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JESUS, THE LAW, AND THE HERMENEUTIC OF LOVE

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Jesus summed up the entire Law in one word: "love" (Matt 22:34–40; cf., Gal 5:14). Other teachers also emphasized the place of love in God's Law. But Jesus advanced unique interpretations of specific laws that showed the calling to love at the heart of each one. To do so, Jesus employed a legal hermeneutic that broke with his contemporaries and that continues to puzzle commentators today.

Within the last few generations, however, new insights into cuneiform law have surfaced that offer new perspectives for understanding the Hebrew law writings, as well as Second Temple controversies over the Law's later reception. But to date, these cuneiform law discoveries remain the rarified stuff of academic treatises among Assyriologists and a narrow circle of specialized biblical law scholars. These insights have yet to be brought into the service of Old Testament commentary, let alone as a possible aid for understanding Jesus's handling of the Law (or that of the Apostle Paul).[2]

This essay will contribute to closing that gap. It is my contention that Jesus's approach to the Law—and his teaching that the Law's pervasive message is love—is grounded in his adherence to a traditional, ancient Near Eastern approach to law in contrast to the Hellenistic legal conventions embraced by his contemporaries.[3]

I. JESUS'S HERMENEUTIC OF LOVE

Jesus taught that the Law's two great commandments are to love God and to love one's neighbor. "On these two depend all the Law and the Prophets" (Matt 22:34–40, ESV), he said. Others also taught that love is the most important command.[4] But for Jesus, the whole Law derives from

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[2] Two early attempts to bring these insights into reach of a broader readership include: for a Christian audience, John H. Walton and J. Harvey Walton, *The Lost World of the Torah: Law as Covenant and Wisdom in Ancient Context* (Downers Grove: InterVarsity, 2019); and for a Jewish audience, Joshua Berman, *Ani Maamin: Biblical Criticism, Historical Truth, and the Thirteen Principles of Faith* (Jerusalem: Maggid Books, 2020).

[3] Portions of this essay draw upon my earlier work, Michael LeFebvre, *Collections, Codes, and Torah: The Re-characterization of Israel's Written Law,* LHBOTS 451 (New York: T&T Clark, 2006).

[4] Jay B. Stern, "Jesus' Citation of Dt. 6.5 and Lv. 19.18 in the Light of Jewish Tradition," *CBQ* 28 (1966), 312–16. Ben Witherington III, *The Gospel of Mark: A Socio-Rhetorical*

("depends upon" or "hangs on"; *kremannomi*) the command to love. Love is not just the most important law among many. It is the root from which all other commands arise.[5] Every law is an expression of love applied to a different problem. Jesus applied this hermeneutic of love in ways that diverged radically from his contemporaries.

For example, the Law commands to "love your neighbor." Other period scribes sought to define the term "neighbor" to ascertain whom one is obliged to love. Only Jesus stretched that command's scope to include one's enemies (Matt 5:43–48; Lk 10:25–37). Others studied the law, "you shall not kill," to determine what kinds of bloodshed were restricted and what bloodshed was permissible. Only Jesus drew from that law a restraint on the anger in one's heart and a duty to reconcile every offense with another (Matt 5:21–26). Other scribes debated whether laws on tithing applied only to seasonal harvests, or to daily pickings from one's herb garden as well. But Jesus rebuked such debates for distracting from the tithing law's true purpose: to promote "justice and mercy and faithfulness" (Matt 23:23–25). Jesus had a different legal hermeneutic than the mainstream, producing messages of love missed by others.

Scholars today continue to wrestle over Jesus's approach to the Law. While conclusions vary, Ben Witherington's explanation illustrates the complexity that is typical. Witherington proposes,

> Some of the new teaching of Jesus not only intensified aspects of the law (e.g., the adultery provisions), it also set up paradigms that went in a different direction from the Mosaic law. The banning of divorce and oaths, the command to love one's enemies, the insistence on nonviolence and no revenge taking and instead on perpetual forgiveness, and possibly the denial that there was unclean food, could not be simply said to be a "going beyond the Mosaic law" in the same direction. Intensification is one thing; fulfillment or nullification is another. Some of that law was being set aside, and new principles were being instituted.[6]

Other scholars similarly regard Jesus as "intensifying" some laws, moving "in a different direction" from other laws, and "nullifying" and replacing still others in a complex series of hermeneutical maneuvers that seem arbitrary. But another solution is now available.

Jesus practiced a traditional legal hermeneutic not widely known to modern scholars. The approach he adopted was not novel. It was actually customary. But in the generations immediately preceding Jesus, mainstream Judaism had rejected the traditional approach to law as "barbaric" and had embraced "civilized" legal methods modeled by the Greeks. Jesus stood apart

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Commentary (Grand Rapids: Eerdmans, 2001), 330.

[5] Richard B. Hays, "The Gospel of Matthew: Reconfigured Torah," *HTR* 61.1–2 (2005), 179.

[6] Ben Witherington III, *Torah Old and New: Exegesis, Intertextuality, and Hermeneutics* (Minneapolis: Fortress, 2018), 353–4.

from mainstream Judaism by his return to those traditional legal methods, advancing his legal hermeneutic of love.

II. THE "CIVILIZED" LAW PARADIGM OF THE GREEKS

In the centuries prior to Alexander the Great, new approaches to law emerged in Greece. The sixth to fourth centuries B.C. were a period of massive cultural foment in Greece. Many aspects of western culture can be traced to that era, including modern ideals of democracy and the rule of law. These innovations are best documented in Athens.[7]

In the wake of King Hippias (reigned 527–510 B.C.) whose reign was tyrannical, Athens devised a new approach to civic rule. Cleisthenes, commonly remembered as "the father of Athenian democracy," gave the city's royal powers to the public assembly (*ekklēsia*). In 508 B.C., the world's first known democracy was born.

More constitutional refinements followed, including the development of a legislative body (*nomothetai*) to draft laws. With no monarch to provide final authority, and to avoid the instability of rule by popular consent, it was decided that written laws would be given the seat of highest authority. In 403 B.C., the following rule was enacted, binding courts to judge based exclusively on written laws as written: "In no circumstance shall magistrates enforce a law which has not been inscribed. No decree, whether of the Council or Assembly, shall override a law."[8] Previously, Greece, like other ancient societies, had been an oral law society. But with that action in 403 B.C., the Athenian democracy became the world's first known "rule of law" society.

Other innovations also emerged in Greece during that era. Developments in philosophy, science, mathematics, theater, rhetoric, architecture, medicine, historiography, and other fields marked a flowering of culture in classical Greece. Something truly transformative was occurring.[9] But among all

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[7] Martin Ostwald, F*rom Popular Sovereignty to the Sovereignty of Law: Law, Society, and Politics in Fifth-Century Athens* (Berkley: University of California Press, 1986). Josiah Ober, *The Athenian Revolution: Essays on Ancient Greek Democracy and Political Theory* (Princeton: Princeton University Press, 1996). Christian Meier, *The Greek Discovery of Politics*, trans. David McLintock (Cambridge, MA.: Harvard University Press, 1990).

[8] Andocides, *Myst*. 1.87.

[9] The remarkable innovations of classical Greece may derive from the development of literacy. Greece invented the first completely phonetic alphabet in the eighth century b.c., borrowing the consonantal alphabet of the Phoenicians and creating the first vowels. Vowels perfected the alphabet and prompted a shift in the technology of memory from predominantly oral to written. As the first truly literate society, Greek mentality also shifted from the predominantly concrete ways of thinking corresponding to an oral society into the conceptual and abstract ways of thinking that emerge in a writing-based society. The numerous innovations in classical Greece each have their own histories, but their coincidence is likely due to the Greek perfection of the alphabet and the shift from an oral to a literate mentality. Robert K. Logan, *The Alphabet Effect: The Impact of the Phonetic Alphabet on the Development of Western Civilization* (New York: St. Martin's, 1986); Eric A. Havelock, *The Muse Learns to Write: Reflections on Orality and Literacy from Antiquity to the Present* (New Haven: Yale University Press, 1986); Walter J. Ong, *Orality and Literacy: The Technologizing of the Word* (New York: Routledge, 2002). On the impact of Greek literacy for the concept of

the innovations of the new Greek way of life (Hellenism), the rule of law was the centerpiece.

III. THE CIVILIZED/BARBARIAN WORLDVIEW

While Greece underwent a cultural renaissance in the west, the Persian Empire was expanding to the east. Mercantile exchanges and military tensions between these cultural centers catalyzed a new Greek worldview. The Greeks came to characterize the societies of the east as "barbarian" and their own as "civilized."[10] And once Hellenism devised the rule of law, that feature came to be the chief marker that distinguished a civilized society from the barbarians.

This sense of civilized superiority broke into full blaze after the Battle of Marathon. A massive Persian army had invaded Greece in 490 b.c. But despite overwhelming odds,[11] the Greeks utterly routed their invaders. This victory was regarded as proof that a civilized society is inherently superior to barbarians. The rule of law was perfected a few decades later in 403 b.c., and the Greeks anachronistically remembered Marathon as a demonstration that soldiers serving under the rule of law fight more nobly than vast hordes serving out of fear of a (stereotypically fickle) barbarian king.[12]

The Greeks had a fully formed "civilized versus barbarian" worldview by the time Alexander the Great began his conquests (334 b.c.). In fact, Alexander may have regarded himself as a liberator rather than a conqueror, bringing the light of civilized ways to the barbarian lands he occupied. He built Greek cities (*poleis*) in the lands he subjugated, giving them civilized institutions including Greek law. These cities were to serve both as homes for his occupying soldiers and as a light of civilization to the surrounding cultures,[13] catalyzing the processes known to historians as "Hellenization."

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law specifically, see Eric A. Havelock, *The Greek Concept of Justice: From Its Shadow in Homer to Its Substance in Plato* (Cambridge, Mass.: Harvard University Press, 1978).

[10] The terms "barbarian" and "civilized" (and their synonyms) are used in this discussion to represent the Greek mentality, but not to endorse the Greek way of classifying peoples and their cultures. The dichotomy was not Greek versus non-Greek in terms of nationality, but those who adopted the Greek way of life (civilization) versus barbarian ideals. Even ethnic Greeks could be barbarian, and ethnic non-Greeks could be "Greek" (i.e., civilized). Francis Hartog, *Memories of Odysseus: Frontier Tales from Ancient Greece*, trans. Janet Lloyd (Edinburgh: Edinburgh University Press, 2001), 79–106.

[11] Reports of the size of the Persian forces range between 18,000 and 100,000, with around 25,000 being the scholarly consensus. The Athenian force was probably closer to 10,000. J. F. Lazenby, *The Defence of Greece 490–479 BC* (Liverpool: Liverpool University Press, 1993), 46, 54.

[12] Simon Goldhill, "Battle Narrative and Politics in Aeschylus' Persae," in Harrison, ed., *Greeks and Barbarians*, 50–61. Thomas Harrison, *The Emptiness of Asia: Aeschylus' Persians and the History of the Fifth Century* (London: Duckworth, 2000). Thomas Harrison, ed., *Greeks and Barbarians* (Edinburgh: Edinburgh University Press, 2002), 3. J. M. Cook, *The Persian Empire* (London: Dent, 1983), 98–99. Edith Hall, *Inventing the Barbarian: Greek Self-Definition through Tragedy* (Oxford: Clarendon, 1989), 101. Herodotus, *Hist*. 7.101–4.

[13] A. H. M. Jones, *The Greek City from Alexander to Justinian* (Oxford: Clarendon, 1979), 4. P. M. Fraser, *Cities of Alexander the Great* (Oxford: Clarendon, 1996).

IV. THE IMPACT OF THE GREEK WORLDVIEW

As one might expect, the proud peoples of the East did not take kindly to the characterization of their ways as "barbarian." But it was hard to ignore the success of Greek mathematics, the prestige of the Greek gymnasium, and the effectiveness of the Greek military. It was also hard to ignore the privileged status of the Greek *poleis*. Period records reveal a fascinating pattern in the way conquered peoples adapted to the civilized/barbarian worldview imposed upon them.

Rather than disparage the civilized institutions Greece championed, conquered peoples looked for ways to demonstrate their own, native precursors to those innovations. In fact, it became popular for subjugated peoples to allege that the Greeks had learned key ideals from their own ancestors.

For example, the Phoenicians had developed the earliest consonantal script by 1000 B.C. [14] Drawing upon this history, the Phoenicians boasted that their own sages invented literacy, "from whom Greece learnt writing."[15] The Egyptians pointed to the ancient Pharaoh Sesostris, whose political reforms in Egypt were legendarily carried north by his conquests into Asia Minor. Sesostris, the Egyptians claimed, was the true inspiration of Greece's civilized institutions.[16] The Sidonians claimed that their ancient King Agenor descended from the Greek King Phronos of Argos. Thus, the Sidonians were actually cousins of the Greeks and rightful participants in the glories of Greek civilization.[17]

The pattern thus emerged: conquered societies defended their honor, not by rejecting the civilized/barbarian polemic but by asserting their own native stake in the civilized side of that dichotomy. Such efforts became the "universally recognized entrance ticket into European culture."[18] The Jews were also among those conquered societies compelled to reckon with the new Greek way of ranking peoples. And the Jews also developed a civilized polemic to defend their native ways.

V. THE JEWISH TORAH AND THE CIVILIZED/BARBARIAN WORLDVIEW

It would have been horrifying to Greek-ruled Jews to suppose that their God was a barbarian deity who taught Israel barbarian customs! Period writings reveal extensive efforts by the Jews of that era to demonstrate the innately civilized character of their ways. In particular, the Jews claimed that Moses was the true source from whom the Greeks learned their rule of

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[14] Joel M. Hoffman, *In the Beginning: A Short History of the Hebrew Language* (New York: New York University Press, 2004), 23.

[15] Martin Hengel, *Judaism and Hellenism*, 72 (citing Diogenes, *Lives* 7.30).

[16] Diodorus, *Hist*. 1.53.9; 54.1–58.5; 94.1–95.4.

[17] Hengel, *Judaism and Hellenism*, 72.

[18] "Das galt eben als Eintrittsbillet in die europäische Kultur." Elias Bickermann, "Makkabäerbucher: Buch I–III," in *PW*, 14.1.786.

law ideals. By developing this polemic, the Jews upheld the honor of their native law-book—but they also subjected it to Greek legal conventions.[19]

Josephus is representative of this polemic. The period writer Apion had alleged that the Jews were "the most witless of all barbarians, and . . . the only people who have contributed no useful invention to civilization." In answer, Josephus argued that Israel gave the world the cornerstone of civilized society: the rule of law. He wrote, "All this tirade will, I think, be clearly refuted, if it be shown that the precepts of our laws, punctiliously practiced in our lives, are in direct conflict with the above description . . . We are the most law-abiding of all nations . . . [and] the first to introduce [laws]."[20] He continued,

> Now, I maintain that our legislator is the most ancient of all legislators in the records of the whole world . . . Why, the very word "law" was unknown in ancient Greece.[21] Witness Homer, who nowhere employs it in his day; the masses were governed by maxims not clearly defined and by the orders of royalty, and continued long afterwards the use of unwritten customs, many of which were from time to time altered to suit particular circumstances. On the other hand, our legislator [Moses]..., after framing a code to embrace the whole conduct of their [Israel's] life, induced them to accept it, and secured, on the firmest footing, its observance for all time.[22]

There are several points to note in this passage. First, Josephus (writing contemporaneously with New Testament writers) was still cognizant of the contest between civilized and barbarian ways of "doing law." Memories of the older law hermeneutic persisted. And he shows detailed understanding of those older legal methods. He calls them "not clearly defined," subject to "the orders of royalty," dependent upon "unwritten customs," and prone to "alter[ation] to suit particular circumstances." His characterizations are pejorative, but they indicate memories of traditional ancient Near Eastern approaches to law. But according to Josephus, Israel was never party to those barbarous ways.

What Josephus fails to demonstrate, however, is whether the Mosaic law writings were actually used as legislation, as required of Athenian law writings after their earlier quoted 403 B.C. decree. There were many ancient law collections, some of them even older than that of Moses.[23] The

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[19] LeFebvre, *Collections*, 190–240.

[20] Josephus, *Ag. Ap*. 2.14.148–15.152.

[21] "The word no´moj appears first in Hesiod; older terms were qe´mistej (Homer) and qe´smoi, 'ordinances.'" H. St. J. Thackeray, trans., *Josephus, Volume 1* (Loeb Classical Library; London: Heinemann, 1958), 355 note a. Cf., Henry S. Maine, *Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas,* The World Classics (London: Oxford University Press, 1950), 3–4.

[22] Josephus, *Ag. Ap*. 2.15.154–56.

[23] For example: the Laws of Ur-Namma from c. 2100 B.C. Ur; the Laws of Lipit-Ishtar from c. 1930 B.C. Isin; and the Laws of Hammurabi from c. 1750 B.C. Babylon.

presence of written law collections does not itself indicate their function as legislation. But Josephus represents the characteristic attitude of many Eastern apologists of the era, ascribing Greek civilized ideals (in this case, the rule of law itself) to his own native heritage.

The trend was likely irresistible. The alternative would be to admit that Israel's God was a barbarian deity and that the Law he gave Moses shared in the barbarian heritage of their neighbors. By defending the Torah as a civilized law code, the Jews defended the honor of their God. But they also subjected the Law to a Greek legal hermeneutic.[24]

The New Testament bears witness that literalistic (also called "legalistic") interpretations of the Mosaic Law were common by Jesus's day. Such legalistic precision, learned from the Greeks as the civilized way to administer law, came to typify rabbinic hermeneutics.[25] But Jesus opposed the legalism of mainstream Jewish leaders.

According to Jesus, these scribal methods undermined the true demands of the Law. He did not set himself in opposition to the Law but to its predominant interpretations. In his Sermon on the Mount, Jesus exhorted his disciples, "Do not think that I have come to abolish the Law or the Prophets; I have not come to abolish them but to fulfill them . . . For I tell you, unless your righteousness exceeds that of the scribes and Pharisees, you will never enter the kingdom of heaven" (Matt 5:17–20). He then proceeded to teach the disciples his own interpretation of various laws in contrast to what "you have heard" (vv. 21, 27, 31, 33, 38, 43) from other teachers. In doing so, Jesus was reasserting the traditional (allegedly "barbarian") way of reading the Law.

VI. LAW-WRITING IN THE ANCIENT NEAR EAST

Until recently, little was known about the function of law writings in the ancient Near East. Most of what has been recorded about "barbarian law" was written by the Greeks who naturally disdained it. But there are modest insights that can be drawn from Greek writers.

For example, in his praise for civilized Greek institutions, Aristotle occasionally made reference to the barbarian traditions they eclipsed. In his *Politics*, Aristotle wrote (dismissively),

> [In barbarian lands,] laws enunciate only general principles but do not give directions for dealing with circumstances as they arise; so that in an art (*technē*) of any kind it is foolish to govern procedure by written rules (and indeed in Egypt, physicians have the right

[24] Yaacov Shavit, *Athens in Jerusalem: Classical Antiquity and Hellenism in the Making of the Modern Secular Jew*, trans., C. Naor and N. Werner (London: Littman Library of Jewish Civilization, 1997), 436.

[25] David Instone-Brewer, *Techniques and Assumptions in Jewish Exegesis before 70 CE*, TSAJ 30 (Tübingen: J.C.B. Mohr, 1992). Alexander Samely, *Rabbinic Interpretation of Scripture in the Mishnah* (Oxford: Oxford University Press, 2002). Note, the term "legalistic" is used here for its technical meaning, "to interpret a text in a legal manner, after the manner of (Western) law." The popular, pejorative use of the term is not intended here.

> to alter their prescription after four days, although if one of them alters it before, he does so at his own risk); it is clear therefore that [in those lands] government according to written rules, that is laws, is not [deemed by them to be] the best, for the same reason.[26]

According to Aristotle, other nations viewed law as a *technē*. Usually translated as "art," a *technē* is a trade or craft that may follow procedures but depends significantly on the practitioner's intuition.[27] Aristotle points to period medical practice to illustrate. Egyptians would have considered it "foolish" to bind a doctor with pre-determined rules how to treat medical cases. They trained doctors with typical paradigms of symptoms and treatments, but doctors were not bound by those training paradigms. Even the doctor's own written prescription for a case might be changed if the initial attempt showed no results after several days.

Archeologists have uncovered numerous medical treatises from the Mesopotamian world. At least in those lands, such documents list medical cases, their symptoms, and their treatments. Ancient doctors would consult the medical treatises for wisdom, but their treatment options were not strictly controlled by what was written. According to Aristotle, the barbarians treated law writings the same way.

Aristotle does not commend this barbarian legal method. In his view, such an approach leaves too much power to the whims of kings and judges. Barbarian societies were corrupt precisely because justice was treated as a *technē*, with too much latitude left to a judge's intuition. Therefore, Aristotle supported Greek legislative ideals which bound judges to implement what was written, only what was written, strictly as it was written. In making his argument, Aristotle leaves us an intriguing description of barbarian law. It is too short and lacks too much detail to be of much help on its own. But further examination of ancient Near Eastern law has become possible through archaeological finds of the past century.

Twentieth-century excavations have uncovered numerous ancient law collections and, in particular, law practice documents. Both law collections and law practice documents are insightful, but it is the analysis of both together that has been especially fruitful. Let me introduce the Ancient Near Eastern law collections first.

VII. THE ANE LAW COLLECTIONS

The best-known cuneiform law collection is the Law of Hammurabi (from Babylon, c. 1750 B.C.). The original stele was uncovered in excavations of Susa in 1901. Discoveries of more law collections followed: the Laws of

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[26] Aristotle, *Politics* 3.10.4. Compare this to Josephus's depiction (*Ag. Ap.* 2.15.154–56), quoted earlier in the paper.

[27] Chryssippos (c. 279–206 b.c.) defined *technē* as "a skill proceeding methodically by the aid of mental images [i.e., intuition]." Andrew Stewart, *One Hundred Greek Sculptors, Their Careers and Extant Works* (ebook; perseus.tufts.edu), section 1.1.1.

Ur-Namma (Ur, c. 2100 B.C.), the Laws of Lipit-Ishtar (Isin, c. 1930 B.C.), the Laws of Eshnunna (Eshnunna, c. 1770 B.C.), and others.[28]

Close study of these documents seems consistent with Aristotle's characterization. At least with regard to their form, these ancient law writings are comparable to, and of the same genre as, the medical and omen treatises of the period. Raymond Westbrook explains,

> Research has shown that these codes are, in origin at least, scientific treatises on the law. They derive from the realm of Mesopotamian science, where similar treatises are to be found on subjects such as divination and on medicine . . . The Mesopotamian scientific treatises employ an approach that is entirely foreign to us. In appearance they are lists of examples, each in the form of a hypothetical set of circumstances and their consequence: "if the circumstances are X, the prediction/disease/judgment is Y."[29]

Based in part on genre, Westbrook concludes, "The law codes are descriptive and not prescriptive. They are not legislation in the modern sense . . . They are essentially a record of the common law, that is the traditional corpus of unwritten law built up mostly through precedents."[30]

The legislative approach to law writing invented by the Greeks is abstract and prescriptive. Legislation identifies abstract principles of justice and creates formulas to prescribe the application of those principles to anticipated circumstances. But these ancient law treatises narrate the wisdom of typical, concrete situations, explore variations on a given situation, and describe justice as learned from those cases. The result is a statement of law that functions more like a proverb than a modern statute. It describes a paradigm of justice, but it does not prescribe how later judges must rule. (We will look more closely at examples later.)

The descriptive nature of these law writings is suggested by their formal similarities to the other Mesopotamian treatises. But another important source of evidence must be recognized: law practice documents.

VIII. LAW PRACTICE DOCUMENTS

The archaeologist's spade has unearthed thousands of law practice documents from the same Mesopotamian societies as produced the law collections. Practice documents include financial contracts, land transfer agreements, court rulings, and so forth. Practice documents reveal how law was actually applied in specific, real-life situations.

Remarkably, the rulings in Mesopotamian practice documents do not match the stipulations of the law collections. In fact, law as practiced in those societies often "contradicted" the specific penalties and fines indicated

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[28] Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, SBLWAWS 6 (Atlanta: Scholars Press, 1997).

[29] Raymond Westbrook, *Studies in Biblical and Cuneiform Law*, CahRB 26 (Paris: Gabalda, 1988), 2–3.

[30] Westbrook, *Studies*, 5.

in the law collections.[31] A few such contradictions might indicate careless judges. But the pattern is so widespread, scholars of cuneiform law have been compelled to abandon legislative assumptions for the ancient law writings. Assyriologists have found it necessary to explore afresh how the law writings were used.

In the early 1960s, F. R. Kraus and J. J. Finkelstein published seminal studies that introduced new understandings of cuneiform law.[32] Building on their work, other Assyriologists further engaged in the development of new models.[33] It has since become generally recognized that kings and judges in the ancient Near East ruled by their closeness to the deity and their incarnate insight into divine justice, not by consulting books.[34] When laws were written down, these documents were created for other purposes, not as instruments for enforcement.

VIII. USES OF LAW WRITINGS

Sometimes laws were inscribed on monuments to extol a king's justice as was the case with the Laws of Hammurabi. Carved onto an eight-foot column with the king's image at the top, Hammurabi's laws were set up in the temple courtyard "to lay before the public, posterity, and future kings, and, above all, the gods, evidence of the king's execution of his divinely ordained mandate: to have been 'the Faithful Shepherd' and the *šăr mīšarim* [prince of righteousness]."[35] That stele was set up at the place of prayer, not

[31] Samuel A. Meier, "Hammurabi," *ABD* 3.41. G. R. Driver and J. C. Miles, *The Babylonian Laws* (Oxford: Clarendon, 1952), 1.53, 401.

[32] F. R. Kraus, "Ein zentrales Problem des altmesopotamischen Rechtes: Was ist der Codex Hammu-rabi?," *Aspects du contact suméro-akkadien*, *Geneva* N.S. 8 (1960), 283–96. J. J. Finkelstein, "Ammi-S[underdot]aduqa's Edict and the Babylonian 'Law Codes'," *JCS* 15 (1961), 91–104.

[33] E.g., Jean Bottéro, *Mesopotamia: Writing, Reasoning, and the Gods*, Zainab Bahrani and Marc van de Mieroop, trans. (London: University of Chicago, 1992), 169–79. Raymond Westbrook, "Biblical and Cuneiform Law Codes," *RB* 92.2 (1985): 247–64; "Codification and Canonization," in *La codification des lois dans l'antiquité: actes du colloque de Strasbourg 27–29 novembre 1997*, ed. Edmond Lévy, *Travaux du centre de recherche sur le Proche-Orient et la Grèce antiques* 16 (Paris: De Boccard), 37–41; "The Character of Ancient Near Eastern Law" in *A History of Ancient Near Eastern Law*, 2 vols, ed. Raymond Westbrook (Leiden: Brill, 2003), esp. 1.12–24. Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, SBLWAW 6 (Atlanta: Scholars Press, 1995), 4–7; "The Law Collection of King Hammurabi: Toward an Understanding of Codification and Text," in Lévy, *Codification*, 9–31.

[34] Dale Patrick, *Old Testament Law* (London: SCM Press, 1985), 189. Bernard S. Jackson, "'Law' and 'Justice' in the Bible," *JJS* 49 (1998), 225–26; *Studies*, 90–92. LeFebvre, *Collections*, 40–47. There is actually surprisingly little evidence for any judicial use of law writings. To date, only one discovery supports the theory that judges may have sometimes consulted written law collections. Fourteen tablets of the Middle Assyrian Laws were found in a gatehouse identified as the "Gate of Shamash" (being the Babylonian god of justice). The find appears to indicate something like a "legal library" for judges. But this use seems to have been rare. E. F. Weidener, "Das Alter der mittelassyrischen Gesetztexte," *AfO* 12 (1937), 46–54. Cf., Westbrook, *Studies*, 1–8; Roth, *Law Collections*, 5–7.)

[35] Finkelstein, "Ammi-S[underdot]aduqa," 103. Cf., Anne Fitzpatrick-McKinley, *The Transformation of Torah from Scribal Advice to Law*, JSOTSup 287 (Sheffield: Sheffield

the place of justice. In trials, judges ruled by unwritten custom law. Written law sometimes served as a form of royal propaganda.

The most common reason for writing laws, however, appears to have been for scribal education. "We are dealing here with a *literary tradition*," Meir Malul explains, "rather than with a *practical legal tradition*."[36] Compilations of model laws were written down as part of the curriculum of young scholars training for high office. "The Mesopotamian educational system . . . ," explains David Carr, "focused on elite literacy—the training of youths to function in specific administrative and ritual capacities . . . The educational system focused on the creation of an elite class of literate, encultured people who then served as the key players in many cultural interactions: political, religious, and so on."[37] Collections of laws would be learned and copied by these scholars as part of their education for various positions of service within the bureaucracy. These scholars would not be expected to use those laws in courts of justice, as most of them would never serve in that capacity. But these exercises trained their understanding of justice as expected by their gods and embodied by their king.

Confronted with these realities from Israel's neighbors, Torah scholars have been compelled to reconsider what functions the Hebrew law writings served in Israel.

IX. LAW-WRITING IN ANCIENT ISRAEL

Many of the same features that characterize the cuneiform law collections are also found in the biblical law collections. The Hebrew laws are similar to the cuneiform laws in form. They reflect similar content, and in some points even appear to draw from or quote certain cuneiform laws.[38] And the Hebrew law writings exhibit the same idiosyncrasies: incompleteness of content; differences between laws that, if read as legislation, would require us to call them contradictory; and practice documents that vary from the penalties stated in the law collections. Drawing upon the insights

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Academic Press, 1999), 143–44.

[36] Meir Malul, *The Comparative Method in Ancient Near Eastern and Biblical Legal Studies*, AOAT 227 (Kevelaer: Butzon & Bercker, 1990), 129. Emphasis original. Cf., Fitzpatrick-McKinley, *Transformation of Torah*, 91–92, 144–45. John Van Seters, *A Law Book for the Diapsora: Revision in the Study of the Covenant Code* (Oxford: Oxford University Press, 2003), 110–11, 121–22.

[37] David M. Carr, *Writing on the Tablet of the Heart: Origins of Scripture and Literature* (Oxford: Oxford University Press, 2005), 20.

[38] The similarities in content are strong enough that David Wright is able to argue, "The Covenant Code [Exod. 21:1–22:16] drew primarily and directly upon the Laws of Hammurabi for its entire composition . . . *Every law or topic is based on a stimulus in LH*, save four cases." David P. Wright, *Inventing God's Law: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* (Oxford: Oxford University Press, 2009), 346, emphasis original. Similarities at the linguistic level are often close enough that Meir Malul is able to identify a place where the Hebrew scribe seems to have copied an Akkadian spelling into Exodus 21:35. Malul, *Comparative Method*, 140–43. Regardless of the validity of these arguments, they illustrate how similar the law traditions are in content.

of Assyriology, biblical scholars have been able to rethink the nature of the Bible's law writings.[39]

Despite Josephus's ardent claims to the contrary, ancient Israel did not invent the rule of law and teach legislative conventions to the Greeks. The Hebrew law writings were typical ancient Near Eastern law collections, compiled to extol the reign of God and for general education.[40] They were not drafted for prescriptive legalistic use.

X. LEARNING TO READ "WISDOM LAWS"

Law writings in the ancient Near East were descriptive, not prescriptive. They were read similarly to proverbs and other wisdom texts. Law paradigms capture difficult examples—some realistic and some hypothetical—to exercise the student's sense of justice. They are to be read as "wisdom laws," a term coined by Bernard Jackson.[41] Rather than emphasizing the verbal precision of the laws (i.e., their "literal" meaning) as expected under the rule of law, wisdom laws are interpreted "*narratively*."

Each law is an abstracted story. And each law plays out its hypothetical story in various ways to tease out a principle of justice for relevance far beyond the limits of what is strictly stated. A few examples will illustrate.

Jackson points to the law of the intruder in Exodus 22:2–3: "If a thief is found breaking in and is struck so that he dies, there shall be no bloodguilt for him, but if the sun has risen on him, there shall be bloodguilt for him." Jackson explains, "The overall effect of this paragraph is that a thief intruding during the night may lawfully be killed, while one intruding by day may not."[42] However, the first line of the provision contains no express notice regarding the time of day when self-defense is warranted. It is only in the second line that there is mention of the sun shining at the

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[39] Shalom M. Paul, *Studies in the Book of the Covenant in the Light of Cuneiform and Biblical Law*, VTSup 18 (Leiden: Brill, 1970). Dale Patrick, Old Testament Law (London: SCM Press, 1985). Westbrook, *Studies in Biblical and Cuneiform Law; Law from the Tigris to the Tiber: The Writings of Raymond Westbrook*, 2 vols., Bruce Wells and Rachel Magdalene, eds. (Winona Lake, IN.: Eisenbrauns, 2009). Dale Patrick, *Old Testament Law. Bernard S. Jackson, Studies in the Semiotics of Biblical Law*, JSOTSup 314 (Sheffield: Sheffield Academic Press, 2000); *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1–22:16* (Oxford: Oxford University Press, 2006). Christine Hayes, *What's Divine about Divine Law? Early Perspectives* (Princeton: Princeton University Press, 2015). Wright, *Inventing God's Law*. Anne Fitzpatrick-McKinley, *The Transformation of Torah from Scribal Advice to Law*< JSOTSup 287 (Sheffield: Sheffield Academic Press, 1999). Joshua Berman, *Inconsistency in Torah: Ancient Literary Convention and the Limits of Source Criticism* (Oxford: Oxford University Press,2017). Michael LeFebvre, *Collections*.

[40] In fact, laws in the Bible are usually addressed directly to the people and not to judges. Bernard Jackson observes, "A significant number of the individual rules of the 'Covenant Code' may be described as 'self-executing laws'—rules so formulated (through the use of evidentiary tests and dispute-resolving mechanisms that are easy to administer, sometimes because of their somewhat arbitrary character) that the need to have recourse to third-party adjudication [i.e., judges] seems to be avoided altogether." Jackson, *Semiotics*, 82.

[41] Jackson, *Semiotics*, 71.

[42] Jackson, *Wisdom-Laws*, 26.

time of the second theft. Read literalistically, this indicates a serious lack of information in the first line. If this law was drafted as legislation, it ought to state something to the effect, "If a thief is found breaking in *at night* and is struck so that he dies, there shall be no bloodguilt for him; but *if the sun has risen* when the theft occurs, there shall be bloodguilt." Because the fundamental distinction at the center of this law is the difference in timing, that point of timing ought to be stated if the text is designed for legalistic interpretation.

However, when read narratively, the audience brings unspoken stereotypes to the story. Jackson explains, "If . . . we pose the question of meaning in the (narrative) form: 'what typical situations do the words of this rule evoke?', then we are entitled to take into account the typical [image of] thieving," namely, that thieves stereotypically break in at night.[43] The timing of the violation is part of the culturally assumed narrative background. Since nighttime is the typical setting for thievery (cf., Job 24:13–16), the law does not need to state it. But because daytime is not the typical setting for thievery, the law states that detail when it is important. The point of this first example is to illustrate the presence of narrative assumptions rather than legalistic precision in the way biblical laws are written.

Jackson provides a second example from Exodus 21:35: "When one man's ox butts another's so that it dies, then they shall sell the live ox and share its price, and the dead beast also they shall share." This law has stirred much controversy through the ages. "As has been widely observed from the time of the earliest rabbinic commentaries, an equal division of the loss will result from the *literal* application of the ancient procedure . . . only if the two oxen had been of equal value."[44] Read as a narrative, where one imagines two identical oxen, the principle is clear. But it would be extremely rare actually to have two oxen of identical size, age, coloring, strength, and thus of equal value. If this law were to be applied literalistically, the owner of the smaller ox would invariably turn a profit from an ox goring accident, and the owner of the larger ox would lose. But the clear intention of the law is to equally share the gains and losses of the incident. Read literally, the law is simplistic and naive and does not work. But read narratively, the law is simple, elegant, and makes its point effectively.

Having opened up the concept of "narrative" readings of law with these simple examples, let me next introduce a more elaborate example from Deuteronomy 22:22–29:

> If a man is found lying with the wife of another man, both of them shall die, the man who lay with the woman, and the woman. So you shall purge the evil from Israel.
>
> If there is a betrothed virgin, and a man meets her in the city and lies with her, then you shall bring them both out to the gate of that city, and you shall stone them to death with stones, the young

[43] Jackson, *Wisdom-Laws*, 26.
[44] Jackson, *Wisdom-Laws*, 27.

> woman because she did not cry for help though she was in the city, and the man because he violated his neighbor's wife. So you shall purge the evil from your midst.
>
> But if in the open country a man meets a young woman who is betrothed, and the man seizes her and lies with her, then only the man who lay with her shall die. But you shall do nothing to the young woman; she has committed no offense punishable by death. For this case is like that of a man attacking and murdering his neighbor, because he met her in the open country, and though the betrothed young woman cried for help there was no one to rescue her.
>
> If a man meets a virgin who is not betrothed, and seizes her and lies with her, and they are found, then the man who lay with her shall give to the father of the young woman fifty shekels of silver, and she shall be his wife, because he has violated her. He may not divorce her all his days.

Let me analyze this Deuteronomic law from four dimensions: its literary form, its narrative features, its comparison to parallel adultery laws, and its relationship to practice documents. The wisdom law paradigm explains idiosyncrasies on all four of these levels that are problematic for the legislative paradigm.

First, note the literary form of this adultery law. This passage is lengthy, but not as lengthy as required if every possible scenario was covered. The passage offers an efficient minimum of information that enables interpolation where there are gaps. The opening paradigm introduces a man who violates a married woman. Their adultery is narratively presumed (though not stated) to be consensual. From that initial paradigm, details are selectively varied. What if the woman is betrothed but not married? What if she is not consenting? And so on. Westbrook explains the technique, which is common in ancient treatises:

> This technique . . . allows a certain economy in variation: if the variation in circumstances is A,B and the variation in grade 1,2,3, there is no need to give all the possible examples, i.e. A1, A2, A3, B1, B2, B3. Instead, the Code selects for example A2, B1, B3, leaving [t]he reader to fill in the gaps by logical deduction.[45]

The following chart illustrates this technique at work in the Deuteronomy passage just cited:

[45] Westbrook, *Studies*, 4.

	A The Woman's Status (1=wife, 2=betrothed, 3=single)	B The Location (1=city; 2=countryside)	C The Woman's Response (1=silent; 2=cries out)	The Penalty
v22	wife (1)			both die
vv23-24	betrothed (2)	city (1)	silent (1)	both die
vv25-27	betrothed (2)	countryside (2)	cries out (2)	he dies
vv28-29	single (3)			bride price and marry

As visualized in the above table, this law provides penalty guidance for just four scenarios:

A1

A2-B1-C1

A2-B2-C2

A3

Through these variations, every circumstance (A1, A2, A3, B1, B2, C1, C2) is addressed, but not every possible combination (A1-B1-C1, A1-B2-C1, A1- B1-C2, A1-B2-C2, A2-B1-C1, etc.) The student is left to interpolate other combinations. This form is elegant as a law paradigm, but it is simplistic for legislation.

Second, the narrative reading principle is evident in this law. The law presumes that a woman who cries out in the countryside will not be heard by anyone. Considered literally, it is possible a passerby might hear her cry in the countryside and come to her aid there. It is also assumed for the sake of the storyline, that a cry in the city would be heard. But it is possible an urban cry would go unheard. Indeed, the passage repeatedly invokes the word picture of the woman crying out to indicate her resistance. But it is also possible a woman would remain silent under duress, but nonetheless be non-consenting. Crying out and the location of the woman's cry are not literal determiners. Those are narrative indicators for the real concern, which is whether the woman is consenting or resisting. What this law captures is the need to distinguish between consensual adultery and non-consensual rape, and to punish accordingly.

Furthermore, the entire scenario is built upon the narrative assumption that men perpetrate sexual violence against women. That is the most common direction of such violence. But woman-against-man, man-against-man, and woman-against-woman rape are also possibilities.[46] Read

[46] E.g., Gen 19:5. The tendency to interpret gendered laws as limiting their provisions to the protection of only the stated gender is especially problematic in readings of the Deuteronomic law on divorce (Deut 24:1–4). That law is written within the typical format of a man divorcing his wife, and it has frequently been interpreted to mean that only men

legalistically, the Deuteronomic adultery law is deficient for its exclusive focus on man-against-woman violence. But read narratively, the typical norm is sufficient to teach the principle. There are several features of this passage that require a narrative reading strategy.

Comparing this adultery law with parallels elsewhere in the Torah further indicates its didactic, non-legislative character. Exodus 22:16–17 presents another adultery law with different outcomes, "If a man seduces a virgin who is not betrothed and lies with her, he shall give the bride-price for her and make her his wife. If her father utterly refuses to give her to him, he shall pay money equal to the bride-price for virgins." This Exodus law mirrors the provisions of the final line in the Deuteronomy law, but it adds a further provision not mentioned in Deuteronomy. The woman and her father have the right to refuse marriage to the man while nonetheless demanding he pay the full bride price. Modern scholars often treat such inconsistencies as indicating different legal traditions awkwardly compiled into the Torah. That conclusion is only compelling when the laws are read with legislative expectations. When read paradigmatically however, it is no surprise that certain statements of the law emphasize certain implications without thereby intending that everything has been said about the topic. No one statement of law needs to be read as the comprehensive and exclusive answer to the issue addressed. A variety of perspectives from different laws framed in different contexts are important for a good education in social justice, and that is precisely what the Torah offers.[47]

A fourth analytical dimension to consider is comparison between the Deuteronomy law on adultery and how adultery was actually handled in the rest of the Hebrew Bible (practice documents). The Deuteronomy law appoints the death penalty for violators.[48] Yet remarkably, the death penalty was never actually applied in any recorded example of adultery in the rest of the Old Testament (including narratives, prophetic references, and proverbs). Henry McKeating surveyed the evidence and concluded, "We have no instance of the biblical law [i.e., its stated penalties] on adultery actually being put into effect . . . Public humiliation (and presumably divorce), was sometimes practiced . . . The wisdom writings imply that the main sanctions to be feared were loss of reputation and the wrath of the offended husband."[49]

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had access to divorce in ancient Israel and that women were compelled to bear any abuses with no recourse. However, Exodus 21:10–11 indicates that women did have rights to release from abusive marriages. The Deuteronomic law on divorce should be read as a paradigm, not as a legalistic norm.

[47] For an extensive study of perceived inconsistencies in Torah: Joshua Berman, *Inconsistency in the Torah: Ancient Literary Convention and the Limits of Source Criticism* (Oxford: Oxford University Press, 2017), 107–91.

[48] Note Moshe Greenberg's discussion of the absolute necessity of the death penalty in cases of adultery. Moshe Greenberg, "Some Postulates of Biblical Criminal Law," in M. Haran, ed., *Yehezkel Kaufmann Jubilee Volume* (Jerusalem: Magnes Press, 1960), 12–13.

[49] Henry McKeating, "Sanctions Against Adultery in Ancient Israelite Society, with Some Reflections on Methodology in the Study of Old Testament Ethics," *JSOT* 11 (1979), 59–62. Judah's intention to burn Tamar (Gen 38:24) comes closest to the penalty stated in

Modern scholars typically conclude from such inconsistencies that the Law was a late composition, unknown in the histories and prophetic writings where adultery was addressed differently. But such radical conclusions are no longer compelling, now that the cuneiform evidence has enabled us to recover a model that makes sense of these complexities. We are now learning to read the Torah as wisdom laws. Those educated in the Law's wisdom remain fully responsible to apply that wisdom to each specific case at hand, sometimes even taking a crime that the Law shows is worthy of death and treating it with a lighter penalty for the sake of redemption. Adultery, considered stereotypically, is serious enough to deserve a death penalty. However, in every instance where adultery actually occurs in the Bible, mitigating circumstances led wronged spouses and judges to pursue lesser penalties. That is not a neglect of the Law, but a wholesome application of it when read through an ancient Near Eastern legal hermeneutic.

The legislative hermeneutic fails to account for the evidence we find in cuneiform and biblical law. However, recovery of the wisdom law hermeneutic opens up fruitful avenues for reading law in the Hebrew Bible. But the most significant implications of these discoveries may be for our understanding of Jesus and his Apostles in the New Testament.

XII. JESUS AND THE LAW OF LOVE

Jesus's teachings radically overturned the demands of the Law taught by the Jewish leaders. But Jesus had not come "to abolish the Law or the Prophets." He came "to fulfill them" (Matt 5:17). In his Sermon on the Mount (Matt 5:1–7:29), Jesus modeled how to read each law for the principle at its heart rather than getting tangled up in the legalistic implications of its details. By taking this approach, Jesus was restoring Israel's traditional, native method of law.

Jesus taught, "You have heard that it was said to those of old, 'You shall not murder, and whoever murders will be liable to judgment.' But I say to you that everyone who is angry with his brother will be liable to judgment . . . So if you are offering your gift at the altar and there remember that your brother has something against you, leave your gift there before the altar and go. First be reconciled to your brother . . ." (Matt 5:2–26 quoting Exod 20:13). This interpretation of the sixth commandment goes beyond an analysis of its stated terms. Jesus expounds the heart of the law in the way a wisdom teacher expands upon a proverb, not as a lawyer construes a statute. Jesus draws out the story inherent within the commandment, right down to the animosity and broken relationship presupposed by, though never stated in, the command. Furthermore, Jesus depends upon his own intimate relationship with God as the basis of his interpretation's authority, as would be expected from an ancient "barbarian" king.

In another example, Jesus provided legal instruction on divorce. "It was also said, 'Whoever divorces his wife, let him give her a certificate of

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Deuteronomy, although that occurred before the Law was given and, in fact, neither party to that adultery was actually executed.

divorce.' But I say to you that everyone who divorces his wife, except on the ground of sexual immorality, makes her commit adultery, and whoever marries a divorced woman commits adultery." (Matt 5:31–32 quoting Deut 24:1–4; cf., 19:3–12). Other scribes debated the precise phrases contained in the quoted paradigm to deduce allowable reasons for divorces.[50] But Jesus drew his exhortations on divorce from the commandment against adultery (Exod 20:14; Matt 5:32) and the Edenic institution of marriage (Gen 2:18–24; Matt 19:5–6). Like a sage rather than a lawyer, Jesus constructed his teachings about divorce from insights into the meaning of marriage, rather than following the legalistic methods of the scribes.

Jesus's law hermeneutic was not new. In fact, it was the legalistic methods of the scribes that were novel. Jesus continued a traditional approach, applying the same hermeneutic to the Law one would practice with the wisdom literature. The book of Proverbs contains powerful paradigms of wisdom, without completely defining or exhaustively containing wisdom. The Song of Solomon contains vivid poetry about love, but to recast that book as a prescriptive manual on lovemaking would lead to absurdities. Likewise, Jesus recovered the traditional approach to the Law that freed it from the absurdities created by rabbinic adherence to the legislative paradigm first introduced by the Greeks. And by teaching his disciples how to read the Law wisely, Jesus restored the ministry of love the Law was given to foster.

"A new (or 'renewed,' *kainos*)[51] commandment I give to you," Jesus told his disciples, "that you love one another: just as I have loved you, you also are to love one another. By this all people will know that you are my disciples, if you have love for one another" (John 13:34–35; cf., 15:10–12). Love is the distinctive trait by which the righteousness of God set forth in the Law becomes manifest in us. The purpose of the Law is to teach us, through carefully crafted paradigms and thought exercises, how to love the Lord and to love our neighbor.[52]

Much work remains to be done. These insights into the hermeneutics of ancient law writings are new enough, little has yet been done to explore their implications for reading the Old Testament let alone for engaging the use of the Law in the New Testament. But it is in New Testament studies where most fruitful implications of these insights may appear, as scholars apply these insights to the legal debates between Jesus, Paul, and the other apostles on the one hand and the scribes, pharisees, and so-called "Judaizers" on the other.

By restoring the Law's proper hermeneutic, and by taking up the traditional role of the king who embodies and accomplishes its righteous order, Jesus teaches us to re-engage with the Torah as a textbook on love.

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[50] *m. Git.* 9:10.

[51] John understood Jesus's "new" commandment to be a renewal of the "old" commandment. "Beloved, I am writing you no new commandment, but an old commandment that you had from the beginning . . . At the same time, it is a new commandment that I am writing to you." (1 John 2:7.10).

[52] Dale Patrick, *Old Testament Law* (London: SCM Press, 1985), 207–18.

Rather than ignoring the Old Testament Law or lifting singular commands from it to make moral judgments on others, Jesus shows us the importance of reading, studying, and preaching from the riches of the Law for paradigms that shape our hearts in love. In those opening books of the Bible, we possess a detailed resource to teach us mercy, justice, and the pursuit of the truly good life—that is a life of love for God and love for our neighbors.

> "You shall love the Lord your God with all your heart and with all your soul and with all your mind. This is the great and first commandment. And a second is like it: You shall love your neighbor as yourself. On these two commandments depend all the Law and the Prophets." (Matt 22:37–40)