presuppose Deuteronomy as a text, even if they begin to express related concerns, such as the social justice owed the immigrant, the widow, and the orphan. Since they are not textually dependent upon Deuteronomy but move in the direction of its concerns, the additions are most logically viewed as pre-Deuteronomistic. The further inconsistency of these expansions with Deuteronomistic language reinforces the judgment that they should be dated prior to Deuteronomy.”

3. Wellhausen (*Composition*, 89–90) saw the plurals as a later redaction level with a perspective similar to Deuteronomy (see also Baentsch, *Bundesbuch*, 45–58). Otto (*Wandel*, 38–40, 58–59) concludes that a basic text with a singular formulation (with its own prehistory) was augmented with 20:22, 23; 21:1; 22:19b, 20aßb, 21, 23, 24b, 30; 23:9, 13, and that 20:22–23 and 23:13, in particular, brought CC into the Sinai pericope with a frame dealing with foreign gods and idols. Osumi (*Kompositionsgeschichte*, 30–44, 69, 85, and passim) sees two basic layers in the apodictic laws: a second-person singular stratum that includes 20:24–26; 22:20a, 22, 24a, 25–29; 23:1–9a, 10–12, 13b (without 2nd pl.), 14–19 (he also includes part of 23:20–33), to which the phrases with second-person plural forms were added. Crüsemann (*Torah*, 198, also pp. 109, 114, 117, 197–200) sees the second-person plurals as later additions but adds that “as close as they are to deuteronomistic language, they are not typical and they illustrate important differences in style and content” and are thus pre-Deuteronomistic. Hossfeld (*Dekalog*, 183–184) says some of the plural forms are comparable to the usage of the Holiness School. Houtman (*Exodus*, 3:218, cf. 99) sees the plural forms as signs of additions and says that this (layer of) “text is the work of Deuteronomistic authors.” Schwienhorst-Schönberger (*Bundesbuch*, 332, 334, 342–343, 345–346, referring to Lohfink, *Hauptgebot*, 240) admits the difficulty of using *Numeruswechsel* as a chief literary critical criterion. But he says that it is still significant when other methods do not provide a sufficient explanation. For problems with or reservations about *Numeruswechsel* as a criterion for redactional analysis, see Levinson, “Birth,” 634–635, 638–639 (see also Chirichigno, *Debt-Slavery*, 189 n. 3; McConville, “Singular Address,” 19–21; Tigay, “Presence of God,” 198). On the versional leveling of the *Numeruswechsel* in Exod 20:23–26, see Levinson, “Is the Covenant Code an Exilic Composition?” 311 n. 74. For *Numeruswechsel* in Deuteronomy, see Levinson, “Carmichael’s Approach,” 231 and nn. 9–10.

Various notes in chapters 11 and 12 summarize critical analyses about the composition of the apodictic laws and the introduction of 21:1 in CC. The following list indexes these discussions: 20:23–26 (chapter 11, n. 13; 12, nn. 13, 27, 38, 42, 83); 21:1 (chapter 12, nn. 41, 42); 22:20–23 (chapter 12, n. 4; cf. 11, n. 44); 22:24–26 (chapter 12, n. 25; cf. 11, n. 49); 22:27–30 (chapter 12, n. 15); 23:1–8 (chapter 11, nn. 91–96; 12, n. 30); 23:9 (see on 22:20–23); 23:10–12 (chapter 12, n. 32); 23:13 (chapter 12, nn. 6, 14); 23:14–19 (chapter 12, nn. 35, 37, 67, 69; see at chapter 11, n. 80).

4. This is Schwienhorst-Schönberger’s solution (*Bundesbuch*, 331–359). For him, a Deuteronomistic redactor expanded this basic material with the rationale of being a resident in Egypt, material about widows and orphans, divine anger, and divine slaying with a sword. The redactor used both second-person plural and singular forms, depending on the context (the redactor’s singulars include תלחצוני in v. 20 and תענה in v. 22). Otto (*Wandel*, 38–40, 58–59) says that the oldest layer in 22:20–23 is 22:20aa. Verses 20aßb, 21, and 23 are a Deuteronomistic addition. For the separation of layers, see Osumi, *Kompositionsgeschichte*, 32, 51–52. Krapf (“Traditionsgeschichtliches zum deuteronomischen...Gebot”) concludes that the pairing of the widow and orphan was the earliest formulation, which Deuteronomy then augmented with the immigrant. This history in his view demonstrates the lateness of the formulation of Exod 22:20–23. Pons (“La référence au séjour,” 171) says the Egyptian rationale may be pre-Deuteronomistic. See the discussion later in this chapter and the observations in chapter 13, n. 19.

5. For views about the secondary character of 22:24b, see n. 25.

6. So Osumi, *Kompositionsgeschichte*, 52, 62. He notes (p. 33) the ostensible problem of שׁו “name” being both the object and subject in the two phrases of the present text. For the presumed secondariness of even the singular verb in 23:13bβ, see n. 14 in this chapter. Schwienhorst-Schönberger (*Bundesbuch*, 394–400, esp. 399–400) attributes 23:13 to Deuteronomistic redaction. The singular at the end of the verse, part of the addition, is used to anticipate the festival calendar that follows. He says that the verse echoes 20:22b–23 to create structure in the text, characteristic of Deuteronomistic editing. Otto (*Wandel*, 6–7) notes that the closest parallel to 23:13ba is Josh 23:7ba, proof that 23:13ba is Deuteronomistic. However, the discussion on name memorialization in chapter 11 (at n. 21 there) observed that Josh 23:7 is likely to be dependent on CC.

7. For Dohmen’s view that 20:23b was originally singular and part of the original context, see chapter 11, n. 13. On v. 23, see n. 13 in this chapter.

8. The possibility of two editions of CC could be coordinated with the speculation about two editions of CC’s narrative, discussed in the second half of this chapter.

9. Levinson (“The Neo-Assyrian Origins of the Canon Formula”) raises a similar issue. He argues convincingly that Deut 13:1 derives from use of VTE as a source. Though the verse displays *Numeruswechsel*, its motifs and elements, especially its chiasmic citation of VTE (manifesting Seidel’s law), indicate that it is a unity. Deut 4:2, which depends on 13:1, has leveled the plural-singular inconsistency. Related to this, the numerical inconsistency in Deut 14:21 is due to sources, particularly “you (pl.) shall not eat” (לֹא תֹאכְלוּ) from Exod 22:30 and “you (sg.) shall boil” (תִּבְשַׁל) from Exod 23:19; the singularity of “you are a holy people” (עַם קְדוֹשׁ אַתָּה) in the verse perhaps reflects the singular used of the rationale in 14:2, which may be based on Exod 19:6. See n. 15 in this chapter. For *Numeruswechsel* as a function of the use of sources rather than redactional additions, see Stackert, *Rewriting*, 128–129 and n. 42, 180 n. 35. On *Numeruswechsel* in Deut 12, see n. 13 in this chapter.

10. Lohfink (*Hauptgebot*, 240–243) argues that *Numeruswechsel* in Deuteronomy is not necessarily a sign of secondary accretion. For him, its function is rhetorical (p. 247): “Jeder Wechsel der Anrede erzeugt notwendig im Zuhörer ein Neuangesprochensein, ein Umschaltung, ein Aufwachen und Neuhinhören” (similarly, Sprinkle, *Book*, 40, 168–169, 174). For a discussion and critique of Lohfink, see Osumi, *Kompositionsgeschichte*, 38–44, 50–52. Otto (*Wandel*, 8) critiques Halbe for attempting to explain cases of *Numeruswechsel* from a stylistic point of view.

11. I am leaving open the question of the ultimate origin or *Sitz im Leben* of the second-person singular form. This does not derive from LH. For a possible connection with treaty, see chapter 13, n. 4.

12. For the verses as counterparts, see Osumi, *Kompositionsgeschichte*, 18, 19; Hossfeld, *Dekalog*, 185; Schwienhorst-Schönberger, *Bundesbuch*, 399–400. See n. 6 in this chapter.

13. Most judge 20:23 secondary. Some argue that the verse (along with v. 22b of the narrative setup) is based on Deut 4:15–16 (for the argument, see Schwienhorst-Schönberger, *Bundesbuch*, 396–397; Baentsch, *Bundesbuch*, 45–47; see nn. 27, 38 in this chapter). But the reverse relationship can be argued. Phillips (“Fresh Look,” 42), for example, notes the differences between Exod 20:23 and the larger passage of Deut 4:15–19 to argue that Deuteronomy’s passage is more developed and is “a highly sophisticated late Deuteronomistic interpretation of the second commandment and its concern is much wider than the very specific and limited interest of Ex. xx 23.” For the priority of the idiom in 20:23 over 32:21 of the golden calf story, see nn. 84, 92 in this chapter.

Hossfeld (*Dekalog*, 180–183) has argued that v. 23 is a priestly addition because of its similarity to Lev 19:4; 26:1. He says that the plural reference to silver and gold gods comports with an exilic and postexilic polemic against divine images (he refers to Hos 8:4 and especially Deut 29:16; Isa 30:22a; 31:7; 40:19; 46:6; Hab 2:19b; Ps 115:4; 135:15 [see also Isa 2:20; Dan 11:8]; cf. Osumi, *Kompositionsgeschichte*, 193). The passages from the Holiness Legislation of Leviticus may actually rely on CC, given the dependence of HL on CC otherwise (see Stackert, *Rewriting*; see chapter 13, n. 22). Hos 8:4 shows that images of gold and silver can be a concern of the Neo-Assyrian period (the context of the passage indicates this period for its formulation: temple v. 1, kings v. 4, Assyria v. 9, Samaria and its cult v. 5; Judean updating is visible in v. 14; Rothenbusch, *Rechtssammlung*, 458, says that Hos 8:4 reflects an early perspective). Background cultural and theological sentiments as expressed in Hos 8:4 may have fed into the formulation of CC's prohibition. The Decalogue prohibition against other gods and images (Exod 20:3–4), which has similarities to 20:23, is probably dependent on CC's verse, according to the arguments of Kratz, "Der Dekalog im Exodusbuch" (see the later section on the CC relationship to the Exodus narrative). See also chapter 11, n. 13. We can note here that Deut 12:1–12 reflects the content and order of Exod 20:23–26: the motif of other gods (Deut 12:3, 4), the destruction of these gods (an inverse extension of fabricating them, v. 3), doing or making (Heb. עשה) with reference to gods and general practices (vv. 4, 8), the listing of offerings and animal types (vv. 6, 11), the term *place* (מקום) referring to cult place (vv. 2, 3, 4, 11), the reference to names of deities (vv. 3, 5, 11), and the reference to divine blessing (v. 7). But these verses are generally considered to be a later stratum of Deut 12 and therefore may not decisively indicate that Exod 20:23 is pre-Deuteronomistic. Related to this, one wonders if the second-person plural in 12:1–12 versus the second-person singular of most of the rest of the chapter is an intentional echoing of the plural to singular shift in Exod 20:23 versus 24–26. On *Numeruswechsel* in Deuteronomy, see n. 3 earlier.

14. Hossfeld (*Dekalog*, 184) and Schwienhorst-Schönberger (*Bundesbuch*, 399–400) explain the shift from second plural ("do not mention" (לֹא תִזְכֵּר) to singular ("your mouth" (פִּיךָ) in 23:13b as a type of attraction. The singular anticipates the second-person singular pronominal number in the festival laws that follow. If this principle can be invoked in this case, it can be invoked in other cases of numerical inconsistency. See also n. 4 for Schwienhorst-Schönberger's view on the redactor's inconsistency in number elsewhere in CC.

15. Schwienhorst-Schönberger (*Bundesbuch*, 260–277, 367–368, 375–378) sees several layers of editing and preexisting sources in 22:27–30, to which v. 30 belongs. The Gottesrechtsredaktor (the hand that Schwienhorst-Schönberger sees as primarily responsible for the underlying apodictic laws) may have created v. 27 and added to this vv. 28–29, which may have preexisted, though the first-person references to deity in these verses are indicative of the work of the Gottesrechtsredaktor. Alternatively, v. 27 may come from a Deuteronomistic stratum. In Schwienhorst-Schönberger's view, a Deuteronomistic editor has brought in an old pre-Deuteronomistic tradition about discarding carrion in v. 30b. This is conceptually older than Deut 14:21 because the direction of evolution is logically from a custom of giving carrion to dogs (Exod 22:30) to giving animals' carcasses to immigrants (Deut 14:21). The Deuteronomistic editor prefaced his inserted old law on carrion in Exod 22:30 with a late rationale about the holiness of the people. This must postdate Deut 14:21, Schwienhorst-Schönberger believes, because the description of the people's holiness as a fact in Deuteronomy

(cf. 14:2, 21) is conceptually earlier than the command *to become* holy of Exod 22:30a and the Holiness Code. (For the people's holiness, see also Schwienhorst-Schönberger, pp. 370–371, 373–374.) Otto (*Wandel*, 7, 60) similarly believes that Exod 22:30 developed from Deut 21:14.

The dietary laws in Deut 14:21, in my analysis, depend on CC. The main dietary laws in Deut 14:3–20 used what might be loosely labeled a proto-Priestly source. This was also used and developed by Lev 11:2b–23 (Lev 11 made two successive interpretive additions to this basic source: vv. 24–40, the primary P stratum, and vv. 41–45, an addition from Holiness legislators). Deut 14:21 is a supplement to and on the same compositional level as vv. 3–20, but from a different source, i.e., CC. Deuteronomy recognized the association of two laws from the two strings of the final apodictic laws (the prohibition against carrion and the holiness rationale from Exod 22:30 and the prohibition against boiling a kid in its mother's milk from 23:19) and placed them together in its anthology of dietary laws. (The Holiness Legislation's Lev 22:27–28 did something similar; see chapter 13 n. 22). Deuteronomy generalized “flesh of predation” (טרפה) to “carcass meat” (נבלה), allowed giving the meat to the impoverished immigrant or selling it to a foreigner rather than wasting it on dogs (contra the development proposed by Sparks, “Comparative Study of the Biblical נבלה Laws”), and altered the conception of holiness from something striven after in CC (“you shall become” of Exod 22:30) to an established status “because you are a holy people.” CC's view of holiness in Exod 22:30 is limited and practically oriented toward cultic concerns (see chapter 11). The view in Deuteronomy is much grander by reflecting the chosen status of the nation. Exod 19:3b–8, which talks about the holiness of the people (vv. 5–6; cf. Deut 14:2, 21), looks like an addition to the narrative and is clearly closer in conception to the concept of national holiness in Deuteronomy. But these verses may nevertheless predate Deut 14 and therefore have served as a source for that chapter (see further in this chapter on the development of the narrative in Exod 19–24). The Holiness Legislation in Lev 17–26 generally blended the two conceptions of holiness. It was a status that befit national identity but was achieved through obedience to a broad spectrum of divine commands. For discussion, see Meshel, “Pure, Impure, Permitted, Prohibited”; Olyan, *Biblical Mourning*, 120–122; Schwartz, תורה הקדושה, 250–266; “Israel's Holiness,” 47–59; Wright, “Spectrum of Impurity,” 168–169; “Holiness in Leviticus” (also Wright, “Review of Van Seters”; “Holiness”; “Unclean/Clean”). See n. 92.

16. There are other indications of the originality of 22:30. The verse speaks of an animal carcass in the field (בשדה); this is a concern of LH 244, which speaks of a lion killing a rented ox or donkey “in the open country” (*ina šērim*). CC had LH 244 in mind when it created 22:9–14 (see chapter 10). Furthermore, 22:30 is concerned about cultic eating, which is also reflected in the rule about eating unleavened bread (23:15) and implicitly with regard to leaven in connection with sacrifice (23:18), leaving an offering over until morning (23:18; cf. Wright, *Disposal*, 135–136), and boiling (i.e., cooking for consumption) a kid in its mother's milk (23:19). Another contextual connection is to the prohibition against eating the carcass of a stoned ox, whose meat is like that of an animal that has been preyed upon (see chapter 8).

17. Marshall (*Israel*, 147) notes that this is viewed as a talion type of penalty but rejects this because the oppression of v. 21 did not necessarily cause the victim's death.

18. In connection with treaty formulation, one can also note the *Numeruswechsel* between second singular and plural in Sefire iii (see Gibson, *Inscriptions II*, 52–53 on line 4). For the phenomenon in treaty, see Sonsino, *Motive Clauses*, 196–198. Of

course, one cannot simply cite the existence of the phenomenon in treaties to prove that biblical texts with similar numerical shift are unities. One still must give an explanation for the divergent style.

19. For divine anger in the Deuteronomistic literature, see Joo, *Provocation and Punishment*. Schwienhorst-Schönberger views the divine anger motif as Deuteronomistic (*Bundesbuch*, 356–357; he compares Deut 29:26; Deut 31:17; Josh 23:16; Judg 2:14, 20; 2 Kings 13:3; 23:26; he follows Otto, *Wandel*, 81 n. 21). Ben-Dov (“The Poor’s Curse”) employs a larger comparative perspective without reference to treaty and notes that Yahweh in the curse of 22:23 acts as avenger rather than as king (he brings in the wronged-man passage on p. 439).

20. Sprinkle sees Exod 22:22–23 as a nationally (not individually) oriented curse and compares the collective punishment (defeat in war) for Achan’s sin in Joshua 7 (*Book*, 169).

21. As for the position of the curse, Gerstenberger (“Covenant and Commandment,” 45) notes that a summary curse need not appear at the end of a document.

22. Ps 109:9 contains a similar curse: “May his sons become orphans and his wife a widow.” This is in a larger list of curses in vv. 8–15, 17–19, some of which are analogical, a type of curse found in treaties (cf. Wright, “Ritual Analogy in Psalm 109”; for treaty cf. p. 388; Wright, “Analogy,” 481; Wright, “Blown Away,” 214; on treaty typology in VTE, see Streck, “Flüche”). For slaying with the sword, cf. Amos 4:10; 9:1; Ezek 26:6 (and Schwienhorst-Schönberger, *Bundesbuch*, 357). On the pseudo-casuistic form of 22:22–23, see n. 30 in this chapter.

23. See n. 4 and Chapter 11, nn. 41, 44.

24. On the concentration and distribution of second-person plural forms in 22:20–26, see Osumi, *Kompositionsgeschichte*, 53. It might be wondered if the forms with and without *nun paragogicum* are structurally significant. Second-person plurals with this feature occur in 20:23 (once with, once without) and 22:21, 24b, 30 (twice with and once without). No second-person plural verbs with this feature appear in string II of the final apodictic laws (“bare” second plural prefixing forms appear in 23:13 and one in 23:15). For some discussion of the *nun paragogicum* (which appears otherwise in CC in third-person plural verbs: 21:18, 35; 22:8), see Dohmen, *Bilderverbot*, 163–168. He notes (p. 164) that the evidence is too slim to use for redaction-critical conclusions. Nonparagogic plurals, both second and third person, appear in 20:23; 21:22; 22:30; 23:13 (bis), 15.

25. The original material in 22:24–26, according to Schwienhorst-Schönberger (*Bundesbuch*, 331–359), is vv. 24a* (without את עמי “my people”) and 25, i.e., the basic lending law and the pledge law without the rationale. Verse 24b, redundant and with a second-person plural verb, is a Deuteronomistic addition (along with את עמי). Verse 26 was added by the Gottesrechtsredaktor to augment v. 25 and provide a counterpart to v. 22b. For Otto (*Wandel*, 38–40, 58–59), the oldest part of these verses is 22:24a (without “my people”), 25, 26aba. Verse 26bβ (the clause about a person calling to the deity) comes from a redactor. The original conclusion of this redaction (21:2–22:26*) was כי חזון אני in 22:26. Hejcl (*Zinsverbot*, 65) and Klingenberg (*Zinsverbot*, 16) view 22:24b as secondary. See chapter 11, n. 48.

26. Sonsino identifies motive clauses in Exod 20:22b, 25b, 26b; 21:8bβ, 21bβ, 26bβ, 27bβ; 22:20b, 21–23, 26; 23:7bβ, 8b, 9b, 11aβ, 12b, 15aβ (*Motive Clauses*, 88, 232–234). He distinguishes motive clauses from notes of explication and paranesis (pp. 65–69). These various clauses have been among the primary candidates for excision as

secondary elements, next to the laws and phrases with second-person plural forms. He makes a cogent argument (pp. 205–210) against the supposition that motive and rationale clauses are necessarily secondary by noting their existence in what he calls “virgin texts,” i.e., texts that did not presumably go through editorial stages, including letters, commemorative building inscriptions, royal inscriptions, contracts, and lawsuits (he also includes treaties and royal proclamations). Sonsino also notes (pp. 153–192) motive clauses in LH and MAL A (though these are not the same as in CC). Osumi (*Kompositionsgeschichte*, 22, 81; see n. 2 in this chapter) says that motive clauses are original (though he believes the second-person plural laws and phrases are secondary). The rationale clauses are taken by some as evidence that the apodictic laws grow out of a wisdom tradition (cf. Gemser, “Importance”; Sonsino, *Motive Clauses*; cf. Marshall, *Israel*, 10–11).

27. Within 20:23–26 Schwienhorst-Schönberger (*Bundesbuch*, 287–299) sees vv. 24aα and 25aβ as the earliest layer, belonging to the Gottesrechtsredaktor. Verses 24b, 25aα, 25b, and 26 are additions but prior to Deuteronomy since they contradict Deuteronomy’s legislation about a single cult place. Verse 23, which uses second-person plural verbs, and the phrase about offering types in v. 24 (אֵת עֲלֹתֶיךָ וְאֵת שְׁלֵמֶיךָ) are Deuteronomistic additions (see n. 38). He says that the idea of vv. 22b–23 correlates with the lateness of the similar ideas in Deut 4:15–16. Otto says that vv. 24aα, 25a*, and 26a are original; vv. 24aβb, 25b, 26b are additions but pre-Deuteronomistic because they reflect Jerusalem temple theology (*Wandel*, 54–55; see also Otto, “Aspects,” 183, 186–187). H.-C. Schmitt (“Altargesetz”), basically following Conrad, says that vv. 24a, 25a, and 26a are original and belong to a premonarchic context, but this has been set in a (post-) Deuteronomistic context. Dohmen (*Bilderverbot*, 171–175) notes the views of Conrad (the original text is 24aα, 25aβ, 26a) and Halbe (the original text is 24aα, 26a). Hossfeld (*Dekalog*, 183) says vv. 25b and 26b are additions that make the law accord with later historical actuality. Heger (*Three Biblical Altar Laws*, 29) finds the phrase of 20:24b (“in every place . . .”) “contrary to the context of this pericope and to the general idea of biblical worship,” and hence not original. He also sees (pp. 23–24, cf. p. 60) the specific offerings as an addition (they refer to a regulated cult over against flocks and herds, which are “appropriate to a plebian cult” or “popular, unsophisticated sacrificial worship”). Levin (“Das Deuteronomium und der Jahwist,” 124–128) finds v. 24b secondary (it is an anti-Deuteronomistic expression from the exile; cf. Schmitt, “Altargesetz,” 279–280). Other studies with the view that at least the core of the altar law is pre-Deuteronomistic, in addition to Schwienhorst-Schönberger and Otto just noted, include Hossfeld, *Dekalog*, 183; Levinson, *Deuteronomy*, 31 n. 17 (and pp. 11–52 generally); “Is the Covenant Code and Exilic Composition?” 272, 297–315; Phillips, “A Fresh Look,” 41 (*Essays*, 57); Schaper, “Schriftauslegung.” It should not be missed that Levinson’s first two case studies of Deuteronomy’s dependence on CC in his book *Deuteronomy* (pp. 23–52, 53–97) treat the laws at CC’s beginning (Exod 20:24–26) and end (23:14–19), laws whose chronological relation to Deuteronomy has been questioned more than the core casuistic laws. These blocks of law, for him, are almost entirely pre-Deuteronomistic. His analysis of the hermeneutics involved in Deuteronomy’s reformulation of the Covenant Code provides decisive evidence of the chronological priority of CC’s laws (see also Schaper for the inner-biblical exegesis in Deut 12).

28. See n. 27 for the excision of these verses in some analyses.

29. For the basic coherence of 20:24–26, see Osumi, *Kompositionsgeschichte*, 80–85.

30. For views about the composition of 23:1–8, see the discussion of the theme of justice in chapter 11. A primary feature that distinguishes 23:4–5 from their context is their pseudo-casuistic (or mixed-apodictic) formulation. Pseudo-casuistic formulation appears in the apodictic and casuistic laws in 20:25; 21:2; 22:22–23, 24, 25; 23:4–5, over against simple apodictic formulation (in the apodictic laws) in 22:20aa, aβ, 21, 27a, b, 28a, b, 29a, 30a, ba, bβ; 23:1a, b, 2a, b, 3, 6, 7a, b, 8a, 9a, 10–11 [various related clauses], 12a [two related clauses], 13a, ba, bβ, 14, 15aa [implied with v. 14], 15aβ, b, 16a, b [both implied with v. 14], 18a, 19a, b. (The casuistic laws also have a form with the protasis in third person and apodosis in second: 21:14, 23.) These mixed forms are not secondary. Chapters 5 demonstrated that the case in 21:2 is original, based on the casuistic law of LH 117 but assimilated to the second person of 20:23–26. Chapter 11 observed that 23:4–5 follow the pseudo-casuistic style of the c-member of the partial casuistic structure of the future king passage and may also be influenced by casuistic law (cf. LE 50). The laws on interest and pledges in 22:24, 25 may also have been influenced by casuistic law; at least their topics are those that would be of interest to casuistic law. The case in 22:22–23 is akin to the mixed-casuistic form in the curses of LH (the end of the future king passage and the end of the exhortatory block): “if that man does not obey the words that I have written on my stela . . .” followed by any of the curses, including “let him (Enlil) pronounce with his revered mouth . . . the supplanting of his kingship, and the disappearance of his name and memory from the land” (49:73–80) or “may the grievous word of Shamash quickly catch him; may he uproot him from the living . . .” (50:31–36). For a form-critical analysis of the form and the extent of its attestation, see Gilmer, *If-You Form*.

Another feature of 23:4–5 is the use of infinitives absolute. In apodictic law, these appear in 22:22, 25; 23:4, 5; in the casuistic laws, including the participial laws, they appear in 21:5, 12, 15, 16, 17, 19, 20, 22, 28, 36; 22:2, 3, 5, 11, 12, 13, 15, 16, 18. One wonders if their appearance in the apodictic laws is partly due to influence from their use in the casuistic laws and specifically the participial source that CC used for 21:12, 16–17; 22:17–19. On infinitives absolute in CC, see Chirichigno, *Book*, 226–227; Osumi, *Kompositionsgeschichte*, 103–104; Rothenbusch, *Rechtssammlung*, 231–232; Yaron, “Stylistic Conceits II.”

31. That chiasmic structure in a passage does not, by itself, assure its original compositional unity, see Levinson, *Deuteronomy*, 26–27. Crüsemann (*Torah*, 188–189) says that the chiasmic structure is proof of the originality of vv. 4–5.

32. Schwienhorst-Schönberger (*Bundesbuch*, 389–394) says that the original material in the seventh-year and seventh-day laws is 23:10a + 11aa and 12a. This delimitation is made on the assumption that the original text was concise and lacked motive clauses. These basic laws were expanded, he believes, by the Gottesrechtsredaktor who brought the basic laws into CC. Verses 10–12, however, are all pre-Deuteronomistic, he says, because the day of rest is not yet identified with the Sabbath (cf. Deut 5:13). Otto (*Wandel*, 46) sees 23:10, 11aa, and 12a as original. This material was expanded with the socially oriented elements in 23:10b, 11aβγ, 12b. The “thus you shall do” phrase in 11b was then added. Otto (*Wandel*, 35) adds that the seventh-day law is not postexilic. Crüsemann (*Torah*, 133–134) believes the seventh-day law is early because of the seven-day pattern in feasts.

33. Stackert, *Rewriting*, 129–135.

34. Leviticus 25:3–7 appears to know CC’s law with that phrase. See Stackert, *Rewriting*, 116–124 and see n. 9 on p. 116. Zakovitch (“ספר הברית,” 63*) says the phrase

involves a double addition, the phrase about the vineyard was added under the influence of Lev 25:3–5, and the mention of the olive grove was added even later. But see chapter 13 n. 22.

35. That the festival passage in CC is pre-Deuteronomistic is evidenced in Deuteronomy 16's dependence on it. See Levinson, *Deuteronomy*, 53–97. He adds (pp. 65–66) that Exod 23:14–19 does not reflect Deuteronomistic editing. Otto (*Wandel*, 58) observes that 23:14–33 is pre-Deuteronomistic. Schwienhorst-Schönberger (see n. 37) views the bulk of 23:14–19 as pre-Deuteronomistic. Deuteronomy's use of CC's festival laws correlates with its use of the altar laws at the beginning of CC. Deuteronomy is largely concerned about rearticulating laws that have to do with the cultic place in CC (e.g., the slave laws in Deut 15:12–18 remove the feature of making a slave permanent at the sanctuary in Exod 21:5–6; the homicide laws in Deut 19 introduce city instead of altar asylum, as prescribed by Exod 21:12–14; see Stackert, *Rewriting*, 31–112). In contrast to these views, Wagenaar (*Origin and Transformation*, 65–73, 156–157) has recently argued that CC's festival laws revise Deuteronomy's festival laws.

36. See chapter 11, n. 81.

37. Schwienhorst-Schönberger (*Bundesbuch*, 401–406) has an alternate description of the development of 23:14–19. In his view a basic festival law (vv. 15aα, 16aα, bα [i.e., (את חג המצות תשמר... וחג הקציר בכורי מעשיך... וחג האסף בצאת השנה כאשר צייתך)], γβ, 16aβ, bβ, 17. The phrase *כאשר צייתך* in v. 15 is Deuteronomistic. This redactor incorporated an old double prohibition in v. 18. Verse 19a, a requirement of first fruits, was added to the requirement of 22:28a; v. 19b was also added. Bar-On ("Festival Calendars," 179–182) says that 23:17 is an addition to the basic unit vv. 14–15 (contra those who say that v. 14 is an addition). One of his chief reasons for this judgment is that v. 17 is formulated in the third person as opposed to the second person of vv. 14–15 (see the third person forms in 22:29b and 23:18b). Note, however, that third person injunctive forms match the style of the LH source text more closely than the more prevalent second person imperatives.

38. Zevit (*Religions*, 277) sees the offering types as secondary. See n. 27. Levinson (*Deuteronomy*, 37 n. 26) has observed, in reaction to the argument that the animals and offerings are a Deuteronomistic addition, that "it is difficult to imagine that a Deuteronomistic interpolator would add such a list but leave unscathed the altar law's explicit reference to multiple altars as legitimate sites for cultic theophany and divine blessing." The same logic makes it likely that the image law in 20:23 is not a Deuteronomistic addition. One would expect the supposed Deuteronomistic editor who added v. 23 to also modify the following altar law to fit Deuteronomistic interests.

39. The argument could be made, too, that 22:23 is necessary structurally. As noted in chapter 11, the outer sections of the final apodictic laws—on the poor in 22:20–23 and the cult in 23:14–19—create a barbell structure of emphasis. Each of these sections is larger than the corresponding member in the other string (cf. the poor in 23:9 and the cult in 22:28–30). If 22:23 is removed, then this emphatic structure is attenuated.

40. See chapter 3 n. 34 for the dependence of Deut 16:19 on Exod 23:8.

41. Schwienhorst-Schönberger (*Bundesbuch*, 301) thinks 21:1 is late, proved by its similarity to Deut 4:44. Jackson views it as an addition (*Wisdom-Laws*, 454). See chapter 3, n. 64.

42. Hossfeld, *Dekalog*, 181–182; Niehr, *Herrschen und Richten*, 267; Otto, *Wandel*, 4, 55; Schwienhorst-Schönberger, *Bundesbuch*, 295, 298, 299–303. For the

post-Deuteronomic date of the altar law, see Levin, “Das Deuteronomium und der Jahwist,” 122–126. In contrast, Sprinkle says that the placement of the introduction in 21:1 allows the image-altar laws in 20:23–26 to be emphasized (*Book*, 33). Otto (*Wandel*, 58) notes that the addition of 21:1 seeks to create a connection with 24:3–8 (esp. v. 3), to make CC one of the documents of the covenant.

43. Those who concluded that the term מִשְׁפָּטִים refers to a specific genre of law found in 21:2–22:16 versus the cultic and social laws in the apodictic sections were on the right track (cf. early on Baentsch, *Bundesbuch*, 14, 29–36, versus 13 and 25). But this title, as we have seen, is not based on textual development according to which an early version of CC consisted only of casuistic law but is a translation of the term *dīnāt mišarim* from LH, a term that refers to its casuistic laws with their particular content.

44. See chapter 11, n. 49.

45. The examination of CC’s connections with the narrative here is neither motivated by Carmichael’s view that the laws of CC are generated on the basis of narrative in the Pentateuch (see his *Origins*) nor by Daube’s view (*The Exodus Pattern*; cf. Smith, *Pilgrimage*, 279–282) that parts of the narrative are motivated and exemplified by CC’s laws.

46. Levinson (*Deuteronomy*, 67 n. 47) has a mediating view, that CC presumes certain elements extant in narrative but that the law collection existed independently and was only later included in the narrative. For example, he says that the phrase “as I have commanded you” in 23:15 (to be discussed shortly) refers to 13:6, but adds that “there is no reason that the textual cross-reference must presuppose the incorporation of the Covenant Code into the Sinai pericope. The reference could just as easily have been made prior to and independent of the present redaction of both texts. By analogy, Deuteronomy’s reuse of the Covenant Code does not presuppose the latter’s incorporation into the Sinai pericope.” See also p. 149 of his study. Ska (*Introduction*, 213) believes with many scholars that the references to the themes of the book of Exodus in 22:20; 23:9, 15 (also discussed later) are additions to the text, but adds “even if these [passages] were ancient texts, they have no direct connection to the Exodus and Sinai pericope as such but simply refer to a well-known tradition.”

47. Those who argue that CC was added by Deuteronomistic editors include, for example, Dozeman, *God*, 37–66; Hossfeld, *Dekalog*, 212–213 (fully discussed on pp. 163–213; Deuteronomistic editing added CC after the E Sinai theophany at 20:21, along with 20:22aα; it also added 24:3, 4aα; priestly redactors added the Decalogue); Noth, *Exodus*, 173–175; Otto, *Wandel*, 4–8; “Gesetzesfortschreibung,” 387, 391; Schwienhorst-Schönberger, *Bundesbuch*, 290, 367, 410–414; Zenger, *Israel am Sinai*, 154. See also Blum in n. 82; Oswald in n. 71. For a bibliography of those with this view, see Rothenbusch, *Rechtssammlung*, 561 n. 292. For the Deuteronomistic redaction of the Sinai pericope in general, see Perlitt, *Bundestheologie*, 167–94. For Rothenbusch’s view that CC was incorporated into the narrative prior to Deuteronomy, see n. 71. For arguments against a Deuteronomistic insertion of CC into the narrative, see Phillips, “Fresh Look.” Patrick (“Covenant Code Source,” 155) makes a case that many of the apparent elements that are similar to Deuteronomy are actually slightly different than Deuteronomy and therefore may be pre-Deuteronomic.

48. For recent shifts in the landscape of Pentateuchal research, see Ska, *Introduction*; Dozeman and Schmid, *A Farewell to the Yahwist?*; Blenkinsopp, *Pentateuch*; Rendtorff, “What Happened to the ‘Yahwist’?”; Pury and Römer, “Le Pentateuque en Question”;

see also the critique of such developments by Nicholson, *Pentateuch*, which contains a good summary of important recent literature.

49. Some will note that several of the texts that I draw into the orbit of CCN have been identified as belonging to the E source in an older documentary model. I should make it clear that I am not making such an identification, nor am I implying that the full extent of CCN—if one were to flesh this out—would correspond with E. The identification of E is a serious problem for documentary models; see Ska, *Introduction*, 131–133 (“Today, only a few scholars continue to speak about an ‘E source’”); K. Schmid, “The So-Called Yahwist,” 29–30; Seebass, “Que rest-t-il du Yahwiste et de l’Élohiste?”; Pury and Römer, “Le Pentateuque en Question,” 45–46, 55, 65; Rendtorff, “L’histoire biblique des origines,” 84. The fate of the Elohist is tied up with the fate of the Yahwist (J) (see Ska, “The Yahwist” and other papers in the *Abschied* volume). For recent arguments for E as a source and the documentary hypothesis in general, cf. Baden, “Rethinking”; Friedman, *Who Wrote the Bible*; “Recession”; Nicholson, *Pentateuch*, 221–248; Propp, *Exodus 1–18; Exodus 19–40*. If one wants to identify CCN with E more largely, this requires the relatively late dating of E (i.e., after 700 BCE, identifiable perhaps with the second edition of CCN that I will propose later on in this chapter; contra, for example, the dating of Friedman, “Recession,” 90–91).

50. This verse has been fundamental to the hypothesis of an E source; see Baden, “Rethinking,” 272–73; Propp, *Exodus 1–18*, 50–51, 223; Nicholson, *Pentateuch*, 230–232.

51. One could argue that 3:15b or all of v. 15 is a later addition (Ska, *Introduction*, 83, sees the adverb “again” עוד as a linguistic marker of redactional expansion). But if this is the case, then one must posit the existence of a more limited version of the narrative, a proto-CCN, and argue that CC was created as a supplement to this narrative. The adverb עוד or the supplementary position or character of v. 15b, however, are not indubitable signs of later expansion. They may be part of an original composition that provided first a cryptic revelation of the name in v. 14—which certainly would not have been understood by the people to whom it might have been announced—followed by a straightforward interpretation of the name which could be understood. In other words, v. 14 by itself would hardly have been a satisfactory answer to Moses’ question in v. 13. See Baden, “Rethinking,” 288, 309, for some who think that v. 14 is an addition, not v. 15.

52. See also 32:1, 15, 19 (Baden, “Rethinking,” 334 n. 29).

53. 24:11bβ (“and they ate and drank”) belongs to vv. 3–8, according to Baden. This enlarges the scope of the event and tends to answer objections of correspondence between 3:12 and 24:3–8 (for example, raised by Booij, “Mountain and Theophany,” 7–8).

54. Exod 3:15 lacks reference to the cult as the place of name announcement, as found in 20:24 (the “place”) and LH (in the Esagil). But note “the mountain” as a place of sacrifice in 3:12.

55. Cf. *CAD* B 156b; *CAD* Z 115b.

56. One is tempted to speculate about a correlation between the verb “cause to be” *šubšûm* (C-stem of *bašûm* “to be, exist”) and the name Yahweh, which has been interpreted as a C-stem “he causes to be” of the verb היה “to be,” and whose meaning is therefore paronomastically developed in 3:14: אהיה אשר אהיה “I am inasmuch as I am.” For the name “Yahweh” as a C-verb form, see Albright, *Stone Age*, 15–16. For the revelation of the name, see Greenberg, *Understanding Exodus*, 78–84. For the name as a G-stem in 3:14–15, see Milgrom, “Desecration,” 80–81.

57. See the observation about the multiple and separate occurrences of a “weak person” (*enšum*) in LH and the possible influence on the string structure in CC, chapter 3 n. 35.

58. Native idioms about name perpetuity may have also influenced Exod 3:15b. This is not unusual in view of what we have seen throughout the analysis of CC: CC takes a motif from LH and actualizes it with its own native phrasing, a necessity when moving from one language to another. Nevertheless, other cases of the combined use of the root זכר, the noun שם “name,” and the adverbial לדר(ו) “from generation to generation” in the Bible are not necessarily prior to Exod 3:15. Therefore, it is difficult to specify the degree of native influence. The wording of Ps 135:13 is close to that of Exod 3:15b: “Yahweh, your name is eternal, Yahweh, your designation is from generation to generation” (יהוה שמך לעולם יהוה זכרך לדר ודר). This is a late hymn that includes a recounting of events around the time of the Exodus and may actually draw on motifs known from the narrative of which Exod 3:15 is part (see Kraus, *Psalms 60–150*, 492; Anderson, *Psalms*, 2:889). Psalm 45:18, with a verbal form of the root זכר similar to that in Exod 20:24, says: “I (the psalmist or the deity) will declare your (the king’s) name in each generation; therefore, peoples will praise you forever and ever” (דר ודר על כן עמים יהודך לעלם ועד זוכירה שמך בכל). Though a royal wedding song that seems to presume the time of monarchy, this psalm does not necessarily antedate CC and Exod 3:15b (cf. Kraus, *Psalms 1–59*, 453–454; Craigie, *Psalms 1–50*, 338), and it has been suggested that v. 18 is an addition that recontextualizes the body of the psalm (cf. Briggs, *Psalms*, 1:391). Ps 102:13 contains a phrase similar to Exod 3:15b: “your (Yahweh’s) designation is from generation to generation” (זכרך לדר ודר), but this is an exilic or early postexilic psalm. Other cases of the term שם “name” with an adverb of perpetuity, but without the root זכר, include: 2 Sam 7:26; 1 Kings 9:3; 2 Kings 21:7; Isa 56:6; 63:12, 16; Ps 72:17, 19; 86:12; 113:2; 145:1, 21; 1 Chron 17:24; 2 Chron 7:16; 33:4, 7. See Eising, “זכר, *zākhār*,” 76–77 for זכר referring to deity.

59. It may also be asked if Exod 3:15 may have been influenced in part by the motif of naming portrayed in the prologue, where toward the beginning of time, Anu and Enlil “named the city Babylon with its exalted name” (*Bābīlam šumšu šīram ibbi*; 1:16–17). This foundational naming is echoed in Hammurabi’s call described in the prologue and epilogue: “by my name (the gods) called/named... me... Hammurabi” (*Ḥammurabi... yāti... šumī ibbū*; 1:28, 31, 49); “the great gods called/named me (Hammurabi)” (*ilū rabūtum ibbūninnima*; 47:40–41). While Anu and Enlil do not announce their own names, they declare or announce the king’s name. Compare also Hammurabi’s epithet as “the one who makes the fame of Babylon great” (*mušarbi zikru Bābīlim*; 2:5–6).

60. Schwienhorst-Schönberger (*Bundesbuch*, 119, 338–357) discusses the thematic correlations of Exod 22:20–26 with Exod 1–3. He concludes that these verses in CC come from redactional expansion to make CC fit the Sinai pericope. See his study on pp. 341–343, 351–353 on the use of the verbs הונה, להזך, and ענה for oppression. The connection of להזך with the immigrant and ענה with widow and orphan is innovative in his view. Propp (*Exodus 1–18*, 202) notes the similarity in language between 3:9, 22:20, and 23:9 and says that “the Egyptians have violated Israelite standards of conduct toward foreigners.” For the passages on oppression in Exodus, see Zenger, “Le thème de la ‘Sortie,’” 315–316 (and n. 45), 318.

61. The verb להזך in 22:20 may be secondary (see the previous section of this chapter). But that the laws on the poor in string I (22:20–26) otherwise emphasize the theme of the oppression over against the treatment at the beginning of string II (23:9–12) may

indicate that this redundancy is intentional and hence original. This becomes especially cogent when CC appears particularly concerned with the immigrant as a victim of oppression.

62. Exod 3 has been a laboratory for recent hypotheses of Pentateuchal development. See Blum, “Literary Connection”; Davies, “Reflections,” 72–73; “K^p in Exodus,” 412–414; K. Schmid, “The So-Called Yahwist,” 39–40; Ska, *Introduction*, 208–210. For arguments that Exod 3 is pre-Priestly (though not necessarily pre-exilic), see Dozeman, “Commission of Moses”; Levin, “The Yahwist and the Redactional Link.”

63. For a discussion of Blum’s view (*Studien*, 33) that 3:21 with the adverb ריקם postdates Deut 15, see Nicholson, *Pentateuch*, 185.

64. An ostensible difficulty in this analysis is the wording at the end of Exod 3:20: “afterwards, he (Pharaoh) will release you” (ואחריו כן ישלח אתכם). The verb שלח (D-stem) in this verse also appears in Deut 15:13 (cited again here for clarity): “when you send him free from you, you shall not send him free impoverished” (וכי תשלחנו חפשי מעמך לא). Despite this similarity, Deut 15:13 is associable with Exod 3:21 alone, not also v. 20. Deut 15:13 specifically follows the syntax of Exod 3:21: “when you go forth you shall not go forth indigent” (כי תלכו לא תלכו ריקם). Deuteronomy has replaced the verb הלך with שלח, mainly because the subject-agent of the verb has changed. As a point of information, the verb שלח D-stem is found throughout Exodus 4–14; cf. 4:21, 23; 5:1, 2; 6:1, 11; 7:2, 14, 16, 26, 27; 8:4, 16, 17, 24, 25, 28; 9:1, 2, 7, 13, 17, 28, 35; 10:3, 4, 7, 20, 27; 11:1, 10; 12:33; 13:15, 17; 14:5.

65. See n. 15; chapter 13, n. 19.

66. For example, Zahn (“Reexamining Empirical Models”) has recently argued that Exod 13:1–16 is a late post-P composition based on various festival and cultic laws from CC, D, and P. Levinson (*Legal Revision*, 171–172) comments positively on her study. But see chapter 5, n. 98.

67. Levinson, *Deuteronomy*, 53–97. He says (p. 67) that “as I have commanded you” in 23:15 is original (to its context), “which reference can apply only to Exod 13:6.” For him, this is part of 13:3–10, a proto-Deuteronomistic unit and a source for Deuteronomy’s festival laws (see also pp. 68–69).

68. On Deuteronomistic influences in Exodus, see the discussion by Ausloos, “Deuteronomistic Elements”; “Les extrêmes”; “Need for a ‘Controlling Framework’”; “Need for Linguistic Criteria”; Brekermans, “Die sogenannten deuteronomischen Elemente”; Childs, *Exodus*, 451–488; Friedman, *Who Wrote*, 258; Levinson, *Deuteronomy*, 3, 11–13; Nicholson, *Pentateuch*, 194, 241–245; Vervenne, “The Question of ‘Deuteronomistic’ Elements”; “Current Tendencies,” 47–54; Propp, *Exodus 1–18*, 376–378; *Exodus, 19–40*, 723–734; Weinfeld, *Deuteronomy and the Deuteronomistic School*, 1–2 and passim. On Exod 13:3–16, see Ausloos, “Les extrêmes,” 361–362; Davies, “K^p in Exodus,” 414–415. For Levinson, Deuteronomy builds on a JE narrative (*Deuteronomy*, 12–13, 57, 58, 60, 62 n. 30, 65, 67 (and n. 47), 68–69, 72, 76, 77 n. 78, 87–89, 140).

69. For others who see the phrase in 23:15 as pre- or proto-Deuteronomistic, see Caloz, “Exode, XIII, 3–16”; Lohfink, *Das Hauptgebot*, 121; and see the discussion of Ausloos, “Need for Linguistic Criteria,” 51 n. 15. For those viewing the phrase in 23:15 as post-Deuteronomistic, see Schwienhorst-Schönberger, *Bundesbuch*, 405–406 and the references in the discussion of Ausloos, “Need for Linguistic Criteria,” 50.

70. For a bibliography on the Sinai narrative, see Vervenne, “Current Tendencies,” 25 n. 17. For recent discussions of the critical issues about the growth of the narrative of

Exodus 19–24, see Blenkinsopp, *Pentateuch*, 183–228; Dozeman, *God*; Oswald, *Israel am Gottesberg*; Rothenbusch, *Rechtssammlung*, 560–561 n. 288; Smith, *Pilgrimage Pattern*, 144–179, 232–244. For inconsistencies in the narrative that must be considered in an analysis, see Levinson, “Is the Covenant Code an Exilic Composition?” 280–281 and n. 12; Rothenbusch, *Rechtssammlung*, 546–566. Exodus 19–24 cannot be considered a unity, contra Sprinkle (*Book*, 17–34), who envisions the chronology of events differently than laid out in the text to make them consistent, and contra Alexander (“Composition”) who, relying on the arguments of Van Seters for unity, claims that there is no evidence for redactional division and undertakes a harmonistic interpretation.

71. My analysis of the basic narrative blocks has been influenced by that of Baruch Schwartz in a paper that he gave at the annual SBL meeting, San Antonio, Texas, November 2004, though I allow for a more complex redactional development and I am not presently concerned about attribution in a larger theory of Pentateuchal sources. Schwartz proposes a J block in 19:9b–16aβ (to הַבְּקָר), 18, 20–25 and an E block in 19:2b–9a, 16aβ (from וַיְהִי קֶלֶת)-17, 19; 20:1 + Decalogue; 20:18–22, + CC (his analysis at the time did not continue into chapter 24; see later). Within chapters 19–20, P is in 19:1–2a. This analysis is similar to earlier analyses, such as Noth’s (*Exodus*, 158–159; and more recently Propp, *Exodus 19–40*, 101–103, 141–154; Nicholson, *Exodus and Sinai*, 78). Schwartz’s views have influenced Baden, “Rethinking,” 179–200.

Other estimates of material belonging to a basic narrative have been proposed. Dozeman (*God*, 23, 25–26, 99–100) sees an original “Mountain of God” narrative in 19:2b–3a, 10aβ–11aα (only הַר וּנְבִיִּים), 12aα, 13b–15aα, 16aβ–17. For him, this narrative is pre-exilic and pre-Deuteronomistic. Eissfeldt (*Komposition*) includes in his basic text: 19:2b, 3aβ, 4–8, 10, 13b, 14, 16b, 17, 19b; 20:18aαb, 19–20a, 21; 20:1–17 (the Decalogue); 24:3–8, 12, 13b, 18b. Levin (“Der Dekalog am Sinai”) says that a divine mountain story, which contained an original form of the Decalogue (19:2b–3a; 20:1–3a, 5a, 13–17a; 24:3aαb, 12a, 13b, 18b), was first added to an itinerary notice in 19:2a (summarized on his pp. 188–189). This was expanded by a story of theophany (mainly in 19:10–20 and 24:1–2, 9–11; he sees several secondary insertions in these verses). Somewhere in the secondary growth of the pericope, CC was added. Oswald’s fundamental narrative (*Israel am Gottesberg*, laid out on his pp. 255–262) consists of: 19:2b–3a, 10a–11a, 14–15a, 16–17, 18bβ–19a; 20:18b, 21b–22aα, + CC (= 20:24–23:19); 24:3, 12*, 13aα, 18aβ. He views this text as Deuteronomistic and dates it to the early exile (p. 148). Patrick (“Covenant Code Source”; *Old Testament Law*, 64–65) argues that CC’s narrative included 19:3b–8, 20:22–23:19, and 24:3–8, which may predate Deuteronomy. This was only later combined with the E narrative, before E was combined with the J source. Renaud (*La théophanie du Sinaï*, 101–102) argues for a pre-Deuteronomistic story about a theophany at the mountain in 19:2b–3a, 10–11a, 13b, 14–17, 19; 20:18b, 20 (this also contained an unelaborated Decalogue), plus two motifs whose original formulation he finds difficult to extract: i.e., a feast, embedded in 24:9–11, and a consecratory aspersion, embedded in 24:4–8. CC was inserted at a secondary stage of Deuteronomistic editing. Rothenbusch (*Rechtssammlung*, 417–419, 569–571) argues that CC (minus the altar laws) was part of the narrative context prior to Deuteronomy. He summarizes (pp. 546–566) the pre-Deuteronomistic text as consisting of 19:2b–3a, 9–19; 20:18–22; 21:1–23:19; 24:3–8, with a more detailed analysis listing 19:2b, 3a, 9a(?), 10aβ–11a, 12aαβ, 14, 15a, 16–17, (18aαb), 19; 20:18a (without וַיֵּרָא הַהָר עֶשֶׂן), 18b, 19–21, 22(?); 21:1–23:19*; 24:3–8. Zenger (*Israel am Sinai*, 155) sees a pre-Deuteronomistic (JE) narrative in: 19:2aβ–3bα, 10aβ–12a, 14–15a, 16–21, 23, 25a; 20:21; 24:3*–5 (see a more detailed and

different presentation of the textual strata in Zenger, *Die Sinaitheophanie*, 166–205). For other views, see Zenger, *Die Sinaitheophanie*, 11–45, plus the verse-by-verse tabulation of different views on pp. 206–231.

72. See this earlier explanation, for example, in Beyerlin, *Origins and History*, 4–5; Eissfeldt, *Komposition*, 14–15, 18, 31.

73. Some think that 19:9a is an addition to the narrative in view of the repetition found between vv. 8b and 9b. See Levinson, “Is the Covenant Code an Exilic Composition?” 280 n. 12 (on resumptive repetition as a criterion of redactional analysis, see Ska, *Introduction*, 77–82; Levinson, “Birth,” 636–637). This explanation is not absolutely certain. Because v. 9b does not record a response by the people (cf. v. 8a), the analysis as a “resumption” is not strictly apposite. One may wonder if the repetition is an artifact of joining v. 9a with vv. 10–15, followed by the subsequent addition of vv. 3b–8. That is, when v. 10 and its associated narrative material was added to v. 9a, v. 9b was created as a link. Later, when vv. 3b–8 were added, v. 8b (perhaps influenced by v. 9b) made v. 9b appear to be a resumptive repetition. Alternatively, when vv. 3b–8 were inserted, and the direct continuation of 3a to 9a was broken, v. 9a was thereby detached from its context and a candidate for recontextualization. Verse 9b was inserted as part of this recontextualization. This allowed the unique content about the purpose of the revelation to be emphasized over against vv. 10–15, which give technical information about preparation for the theophany. If 19:9a is not original to the storm-theophany narrative, but is an addition, then its language builds on CC (20:24).

74. For this understanding of the first clause, which a reader in antiquity may have followed, see chapter 3, n. 28.

75. Evidence does not allow for connecting the motif “Moses approached the dense fog where God was” (ומשה נגש אל הערפל אשר שם האלהים) with the depiction of Hammurabi before Shamash, who is seated on a throne, engraved on the top of the Louvre stela, even though OB copies of the stela may have been known in the Neo-Assyrian period (see chapter 4, the appendix on Neo-/Late Babylonian manuscript ε; see also the motif in Exod 33:11, which may be associated with, at least, the second edition of CCN; see Baden, “Rethinking,” 140, 267). Even more unlikely is seeing the term ערפל (“dense fog, cloud”) as a play on or cipher for the name Hammurabi (cf. Ugaritic royal name *mrpi*/*mrpu* ‘Ammurapi and אמרפל, a king of Shinar, i.e., Babylon, in Gen 14:1, 9; for basic critical considerations, see Meier, “Hammurapi,” 41–42).

76. Several see redactional development in 24:3–8 (see Schwienhorst-Schönberger, *Bundesbuch*, 302 n. 16). Oswald (*Israel*, 57–58, 91–94, 261) argues that only v. 3 is original. In contrast, Rothenbusch (*Rechtssammlung*, 567–571) says that 24:3–8 are a unity and proto-Deuteronomic (the verses reflect vassal treaty conceptualization, which is at home in the seventh century). Carr (“Response to W. M. Schniedewind,” 7–8) sees 24:3–8 as a late text that “links P and non-P elements of the Exodus Sinai narrative, harmonizing both with Deuteronomy on the one hand and 2 Kings 23 on the other.” Ska (“From History Writing,” 160–169) argues that 24:3–8 is a unity and late (its lateness is evident in its sophisticated liturgy, the valuation of literacy in the passage, and the sprinkling of blood). Levinson (*Deuteronomy*, 60) indicates that Exod 24:6, for example, is JE. His discussion on p. 148 implies that 24:4 is pre-Deuteronomic. Elsewhere (“Is the Covenant Code an Exilic Composition?” 281–283), he suggests that 23:3–8* predates CC. Within Exodus 24, Baden attributes to E vv. 3–8, 11bβ (“and they ate and drank”), 12–15, 18b (see his “Rethinking,” 186 n. 146 and also pp. 140, 180, 181, 184 n. 142, 186 and n. 147, 195, 218, 372). For a discussion of issues surrounding 24:3–8 (and the related

19:3b–8), see Nicholson, “Covenant Ritual in Exodus xxiv 3–8” (with helpful summary of earlier views, including the argument of Peritt, *Bundestheologie*).

77. Compare the setting up and inscription of laws on stones in Deut 27:2–8 and Josh 8:30–32; see chapter 11, n. 73. Hurowitz (Inu Anum šrum, 29 n. 40) compares the setting up of a monument in Exod 17:14, where Moses is commanded: “write this as the memorial in the (a?) document and place it in the ears of Joshua (i.e., recite orally to him)” (כתב זאת זכרון בספר ושים באזני יהושע).

78. One can still compare the “publication” of the Covenant Code with the public display of LH. For the proclamation of biblical law, see Greenberg, “Biblical Attitudes,” 105.

79. For the view that 19:20–25 are secondary, see for example Blum, *Studien*, 48–49. Exod 24:1–2, 9–11b α appear to be a self-contained unit that extends the revelation at the mountain in respect to the people’s leadership. It may have been part of or joined with the fire theophany block directly after 19:18 before the addition of 19:20–25 (see the next observation). Baden, “Rethinking,” 334 n. 30, attributes 24:10 to J; this verse contextually entails with it 24:1–2 and 9–11b β . See also Nicholson, “Interpretation of Exodus XXIV 9–11”; “Antiquity of the Tradition in Exodus XXIV 9–11”; “Origin of the Tradition in Exodus XXIV 9–11” (he sees 24:9–11 as distinct from the surrounding traditions and materials).

80. Kratz, “Der Dekalog im Exodusbuch,” primarily pp. 216–217, 219, 222–223. For him, the Decalogue in Exodus 20 is earlier than that in Deuteronomy 5. He concludes that the Decalogue in Exodus developed as a summary and even a prologue-like anticipation of CC, probably in the context of a pre-Priestly Sinai narrative. This could have been in the late pre-exilic monarchy or in the exile (depending on the date of Deut 5 and 9–10, which depend on the Exodus narrative). (He also argues that Exod 34 was influential on the Decalogue; this must remain a point for further study; see chapter 11 n. 82.) Further evidence for the secondariness of the Decalogue from the evidence of the present study is the six/seven pattern in the Sabbath law (20:8), which is similar to the six/seven pattern in CC (21:2; 23:10, 12). CC’s wording appears to depend on and transform the three/four pattern in the legislation of LH 117 (see chapter 5, n. 25). Therefore, it appears that the Decalogue’s Sabbath law in 20:8 is secondary to the CC/LH compositional matrix, unless one argues for an original brief Sabbath law that read only *יזכור את יום השבת לקדשו* “Remember to keep the Sabbath day holy” (so Weinfeld, “Decalogue,” 13) that was later expanded by the pattern found in CC. The laws about Yahweh’s name and false witness in 20:7, 16 also have found similarities with 23:1–2, 8 (possibly 22:10), which point to dependence; the direction seems to be from CC to the Decalogue. See also Levinson, “Human Voice,” 46–48, for the possibility of Assyrian treaty influence on Exod 20:4–6, which supports seventh-century composition. Blum (“Israël à la montagne,” 273) sees the theology of mediation surrounding CC, in contrast to the direct revelation of the Decalogue, as secondary.

81. That the Decalogue is secondary can explain the awkward phrase “and all of the laws” (ואת כל המשפטים) in 24:3. This looks like an insertion. It clearly refers to CC, making reference back to the term “laws” (משפטים) in the introduction to the casuistic laws in 21:1. But rather than taking this as evidence that CC was inserted late (cf. Levinson, “Is the Covenant Code an Exilic Composition?” 281–282), one can understand the term “the words (of Yahweh)” (הדברים/דברי יהוה) in 24:3, 4, 7, 8 to have referred to CC when the Decalogue was not part of the narrative. When the Decalogue was added, the term “words” (דברים) came to refer to that collection, especially as the Decalogue’s

introduction used this term (20:1). Hence it was necessary to add the gloss “and all of the laws” in 24:3 to make reference to CC as well. See also Jackson, *Wisdom-Laws*, 454, 461 (and n. 169 there with literature); Schwienhorst-Schönberger, *Bundesbuch*, 411, 413 (for him, the Decalogue was added at the level of priestly redaction; similarly Nicholson, “The Decalogue,” 431–432).

82. See Baden, “Rethinking,” 183–184. Levinson (“Is the Covenant Code an Exilic Composition?” 284) notes that Deuteronomy portrays only the Decalogue as what was spoken at Horeb and that (n. 20 there) “Deuteronomy 5 only makes sense as a response to the prior combination of the Decalogue and the Covenant Code.” Phillips similarly notes (“Fresh Look,” 45) that “the Deuteronomistic redactors may have deliberately rejected the [book of] Exodus tradition by affirming that nothing else was added to the Decalogue [Deut 5:22]. This they achieved in two ways. First, they introduced the two tablets immediately after the giving of the Decalogue (Deut. v 22), whereas in the Exodus account they do not appear until after the Book of the Covenant has been mediated to Israel by Moses (Ex. xxiv 12). Second, they reconstructed the account of their replacement. So in Deut. ix 1–x 11, after the incident of the golden calf, the Deuteronomistic redactors described Moses breaking the two tablets of the law inscribed with the Decalogue and going back up the mountain taking the fresh-hewn replacement tablets on which it is specifically asserted that the Decalogue was rewritten by God himself (Deut. x 4).” Blum (*Studien*, 93–94) compares Exod 19–20 with the structure of Deut 5 and notes that Deut 5 is very similar in overall plot to Exod 19–20, with Deut 5 replacing CC with the revelation referred to in 5:31 and 6:1. He concludes that CC was embedded in the context of Exod 19–20 *before* the writing of Deut 5–6.

83. Other additions to Exod 19–24, not addressed in the main discussion in the text, include the following (see also n. 73):

(1) The “appendix” to CC in Exod 23:20–33. This does not appear to be an organic part of CC, and it does not appear to derive from LH or similar sources (but see Levinson’s observation in n. 93 in this chapter). The term *מִקוֹם* “place” in 23:20, for example, is used in a different sense than in the altar and asylum law of 20:24; 21:13 (see Ausloos, “Deuteronomistic Elements,” 490–491). The passage also breaks up the flow from revelation to report and covenant commitment in 24:3–8. The passage may have been added in a second edition of CCN, when the Decalogue was presumably added to the narrative. For discussions, see Ausloos, “Angel of YHWH,” Boecker, *Recht und Gesetz*, 117; Childs, *Exodus*, 486–487; Crüsemann, *Torah*, 171, 178–181; Houtman, *Exodus*, 3:80; Osumi, *Kompositionsgeschichte*, 63–70; Schwienhorst-Schönberger, *Bundesbuch*, 410–414; also n. 3 earlier.

(2) Exod 20:22b. This, technically, is the beginning of CC in the present context. This has the phrase “you have seen” *אַתָּם רִאִיתֶם*, which is identical to the wording in 19:4. This way of describing the people’s experience is similar to Deuteronomic idiom (cf. Deut 4:3, 15; 11:7). The locus of revelation “out of heaven” in 20:22b is also the same as in Deut 4:36. This is taken as a major indication that CC was inserted into the narrative by Deuteronom(ist)ic editors. Cf. Baentsch, *Bundesbuch*, 45–48; Blum, *Studien*, 92–93 and n. 207 there. Osumi (*Kompositionsgeschichte*, 185–195) says that 19:3–8 is built on 20:22–23. Weinfeld (*Deuteronomy and the Deuteronomic School*, 206–207 and n. 4) says that the description of the revelation as “out of heaven” in 20:22b contradicts 19:11, 20 (cf. Levinson, “Is the Covenant Code an Exilic Composition?” 280 n. 12) but agrees with Deut 4:36. He concludes that Exod 20:22b is either an addition or that it is E (proto-Deuteronomic). Beyerlin (“Paranäse,” 13–14) says “you have seen” in 20:22

is similar to Deuteronomy's idiom but is nonetheless distinctive. Hossfeld (*Dekalog*, 177–178) says that 20:22a looks priestly and that v. 22aα could be Deuteronomistic with 22aβ being priestly. He says (p. 179) that 20:22b is similar to 19:4a, but only similar, not the same. For a discussion of the evidence and studies, see also Rothenbusch, *Rechtssammlung*, 558, 589–596. Despite the hesitations of various scholars, it is not clear that the phrase in 20:22b is an addition. It actually does not contradict the scenario of a storm theophany—storms are in the sky, and this is whence the thunder is heard. That the half verse is Deuteronomistic is not clear, given the priority otherwise of the CCN over Deuteronomy. Note that the idiom is consistent generally with “you know” (אתם ידעתם) in 23:9, which is not an addition according to the estimate of the present study. See nn. 3, 4, 13, 47 in this chapter.

(3) Only at a late stage (Persian period) was the Priestly material (i.e., 19:1–2a; 24:15b–18a) blended with the mountain/Sinai narrative.

84. For the identification of the narrative thread of the Golden Calf story, see Baden, “Rethinking,” 100–01, 126, 140, 152, 155, 180, 181, 184–85, 188–89, 191, 193–98, 202–03, 206, 218, 266–71, 290, 295, 307–310, 334–36, 352–54, 372–73, including several of his notes on these pages. Blum (“Israël à la montagne,” 275) notes how the sin of the Golden Calf story seems totally contradictory to the revelation of the law in Exod 19–24. This seems to be an indicator of a redactional rerouting of an original CCN with a different purpose. Several argue that CC reflects northern concerns (Goldstein and Cooper, “Festivals of Israel and Judah,” 21 [cf. 22], say, for example, that “the special times of the Northern calendar . . . are recorded in Exod 23:10–19, [and] generally acknowledged to be an early and relatively pristine Northern text”). These judgments must be reassessed in light of the evidence of this study.

85. For other translations, see Lewis, *Sargon Legend*, 24–29 (with transliteration and accompanying commentary); *COS* 1:461; Foster, *Before the Muses*, 803–804; *ANET* 119.

86. Lewis, *Sargon Legend*, 149–209 with analysis of folkloric motifs on pp. 211–272. He provides summary descriptions of tales from around the world about the abandonment or exposure of children, several of which involve leaving a child in a body of water in a basket or other container and the discovery and raising of the child by another party. He discusses “a Semitic subtype” on pp. 255–257, noting that of the four belonging to this class only two belong to the first millennium (i.e., the Akkadian and biblical stories); the others derived from the Bible's story. He discusses differences on p. 264. Greenberg says that the differences between the biblical and Akkadian stories and a closer parallel in Egyptian myth indicate that the biblical story cannot be dependent upon the Akkadian version (*Understanding Exodus*, 198–199; rejected by Lewis, *Sargon Legend*, 263–266).

87. Otto concludes that the biblical narrative depends on the Neo-Assyrian story (“Political Theology,” 72–75). He notes the specific motifs shared by the two and goes on to say (p. 74) that the story of the Israelites' oppression and labor in Egypt was influenced by Neo-Assyrian descriptions of forced labor, citing a royal inscription of Esarhaddon (Niniveh A § 27 V 40–42, 47–53, 55, 74075, 82-VI 1; in Borger, *Die Inschriften Asarhaddons*, 59–61). He says (pp. 74–75) that “the Moses-Exodus account in Ex 14*, 19*, 34* was also influenced by Assyrian royal ideology which it displaced by means of subversive reception.” He notes (p. 75): “This [creation of a story on the basis of Assyrian models and motifs] was not an idea of Judean groups during the exile but a Judean counter-programme of the seventh century BCE, which rejected Assyrian

claims to loyalty [*sic*]. For the first time in the Ancient Near East the idea of political freedom because of obligations to God's will was born." Sparks (*Ancient Texts*, 280) suggests that "the Hebrew writer took up the motif from the Sargon legend... and applied it to Moses in order to portray Israel's lawgiver as a similar hero."

88. The texts are listed in Lewis, *Sargon Legend*, 11; Glassner, "Le récit."

89. Lewis (*Sargon Legend*, 106–107) considers evidence for composition during the time of Sargon II and says: "if the Legend had been written during the reign of Sargon II, it would probably be a product of his later years. The most likely motive would be to glorify Sargon II by showing that he was a worthy successor to Sargon of Akkad. At the same time, this would help to explain the selective list of exploits attributed to the Akkadian king in the Legend, for at least some of these correspond to the actual experiences of Sargon II." Franke ("Kings of Akkad," 837) says the story "could have been composed at the court of Sargon II... to exploit [the earlier] Sargon's deeds as a paradigm of his own." Foster (*Before the Muses*, 803; cf. *From Distant Days*, 165) says that the "language and content point to a first-millennium date for this composition, which may have its origins in the court of Sargon II of Assyria." Glassner ("Le récit," 8) says: "Il n'est guère douteux que dans l'Assyrie des Sargonides, le récit autobiographique servit à légitimer la figure controversée de Sargon II que prit le pouvoir dans des circonstances troubles." Morgan (in Chavalas, *Ancient Near East*, 22–24) does not want to exclude the possibility that there may be a kernel of the tale that goes back to the time of the first Sargon. Dalley ("Influence of Mesopotamia," 68) allows for a second-millennium date for the story. See Limet, "Aspect mythique," for other discussion.

90. See chapter 4, n. 51. The majority of Neo-Assyrian stela fragments found in the land of Israel date from the time of Sargon. Horowitz, Oshima, and Sanders (*Cuneiform*, 19) note that fragments Ashdod 2–4 (see chapter 4) "most likely mark Sargon II's conquest of the city in 712 BCE. Ben-Shemen 1 is also dated to the reign of Sargon II... We concur and surmise that the stela fragment from Samaria (Samaria 4) dates to early in the reign of Sargon II, soon after the fall of the northern kingdom and its reorganization into an Assyrian province... [though] we cannot be certain of this."

91. Lewis (*Sargon Legend*, 265) describes the revision involved in the biblical tale: "Were we to strip away all the obvious innovations present in the Exodus birth story, we should be left with a basic tale structure that might approximate the *Vorlage*"; and further (p. 266): "After eliminating the Hebrew contributions, one finds a tale structure based on... the same pattern present in the Sargon Legend and the hypothetical archetype. The author of the Moses story may have known of and have been influenced by the Sargon tale, as he was apparently influenced by other Mesopotamian traditions. Cuneiform documents such as an Akkadian fragment of Gilgameš found at Meggido, clay liver models from Hazor, and El Amarna correspondence, testify to the presence of cuneiform literature in Syria-Palestine during the second millennium. Of course, the Moses birth story might just as easily have derived from an unknown version of the exposed-hero tale." Note that Lewis paints himself into the same chronological corner of Akkadian textual attestation that other scholars have done in trying to explain similarities between CC and LH. He does not consider the Neo-Assyrian period, even though he cites recent scholarship that concludes that "the Moses birth narrative belongs to the youngest strata of Exodus tradition" (pp. 264–265).

92. One other correlation between CC and its narrative that might be considered significant is the language of a case (בָּרַךְ) coming or being brought (בָּאֵלֶיךָ) in connection

with the deity described with the general term “the God” (ה(ה)אלהים) in Exod 18:15–16, 19, 22, 26 and 22:8. Chapter 9 suggested that the language of 22:8 was influenced by the wronged-man passage in the exhortatory block, “let a wronged man (*awīlum ḥablum*) who has a case (“word”; *awātam*) come (*lillik*) before the statue of me, the king of justice,” interpreted in connection with the performance of judicial oaths and activities “before the god” (*[ina] maḥar ilim*), found in the casuistic laws. The idiom in Exod 18 may have a compositional association with CC, similar to what has been proposed for idioms in 3:15b or 19:19a. Bovati (*Justice*, 219) does not think the descriptions 22:8 and 18:15 are phenomenologically the same. For discussion of Exodus 18 in general, see Knierim, “Exodus 18”; Schäfer-Lichtenberger, “Exodus 18.” For the dependence of Deut 1:9–18 on Exod 18:13–27, see Baden, “Rethinking,” 134–141 (compare in particular Deut 1:17 with Exod 18:26 in regard to the motif of a “word” that “comes”). For a discussion of the reformulation of the tradition of Exodus 18 in Deuteronomy 1, see Levinson, “First Constitution,” 1864–1871; cf. Brettler, *Creation*, 65–70. Jackson (“Modelling,” 1804) sees a similarity between 23:1–8 and Exod 18, suggesting that both were added to the Sinaitic pericope by the same hand.

Some narrative correlations may have developed after CC was in place in the narrative. Such include various motifs in Exod 19:3b–8: “you shall be for me... a holy nation” (וְאַתֶּם תְּהִיוּ לִי... לְגוֹי קֹדֶשׁ; 19:6), similar to “you shall be a holy people to me” (וְיִשְׁמַע לְפָנֵיהֶם אֵת כָּל אֵלֵהֶם; 22:30); “he placed before them all of these words” (וַיִּשֶׂם לְפָנֵיהֶם אֵת כָּל הַדְּבָרִים הָאֵלֶּה; 19:7), similar to “these are the laws that you shall place before them” (אֵלֶּה הַמִּשְׁפָּטִים אֲשֶׁר תִּשִׂים לְפָנֵיהֶם; 21:1). Exod 19:3b–8 may be an addition, a covenant ceremony described to anticipate 24:3–8. (Baden, “Rethinking,” 181, and Schwartz [see n. 71] believe that 19:3b–8 was part of the storm theophany story.) For the lateness of 19:3b–8 in the narrative context, see Otto, *Wandel*, 57; Schwienhorst-Schönberger, *Bundesbuch*, 411; Ska, “Exode 19,3–6,” 292–293 and passim. Ska’s review of various views about 19:3b–6 (pp. 289–290) shows the difficulty in comparing these verses with other strata. Blum (*Studien*, 92–93; cf. pp. 46–47, 169–172) says that 19:3b–8 and 24:3–8 are on the same level and compositionally coordinated with the Deuteronomistic insertion of CC. He notes, as several have, that the introduction to CC in 20:22 specifically parallels the language of 19:4 (“you have seen” וְאַתֶּם רִאִיתֶם; p. 92 n. 207). Osumi (*Kompositionsgeschichte*, 185–195) downplays these phraseological connections. On the holiness of the people, see n. 15 in this chapter. The idiom of torah placement in Deut 4:44 is probably based on Exod 21:1.

Though we cannot enter into an analysis of Exod 32, the wording “making for oneself gods of gold” in 32:31 (cf. 1 Kings 12:28) may depend 20:23 (cf. Phillips, “Fresh Look,” 51; Blum, *Studien*, 50), though most claim the reverse; see Blenkinsopp, *Pentateuch*, 197; Schwienhorst-Schönberger, *Bundesbuch*, 412 (cf. Otto, *Wandel*, 5).

Other correlations with the narrative of the Pentateuch are probably coincidental, including the word pair “wound/injury” in 21:25 and in Gen 4:23 (cf. Schwienhorst-Schönberger, *Bundesbuch*, 119, 338–357); the adjective “Hebrew” in Exod 21:2 and 1:15, 16, 19; 2:6, 7, 11, 13; 3:18; 5:3; 7:16; 9:13; 10:3; the immigrant in 22:20 and 23:9 and in the explanation of the name Gershom “I have been an immigrant (גֵר) in a foreign land” (2:22; cf. Zenger, “Le thème de la ‘Sortie,’” 312); homicide and injury laws in 21:12, 18–19, 22–25 and the story about Hebrews’ fighting and Moses’ killing an Egyptian (2:11–15); the prescriptions for the altar and sacrifice in 20:24–26 and the request to make sacrifice in the “J” plague episodes (3:18; 5:3, 8, 17; 8:4, 21, 22, 23, 24, 25; 10:2; CC need only have an association with the sacrifice of 3:12); stoning in 21:28, 29, 32 and

in the fire theophany of 19:12–13 (cf. Jackson, *Wisdom-Laws*, 257, 266; see also pp. 263, 265 and Fensham, “Liability,” 89).

93. Some see 20:24–26 as a type of prologue to CC (Phillips, *Essays*, 97; Otto, *Wandel*, 58, says this prologue was created by the Deuteronomistic addition of 21:1). Paul says that Exod 19:3b–6 plus the Decalogue is a prologue (Paul, *Studies*, 11–42; cf. Hurowitz, *Inu Anum šīrum*, 4 n. 9; Lemche, “Hebrew Slave,” 130–131; Osumi, *Kompositionsgeschichte*, 8–9). Several see 23:20–23 as an epilogue (Fensham, “Rôle,” 271–272; Houtman, *Exodus*, 3:80, 270; Levinson, *Deuteronomy*, 66 n. 42; Osumi, *Kompositionsgeschichte*, 63; Phillips, *Essays*, 97; Schwienhorst-Schönberger, *Bundesbuch*, 407–408; cf. Otto, *Wandel*, 8). Levinson (“Deuteronomy [Commentary],” 427) notes that 23:20–33 is a curse section similar to that in the epilogue. Otto (*Wandel*, 58) sees 23:14–33 as an epilogue. For various views, see Marshall, *Israel*, 21; cf. Jackson, *Wisdom-Laws*, 459–461. An exception to foregoing analyses is Boecker’s view (*Law*, 137–139; *Recht*, 118–120) that the initial and final apodictic laws are a prologue and epilogue. Marshall resists Boecker’s identification, partly because “they are completely at odds with the prologues and epilogues of the ancient Near Eastern codes.” To be sure, Boecker does not share the view that CC derives from LH (see the citation of his views in chapter 1), but his intuition about the structure of CC was exactly right.

Chapter 13

1. See toward the end of the chapter for a narrowing of this chronological window.

2. Other purposes and contextualizations might be imagined for CC: (1) it is simply a work of scribal scholarship, with no inherent polemic; (2) while making its own cultural statement setting it apart from LH and Mesopotamian sources, it ultimately seeks to be pro-Assyrian by flattering imitation of Mesopotamia’s most significant legal work; (3) it attempts to write a set of laws that responds to local social problems of the end of the eighth century (e.g., Chaney, “Debt Easement,” who argues that the various laws on relaxing debt regulations in favor of the poor came as a result of different groups of elites competing for the support of the poor; cf. Albertz, “Theologisierung,” 120–124); (4) it is a polemic against Israelite or Judean monarchy; (5) it attempts to tie law with the cult and thus empower priests over prophets and the local king; (6) the text was written by an Assyrian immigrant and scribe (who knew LH), hence the focus on a נָ “immigrant.” These options are less compelling than that argued in this study.

3. Another exception, quite minor, is the negligence law in 21:33–34, if this is not based on LH 229–230, but on a law like NBL 3 (see chapter 8). Nevertheless, it is worked into the context of the goring ox as CC moves on to the topic of property law. The other three instances of visible correlation with cuneiform collections other than LH, in the talion/miscarriage, burglary laws, and sorcery laws (see table 1.3 in chapter 1), are not problematic. The first two topics originate in the context of LH and only add motifs from other sources. The sorcery law is part of the miscellaneous appendix influenced in part by the participle source, which, as already noted, is subordinate to the use of that source for rendering laws from LH in 21:12–17.

4. It is argued that the second-person forms in CC derive from treaty formulation (e.g., McConville “Singular Address”). If so, then treaty influence is broader than just 22:23 or the narrative of 24:3–8. For reservations about treaty influence in this stylistic feature, see Morrow, “Generic Discrepancy,” 148–149.

5. The ability of CC's author to cross-reference and recombine various laws from LH is made more reasonable in view of a theory of combined textuality and orality developed by Carr, *Writing*, esp. 3–73 (see also Hurowitz, "Spanning the Generations"; Carr, "Response to W. M. Schniedewind," 4; Niditch, *Oral World*). Carr (*Writing*, 34–36, 40, 162) argues that new texts that transform sources may have been created from intimate knowledge or even memorization of the source texts rather than from recurrent visual consultation of the texts themselves. Data from this study of CC will no doubt require modification of Carr's conclusions. But if CC was intimately familiar with its source, then one need not suppose that every correspondence between CC and LH (or another supposed source) resulted from the inspection of tablets. For some criticism of Niditch's disbelief about scribal referencing, see van der Toorn, *Scribal Culture*, 140.

6. Levinson ("Human Voice," 45) speaks about the "rhetoric of concealment" that operates in legal revision, "which serves to camouflage the actual literary history of the laws." While knowledge of CC's source might allow a general audience to appreciate the composition from a literary-academic point of view, this knowledge would actually undermine the ideological effect toward which the author(s) were striving.

7. Levinson ("First Constitution," 1887–1888) notes: "In their own way... *Deuteronomy's* authors were also Founders. They sought to overthrow the neo-Assyrian Great King, and the yoke of aggressive imperial taxation, in order to establish an independent Judean polity. The draft constitution they wrote was part of a larger attempt to purchase freedom and cultural autonomy." Elsewhere ("Is the Covenant Code an Exilic Composition?" 294 n. 37) he notes my argument about CC serving a strategy of "cultural subversion" and then asks: "Taken together, this raises the question of whether two legal texts that are diverse in cultic and social agenda (the Covenant Code and Deuteronomy) could each draw upon cuneiform traditions (the legal collection and the loyalty oath) during the Neo-Assyrian period with a single goal: to wield the expropriated literary model against the hegemony of Neo-Assyrian culture."

8. See Morrow, "Resistance and Hybridity," for bibliography on post-colonial theory. See also his "'To Set the Name' in the Deuteronomistic Centralization Formula."

9. See Morrow, "Resistance and Hybridity," 335–336 for the citations.

10. Hurowitz, "Hammurabi in Mesopotamian Tradition," 517–518; Inu Anum şırım, 62–63, n. 70; Weinfeld, *Deuteronomy and the Deuteronomistic School*, 150–151 (compare also Walzer, "Legal Codes," 339). For other passages like Deut 4:8 that portray the distinctiveness of Israel, see Peter Machinist, "The Question of Distinctiveness in Ancient Israel," 196–212. He says (pp. 210–211): "It is the fact and problematic of Israel's newness, I would like to suggest, that lie at the heart of the Biblical distinctiveness passages.... The problematic was simply, and yet most formidably, this: how to forge an identity for a people that began on the margins of history and thereafter was faced constantly with a return to marginality—whether cultural, political, military, or a combination of all these—as against older societies like Egypt and Mesopotamian on its outside, and Canaanites and others within its midst." CC functions in the context of this problematic.

11. Exod 34:10–26 was not a source for CC. See chapter 11, n. 82.

12. Levinson's criticism of Van Seters's and Carmichael's approaches could be seen as applying to my conclusions. Of Van Seters's approach, Levinson ("Is the Covenant Code an Exilic Composition?" 276 n. 8) says: "Other scholars, of course, have adopted

superficially similar positions based on their rejection of the source-critical method. However, for the coherence of the Covenant Code to be defended by someone with a very deep commitment to the source and literary criticism is unprecedented.” Of Carmichael he says (“Carmichael’s Approach,” 236): “If repetition never involves redundancy but only rhetorical emphasis, and if grammatical inconsistency arises only because of the impact of a literary source and does not designate different compositional strata, and if the two problems are never brought into relation, then the text is intrinsically different from the one that critical scholars confront.” See also Otto’s methodological critique in his review of Van Seters, *Law Book*. See, too, Levinson’s article on empirical evidence for redactional analysis (“Case for Revision,” 39) where he asks: “Both synchrony and diachrony, finally, are interpretive constructs. The only question is, which better explains the textual phenomena?” The present study complicates this question by bringing in evidence of an external source to demonstrate empirically that textual variety may equally arise from the impingement of a source as from the consequent redaction. See Otto, “Diachronie,” who critiques Westbrook’s approach to CC as a unity.

13. The use of potsherds by Hebrew scribes to draft compositions, noted by van der Toorn (*Scribal Culture*, 21–22), can help explain the intertextuality of sections of CC and some of the elements that appear to be additions or inconsistencies in the text (e.g., elements of the altar law of 20:24–26 that appear in the homicide law of 21:12–14 or the placement of the burglary law at 22:1–2a rather than with the deposit law of vv. 6–7). The use of sherds (or scraps of other expendable material) would have been particularly suited to drafting a law collection, since discrete topical sections could be written on individual fragments and rearranged as necessary. Moreover, changes could be made to the text as the composition evolved in conception. This could also explain how third-person family law was interspersed among the otherwise apodictic laws of Deuteronomy 21–25 (see chapter 4). Scholarship has not paid enough attention to the drafting process to explain inconsistencies in these and other texts.

14. For 22:19b “apart from Yahweh alone” as a possible addition, see chapter 6, at n. 25 and the discussion of sacrifice to other gods in chapter 7.

15. The Decalogue, if based in part on CC, may also be partly viewed as an updating (especially in including a law about adultery, missing in CC). For revision in the Hittite Laws, see short but substantial discussions, with bibliography, by Levinson, “You Must Not Add,” 16–18, 22–23; “Human Voice,” 41–45. Levinson (“You Must Not Add,” 13) also observes that “the authors of Deuteronomy might more easily have inserted the necessary revisions and corrections directly into the Covenant Code, rather than create an entirely new literary and legal composition. Indeed, certain didactic, theological, and ethical expansions within the Covenant Code and the legal narratives of Exodus (12:24–27a; 13:3–16) betray such an affinity to Deuteronomy that they are labeled ‘proto-Deuteronomic.’ If these expansions represent the first literary expression of a scribal group that may later have composed Deuteronomy itself, that only sharpens the question: why did they not merely continue in the more conventional vein? Why did they choose instead to compose an entirely new text?” Otto (“Gesetzesfortschreibung,” 380) notes that “der Umbruch der Josia-Zeit war so tiefgreifend, daß eine Reformierung des Bundesbuches durch unmittelbare Fortschreibung innerhalb dieser Rechtssatzsammlung nicht mehr möglich war, sondern es einer neuen Sammlung, des Deuteronomiums, bedurfte, die das Bundesbuch auslegt und ergänzt.”

16. Compare the examples of blending sources discussed in Tigay, *Empirical Models*, 61–83 (see also the summary in Nicholson, *Pentateuch*, 224–228). One can compare Weinfeld’s approach to the curses in Deuteronomy 28 (*Deuteronomy and the Deuteronomist School*, 129) who concludes: “There is no doubt, then, that both the VTE curses and Deut. 28 are composite literary creations, but—as Hillers has already indicated—‘not because of late redactional activity but because the scribes have combined a variety of traditional curses.’”

17. The issue of redaction versus authorship has been a concern in recent studies. This study will no doubt provide data for thinking about this issue.

18. This analysis indicates that a priority in the study of biblical law, and perhaps of biblical texts in general, is ascertaining whether a text has used sources as part of the historico-critical analysis that, as Rofé suggests, must precede any analysis of biblical law (“Methodological Aspects,” 205–209).

19. CC can be identified as a source or influence in the following laws of Deuteronomy, if one allows for hermeneutical transformation of CC’s legislation (see Levinson, *Deuteronomy*; Lohfink, “Fortschreibung”):

- Cult place and the divine name (Deut 12:1–12, 13–41 // Exod 20:23–24; see chapter 12, n. 13; cf. Lohfink, “Zentralisationsformel”; Tigay, “Presence of God,” 210–211; Mettinger, *Dethronement*, 116–134; for a recent discussion of redactional development in Deut 12, see Schaper, “Schriftauslegung”).
- Apostasy (Deut 13 // Exod 22:19; Assyrian treaty has served as the major source for D here; see chapter 4, n. 116).
- Holiness of people and diet (Deut 14:2, 21 // Exod 22:30; 23:19; cf. Exod 19:5–6; Deut 14:21 brings together the two dietary motifs at the end of the two strings of CC’s final apodictic laws; see chapter 12 n. 15).
- Seventh year (Deut 15:1–11 // Exod 23:10–11; Deut reinterprets the root צמח to refer to debt remission; cf. Otto, “Soziale Restitution,” 153–154, 158–159; see chapter 11, n. 57).
- Debt-slavery (Deut 15:12–18 // Exod 21:2–11; Deut reduces the material from CC down to one law, according to which only a debtor is enslaved; this complements the seventh-year law in Deut 15:1–11; see chapter 5).
- Firstborn (Deut 15:19–22 // Exod 22:28–29).
- Festivals (Deut 16:1–17 // Exod 23:14–19; see chapter 12, n. 35).
- Judges and proper judgment (Deut 16:18–20 // Exod 23:1–3, 6–8; see chapter 3, n. 34).
- Appeals court (Deut 17:8–13 // Exod 21:6, 13–14; 22:6–8, 10; see Stackert, *Rewriting*, 31–112; chapter 11, n. 79).
- Law of the king (Deut 17:14–20; Deut may be reading CC’s placement of the local king in the background as a polemic against local kings; cf. Exod 22:27; see chapter 11, n. 30).
- Sorcery (Deut 18:9–14 // Exod 22:17; see chapter 7, n. 27).
- Homicide (Deut 19:1–13 // Exod 21:12–14; see chapter 6, n. 38).
- Talion and witnesses (Deut 19:15–21 // Exod 21:23–25; 23:1–3, 6–8; cf. 20:12; see chapter 6, n. 121).
- Child rebellion (Deut 21:18–21 // Exod 21:15, 17; but see the discussion of the passage associated with table 4.1 in chapter 4).

- Returning a stray animal (Deut 22:1–4 // Exod 23:4–5; cf. 22:8, 25; Otto, *Wandel*, 8; cf. Cooper, “Plain Sense,” 2–4; see chapter 11, n. 96).
- Rape of an unbetrothed virgin (Deut 22:28–29 // Exod 22:15–16; but see the discussion of the passage associated with table 4.1 in chapter 4).
- Interest (Deut 23:20–21 // Exod 22:24–26; see chapter 11, n. 48).
- Loans, pledges, same-day economic obligations (Deut 24:6, 10–15 // Exod 22:25–26).
- Kidnapping (Deut 24:7 // Exod 21:16; but see table 4.1 in chapter 4; Stackert, *Rewriting*, 46–47).
- Individual responsibility (Deut 24:16 // Exod 21:31).
- Widows, orphans, immigrants, and the poor (Deut 24:17–22 // Exod 22:20–23; 23:9, 10–11; see chapter 11, n. 44).

In connection with the last correlation, one can conclude that Deuteronomy’s instances of an Egypt rationale and other immigrant laws (being an immigrant/slave in Egypt: Deut 5:15; 13:6; 15:15; 16:12; 23:8; 24:18, 22; 26:5–11; cf. 6:12, 21; 8:14; 13:6, 11; immigrant and poverty laws 12:12, 18; 14:21; 16:9–13; 24:19–22; 26:12–13) are based on Exod 22:20–23 and 23:9 and the poverty theme in CC’s final apodictic laws generally.

Deuteronomy tends to collect laws dispersed in Exodus (the slave and seventh-year laws in Exod 21:2–11 and 23:11–12 are brought together in Deut 15:1–18; also the dietary laws in Exod 22:30 and 23:19 in Deut 14:21; see chapter 12, n. 15; cf. Chamberlain, “Exodus 21–23,” 131–133 and *passim*). But Deuteronomy also splits the laws on the poor in Exod 22:20–26 (see the preceding passages; Chamberlain, “Exodus 21–23,” 137, uses this as evidence against the early dating and priority of Exod 22:20–26). On Deuteronomy’s use of CC, see also Weinfeld, *Deuteronomy 1–11*, 19–24.

20. Levinson, *Deuteronomy*, 15.

21. Knohl, *Sanctuary*. See his list on pp. 104–106 for passages that belong to the Holiness Legislation (his HS = Holiness School) as distinct from those that belong to Priestly Legislation (= P; his PT = Priestly Torah). See also Milgrom, *Leviticus 17–22*, 1319–1367, esp. 1332–1344 for a similar view. I also agree with Knohl and Milgrom that HL is subsequent and dependent on P. I do not agree with their early dating of much of P and HL. In fact, the dating of CC to around 700 now makes an early dating of HL impossible.

22. The use of CC by the Holiness Legislation can be seen in the laws on not oppressing the immigrant (Lev 19:33–34; cf. Exod 22:20; 23:9; cf. chapter 11, n. 44); a sacrificial victim and its mother (Lev 22:27–28; cf. Exod 22:29; 23:19; HL brings together, interprets, and expands related laws from the two strings of the apodictic laws similar to Deut 14:21; see chapter 12, n. 15; cf. Sasson, “Seething,” 305); talion (Lev 24:17–22; cf. Exod 21:23–25; chapter 6, n. 121); the seventh-year (Lev 25:2–7; cf. Exod 23:10–11; Stackert, *Rewriting*, 115–122; see chapter 11, nn. 48, 57); debt-slavery (Lev 25:39–46; cf. Exod 21:2–11; see Stackert, *Rewriting*, 113–164; Levinson, “Manumission”; “Birth”; Kaufman, “Deuteronomy 15”); and homicide (Num 35:6–34; cf. Exod 21:12–14; see Stackert, *Rewriting*, 31–112; “Asylum”). See also Milgrom, *Leviticus 17–22*, 1355–1356. P proper, in contrast to HL, did not use CC as a source, as Stackert (*Rewriting*, 224) notes: “P is strongly self-oriented and does not, as far as I can tell, employ a discernable revisionary method for its legal composition. In this way, P can be viewed as unique among pentateuchal law collections. . . .”

23. Stackert, *Rewriting*, 224–225. A question that will occupy scholars will be whether Deuteronomy or the Holiness Legislation sought to replace or merely supplement their sources. If we can learn from the example of CC, it would seem that successive biblical collections, even though they are beholden to their sources for content and a certain type of authority, nonetheless seek to supplant them. Stackert (*Rewriting*, 220–222) already uses my conclusions about CC for a judgment about Deuteronomy’s and the Holiness Legislation’s rejection of their sources. Otto (“False Weights,” 132 n. 17, 142) says that Deuteronomy affirms CC by the Deuteronomistic insertion of CC into the Sinai narrative, after the formulation of the laws of Deuteronomy. If CC was present in the narrative before the creation of the laws of Deuteronomy, as I argue, Deuteronomy may seek to replace CC. For a discussion of the related issue of the “canonicity” or authority of sources, see Stackert, *Rewriting*, 209–225; Baden, *Rethinking*, 358–382. The lack of comprehensiveness in successive law collections is not necessarily an indication of their intent merely to supplement, especially given that the collections may have ideological rather than purely legislative goals. This issue is related to the larger question of the purpose of Near Eastern law collections. Most agree that the purpose of these collections, at least Mesopotamian collections, was not primarily to legislate. On the purpose of Near Eastern law collections, see Bottéro, *Mesopotamia*, 156–184; Finkelstein, *Ox*; “Ammişaduqa’s Edict,” 102–104; Knierim, “Problem of Ancient Israel’s Prescriptive Legal Traditions,” 14–19; Kraus, “Ein Zentrales Problem”; Leemans, “Quelque considérations,” 414–420; Mendenhall, “Ancient Oriental and Biblical Law,” 32–34; Otto, “Bedeutung,” 146–152; Renger, “Hammurapis Stele”; “Noch einmal”; Schwienhorst-Schönberger, *Bundesbuch*, 256–258; Wells, “What Is Biblical Law?”; Westbrook, “Biblical and Cuneiform Law Codes”; “Cuneiform Law Codes”; *Studies*, 2–3. Levinson (You Must Not Add,” 13) notes: “Despite the ostensible legal form, Near Eastern legal collections were much closer to literature or philosophy than to actual law in the modern sense.”

24. For a description of the Temple Scroll’s techniques in using its sources, see Levinson and Zahn, “Revelation Regained,” 306–309, 333–335, and *passim*.

25. See chapter 11 n. 21 on the idiom generally. The verb in Gen 4:26b may be read as a pluperfect: “at that time (the time of Seth), the calling on the name of Yahweh *had* (already) begun.”

26. Within Exod 19–34, the material to be attributed to this story may include the verses associated with the fire-theophany thread of Exod 19 (discussed in chapter 12) plus Exod 24:1–2, 9–11ba, 32:15aα [only a descent notice], 25*, 26–29, 33:1–3, 12–23; 34:2–3, 4aβ*[the ascent notice], 5aβ*–27 (for sorting out this thread, see the reference to Baden in chapter 12, n. 84). This story would be rather baroque with multiple episodes, describe Yahweh’s revelation to various members of the community’s hierarchy, and set the revelation of law *after* (not before) some sin committed by the people. For the dependence of the laws in Exod 34 on CC, see chapter 11, n. 82.

27. For a recent argument about P as an independent source, see Nicholson, *Pentateuch*, 196–221 and Schwartz, “Priestly Account of the Theophany.” Some of those who employ postdocumentary approaches to the Pentateuch appear to have come to reassert the integrity of P as a source. See Levin, “The Yahwist and the Redactional Link,” 131. I agree with much of what Schwartz says about P’s independence from other sources, but this study’s dating of CC and its narrative requires a later dating for P than what he claims (see n. 21), and I am not sure that P was “thoroughly uninfluenced by [other Pentateuchal narratives] and indeed was unaware of them” (his article p. 110, also 120–130).

28. J in Genesis 1–11 must be earlier than P in the same chapters, contra, for example, Blenkinsopp, “Post-exilic Lay Source.”

29. For non-P examples of sacrifice and altar building before the time of Moses, see Gen 4:1–7; 8:20–22; 12:7–8; 13:3–4, 18; 22:1–19; 26:23–25; 31:54; 33:20; 35:1–7; 46:1 (for a list of “early,” i.e., J, E, and proto-Deuteronomic altar-building passages in Genesis and Exodus, see Zwikel, “Altarbaunotizen,” 538–539). The covenant ceremony of Gen 15:1–19 may be included in this list, though the killing of animals described there is not strictly sacrificial. For the lateness of Gen 15, cf. Dozeman and Schmid, *Farewell to the Yahwist?* 17; Gertz, “Transition,” 74.

30. The reason for creating the man in J was to work and guard the Garden of Eden (2:5, 8, 15). For feeding the god in P and H, see Wright, “Study of Ritual,” 133. For a recent study of the similarities in P and in Mesopotamian tradition, see Sparks, “Enūma Elish.”

31. P’s extended process of creation is reflected in the creation of astronomical features in Gen 1:14 that set in motion the weekly and annual cycles. The term אִתָּה “signs” in the verse anticipates the Sabbath, described with the same term (Exod 31:13, 17). The term מועדים “festivals” anticipates the festival calendar in Lev 23 and Num 28–29. The terms ימים “days” and שנים “years” refer more generally to the annual cycle. The annual cycle is set in place with the creation of the lights, and the cycle of weeks is begun with the week of creation. These temporal cycles operate in the background of P’s history until the time of Moses. P nonetheless reflects preoccupation with these cycles before the time of Moses in the description of the ages of characters and the dating of the flood in its Genesis narratives. Israel is finally notified of the existing temporal cycles at two points in history. The annual cycle is revealed in Exod 12:2: “*This month* is the beginning of months for you.” The weekly cycle may have been revealed in the manna episode in Exod 16, if this belongs to P (P may include vv. 2–3, 6–35a, 36; see chapter 5 n. 25 for dispute about the source attribution). If this is not P, then within P/HL the Sabbath is introduced in Exod 31:13–21. In addition to the issue of the calendar, the description of the building of the wilderness tabernacle uses language similar to the creation story, thus implicitly representing it as a fulfillment of the creative process (cf. Gen 1:31–2:3 and Exod 39:32, 43; 40:9, 33; see Weinfeld, “Sabbath, Temple”; Levenson, *Creation*, 78–99, 100–120). Schwartz (“Priestly Account”) notes P’s culminating narrative focus (p. 109): “[P] telegraphs early events and rushes to Sinai, after which it slows down to a snail’s pace and becomes a protracted tale of endless lawgiving” and (p. 134) “the tabernacle-lawgiving pericope, from Sinai to the plains of Moab, comprises the bulk of the Priestly work and is indisputably its climax and focal point, indeed its *raison d’être*.” For the culmination of creation in P with the sanctuary building, see Ska, *Pentateuch*, 27–28. One of the problems involved in this analysis of P’s narrative is whether some of it should actually be ascribed to H (see Tanchel, “Honoring Voices,” 13–114).

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