Anselm Hagedorn
Georg-August-Universität Göttingen
Göttingen, Germany

“[S]ome points of the comparison of ancient Near Eastern and biblical law” (ix), as well as an interest in the comparative method in biblical studies, provided the starting point for Jackson’s Sydney dissertation. The result is a study that once again confirms the view that the thesis of a “common law” in the ancient Near East does not adequately explain the similarities and differences existing between the various Near Eastern law codes.1 As far as his methodology is concerned, Jackson neglects the complex case of a legal comparison between ancient Near Eastern law codes and the laws found in the Bible.2 Instead, he wants to focus on the collections prior to the first millennium B.C.E. He occasionally

1. R. Westbrook’s theory is most succinctly expressed in “The Trial Scene in the Iliad,” HSCP 94 (1992): 53–77, repr. in The Shared Tradition (vol. 1 of Law from the Tigris to the Tiber: The Writings of Raymond Westbrook; ed. B. Wells and R. Magdalene; Winona Lake, Ind.: Eisenbrauns 2009), 303–27. Here he states: “The societies of the ancient Near East for which we have written records are diverse in language and culture, but they appear to some considerable extent to have a common legal tradition” (305).
returns to the biblical material, though this is not really necessary, as there were no biblical laws prior to the first millennium. Nevertheless, his results could have implications for the study of biblical law. As such, Jackson’s study is a welcome addition to the field on ancient law, as it rejects models that argue for the special character of the biblical laws, while at the same time maintaining the unity of the laws from the ancient Near East. In contrast to such an approach, Jackson first wants to interpret individual legal stipulations within the context of their sociocultural framework before he utilizes them for a comparative enterprise. This method will most likely be acceptable to many scholars working in the field of ancient law. The way that Jackson proceeds, however, raises a number of questions and problems. As part of his rejection of any form of Gattungsforschung, Jackson ignores any text-linguistic aspects of the analysis of legal stipulations. He is undoubtedly right to argue against scholars such as S. Talmon, who proposed that only texts of the same Gattung and the same Sitz im Leben should be compared, but Jackson overlooks the fact that any investigation of the intention of a legal clause needs to take its linguistic form into account. Jackson’s attempt to construct an opposition of genre and meaning is difficult to follow, and one wonders why he does not address the question how legal clauses with identical content can be formulated differently. A similar problem arises from Jackson’s endeavor to separate the literary context of a legal clause from the social one. I wonder how one should be able to access the social context of ancient laws if not via the literature.

After the introduction, Jackson provides a short overview of the material utilized in his study. Next to the ancient codices (Hammurabi, Middle Assyrian Laws, Hittite Laws, etc.), he also includes various edicts (Ammisaduqa, Telepinu, Tudhaliya IV) and the material from Egypt (Edict of Haremhab, Nauri Decree, and Elephantine Decree). He states: “As one can see we are not too worried about looking at material only from one classification. We are interested in comparing works about law from different cultures of the ancient Near East before the first millennium B.C.” (37). Here I think some additional worry would actually have been helpful. There is a fundamental difference between a legal code that may have originated as part of a scribal exercise or within royal ideology and an edict or decree. As far as the latter are concerned, one can be fairly certain that the stipulations listed were indeed enacted (or acted upon), while it remains unclear (and possibly unlikely) that the laws found in the different codices were ever put into practice. It certainly is commendable that Jackson wants to provide a complete picture of legal collections prior to the first millennium, but more attention to the different character of the various materials would have been very helpful.

Here we encounter one of the shortcomings of the study: Jackson’s book lacks a detailed textual exegesis. He utilizes a plethora of Near Eastern laws but mostly provides a survey of secondary literature instead of studying the texts. Readers who are not familiar with the
discussion about ancient law find a useful summary of the state of research here. However, specialists in the field—and those are most likely the ones who will pick up a book for $115—often simply encounter material already known to them. In my opinion, for example, a more detailed treatment of the lesser-known sources would have been helpful, and since Jackson incorporates the Egyptian legal material, this may have led to new and exciting insights. As a result, the study does not succeed in providing an answer to the vexing question of how legal collections functioned in the ancient Near East.

After introducing the sources, Jackson addresses problems with regard to form, framing, nature, function, and purpose. As far as the framing of the laws is concerned, he notes “a number of features which may be explained as cultural specificities” (68). These cultural specificities are then also the reason for the close parallels between Codex Hammurabi (CH) and the laws of Lipit-Ishtar and Ur-Nammu, which are all rooted in the same south Mesopotamian royal ideology. Differences in Hittite laws are explained by differences in the royal ideology. One wonders how the laws of Eshnunna relate to all that, as they are close (in time and place) to Hammurabi but lack the royal ideology. The question of the role of royal ideology in the compilation of law codes is, however, a very important one, as differences in such an ideology seem to be reflected in the character of the sources. It is remarkable that we have legal collections from Mesopotamia and Asia Minor but not from Egypt and the Persian Empire.

Naturally, much of Jackson’s discussion of the function of the law codes centers around CH. He notes: “The fact that the judges did not tend to follow LH or at least did not cite it for their decisions does not tell us very much about the purpose of LH. It may tell us something about the temporary nature of law put forth by a king in Mesopotamia” (88). He also notes the model character of CH: the laws of Hammurabi might not be positive law, but they can be used as “models” for how proper legal decisions should be made. According to Jackson, the function of CH can be tied to the royal ideology, but he refrains from offering an explanation for collections such as MAL. Although he states that “[o]ur best evidence for the nature of these texts comes from the internal clues within the texts” (111), Jackson misses the point already made by G. R. Driver and J. C. Miles and recently demonstrated in more detail by E. Otto that MAL were the basis for a program of legal

---

3. Here it would be short-sighted to collapse law code and edict; see the definition of “law code” and “edict” in R. Westbrook, “The Edict of Tudhalia IV,” in Cuneiform and Biblical Studies (vol. 2 of Law from the Tigris to the Tiber: The Writings of Raymond Westbrook; ed. B. Wells and R. Magdalene; Winona Lake, Ind.: Eisenbrauns, 2009), 3–39, esp. 4–5; see also C. Wilcke, Early Ancient Near Eastern Law: A History of Its Beginnings: The Early Dynastic and Sargonic Periods (rev. ed.; Winona Lake, Ind.: Eisenbrauns, 2007), 20–25. Jackson (72ff.) critiques Westbrook’s distinction between law code and edict mainly on the basis of Westbrook’s inclusion of the reforms of Uru-Inimgina among the decrees.
According to Jackson, only the Hittite Laws (HL) address the question of legal revision: “The differences reflected within various witnesses to HL demonstrate the uniquely Hittite tendency to reflect the updating of laws within its law collections” (241). This tendency to view HL as unique among the Near Eastern legal collections is based on Jackson’s argument that Hittite royal ideology is different from the other ideologies in the ancient Near East. When Jackson wants to view HL as being a separate entity from the other legal collections, one wonders whether the theory of a common law does not creep back in by the back door here. Already R. Westbrook in his analysis of the Covenant Code excluded HL from the other legal material belonging to a common tradition.

The main body of the work is devoted to a comparison of the different topics found in the legal collections. Here Jackson treats “Marriage and Divorce” (115–18); “Property and Inheritance” (118–24), including real estate and adoption; “Contract” (124–27), including loans, distraint, deposit and safekeeping, and breach of contract; “Crime and Delict” (127–220), covering theft, kidnap, sexual offenses, false accusation, sorcery, murder, personal injury, and negligence; and “Penalties” (220–41), such as corporal, capital, and talionic. This part of Jackson’s book is a most useful tool, as it provides convenient access to the various legal topics and enables readers to get a quick and well-informed overview how the different law codes treat similar offenses. By placing emphasis on the differences between the various law codes, Jackson wants to demonstrate that there can be no common legal tradition. Such a mechanical approach to the question under scrutiny opens up new problems, namely, how to explain the manifold parallels. As Jackson negates any possibility for reception within or across law codes, he is forced to state “that there are a finite number of ways for any culture to express their laws” (245). Where Jackson acknowledges great similarities, as for example in the case of personal injury, he fails to draw interpretive consequences from his own analysis. Again, the lack of detailed


exegesis of the individual legal collections hinders a fruitful utilization of the issues uncovered by Jackson. Because his main concern is to refute the theory of a common law, Jackson focuses almost exclusively on the differences existing between the law codes. As a result, Jackson never allows for the possibility that there were individual legal reception processes at work between individual law codes. If one law code draws from another, this does not automatically imply that we have to argue for a common legal tradition.

The final chapter offers an evaluation of the evidence. As throughout the study, Jackson once again affirms his view that there is no “good evidence for widespread borrowing amongst the ancient Near Eastern law collections” (243). Rather, he explains the obvious parallels by cultural similarities. The same must be said of the differences: “The prevalence of similarity within Lower Mesopotamia as opposed to Assyria, Hittite or Egyptian collections fits with the writer’s initial suspicion that cultural differences would permeate the law collections” (247). However, if these differences were to be linked to and explained with differences in the cultural, political, and historical context, more is needed than simply listing the various divergences between the law codes. Here a broad social-scientific analysis would have been necessary, including archaeology and the like.

As a way of closure, I can state that Jackson is certainly right to emphasize the influence of societal history on legal developments. He is equally right to draw attention once again to the shortcomings of a theory of a “common law” in the ancient Near East. Jackson arrives at his conclusions by processing a vast amount of secondary literature, and such a method of work is naturally to the disadvantage of detailed textual analysis. In the end, Jackson once again returns to the biblical legal material when he outlines avenues of further research: “The method of trying to understand laws within their own cultural connections before imposing understandings derived from other cultures should be applied to biblical law also” (255). Again, one would not dispute such a statement, but one also has to concede that most scholars working on the biblical material are doing precisely that.

6. “The most important conclusion to come out of the research presented here is that similar societies can exhibit a fair degree of similarity while allowing room for significant differences” (253).
7. Jackson seems reluctant to employ anthropology; see 255 with n. 24.