A question not treated fully in the preceding chapter is that of the nature of H. What is it? And what is it for? Is it a code of positive law? A programme? A sermon? In what way is it anchored in the reality of Israel’s society? Does it go back to oral traditions? Or is it purely a literary creation? It is easier to ask these questions than to answer them with any certainty. Nevertheless, a discussion of various approaches that have been essayed will allow us to draw some methodological conclusions for the study of H.¹

In the literature, these questions have seldom been addressed specifically with regard to H; usually the Deuteronomic Code and the Book of the Covenant have been included in the discussion (sometimes even to the exclusion of H). Indeed, these three corpora share a number of characteristics: they are collections of laws, they are said to have been given by YHWH to his people at mount Sinai as part of the covenant he concluded with them.² They also contain some of the same prescriptions—though often differently formulated—and even, partly, the same paraenesis. We will therefore discuss H in conjunction with the two other corpora, although, it is to be hoped, without losing sight of its specificity.³

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¹ Many studies of H leave themselves open to criticism because they naively ascribe to H a function which it may not have. To give only one very recent example, it appears that Blum has not circumvented this pitfall when he writes: “Wenn es um die Ausrichtung konkreter Rechts-, Kult-, und Lebenspraxis geht…” Blum, Studien, 334. See criticism of earlier scholars in R. P. Knierim, “The Problem of Ancient Israel’s Prescriptive Legal Traditions”, Semeia 45 (1989), 7-25.

² For the relationship between law and covenant, see below.

³ The fact that H, as opposed to Deuteronomy and BC, stands in the priestly tradition has become clear from the preceding chapter. Most of the differences between H and Deuteronomy are probably due to the fact that these corpora originated in different milieux, see chapter 1, n. 48. BC is older than both.
CHAPTER TWO

LAW CODE

Traditionally, the laws of the Pentateuch have been understood as positive law, meant for use in the courts of law.\(^4\) For a number of reasons, however, the law codes of the Pentateuch cannot be regarded as collections of positive law comparable to the Roman or Napoleonic codes. To begin with, none of the former codes lays down exhaustive and systematic legislation, and even when taken together, they leave open many legal questions that must certainly have been important in OT times.\(^5\) Moreover, it is striking that the codes contain no specific instructions for judges.\(^6\) Finally, it has been remarked that in none of the court cases that are recounted in biblical narratives is recourse had to a "book of the law" or to "the law of YHWH" or the like.\(^7\) That this is no accident is confirmed by a unique epigraphic find: the judicial plea from Metsad Hashavyahu (Yavneh-Yam).\(^8\)

Now, in every one of these characteristics, the biblical law codes resemble the Ancient Near Eastern (ANE) law codes unearthed in the course of the present century.\(^9\) These cuneiform codes legislate in the same apparently haphazard fashion as the OT codes. They contain no

\(^4\) See, e.g., A. Menes, *Die vorexilischen Gesetze Israels*, BZAW 50 (Gießen, 1928), 20.


\(^6\) The codes are addressed, in the 2nd person singular or plural, to the people collectively or to each individual.

\(^7\) See the remarks of C. van Houten, *The Alien in Israelite Law*, JSOTS 107 (Sheffield, 1991), 30f. One may object that the silence of the sources on this point does not mean that law-books could not have played a part in court cases. However, non-forensic contexts state on several occasions that individuals did (Jos 8:31; 2 Ki 14:6; 2 Ki 22f) or did not (2 Ki 10:31; 2 Ki 17:34-37; 2 Ki 21:8) follow the stipulations of a law-book. This indicates that if the authors of the historical books thought that in court cases a law-book should be used, they might have said something about it. Note also that the prophets vituperate against abuses in legal practice, but never mention a law-book in this context.

\(^8\) See K. A. D. Smelik, "The Literary Structure of the Yavneh-Yam Ostracon", *IEJ* 42 (1992), 55-61, with a selection of earlier literature. As Smelik remarks, it seems that the writer of the ostraca would have had occasion to appeal to the provisions in Ex 22:25f or Deut 24:10-13 prohibiting the keeping of a garment taken in pledge overnight. Yet he does not do so.

\(^9\) See R. Westbrook, "Biblical and Cuneiform Law Codes", *RB* 92 (1985), 247-264, with earlier literature. A translation of the ANE codes can be found in TUAT I, 1 and in ANET.