Conclusion

The question that I have addressed in this study is the question of when written law in early Judaism came to be treated as a source of binding obligation. It is clear from the Mesopotamian evidence that although the ancient cuneiform legal collections were highly venerated and even possessed authority—particularly the Laws of Hammurabi—they were not legally binding upon judges; they did not tell the judges how to decide cases as legal texts do (or at least are intended to do) in courts today. This non-binding character of Mesopotamian law also applies to law in ancient Israel and the Pentateuchal legal collections. By contrast, it is clear that the tannaitic sages viewed their Torah as a source of binding obligation; they felt obligated to do what the Torah demands, and they interpreted the Torah's laws as such. Therefore, somewhere between ancient Israel on the one hand and beginnings of Rabbinic Judaism on the other, there must have been a shift in how law was treated; this is a question that has plagued scholars since Finkelstein and Kraus' articles in 1960–61,[1] and it is the question that I address in this study.

Rather than beginning with the question of when law in ancient Israel/early Judaism came to be viewed as legally binding, however, my goal has been to identify more precisely what it is that we are looking for in our sources. What does it mean for law to be binding? What does it look like when law is binding? How can we know when a directive is being treated as law or as some other type of normative statement? These questions must be answered before any progress can be made toward identifying the emergence of a binding attitude toward law; the lack of critical attention to these questions is the reason that scholars have not been able to agree on this issue. To address these questions, I turned to legal theory.

1 Summary of Theory and Method

1.1 *The Nature of Law's Authority*

The best means of articulating how the authority of law functions is with Joseph Raz's preemption thesis. According to this theory, law provides reasons for action that preempts its subjects' background reasoning, such that they feel obligated to do what the law says, simply because it says so. Thus, when we attempt to identify instances in which an interpreter treats a text as legally

1 Kraus, "Codex Hammu-rabi," 283–96; and Finkelstein, "Ammiṣaduqa's Edict," 91–104.

 | DOI:10.1163/9789004381643_010

binding, we are looking for instances in which an interpreter sees that text as providing reasons for action that preempt their background reasoning. In other words, we are looking for instances in which an interpreter feels obligated to comply with that text's requirements simply because it is what the text requires. This is the essence of how the law's authority functions. It is known as practical authority.

The law's authority must be distinguished from another type of authority: epistemic authority. Epistemic authorities only preempt their subjects' reasons for belief. This is the authority of the expert; we believe what they say based on their say-so, but we do not do what they say simply because they say it. The law's authority, by contrast is a practical authority. It tells its subjects what to do regardless of what they think or believe. This is how the authority of the law operates, and it must be kept distinct from other types of normative statements, which can only possess epistemic authority.

1.2 *Identifying an Attitude of Binding Obligation in Ancient Sources*

The method that I have proposed for identifying an attitude of binding obligation in early Judaism is based on the fact that binding norms are interpreted differently than non-binding norms. Once a text is treated as a preemptive reason for action—as a practical authority rather than an epistemic authority—its subjects treat it in a distinct and identifiable way. There is an intense concern with the words of the text and with the question of what does and does not qualify as compliance. By contrast, non-binding texts are not treated in this way. The interpretive reasoning that is applied to binding norms, therefore, is distinct and identifiable.

I have furthermore suggested that another concept from legal theory can be used to help identify instances in which an interpreter treats a legal text as a source of binding obligation. This is the legal ideal known as the rule of law. This legal ideal is the notion that legal decisions are determined by preestablished law, rather than arbitrary discretion. According to this ideal, the law must be written such that it can guide its subjects' behavior and determine judicial decisions. The rule of law applies to any long-term text that possesses practical authority.

This ideal is important for my methodology because the rule of law is comprised of eight essential requirements that govern the manner in which law is interpreted. When a long-duration text is viewed as the source of binding obligation, its subjects will interpret it in such a way that they will show a concern for the requirements of the rule of law. Put differently, an interpreter will show a concern for any deficiency in the law's formulation that threatens the eight requirements of the rule of law. For example, vagueness (such as the word