

PROBLEMS WITH THE COMPARATIVE METHOD IN OLD TESTAMENT STUDIES

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Abstract: *The “comparative method” in Old Testament studies uses ancient Near Eastern texts to address historical and exegetical issues raised by the biblical text, often without addressing the historical and methodological problems of such usage. A comparison of two works, each of which uses the method extensively, illustrates the problems: Kitchen and Lawrence, Treaty, Law and Covenant in the Ancient Near East and Walton and Walton, The Lost World of the Israelite Conquest. The argument of one depends upon uniformity through a vast expanse of time and space. The argument of the other depends on lack of uniformity. There can be a failure to face the problems of gaps in the ancient Near Eastern textual evidence and an ignoring of the range of scholarly opinion about the evidence. While the connections between the biblical text and its environment are real, making definite conclusions is very difficult.*

Key Words: *comparative method, John H. Walton, J. Harvey Walton, Kenneth A. Kitchen, Paul J. N. Lawrence, Israelite conquest, biblical law, covenant and treaty, use of ancient Near Eastern sources*

In any intellectual discipline the relationship between argument and conclusion is complex. In the realm of biblical studies it is particularly fraught because many implications, which extend beyond the merely intellectual, flow from the conclusion. If the argument is weak or invalid, is the conclusion disproved or is it only that particular path to the conclusion? Particular problems arise where the argument uses esoteric factors, making it very difficult for the reader to judge and raising the danger that acceptance depends completely on the whether the conclusion is liked. Interpretation of the OT via the “comparative method” raises these problems. At some point in the argument an extrabiblical source will be introduced, directly or by implication, as crucial evidence. Whether that evidence is used validly or invalidly is difficult for a reader to judge without detailed knowledge of the extrabiblical discipline involved. It is this author’s opinion that examination of various flawed applications of the comparative method provides useful lessons.

The crucial background to this study is the lack of agreement over the methodology to be applied when exegeting the biblical text by means of external parallels. Sometimes similarity between something biblical and something extrabiblical is noted and a conclusion is drawn from the similarity without the examination of both contexts to determine whether the similarity is real or accidental, and, if real,

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the most likely of the multitude of conclusions which might be drawn.¹ When these methodological issues are brought into the discussion, crucial presuppositions emerge. In a challenging article, Shemaryahu Talmon related the methodology in the biblical field to the wider discussion in the humanities, in particular controversies in anthropology.² Evolutionary anthropology, which expected similar paths of social evolution in different societies and looked for non-functional “vestiges” of earlier stages in more advanced societies had been challenged by functionalist anthropology which saw societies as integrated networks. In the latter perspective many analogies from one society to another were revealed as accidental because their function was quite different in the different cultures. Transfer the functionalist model to the biblical question, as Talmon wants to do, and the result is that one must examine the two supposed parallels in each original context.

It cannot be claimed that Talmon’s appeal for methodological rigor has been widely accepted. I suspect that is because applying the functionalist model to OT Israel results in a different society to the one scholarship imagines. Throughout his article Talmon argues that the monotheistic faith underlying the biblical text would have rejected certain outside incompatible elements. That is a different understanding from the evolution-of-religion model in which vestiges of Israel’s polytheistic past and conflicts of basic religious notions are to be seen in the text. In also requires in-depth analysis of the social context of the supposed external parallel. It may be that the situation in the external culture is far from clear. Rather than making the obscure biblical text clearer by means of a transparent situation in an extrabiblical culture, we are importing our lack of penetration into the extrabiblical culture to make the biblical situation ever more impenetrable.

A good example of the latter problem is provided by comparing two excursions into the comparative method by William Hallo. In the first,³ he claims that “Genesis 1–11 was appropriated virtually in its entirety from external sources.”⁴ In the second,⁵ he deals with the aniconic approach to the deity in the Bible. Whereas one might expect a simple contrast with the worship of anthropomorphic statues of gods elsewhere, it turns out to be more complex. There is uncertainty over whether early Mesopotamia used symbols of the gods rather than anthropomorphic figures. While Hallo does not say so explicitly, the data raises the question whether Israel and Mesopotamia both go back to a situation where anthropomorphic imag-

¹ For example, to cite just three of the many possibilities, does the similarity show dependence of one text upon another text, or reliance of both upon a more distant common text or tradition, or a common background encompassing both cultures? Too many comparative studies opt for a conclusion without establishing the basis for a conclusion.

² Shemaryahu Talmon, “The ‘Comparative Method’ in Biblical Interpretation: Principles and Problems,” *Congress Volume Göttingen 1977* (VTSup 29; Leiden: Brill, 1978), 320–56.

³ William Hallo, “Biblical History in Its Near Eastern Setting: The Contextual Approach,” in *Scripture in Context: Essays in the Comparative Method* (ed. C. D. Evans, W. W. Hallo, and J. B. White; PTMS 34; Pittsburgh: Pickwick, 1980), 1–26.

⁴ *Ibid.*, 8.

⁵ William Hallo, “Cult Statue and Divine Image: A Preliminary Study,” in *Scripture in Context II: More Essays on the Comparative Method* (ed. W. W. Hallo, J. C. Moyer, and L. C. Perdue; Winona Lake, IN: Eisenbrauns, 1983), 1–17.

es were not used in worship. In the first case Mesopotamia was seen as unproblematic and Israel as the borrowers. In the second case it was realized that Mesopotamia might be more complex than we tend to assume. This relates to Talmon's point that comparisons are often not looking at the functioning reality of the societies from which items are being plucked for comparison.

There are many examples of the use of the comparative method. I have chosen to use primarily two, which by their heavy reliance on extrabiblical sources give us ample material to examine: Kitchen and Lawrence, *Treaty, Law and Covenant in the Ancient Near East*,⁶ and Walton and Walton, *The Lost World of the Israelite Conquest*.⁷ One advantage of choosing these two works for comparison is their contrast: Kitchen and Lawrence is a work of impressive scholarship over a range of languages, while the Waltons' work is more popular. While one may avoid a blatant problem found in the other, there are instances where similar objections can be raised regarding both.

Kitchen and Lawrence use ancient Near East (hereafter ANE) texts of treaty and related genres to argue that Deuteronomy must be placed in the late second millennium BC. Their work thus constitutes an attack on both the Developmental Hypothesis and the Documentary Hypothesis for the composition of the Pentateuch. The work is a culmination of Kitchen's defense of the historicity of the OT.⁸

The Waltons' book is another in the series in which John Walton, sometimes with a collaborator, argues that if we really understood the world in which the OT was written, we would understand it very differently.⁹ Ostensibly the volume in focus here argues that the Israelite conquest of Canaan is not to be seen as genocide. It thus fits with the drift of the other works in the series in eliminating issues where the Bible conflicts with dominant modern opinion. Thus, it contrasts with the Kitchen and Lawrence defense of a conservative but unfashionable view.¹⁰

I. THE UNIFORMITY OF ISRAEL'S ANCIENT WORLD

The Waltons are dogmatic about the uniformity of the ancient world of which Israel was a part.

⁶ Kenneth A. Kitchen and Paul J. N. Lawrence, *Treaty, Law and Covenant in the Ancient Near East* (3 vols.; Wiesbaden: Harrassowitz, 2012).

⁷ John H. Walton and J. Harvey Walton, *The Lost World of the Israelite Conquest* (Downers Grove, IL: InterVarsity, 2017).

⁸ *Ancient Orient and Old Testament* (London: Tyndale, 1966); *The Bible in Its World: The Bible & Archaeology Today* (Downers Grove, IL: InterVarsity, 1977); *On the Reliability of the Old Testament* (Grand Rapids: Eerdmans, 2003).

⁹ John H. Walton and D. Brent Sandy, *The Lost World of Scripture: Ancient Literary Culture and Biblical Authority* (Downers Grove, IL: InterVarsity, 2013); John H. Walton, *The Lost World of Genesis One: Ancient Cosmology and the Origins Debate* (Downers Grove, IL: IVP Academic, 2009); idem, *The Lost World of Adam and Eve: Genesis 2–3 and the Human Origins Debate* (Downers Grove, IL: InterVarsity, 2015).

¹⁰ A caution is necessary here. The Waltons conjecture a situation where Israel kills the Canaanite leaders but drives out the bulk of the population. In modern terms that is ethnic cleansing, hardly less offensive than genocide. Deeper probing of the work points to a more important conclusion.

In the ancient world the cultural river of the time flowed through all of the diverse cultures: Egyptians, Hittites, Phoenicians, Canaanites, Arameans, Assyrians, and Babylonians—and the Israelites. And despite the variations among cultures and across the centuries, certain elements remained static. The Israelites sometimes floated on the currents of that cultural river without resistance while at other times the revelation of God encouraged them to wade into the shallows to get out of the currents or to swim persistently upstream. But whatever the extent and nature of the Israelites' interactions with the cultural river, it is important to remember that they were situated in the ancient cultural river, not immersed in the modern ideas or mindsets of our cultural river.¹¹

Kitchen and Lawrence cannot take that position because their argument depends upon there being different treaty forms in different cultures and in different periods. One of the omissions in their work is the history of scholarship, which led them to the strategy of their work. The story began with George Mendenhall.¹² When Mendenhall wrote, the two great collections of treaties that were available were the Hittite treaties and the Neo-Assyrian treaties. They were obviously very different in format and tone. One of the great differences was the Hittite appeal to history as motivating the vassal's obedience, a feature absent from Neo-Assyrian treaties. Mendenhall was struck by the similar use of history in some biblical covenants and used it as a basis for placing the essential Sinai covenant (the Ten Commandments) and the covenant of Joshua 24 in the same period as the Hittite treaties. That is in the late second millennium BC.

Both Kitchen¹³ and Meredith Kline¹⁴ argued that the identification of early biblical covenants should not stop there but must include Deuteronomy on the same grounds. That was an obvious challenge to establishment views of the OT and Israelite religion. Various objections were raised. These volumes have to be seen as an attempt to surmount those objections and validate Kitchen's position.

There was an obvious alternate way to read Mendenhall's data, namely that it reflected basic differences between Hittite and Mesopotamian approaches to treaties, differences that reflected deeper cultural features. If Hittite and Mesopotamian cultures have significant differences, might Israel also be different, casting doubt on the sweeping claims of the Waltons? If Israel was significantly different, is discussing the OT by comparison with texts of other cultures invalidated, and thus are the exegetical and apologetic arguments of many scholars threatened?

These questions become urgent if we trace the discussion since Mendenhall. Mendenhall's position rested on a contrast of second-millennium and first-millennium texts. As more treaties appeared, that simple division became more complicated. Continued publication of texts from early second millennium revealed

¹¹ *Lost World of the Israelite Conquest*, 8, 9.

¹² *Law and Covenant in Israel and the Ancient Near East* (Pittsburgh: Pres. Board of Colportage of W. Penn., 1955).

¹³ *Bible in Its World*, 79–85.

¹⁴ Meredith G. Kline, *The Treaty of the Great King* (Grand Rapids: Eerdmans, 1963); idem, *The Structure of Biblical Authority* (2nd ed.; Grand Rapids: Eerdmans, 1972). Kline's subsequent work was more theologically focused and presented an idealized form of treaty without reference to the variations in treaty form.

treaties without historical prologue, a feature that Mendenhall had seen as typical of early treaties.¹⁵ Furthermore, some of these treaties had a list of the gods before whom the oath was sworn immediately after the title, a feature that was well known as typical of the much later Neo-Assyrian treaties. This evidence was posing the question of whether there was a distinctively Mesopotamian type of treaty. In addition, a very late Assyrian treaty emerged with an appeal to history.¹⁶ Mendenhall's case based on distinction of treaty types over time was eroding. Since Kitchen had used Mendenhall's framework to defend Deuteronomy, that case was similarly weakened.

If the evidence was leading to a distinction of culture types, what happens to the long-accepted cultural hegemony of Mesopotamia, immortalized in Samuel Kramer's book title, *History Begins at Sumer*?¹⁷ One of the things revealed in this discussion is that dating of cultural history in the ANE is often tied to the premise of a cultural continuum with Mesopotamian hegemony. What if there were many cultural trajectories interacting in complex ways? Dating something in culture X by a claimed similarity in culture Y then becomes more problematic. Cultural history may not proceed at the same rate in different cultures or the similarities may not be real similarities once their cultural contexts are compared as well.¹⁸

In the Kitchen and Lawrence argument, variation within ANE culture is crucial to their attempt to date the writing of Deuteronomy. In contrast, the Waltons claim sweeping uniformity. Yet both could be described as uses of the comparative method. The obvious conclusion, which could be confirmed by many other examples, is that, when scholars use the ANE as background for elucidation of the OT, they may not have the same ANE background in mind. That means that the evaluation of a particular use of the comparative method has to ask not only whether it fits the biblical text but also whether it fits the ANE. That poses a significant challenge for anyone without detailed knowledge in both areas.

¹⁵ For a brief survey of these texts see Noel K. Weeks, *Admonition and Curse: The Ancient Near Eastern Treaty/Covenant Form as a Problem in Inter-Cultural Relationships* (JSOTSS 407; London: T&T Clark, 2004), 23–30, 118–24. For detail, including transcription and translation, see the first volume of *Treaty, Law and Covenant*, 186–230 and corresponding notes in the other volumes. Our knowledge of these treaties is helpfully supplemented by contemporary letters. The limitation in the Kitchen and Lawrence volumes to three genres of texts means that evidence from letters may be referred to in the notes but the extra levels of complexity indicated by the letters does not come out in Kitchen and Lawrence's work.

¹⁶ The treaty of Assurbanipal with Abiate of Qedar: *Treaty, Law and Covenant*, 1:1009–12; 3:232–33; K. Deller and S. Parpola, "Ein Vertrag Assurbanipals mit dem arabischen Stamm Qedar," *Or* 37 (1968): 464–66. For Kitchen and Lawrence's treatment of this problem for their thesis see *Treaty, Law and Covenant* 2:99, 100. Looking outside the narrow range of genres, Weeks pointed out that this new element in an Assyrian treaty correlated with a shift in Assurbanipal's Annals (*Admonition and Curse*, 42, 43, 47). There may be stability in traditional genre form, but genres are not impervious to wider cultural shifts.

¹⁷ Samuel N. Kramer, *History Begins at Sumer* (Garden City, NY: Doubleday, 1959).

¹⁸ The collapse of the so-called "Albright synthesis" is a good example of this problem. The comparisons between the patriarchal narratives and other texts, particularly from Nuzi and Mari, were revealed as less convincing when the contexts of those other texts were taken into consideration. John Van Seters, *Abraham in History and Tradition* (New Haven, CT: Yale University Press, 1975), esp. 65–103; T. L. Thompson, *The Historicity of the Patriarchal Narratives: The Quest for the Historical Abraham* (Berlin: de Gruyter, 1974), esp. 51–88, 196–297.

As each of these two examples are submitted to tests both in terms of the whole biblical and the whole ANE picture, some very different problems emerge and yet some very similar ones. There are serious issues with both the Waltons' use of the Bible and their use of ANE texts. Kitchen and Lawrence's problems focus on texts of the ANE but there are problems in reconciling their view with the Bible.

II. THE WALTONS AND THE BIBLE

The list the Waltons give of some of the things common between the Bible and the ANE is significant: "community identity, the comprehensive and ubiquitous control of the gods, the role of kingship, divination, the centrality of the temple, the mediatory role of images, the reality of the spirit world and magic, and the movement of the celestial bodies as the communication of the gods."¹⁹

There is crucial ambiguity here. The Bible quite explicitly rejected items described above as part of the common culture. For example, Ps 115:4–6 rejects any role for images, Deut 18:14 forbids divination, and Jer 10:2 rejects the astrological concerns of the surrounding nations. How can it be said that there was a common culture for all including Israel? Certainly, one could point to the fact that pagan practices, condemned by the Bible, persisted within Israel, but concern to distinguish the mass of the people from the biblical writers does not occur in the works of Walton. Also, it could be that this is one of the cases intended in the admission that Israel sometimes removed itself from the mainstream. Nevertheless, the ambiguity is there. I think it is fair to say that the Waltons tend to emphasize the participation of the OT in the general cultural stream, and that participation as the key to interpretation, rather than the difference between the Bible and surrounding literature being the key to interpretation.²⁰ Note also the crucial difference from Talmon's functionalist approach, which gives to cultures a distinct and integrated character.

If there is such an involvement of Israel in the common culture of pagan nations and that involvement contributes significantly to the formation of the biblical text, then surely there is the possibility that the OT text is expressing the ideas and values of pagan cultures. If that is the case, there are potential implications for our understanding of the NT as well and for our role as Christians today. If God once approved such involvement, he might continue to approve it.

This is not an unfair extrapolation of the Waltons' approach but one that fits their thinking.

The Bible exists to tell us what God is doing, and it describes what God is doing in terms of the language, logic, and values of the culture to which it was originally written.

¹⁹ *Lost World of the Israelite Conquest*, 8, 9.

²⁰ There are several cases where the Waltons say the Bible is different from the surrounding world (*Lost World of the Israelite Conquest*, 103, 104, 123, 139, 206, 209, 218). However, there is no attempt to explain the contradiction between the exceptions and the sweeping statements of cultural uniformity.

What this means is that the idea of goodness described in the text needs to be *translated*, not simply adopted. If we obeyed the instructions of the OT text, we would become good citizens of the ancient Near East. If we obeyed the instructions of the NT text, we would become good citizens of classical Rome. But what we are supposed to be is good citizens of the modern West, for the same reason that the Israelites (the original audience of the Old Testament) were supposed to be good citizens of the ancient world, and the early Christians (the original audience of the New Testament) were supposed to be good citizens of the classical world.²¹

Previous volumes in the Walton series may have implied that the commonness with other cultures could spill over to the relationship of Christianity to the surrounding modern culture, but this is much more explicit. Just as the Waltons do not acknowledge that there are multiple cultures in the ancient world, they do not mention multiple cultures in the modern world. Their position would seem to imply that Christians in non-Western cultures should have a quite different faith from Christians in the West. This failure to recognize modern cultural difference is actually insensitivity to diversity of cultures, which is one of the “good” things the modern world emphasizes.

A crucial issue follows. In interpreting something in the OT as reflecting a practice of surrounding pagan nations, might the result be endorsement of a practice contrary to biblical teaching? The Waltons have an answer to that fear. Following a discussion of the action of Joseph’s brothers in selling him into slavery and the explanation that that is not an example for us to imitate, we read,

Further, the Bible does not tell us what particular actions we have to take; we draw our understanding of these from our own religious tradition (that is, our own cognitive environment). The text does not specify anything beyond a generic “Believe in the Lord Jesus” (Acts 16:31) and baptism of water and the Spirit (Jn 3:5). It provides no specific creed or catechism and does not specify infant baptism, believer’s baptism, the sacrament of chrismation, the sinner’s prayer, or any other particular action.²²

The Waltons go on to make the point, with which no evangelical Christian will disagree, that human actions are not themselves redemptive. They distinguish what they class as the ancient ideal of “order” from the modern ideal of “happiness.”²³

Yet we are still left with the practical problem of how we “translate” the “goods” of the ANE, in terms of which the Bible is written, into what is good for

²¹ *Ibid.*, 23 (emphasis original).

²² *Ibid.*, 20.

²³ Exploration of these claims is not relevant in this context but this is an example of making sweeping claims that are very difficult to substantiate. No ANE text argues for “order” as the highest ideal. Here we have a modern scholarly generalization, formed more on the basis of the way some moderns have translated key words than on any concrete ancient statements. For an elaboration of the problem in making the complex and distinct concepts of ancient cultures fit a simple modern notion of “order” see Noel K. Weeks, “The Bible and the ‘Universal’ Ancient World: A Critique of John Walton,” *WTJ* 78 (2016): 19–21.

us to do. Let us follow the Waltons as they try—unsuccessfully, perhaps—to do that:

God's revelation was not written to teach the Israelites how to be good, and it was not written to teach us how to be good, either. The Israelites already knew how to be good; their moral knowledge was derived from their surrounding culture, what we termed the cultural river or cognitive environment. The Bible's text assumes this knowledge and writes in its terms but does not attempt to revise their thinking. Neither, however, was it written to stamp the ancient conceptions of goodness for all time with the seal of divine authority ...

Since the content of the text is not supposed to describe or demonstrate goodness, the question of whether it *actually does* describe or demonstrate goodness is irrelevant. A far more useful discussion concerns what it is describing or demonstrating instead.²⁴

It seems clear that they are not endorsing the values revealed in the biblical text. They describe the ideas of “goodness” underlying both the OT and the NT texts as separate “templates.” After discussing progressive and relativist approaches to the biblical text they say,

The relativist approach, like the progressive approach, is misguided because it misunderstands what the Bible is for. The Bible does not tell us what God's ideal of goodness is because the purpose for which the Bible was written does not require us to know that. ... We might imagine bakers on an assembly line, each producing one step of a recipe over and over. None of them are personally making cake, and none of them, by examining the thing they are making, will have any real understanding of what the cake that comes out of the factory at the end will be like. In this metaphor God is the factory, and the cake is the goodness that God is acting to produce. The Bible does not tell us what the final product is; the Bible tells us how to do our part on the assembly line. If we fail to translate the teaching properly, we will fail to do our part in the process; we will not produce goodness, and we will not contribute to the procedure. If we do translate properly, we will be able to contribute to the procedure, but we will still produce no goodness. This is because, once again, the Bible was not written to tell us how to produce goodness; it was written to tell us how to participate in the goodness that God is producing.²⁵

What all this seems to be saying is that God is in the process of producing something which is known only to himself by having believers in each period (OT, NT, and modern) conform to the ideal of “goodness” of that particular age. We should not think that the idea of goodness of any of those particular ages is God's idea of goodness. In some mysterious way each contributes to God's objective.

Putting this into practice has an obvious difficulty. Which of the many crusades for “good” in the modern world is the one we should be supporting? The Waltons wrestle with this as they try to spell out what they think the Israelite con-

²⁴ *Last World of the Israelite Conquest*, 234 (emphasis original).

²⁵ *Ibid.*, 27.

quest of Canaan means for the modern church. Passages quoted above give the impression that they are saying that just as Israel conforms to the ideals of the ancient world, so the church should conform to the ideals of the modern world. Yet they also rule that out.

What the template does tell us is that, in order to serve its purpose, the integrity of the community's identity must remain intact; the community cannot serve its purpose simply by conforming to whichever way the wind happens to be blowing. The decision of whether to be all things to all people (that is, to be attractive to potential converts) or not to be conformed to the pattern of this world (that is, to remain distinct at any cost) does not default in either direction. Deciding which is more pressing in which context at any particular place or time is part of the responsibility that is delegated to the leaders and shapers of the community. The template only tells us that both factors need to be considered.²⁶

I believe that there is a contradiction here, but a very understandable one. If God was accepting the conformity of the biblical writers to the norms of the ancient world, then it is logical that he would also accept the conformity of the modern church to the norms of the modern world. The problem is that the moment the church is indistinguishable from the world, it is also irrelevant. Yet if the church obeys Rom 12:2 and does not conform to the world,²⁷ it raises the question of why conformity was permissible in the OT age. The dilemma cannot be resolved within the Walton method. Hence, they leave it to the church's leadership to cut this particular Gordian knot. As I will point out below, there are other components of their approach, which leave the Christian without guidance as to how to live in the modern world, and hence the only solution for the church is clericalism. Yet the "clerics" are left with no guidance.

III. KITCHEN AND LAWRENCE AND THE ANCIENT NEAR EAST

The crucial argument in Mendenhall's original thesis depended upon the use of history in both Israelite and Hittite treaties to motivate. Hence the Kitchen-Lawrence argument is concerned with treaty texts involving history.

The very early Mesopotamian treaty of Eannatum of Lagash (c. 2500 BC) has historical elements.²⁸ However, there are problems in the way of making it the basis of the historical emphasis in the Hittite treaties. The main one is that Mesopotamian treaties between it and the Hittite treaties do not use history. Furthermore, it uses history to vindicate the righteousness of Eannatum rather than, as the Hittite treaties do, to persuade the vassal of the reasonableness of obedience. In addition, it is in Sumerian and whereas some Sumerian material was transmitted to the Hit-

²⁶ Ibid., 251.

²⁷ Note the negative slant the Waltons attach to that possibility ("to remain distinct at any cost"). Their language looks like an allusion to the Romans passage, but presented as an unattractive option.

²⁸ *Treaty, Law and Covenant*, 1:1-16.

tites and understood by them,²⁹ there is no evidence of Sumerian historical texts being transmitted.

Hence, Kitchen and Lawrence turn to the great early Mesopotamian legal codes, those of Lipit-Ishtar and Hammurabi from the early second millennium BC. Both of these texts have an historical introduction, and Kitchen and Lawrence argue that is the ultimate source of the historical introduction in the Hittite treaties.³⁰ This argument raises a whole host of new issues.

Reviews have criticized the work of Kitchen and Lawrence because texts that seem highly relevant are not in the work. For example, we have Hittite edicts, which have an historical introduction and refer to gods.³¹ Kitchen and Lawrence lay down a clear demarcation. An edict is not a treaty.³² Thus they are showing a commitment to form or genre criticism, a position that I will take up later. However, at this point the relevant issue is that their historical argument depends on a crucial element which is able to shift between genres, namely from law code to treaty. In addition, the history plays a different role in each text form. In the law codes it plays the typical role in Mesopotamian royal texts of royal boasting. That is quite different from the role of history in Hittite treaties.

It is a long step from history in one genre in Mesopotamia to a different use of history in a different genre in a different culture several centuries later. Kitchen and Lawrence identify something to bridge the gap, a proposal that involves yet another genre. They propose that the shift to using history in treaties had already occurred in Mesopotamia, and their evidence is the literary text commonly called *The Tukulti-Ninurta Epic*.³³ In this story about the war between the Assyrian king Tukulti-Ninurta I and the Babylonian king Kashtiliash IV, the conflict is described in terms of the rectitude of Tukulti-Ninurta and the treaty-breaking of his enemy. From this they deduce that there must have been historical elements in the treaty to which the story alludes. Diplomatic contacts could then have carried that treaty form to the Hittites. The problem is that later Mesopotamian treaties do not show this shift to the use of history.

A further flaw in the argument is that Mesopotamian texts such as the Assyrian Royal Annals regularly contain history and refer to treaty-breaking at the same time that Mesopotamian treaties themselves contain no appeal to history. The argument that history appears in one sort of text, so it must have been present in treaties, has a crucial weakness. In order to preserve the theory of Mesopotamian

²⁹ M. Weeden, *Hittite Logograms and Hittite Scholarship* (Studien zu den Boğazköy-Texten 54; Wiesbaden: Harrassowitz, 2011), 10.

³⁰ *Treaty, Law and Covenant*, 3:102.

³¹ The distinction between “treaty” and “edict” is a modern distinction. Hittite uses the same term for both. See the discussion of the overlapping genres in Weeks, *Admonition and Curse*, 78–81.

³² For a catalogue of Hittite treaties in distinction from edicts see Elena Devecchi, “(Re-)defining the Corpus of Hittite Treaties,” *ZABR* 19 (2013): 89–98. A paradox in this useful work is the admission that the Hittite and Akkadian terminology did not distinguish between treaties and edicts as we do.

³³ What Kitchen and Lawrence see as the significant section is translated in *Treaty, Law and Covenant* 1:643–46. For fuller translation see B. R. Foster, *Before the Muses*, vol. 1 (Bethesda: CDL, 1993): 209–29. For discussion see Weeks, *Admonition and Curse*, 83–84.

cultural priority, they have to appeal to different genres of text. However, the more we look beyond a narrow range of genres, the more distinctive the Hittite picture becomes. There are not only Hittite decrees which share many features with treaties, but there are several sorts of texts, the Instructions and the Service Oaths, which the Hittites use as part of internal administration, and which are like treaties between the king and parts of his governing apparatus.³⁴ As we see the distinctiveness of the Hittites, particularly if we include their historical narratives, it becomes harder to explain the history in their treaties as simply derivative of Mesopotamia.

There is another crucial gap between cultures, which has to be bridged. If the Hebrews were simply taking over the form of treaties common with the Hittites, how did they know about them? Mendenhall, working with an assumption of cultural uniformity across the ANE in any particular period, assumed that the Egyptians administered Palestine, during the New Kingdom, through the common treaty form for that time, which was the Hittite one using history.³⁵ It is actually difficult to find evidence of Egyptian use of treaty forms with their vassals.³⁶ Instead Kitchen and Lawrence point out that there are clear evidences of diplomatic contacts between Egypt and the powers of Western Asia, a contact well exemplified by the treaty between the Hittite Hattusili III and Rameses II of Egypt. They then postulate that Moses could have carried the knowledge of such treaties with him as he left the Egyptian royal environment to become the leader of the Hebrews.³⁷

The complicated sequence by which Kitchen-Lawrence trace treaties using history for motivation from Sumer to Israel is ingenious but ultimately implausible because there are significant gaps in the chain of transmission, which have to be bridged by conjectures. By themselves conjectures do not have the power of evidence.

The appeal to a motif, which can switch from genre to genre, conflicts with Talmon's idea of integrated societies. Talmon argues that if a genre is to be seen as identical to a genre in another society, then the contexts which created that genre must also be comparable.³⁸ While he does not cite Gunkel, Talmon is effectively requiring biblical scholars to be consistent in their adoption of Gunkel's form criticism. If forms are deterministically connected to social situations,³⁹ and Talmon's functionalist view of integrated societies is valid, then forms may be comparable only if the societal contexts are also comparable. There are crucial suppositions here and we are entitled to be skeptical. Yet there is an inconsistency in the Kitchen

³⁴ Weeks, *Admonition and Curse*, 84–88. Whereas Kitchen and Lawrence list edicts as not covered in their volumes, they do not deal with these texts. I find that inexplicable.

³⁵ This was also the basis of his theory of the "conquest," in which rebelling Canaanites kept the legal instruments of rule used by the Egyptians, but made YHWH the suzerain, instead of the pharaoh, thus becoming Israelites. Mendenhall, *The Tenth Generation: The Origins of the Biblical Tradition* (Baltimore: Johns Hopkins University Press, 1973).

³⁶ Weeks, *Admonition and Curse*, 103–9.

³⁷ *Treaty, Law and Covenant*, 3:132–36.

³⁸ "The 'Comparative Method' in Biblical Interpretation," 351, 352.

³⁹ See W. Klatt, *Hermann Gunkel: Zu seiner Theologie der Religionsgeschichte und zur Entstehung der formgeschichtlichen Methode* (Göttingen: Vandenhoeck & Ruprecht, 1969).

and Lawrence appeal to the fixed genre of treaty forms while also using a motif, which moves from genre to genre. On the other hand, comparison of features without consideration of the context in the individual societies risks turning accidental similarity into significant fact.⁴⁰

IV. KITCHEN AND LAWRENCE AND THE OLD TESTAMENT

Mendenhall could use a theory of cultural uniformity in the ANE to bridge the gap between cultures. Kitchen and Lawrence realize they cannot do that but want to use the similarity between Hittite and biblical treaties to date some biblical treaties. The Bible contains covenants before the Sinai covenant (i.e. covenants before Moses), and Kitchen and Lawrence attempt to fit some of these covenants into the grid of the expected form.⁴¹ With others they simply say that enmeshment in a narrative text has made the original form obscure.⁴² However, if Moses is the crucial link in the transmission, how can there be normal form treaties before him? I think they may be trying to hint that older stories have been changed to conform to later norms, but that is not said explicitly, and if it were, it might undermine other parts of their argument.

Another evidence that they might think there is a distinction between earlier and later parts of the Pentateuch is their unexplained removal of the detailed instructions for the building of the tabernacle from the covenantal text of Exodus.⁴³ Are they troubled by the fact that there is nothing analogous in the very political treaties of the ANE? Yet an unexplained excision merely leaves the reader wondering.

If they have to conjecture a doubtful path to justify their dating of Deuteronomy and then are left with early biblical covenants which do not fit their expected form, is it that the differences between biblical covenants and surrounding treaties are greater than they can really allow? Certainly, it is true that there are real similarities between biblical covenants and Hittite treaties, but when all the data is considered, it is part of a pattern of the importance of history in both cultures.⁴⁴

⁴⁰ Two articles in *Context of Scripture II* illustrate this problem. W. C. Gwaltney ("The Biblical Book of Lamentations in the Context of Near Eastern Lament Literature," 191–211) appears to believe that what is needed to establish the possibility of the dependence of Lamentations on Mesopotamian laments is the existence of the Mesopotamian laments in the right time period to be experienced by the biblical author. That they are texts heavily impacted by polytheism is not considered relevant to the biblical author's appropriation of the form. R. G. Albertson ("Job and Ancient Near Eastern Wisdom Literature," 213–30) believes that the literary intricacy of the biblical book is explicable by its use of themes and reaction to themes that appear in the Mesopotamian literature, which wrestles with suffering. Once again, the distinctive way that literature views the relationship of man and the gods is not considered.

⁴¹ *Treaty, Law and Covenant*, 1:235–44; 3:71–74.

⁴² *Ibid.*, 1:245–50; 3:74.

⁴³ *Ibid.*, 1:720–21.

⁴⁴ For speculation on the reason for the prominence of arguments from history in Hittite texts see Weeks, *Admonition and Curse*, 92, 93.

V. THE WALTONS AND THE ANCIENT NEAR EAST

The Waltons couple their theory of the non-prescriptive nature of the biblical text with a similar interpretation of ANE law. They claim that law codes in the ANE, as with other disciplines where the lore is presented in the form of lists, were not intended to be seen as laws to be obeyed. Hence the same should apply with OT law.⁴⁵

Their discussion is confused because they link it with other aspects of culture where the results are presented in the form of lists of statements. This complicates their whole treatment because divination is the discipline with the most voluminous collection of listed statements of possibilities.⁴⁶ There were many forms of divination in Mesopotamia and the Hittites had some methods of their own. The Waltons claim that these lists were for giving wisdom to practitioners.

Scholars came to recognize that the ancient tradition of circumscribing literature in a particular area of knowledge by means of lists was a means of communicating wisdom with regard to that area. Lists of symptoms and treatments, for example, were gathered to give practitioners wisdom about disease (in the way it was understood in the ancient world). Likewise, lists of divinatory observations and the resulting prognoses were gathered to give divination experts wisdom regarding the messages that they believed were embedded in the signs provided by the gods.⁴⁷

The Waltons' suggestion is quite foreign to the material in question. They say it was all for instruction but none of it was individually valid or a basis for action. Even without seeing the material one would ask how likely it is that phenomena would be seen as messages from the gods, but as having no individual validity. Or that a list of symptoms should be given with various prognoses but none of these be seen as individually relevant for the "doctor." Or that a description of symptoms would be followed by a description of actions to be taken, whether physical or magical, and there be no expectation that practitioners would treat these prescriptions as a basis for action.⁴⁸ The proposition that records of signs and predictions were not seen as having individual validity is highly implausible. We have letters

⁴⁵ *Lost World of the Israelite Conquest*, 89–93.

⁴⁶ For their understanding that divination texts used lists see *ibid.*, 90. For a discussion of divination in general and especially extispicy see S. M. Maul, *Die Wahrsagekunst im Alten Orient: Zeichen des Himmels und der Erde* (München: C. H. Beck, 2013). For examples of the importance of lists in divination see S. M. Freedman, *If a City Is Set on a Height: The Akkadian Omen Series Šumma Alu ina Melē Šakin. Volume 1: Tablets 1–21* (Occasional Publications of the Samuel Noah Kramer Fund 17; Philadelphia: University of Pennsylvania Museum, 1998); E. V. Leichty, *The Omen Series Šumma Izbu* (Texts from Cuneiform Sources 4; Locust Valley, NY: J. J. Augustin, 1970).

⁴⁷ *Lost World of the Israelite Conquest*, 90

⁴⁸ For some of the many "medical" lists that clearly read as though they reported individually valid information see R. Labat, *Traité akkadien de diagnostics et pronostics médicaux 1: Transcription et traduction* (Paris: Academie Internationale d'Histoire des Sciences, 1951); B. Bock, "When You Perform the Ritual of Rubbing: On Medicine and Magic in Ancient Mesopotamia," *JNES* 62 (2003): 1–16

from diviners to the king recording their observations, referring to the manuals, and giving interpretations.⁴⁹

However, that does not mean that we should necessarily see ANE law codes in the same way. Paradoxically, if the Waltons had not followed their habit of lumping together things which may be different, they might have a stronger argument. There has been a long scholarly debate as to whether ANE law codes were meant to be implemented. A major source of the debate was the realization that the most studied code, Hammurabi's, was not being cited or even followed by subsequent Babylonian judges. Hence some scholars opined that it was not intended to be implemented. Others responded with evidence it was having an effect and others asked whether the failure to follow a law meant it was never intended to be effective. The whole debate has been summarized by Samuel Jackson who lists more than seventeen scholarly opinions on the question.⁵⁰ This issue is a good example of a fundamental flaw in the way in which the Waltons treat ANE evidence. They stress that we should realize that the ancient world is different from the modern world. That is very true. One consequence is that, for whatever reason, we have few extant works from the ancient period that summarize and describe the situations in which events are happening.⁵¹ For example, if in the modern world judges were to fail to follow the wording of a law in their decisions, we might expect it to arouse comment in newspapers and magazines or to be mentioned in parliamentary debates. Those comments and mentions would give us some idea of why the judges were ignoring the law. We typically lack such commentary for the ANE. That means that what we have is a situation of raw data. The law says one thing; the judges decide something else. There are myriad possible explanations for the discrepancy and scholarship has debated those. To pick out one explanation and cite it as fact is simply wrong.

Jackson comes to a sensible conclusion:

Given the uncertain significance of most of the evidence that can be brought to bear to decide on the issue of LH's [Law of Hammurabi] purpose and function it would seem unnecessary to try and explain away the simplest reading of his prologue and epilogue and its claims that what is being presented will be of use to the *awilum hablum* ["wronged man"] in his case and to the future ruler in deciding the law of the land.⁵²

In other words, in the last resort we should let the text speak for itself. Hammurabi indicated the purpose he wanted for his laws. We have no better evidence for their purpose. Whether he succeeded in that purpose, and if he did not, the reason for the failure, are both irrelevant to the original purpose.

⁴⁹ H. Hunger, ed., *Astrological Reports to Assyrian Kings* (SAA 8: Helsinki: Helsinki University Press, 1992).

⁵⁰ *A Comparison of Ancient Near Eastern Law Collections Prior to the First Millennium BC* (Gorgias Dissertations 35; Piscataway, NJ: Gorgias, 2008), 69–71.

⁵¹ Paradoxically the Bible gives us more such commentary than we find from other ANE societies, despite the fact that we are told that the OT is just like the rest of the ANE!

⁵² *A Comparison of Ancient Near Eastern Law Collections*, 100–101.

If that applies to Hammurabi's Laws, how much more does it apply to biblical law where we find repeated statements that God wanted them obeyed? The Waltons argue against the clear statements of the text by appealing to one opinion about ANE law codes, when it is a very doubtful and debated area. Even if they were correct about Mesopotamian law, the assumption of legal uniformity in the ANE is false. Jackson in his survey of law codes and related genres found:

These systematic differences between the law collections of the ancient Near East and the ability to connect them to differences in regards to historiography, treaty framing and existence and conceptions of kingship should certainly make one hesitate before ascribing a common culture to the ancient Near East. Questions of the priority of contexts do arise, however. Within this thesis it has been noted repeatedly that there is a higher level of similarity within Mesopotamia, particularly Lower Mesopotamia. This is borne out in a number of different aspects of these collections as outlined above. Within Mesopotamia, however, Assyria stands out as different quite often.⁵³

The Waltons present an argument that the biblical text is not presenting the Canaanites as sinners coming under the wrath of God. Since the Canaanites were not under the covenant as Israel was, they could not be sinners. Leaving aside the issue of whether there is a general law of God applicable to all,⁵⁴ this argument is fatal to their whole case. It implies that biblical law was binding on Israel. The almost universally accepted parallel of biblical covenants and ANE treaties means that if treaty stipulations were regarded as binding, punishable by gods if broken, then the same must apply to biblical law. The comparative method destroys their whole case.

A similar practice of relying on doubtful views, in this case their own, arises when they attempt to characterize the biblical way of picturing the Canaanites. They say that the term used for people outside of "the bounds of order" in Babylonian and Assyrian texts is *Umman-manda* and they claim that the Canaanites are being seen as such people. We therefore need to read the biblical text in terms of these "invincible barbarians." There has been a recent study of these people, to which the Waltons refer.⁵⁵

Although Hebrew does not use the word, there is some indication that the depiction of the nations of Canaan is categorically similar to the *Ummam-manda*. In addition to the bizarre and generally taboo practices (e.g., bestiality) described in Leviticus 18, we see the peoples of the land described as unworldly beings (the *Nephilim* in Num 13:26 and the *Rephaim* in Deut 2:11, 20; 3:11; 2 Sam

⁵³ *Ibid.*, 251.

⁵⁴ As at many points, the Waltons' arguments rest upon ignoring anything the NT has to say on the issue.

⁵⁵ S. F. Adali, *The Scourge of God: The Umman-Manda and its Significance in the First Millennium B.C.* (State Archives of Assyria Studies 20; Helsinki: Neo-Assyrian Text Corpus Project, 2011).

21:20) which are depicted in terms befitting ogres and monsters. . . . This kind of description would be expected for those living outside the ordered world.⁵⁶

Contrast this with Adali's conclusion to his comprehensive study:

This study indicates that *Ummān-manda* was not a term used indiscriminately for any group or people. There are certain patterns to its use. The present study focused on the distinction between the Assyrian use of the term for the Cimmerians and the Babylonian use of the term for the Medes. Other contemporary peoples on the northern and eastern frontiers did not receive such a designation. Why did the Assyrians and Babylonians use the term specifically in this way for the Cimmerians and Medes respectively?⁵⁷

Put simply, the very work that the Waltons refer to as their source refutes their attempt to apply the term indiscriminately to the Canaanites. Even without Adali's conclusion that would be obvious to anybody knowing the usage of the term in Hittite and Mesopotamian texts. As Adali's study demonstrates, it is used exclusively for peoples on the northern and eastern fringes of Mesopotamia and then, as Adali says, not for all such peoples. The relevant literary text that is most accessible to those outside the field, the *Cuthaeen Legend of Naram-Sin*, is very clear in its geographical indications.⁵⁸

The Waltons couple their references to Ummān-Manda texts with the Sumerian literary composition, *The Marriage of Martu*. The Martu of the title is a god, and scholars have generally assumed that the text is referring to a people to which we commonly refer, via the Akkadian form of the name, as Amorites. In the story the question is whether a native goddess will marry the foreign god Martu. One character in the story says depreciating things about Martu's people.⁵⁹ The goddess in question replies adamantly that she will marry Martu. As Kramer said, it is a difficult text to read and interpret. A depreciating comment by one character stands in contrast to the positive portrayal of Martu in the story and the goddess's determination to marry him.⁶⁰ In addition, the comments of the negative voice in the story are not in accord with what is known of the Amorites.⁶¹ This is distressingly typical

⁵⁶ *Lost World of the Israelite Conquest*, 139.

⁵⁷ *Scourge of God*, 169.

⁵⁸ See T. Longman III, *Fictional Akkadian Autobiography: A Generic and Comparative Study* (Winona Lake, IN: Eisenbrauns, 1991), 103–17, 228–33; B. R. Foster, *Before the Muses: An Anthology of Akkadian Literature* (2nd ed.; 2 vols.; Bethesda, MD: CDL, 1996), 1:258–70.

⁵⁹ The Waltons quote this (pp. 138–39) as evidence that the biblical negative portrayals of the Canaanites are ways of saying they are “liminal” people.

⁶⁰ S. N. Kramer, “The Marriage of Martu” in *Bar-Ilan Studies in Assyriology Dedicated to Pinbas Artzi* (ed. J. Klein and A. Skaist; Ramat-Gan, Israel: Bar-Ilan University Press, 1990), 11–27. For a comprehensive study of the god see Jacob Klein, “The God Martu in Sumerian Literature,” in *Sumerian Gods and Their Representations* (ed. I. L. Finkel and M. J. Geller; Cuneiform Monographs 7; Groningen: Styx, 1997), 99–116.

⁶¹ Kramer, “Marriage of Martu,” 23–26; C. Felli, “Funerary Practices from the End of the Early to the Middle Bronze Age in Northwestern Syria: The Middle Euphrates Valley,” in *(Re-)Constructing Funerary Rituals in the Ancient Near East* (ed. P. Pfälzner et al.; Qatna Studien Supplementa 1; Wiesbaden: Harrassowitz, 2012), 79.

of the Waltons' method: the relevance of the text to Bible interpretation is extremely doubtful because it is in Sumerian and, for all we know, the item plucked from the text might be quoted just to highlight the decision to accept Martu, and possibly his people. A further relevant question is whether we should assume that a possibly exaggerated statement in a literary text should determine how we see the same group in an historical text.⁶² For example, the Umman-manda occur among other groups of soldiers in the Hittite Laws.⁶³ No one assumes that, because an ethnic group is given a somewhat outlandish description in a Babylonian literary text, we should read that description into a prosaic set of Hittite laws. Obviously, there was an ethnic group, whose composition may have changed over time, who were treated differently in laws and legends.

A crucial issue with the marriage of Martu text is that it is in Sumerian. One might think from the way the Waltons cite ANE texts that a text written in one period in one language must be available and comprehensible to any other language group in any other period. Once again this is the Waltons treating the ancient world as if it is the modern world. While some Sumerian texts survive in the Mesopotamian scribal curriculum after about the middle of the second millennium BC, surviving texts tend to be texts for which an Akkadian translation existed or texts with explicit ritual use such as the laments of the class of cultic officials called *kalú*.⁶⁴ Kitchen and Lawrence, though starting their conjectured history of treaty forms with a Sumerian text, realised they had to postulate a way the concepts of that text could come to the Hittites and then on to Israel. The Waltons tend not to show awareness of such complexities.⁶⁵

VI. COMPARISONS

These two works are ostensibly about the same endeavour: elucidating the Bible from the ANE. Law codes and covenantal texts play a prominent role in both arguments. Yet they are so different. Kitchen and Lawrence are marshalling an impressive array of evidence to make a case. The Waltons are ignoring complexities and misusing other works in search of a particular conclusion. Obviously, the

⁶² When it suits them, the Waltons make a point of genre classifications and assume that texts that we classify as a certain genre somewhere in the ANE will have the same characteristics as biblical texts we classify as being of that genre. When it suits them, they ignore genre differences between texts.

⁶³ Adali, *Scourge of God*, 75–77.

⁶⁴ Mark E. Cohen, *The Canonical Lamentations of Ancient Mesopotamia* (2 vols.; Potomac, MD: Capital Decisions, 1988), 1:11–13; P. Michalowski, "The Lives of the Sumerian Language," in *Margins of Writing, Origins of Cultures* (ed. S. Sanders; Oriental Institute Seminars 2; Chicago: Oriental Institute of the University of Chicago, 2006), 173.

⁶⁵ A similar problem arises with John Walton's crucial appeal to the Sumerian text of Gudea to support his conjectures about the meaning of the biblical creation story (*Lost World of Genesis One*, 87–89). In one way this case is even worse because the text to which Walton appeals is not even a literary text, which might have been handed down as part of the scribal curriculum. Jacob Klein, "From Gudea to Šulgi: Continuity and Change in Sumerian Literary Tradition," in *DUMU-E2-DUB-BA-A: Studies in Honor of Åke W. Sjöberg* (ed. H. Behrens, D. Loding, and M. Roth; Occasional Publications of the Samuel Noah Kramer Fund 11; Philadelphia: University Museum, 1989), 301. See also Weeks, "The Bible and the 'Universal' Ancient World: A Critique of John Walton," *WTJ* 78 (2016): 18, 19.

Kitchen-Lawrence work has to be treated with far greater respect. Yet, even it struggles to make a convincing case. A basic reason for that struggle is that they want to present the history of the treaty form as something derived from Mesopotamia. It is true that our first textual examples come from Mesopotamia but that is not necessarily absolute origin, given that we have so little early textual evidence from outside Mesopotamia. The biblical text itself indicates that there were very early covenants.

There has been an attempt to argue that the covenantal curses of Deuteronomy were derived from Assyrian treaties, thus dating Deuteronomy where the Developmental Hypothesis put it in the reign of Josiah. Kitchen and Lawrence responded by amassing the data on curses to show that there was a long tradition of cursing in the ANE from which the curses of Deuteronomy could be drawn.⁶⁶ Yet because they want to date Deuteronomy to a specific period they cannot see it as merely part of that widespread tradition. The paradox is that treaty forms are probably to be placed with the flood story as being the most certain examples of overlap between the OT and the ANE. Going from the certainty of connection to specific historical conclusions about the time and nature of the connection is difficult, if not impossible.⁶⁷

The crucial result is that specific historical conclusions on the basis of the comparative method are very difficult to establish. The unsure nature of the Kitchen and Lawrence conclusion, despite their detail and scholarship, emphasizes that fact. As I said before, that does not mean their conclusion was objectively wrong. It just means such a conclusion is difficult to reach by their method.

The Waltons are a different story. Their detailed theories, which run counter to the plain meaning of the biblical text, are inherently suspicious, especially when the authors quote ANE texts with no reference to time of attestation, or the range of modern scholarly opinion. Paradoxically, the well-established parallel between biblical law and ANE treaty specifications demolishes their thesis on biblical law. No one doubts that treaty rules were meant to be obeyed. The same must apply to biblical law, as the biblical text repeatedly says.

Kitchen and Lawrence find themselves wanting to use the comparative method to date Deuteronomy to the late second millennium, but when others use a parallel argument to date it to the Assyrian Empire, they rebut that by appeal to the

⁶⁶ *Treaty, Law and Covenant*, 2:209–32.

⁶⁷ It is not generally recognized that the case of the flood shows similar uncertainties because the part of the text where the flood story appears in the Standard Babylonian version of the Gilgamesh Epic is lost in the Old Babylonian version. We know from other texts such as the *Sumerian King List* and *Atrahasis* that the flood tradition did go back to the Old Babylonian period but the form of the story in Gilgamesh is much closer to the biblical. If an Old Babylonian version of the Gilgamesh Flood story was discovered it would increase the range of possible times of connection between the Babylonian story and the biblical story by about a thousand years but would not necessarily provide explanations of how the overlap occurred. T. Jacobsen, *The Sumerian King List* (Chicago: University of Chicago Press, 1939); W. G. Lambert and A. R. Millard, *Atra-Hasis: The Babylonian Story of the Flood* (Oxford: Clarendon, 1969); A. R. George, *The Babylonian Gilgamesh Epic* (Oxford: Oxford University Press, 2003).

general tradition of treaty curses.⁶⁸ It is a case of using the comparative method when it yields the “right” answer but denying others use of it. The Waltons are similarly picking the uses of parallel texts that fit their argument: the non-use of Hammurabi’s Code to make biblical law non-prescriptive but ignoring the treaty-covenant parallel.

What is driving the Waltons to a position which is lacking all credibility with the biblical text and in reference to ANE scholarship? In earlier volumes it could be seen as an apologetic desire to remove inferences of the biblical texts that trouble modern unbelievers. As mentioned above, the historical conclusion of this recent work is equally offensive. It does not make sense.

The Waltons, by a few side comments, make clear their liking for the New Perspective on Paul.⁶⁹ N. T. Wright contributed to *The Lost World of Adam and Eve*.

If there is an all-encompassing law of God and the Canaanites were condemned for their transgressions of that law, what must be the fate of others who have broken that law? A traditional evangelical understanding of the conquest as an expression of the just judgment of God, leads logically to the need of atonement, and substitutionary atonement leads to the question of who benefits from that atonement. Justification by faith is then a very live option. Was the embarrassment that the Waltons saw in the traditional view of the conquest not just the problem of genocide but also the threat to the New Perspective on Paul posed by a God of righteous judgment? I have noted above what a poor solution they provide to the problem of genocide.

It would be quite unfair to charge the New Perspective on Paul with all the problems that result from the Waltons’ treatment. Nevertheless, I think it fair to ask whether they have sensed a real issue. If justification by faith is excluded what are the other options? A rigorous, punishable law of God has to be met somehow. And the conquest seems to imply such a law. The Waltons have met that challenge. Yet at what a cost! Any clear word from God is gone, and God himself has become quite mysterious. There was no standard of God condemning the Canaanites, and logically no law of God condemning the modern unbeliever.

It is easy to condemn the Waltons for coming to the texts with preconceptions. However, we all struggle with that problem. The Kitchen and Lawrence work looks more empirical because of the mass of data accumulated but the way the thesis is argued shows fixed ideas. Why do we have to start cultural history with Mesopotamia and why do we have to argue that genre distinctions are rigid? They state that dominant Pentateuchal theories, going back to Wellhausen, reflect the influence of Darwinian progressivism.⁷⁰ I disagree. In the Developmental Hypothe-

⁶⁸ For the weakness of both cases see K. Lawson Younger and Neal A. Huddleston, “Challenges to the Use of Ancient Near Eastern Treaty Forms for Dating and Interpreting Deuteronomy,” in *Sepher Torah Mosheb: Studies in the Composition and Interpretation of Deuteronomy* (ed. D. A. Block and R. L. Schultz; Peabody, MA: Hendrickson, 2017), 78–109.

⁶⁹ Note the interpretation of Galatians dispute not in terms of ways of salvation but in terms of “identity markers” (146), and the rejection of substitutionary atonement as the teaching of the OT (79).

⁷⁰ *Treaty, Law and Covenant*, 3:260.

sis the final stage, which is “priestly” dominance, is not pictured as an advance but as a regression. The influence at this point is not Darwin but Romanticism.⁷¹ There is Romanticism also behind the whole notion of rigid genre.⁷²

VII. CONCLUSION

Real overlaps between the OT and the ANE may be fewer than some suppose, but they are real. Turning those cases into detailed historical conclusions is very difficult. The ANE is complex and cultural differences are real. One cannot but wonder in the case of both of these works whether they knew the conclusion before the investigation. I would not necessarily condemn that because all of us do it, at least to some extent. However, it has led to trying to find a path that will lead to the conclusion. One may respect one attempt more than the other but together they highlight the difficulties that arise. When we consider the huge span of time involved in ANE history, the range of cultures, and the difficulties of the sources, we need to keep our expectations in check. Our task becomes even more difficult if the presuppositions, with which we approach the data, fit poorly with that data, both of the Bible and the ANE.

⁷¹ Weeks, *Sources and Authors: Assumptions in the Study of Hebrew Bible Narrative* (Perspectives on Hebrew Scriptures and Its Contexts 12; Piscataway, NJ: Gorgias, 2011), 186–97.

⁷² Klatt, *Hermann Gunkel*.