
BOOK REVIEW

THE BIBLICAL ORIGINS OF LAW TOWARDS A LIVING ORIGINALIST READING OF THE BIBLE

**BIBLICAL JUDGMENTS: NEW LEGAL READINGS IN
THE HEBREW BIBLE. BY DAPHNE BARAK-EREZ**

*Reviewed by Joshua Segev**

TABLE OF CONTENTS

I. INTRODUCTION.....	504
II. STRUCTURE AND CONTENT OF BIBLICAL JUDGMENTS.....	505
III. CATEGORIZING THE BIBLICAL LEGAL TEXT	507
IV. THE GAP BETWEEN THE BIBLICAL LEGAL TEXT AND MODERN LAW	512
V. LIVING ORIGINALISM AS A METHOD OF READING THE BIBLICAL LEGAL TEXT	516
VI. A LIVING ORIGINALIST READING OF NABOTH'S VINEYARD.....	520
VII. CONCLUSION.....	527

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I. INTRODUCTION

In this book, Daphne Barak-Erez invites readers to reconsider law and legal institutions through a new engagement with the Hebrew Bible.¹ While tracing the biblical roots of modern legal systems is not a new idea, her objectives are broader: to expose hidden assumptions and correlations adopted by contemporary law, to draw inspiration from the text's enduring universal questions and institutional challenges, to analyze how the biblical text reflects legal dilemmas, and to connect those dilemmas to modern law and political thought. However, Barak-Erez sees the project as a two-way inquiry, using the biblical text to shed light on modern law while allowing contemporary legal thought to reinterpret the biblical text itself.

Barak-Erez explicitly states that the book avoids traditional interpretations, engaging directly with the biblical legal text² to maintain interpretive freedom, encourage personal engagement, and emphasize legal aspects often overlooked in standard readings.³ She explains that her interest in the Bible's legal dilemmas started in childhood. After serving as a professor and a dean at Tel Aviv University's law faculty, and since 2012, as a Justice on the Supreme Court of Israel, returning to the text has given her new insights into both the Bible and contemporary legal issues. She hopes others will also find value in this experience.⁴

This is an impressive and important project; few today could undertake a work that engages with such a wide spectrum of legal dilemmas in the Hebrew Bible. The purpose of this review is threefold. First, it assesses the structure and methodology of Barak-

¹ See DAPHNE BARAK-EREZ, *BIBLICAL JUDGEMENTS: NEW LEGAL READINGS IN THE HEBREW BIBLE 1* (University of Michigan Press 2024).

² Unless otherwise indicated, I use the terms "biblical law" and "biblical legal text" broadly and flexibly to refer not only to the legal collections of the Pentateuch (the Ten Commandments; the Covenant, Priestly, Holiness, and Deuteronomic collections) but also, in a wider sense, to ideas and references to legal traditions and practices found in other biblical texts, such as narratives, prophetic speeches, and wisdom sayings. Barak-Erez likewise employs the term "biblical law" in this broader sense. *See id.* at 2.

³ *Id.* at 1.

⁴ *Id.* at 5.

Erez's project, showing both its strengths in making biblical legal dilemmas accessible and its weaknesses in fragmenting the text, relying on an intuitive interpretive approach, and risking anachronism. Second, it considers the broader implications of this intuitive method, especially in contrast with the framework of living originalism that may better capture the biblical text's layered nature. Third, it develops an alternative path by demonstrating, through the test case of Naboth's vineyard, how a living originalist reading illuminates the biblical text itself and explains its continuing relevance for modern legal and political discourse.

This review is organized as follows. Part I outlines the structure and general content of *Biblical Judgments*. Part II examines the book's organization based on legal categories instead of biblical or historical order. This method highlights recurring patterns and makes subtle legal nuances accessible to modern readers. It also allows for further exploration of foundational legal readings. Part III discusses several broad concerns about Barak-Erez's readings of the biblical legal text. It emphasizes the gap between modern law and the biblical legal text, explaining that, because of the historical and cultural distance from its original context, the text cannot be fully understood through a direct and non-contextual reading. Part IV explores how Jack Balkin's theory of living originalism can provide an alternative framework for reading the biblical legal text. This approach combines fidelity to the original meaning of the text with recognition of the ways its significance has been reinterpreted across generations. Part V turns to the story of Naboth's vineyard, using it as a case study for a living originalist reading of the biblical legal text. It shows how the narrative's layered composition enables both its reuse across generations and continuing relevance for legal and political discourse. The review concludes with a summary of the main insights.

II. STRUCTURE AND CONTENT OF BIBLICAL JUDGMENTS

BIBLICAL JUDGMENTS is a comprehensive work that extends across nearly four hundred pages. The book is organized into six legal subjects: Law and Government, Judging and Judges, Human Rights and Social Justice, Criminal Law, Private Law, and Family and Inheritance Law. Each section features a series of short essays, totaling 127, which explore their respective themes through a biblical story, a single verse; or, which explore a specific theme by

presenting a legal dilemma or serving as a starting point for legal discussion. These essays are concise, most no longer than one or two pages, and collectively form a rich and multifaceted whole.

The first section, "Law and Government," discusses the legal and normative principles shaping the functioning of government and political institutions.⁵ Barak-Erez explores topics such as the limits of majority rule, the significance of minority opinions, the discrepancy between "law in the books" and "law in action," conflicts between rulers and critics, and the principle of separation of powers through analyses of biblical stories like Sodom and Gomorrah, Korah and his followers, the twelve spies, the poor man's ewe lamb, and various other instances involving prophets rebuking kings.

The second section, "Judging and Judges," explores the foundations of a fair and just judicial system.⁶ Concepts, such as due process, judicial independence, evidentiary rules, and access to justice, are illustrated by stories such as Solomon's judgment, Absalom's rebellion, Naboth's vineyard, the trial of Achan, and the story of Phinehas. Barak-Erez uses these accounts not merely to highlight mundane legal concepts, but as a starting point for evaluating contemporary juridical institutions and forms of adjudication, including the contribution of public interest petitioners, the role of the public defender, and the use of testers in discrimination cases.

The third section, "Human Rights and Social Justice," highlights biblical stories and readings that raise dilemmas of dignity, equality, and the protection of the vulnerable.⁷ Stories such as Joseph and Potiphar's wife, Moses and the Cushite woman, Jacob's service under Laban, the Tower of Babel, the Garden of Eden, and Moses' appointment of a spokesman to overcome his speech difficulty serve as points of departure for discussions of slavery and trafficking, racism, labor rights, urban planning, refugees and labor migration, disability access, and more.

The fourth section, "Criminal Law," turns to biblical readings of crime and punishment, including the obligation to obey the law and accounts of violence, corruption, and sexual offenses.⁸ These readings address core issues of criminal law, such as

⁵ *Id.* at 7-65.

⁶ *Id.* at 67-121.

⁷ BARAK-EREZ, *supra* note 1, at 123-179.

⁸ *Id.* at 181-274.

individual and collective responsibility, criminal intent, the risk of false convictions, and the nature of punishment. Examples like “When Jonathan Ate of the Honey” illustrate dilemmas of ignorance of the law, while others like the rape of Dinah and the Levite’s Concubine grapple with questions of proportional punishment, victim rights, and the boundaries of self-defense.

The fifth section, “Private Law,” addresses conflicts over torts, contracts, and property.⁹ Readings on liability for damages ask how to compensate for injuries and loss of life, while stories such as Job’s suffering probe the limits of remedy. Contractual narratives — from Abraham’s purchase of the cave of Machpelah to Jacob’s bargains with Laban and Esau’s sale of his birthright — highlight questions of good faith, flawed agreements, and unconscionability. Property stories, including the allocation of land and the tragedy of the commons faced by shepherds, further explore the balance between ownership, joint use, and access to shared resources.

The sixth section, “Family and Inheritance Law,” examines biblical narratives that address enduring concerns of parenthood and barrenness, marriage and divorce, family loyalties, and inheritance.¹⁰ These readings include the daughters of Zelophehad and the incremental recognition of equality in inheritance, Hagar, Bilhah, and Zilpah as surrogate mothers, Lot’s daughters and the anxieties of reproduction, and the story of Pharaoh’s daughter and Naomi —which highlight the emergence of new family forms. Questions of adultery, conflicting loyalties, and the honor owed between parents and children are also explored.

III. CATEGORIZING THE BIBLICAL LEGAL TEXT

Neither the book as a whole nor the essays within each section are arranged in a biblical, historical, or literary sequence. Instead, the divisions and internal structure of the book’s sections are based on legal categories. Barak-Erez does not provide a reason for this classification, aside from brief comments. By “biblical sequence,” I refer to the canonical order of the Tanakh, where the Pentateuch is followed by the Prophets and the Writings. When I mention “historical,” I am referring to the compositional sequence, the chronological timeline according to which texts were likely

⁹ *Id.* at 275-327.

¹⁰ *Id.* at 329-373.

written. When I refer to “literary sequence,” I mean an arrangement guided by biblical literary genres, distinguishing between stories, legal collections, speeches, fables, and other forms.¹¹

A notable benefit of this approach is that it enables the combined analysis of narratives dealing with similar legal issues. The biblical text is characterized by recurring type-scenes, stories built around fixed motifs whose repetition, absence, or manipulation allows the biblical author to convey messages which produce meaning.¹² It is also believed to be the product of multiple sources and collections, giving it a multi-faceted character that reflects diverse styles, themes, and perspectives.¹³ The Hebrew Bible is not a book in the conventional sense but a library, written and compiled over centuries by various authors, including prophets, priests, and scribes.¹⁴ Additionally, it contains a wide range of materials, including stories, laws, sayings, proverbs, poetry, prophecy, and wisdom.¹⁵ Barak-Erez’s organizational choice purposefully mirrors this variety by grouping texts across different contexts, according to their legal significance.

Moreover, by placing parallel stories, laws, sayings, and proverbs side by side, Barak-Erez is able to highlight the legal nuances and distinctions that emerge from these recurring patterns. In doing so, accessibility is enhanced for legal readers: the categorization by familiar legal fields makes it easier to navigate the book, locate relevant topics, and engage with the essays efficiently and as needed. Beyond orientation, it also renders these recurring patterns legible to legal readers who are often unfamiliar with such

¹¹ MARC ZVI BRETTTLER, *HOW TO READ THE BIBLE* 31 (Jewish Publ’n Soc’y 2005).

¹² See Robert Alter, *Biblical Type-Scenes and the Use of Conventions*, 5 *CRITICAL INQUIRY* 355, 359 (1978); ROBERT ALTER, *THE ART OF BIBLICAL NARRATIVE* 58-77 (Revised edition, 2010) (1981).

¹³ The recognition of multiple sources and collections in the Hebrew Bible gave rise to the Documentary Hypothesis for the Pentateuch and the theory of a Deuteronomistic History for the Former

Prophets. Scholarly views remain divided on the scope and interrelationship of these sources. See JULIUS WELLHAUSEN, *PROLEGOMENA TO THE HISTORY OF ISRAEL* William Robertson Smith ed., J. Sutherland Black & Allan Menzies trans., 2013) (1885); MARTIN NOTH, *THE DEUTERONOMISTIC HISTORY* (Univ. of Sheffield, Dep’t of Biblical Stud. 1981); FRANK MOORE CROSS, *CANAANITE MYTH AND HEBREW Epic* (Harvard Univ. Press 1973).

¹⁴ RICHARD ELLIOTT FRIEDMAN, *WHO WROTE THE BIBLE?* (Simon & Schuster 1996); WILLIAM M. SCHNIEDEWIND, *HOW THE BIBLE BECAME A BOOK* 3 (Cambridge Univ. Press 2005); WILLIAM M. SCHNIEDEWIND, *WHO REALLY WROTE THE BIBLE?* (Princeton Univ. Press 2024).

¹⁵ CHRISTINE ELIZABETH HAYES, *INTRODUCTION TO THE BIBLE* 6 (Yale Univ. Press 2012).

literary devices, allowing them to detect legal nuances that would likely remain hidden without a combined, parallel reading.

This approach is illustrated by Barak-Erez's comparison of Prophet Nathan's rebuke of King David following the killing of Uriah the Hittite and the taking of his wife, Bathsheba (the poor man's ewe lamb parable), with Prophet Elijah's confrontation with King Ahab after the killing of Naboth and the seizure of his vineyard ("would you murder and take possession?"), a comparison she revisits four times throughout the book.¹⁶ Like other scholars before her, she relates these two exemplary, prophetic stories.¹⁷

Still, her fragmented legal analysis and conclusions sometimes differ radically from most traditional legal interpretations of the two biblical texts. In the essay "King, Priest, and Prophet," Barak-Erez identifies the biblical tension between kings and prophets as an early expression of the separation of powers — exemplified by both Nathan's and Elijah's rebukes of their kings.¹⁸ She argues that while modern democracies differ fundamentally from biblical governance, the biblical model highlights the enduring need to separate powers and ensure mutual oversight.

In the essay "The Poor Man's Lamb," she explores theft and murder disguised as law.¹⁹ She hypothesizes the parable omits murder because the causal link between David's order and Uriah's death was too complex to allow for a direct accusation: being sent into battle did not guarantee death, David acted under his authority as king, and ancient conceptions even allowed the monarch to merge personal with official interests.²⁰ She contrasts this with Elijah's rebuke of Ahab, where theft and murder are intertwined and also under the guise of law.²¹ Naboth's death was not "mere" murder, but murder under the guise of law, which signaled the complete

¹⁶ BARAK-EREZ, *supra* note 1, at 21-23, 59-61, 107-108, 320-321.

¹⁷ DANIEL FRIEDMANN, TO KILL AND TAKE POSSESSION: LAW, MORALITY, AND SOCIETY IN BIBLICAL STORIES 75-111 (Hendrickson Pub 2002); MARSHA C. WHITE, THE ELIJAH LEGENDS AND JEHU'S COUP 17-24 (Scholar's Press 1997).

¹⁸ BARAK-EREZ, *supra* note 1, at 22-23.

¹⁹ *Id.* at 59-61.

²⁰ For a different view, see F. Rachel Magdalene, *Trying the Crime of Abuse of Royal Authority in the Divine Courtroom and the Incident of Naboth's Vineyard*, in THE DIVINE COURTROOM IN COMPARATIVE PERSPECTIVE 145, 200 (Ari Mermelstein & Shalom Holtz eds., 2014), which argues that David clearly abused his royal authority.

²¹ BARAK-EREZ, *supra* note 1, at 60.

destruction of the moral and legal system. Thus, Ahab's harsher punishment was justified compared to David's.²²

In the essay "So You Have Found Me, My Enemy," Barak-Erez examines the issue of standing and public interest litigation.²³ She reads Nathan's rebuke and Elijah's confrontation as early examples of petitioners acting not for themselves but on behalf of others who could not seek justice: Uriah, who was already dead, and Naboth, who was stoned to death. For her, these stories support a liberal approach to standing, emphasizing the importance of public interest petitioners in defending the rule of law when direct victims are unable to do so. She argues that the reasoning behind these stories should not be limited to such extreme cases because barriers to litigation can also arise from fears of criticizing the government or harms that affect the broader public.

Finally, in the essay "The Right to Private Property and Freedom of Contract," Barak-Erez examines biblical conceptions of property rights and their relationship to contractual freedom. She juxtaposes the parable of the Poor Man's Lamb with the story of Naboth's vineyard to show that biblical law protects property not only against private theft but also against government taking, especially where possessions bear deep personal meaning.²⁴ Drawing on Margaret Radin's theory of "property and personhood,"²⁵ she highlights that both the lamb, treated like a daughter, and Naboth's inherited vineyard exemplify forms of property whose intimate connection to their owners makes their loss particularly grave.

Therefore, Barak-Erez's editorial choice enables discussion of multiple biblical stories within shared legal themes, while also making subtle nuances accessible to legal readers. Unfortunately, her method is not always applied consistently. This is evident in the two prophetic narratives on which I have focused – Nathan's rebuke and Elijah's confrontation. In her essay on judicial independence, she concentrates only on Naboth's case, without comparing it to other stories about judicial corruption or Nathan's parable.²⁶ This omission is surprising because Robert Cover highlighted Nathan as an early figure of judicial independence, arguing that, like the prophets,

²² *Id.*

²³ *Id.* at 107-108.

²⁴ *Id.* at 321.

²⁵ Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957 (1982).

²⁶ BARAK-EREZ, *supra* note 1, at 74-75.

modern judges must be independent of the ruler and speak truth to power.²⁷ Daniel Friedmann, in turn, explained the difference between Nathan's rebuke and Elijah's confrontation in terms of institutional independence: Nathan, as a court-prophet dependent on the king, was constrained to admonish discreetly, whereas Elijah, functioning as an opposition or freelance prophet, embodied a far greater degree of independence, allowing him to denounce Ahab in the harshest terms.²⁸

Similarly, in her discussion of the principle "would you murder and take possession?" Barak-Erez concentrated again solely on Naboth's vineyard, overlooking the striking linguistic and conceptual similarity between Nathan's rebuke to David and Elijah's accusation against Ahab.²⁹ In that passage, Nathan condemns the king for having "killed Uriah the Hittite with the sword; [and] ...taken his wife,"³⁰ a formulation that mirrors Elijah's accusation against Ahab. Both narratives crystallize the same juridical core: the abuse of royal power to combine murder with unlawful appropriation. Had she compared the two stories, she would have seen an additional point: the principle is qualified. In David's case, the divine promise of an eternal dynasty together with repentance allowed him to retain the fruits of his crime, whereas Ahab's dynasty was irrevocably doomed.³¹

27 Robert Cover, *The Folktales of Justice: Tales of Jurisdiction*, 14 CAP. U. L. REV. 179, 189 (1985); Ronald R. Garet, *Judges as Prophets: A Coverian Interpretation*, 72 S. CAL. L. REV. 385, 408 (1999); Joshua Segev, *Judges in Their Own Cases: Biblical Kings and Supreme Court Justices*, 39 TOURO L. REV. 1147, 1162-1169 (2024).

28 FRIEDMANN, *supra* note 17, at 82. On Nathan being a court-prophet, see BENJAMIN UFFENHEIMER, *EARLY PROPHECY IN ISRAEL* 285-301 (David Louvish trans., Magnes Press 1999); GWILYM H. JONES, *THE NATHAN NARRATIVES* 20-21 (1990).

29 Uriel Simon, *The Poor Man's Ewe-Lamb: An Example of a Juridical Parable*, 48 BIBLICA 207, 220-21 (1967).

30 2 Samuel 12:9 (New King James).

31 See also FRIEDMANN, *supra* note 17, at 82. But compare with Nili Cohen, *The Slayer Rule*, 92 B.U.

L. REV. 793, 794 (2012) ("In practice, however, both [kings] retained the profit of their crimes: David kept Bathsheba, Ahab the vineyard.").

A further gap in *Biblical Judgments*' structure appears in the opening essay on constitution and interpretation. Strikingly absent are the foundational covenantal narratives of the giving of the Torah at Mount Sinai and the parallel covenant at Shechem, mediated by Joshua bin Nun. These stories are of a constitutional character: they frame law as a covenant between God and the people and continue to serve as paradigms for constitutional thought—the constitution as a contract—up to the present day. Their omission from such a comprehensive volume is regrettable. Presumably, the reason lies in the practical difficulty of applying the author's chosen method to the sheer richness and complexity of these narratives, yet the absence remains notable.

IV. THE GAP BETWEEN THE BIBLICAL LEGAL TEXT AND MODERN LAW

While reading *BIBLICAL JUDGMENTS*, I found myself asking a question similar to that posed by the student in one of Stanley Fish's famous essays:³² is there, in fact, a biblical legal text in this book? Do we actually encounter the stories, laws, and legal teachings of the Bible, or are we mainly left with ourselves and the opinions we project onto the biblical text? It feels somewhat strange, since Barak-Erez repeatedly emphasizes her desire to place the biblical text at the very center of her inquiry.³³ This may relate to her editorial choice to structure the discussion around legal categories, a choice that often fragments the biblical narratives and biblical legal codes. As a result, the reading is not centered on complete stories or legal collections in all their dimensions but on specific legal aspects abstracted from them.³⁴ The feeling may also come from the passionate perspectives and legal worldview that Barak-Erez promotes, which sometimes causes her legal positions to take

³² STANLEY FISH, *IS THERE A TEXT IN THIS CLASS? THE AUTHORITY OF INTERPRETIVE COMMUNITIES* 525 (1980).

³³ BARAK-EREZ, *supra* note 1, at 2 ("This book aspires to go back to the text that is the cornerstone of the Judeo-Christian tradition, the Bible.").

³⁴ Uriel Simon distinguishes between literary reading, which attends to the integrity and uniqueness of the individual story, and literary criticism, which seeks similarities and dissimilarities across stories. He cautions that combining the two often subordinates reading to the needs of criticism. *See* URIEL SIMON, *READING PROPHETIC NARRATIVES* xiii (Lenn J. Schramm trans., 1997). Similarly, in my view, fragmenting biblical stories into legal categories to serve a juridical purpose subordinates the biblical text itself to an external legal analysis. The focus is thereby shifted from the integrity of the narrative to its instrumental use in addressing questions of legal doctrine.

precedence over the biblical text.³⁵ This is reflected, for example, in her focus on a nontextual interpretation as the primary way to adapt biblical canonical law, her support for public interest petitioners, and her endorsement of using testers in discrimination cases.

The problem, however, goes deeper. Any effort to describe and understand the biblical legal text inevitably involves using modern legal categories, concepts, and terms. At the same time, a significant gap exists between modern law and biblical law.³⁶ Framing a biblical passage in terms of “the limits of majority rule,” “the significance of minority opinions,” or “defending the rule of law” risks bringing anachronisms into our analysis. Making direct connections from biblical passages to modern constitutional ideas can at times appear forced, casting doubt not only on specific comparisons but also on the overall attempt to draw parallels with the biblical legal text.³⁷ Likewise, we should exercise caution before passing judgment on the biblical legal text, considering the vastly different legal, political, and social contexts in which it was written, and recognizing our bias toward modern perspectives over those of the past.

Barak-Erez attempts to avoid this problem through a strategy of interpretive avoidance. As she explains, her book “does not offer a historical study aimed at uncovering actual legal practice during biblical times, nor does it examine that history vis-à-vis other ancient Near Eastern cultures.”³⁸ Instead, she describes her project as building on earlier literary and cultural readings of the biblical text.³⁹ In a footnote, Barak-Erez selectively refers to two studies,⁴⁰ but she does not clarify why these particular works were chosen.

³⁵ David F. Levi & Daphne Barak-Erez, *Biblical Judgments: An Interview with Justice Daphne Barak-Erez of the Supreme Court of Israel*, 108 JUDICATURE 78, 81 (2024).

³⁶ See Bruce Wells, *Introduction*, in THE CAMBRIDGE COMPANION TO LAW IN THE HEBREW BIBLE 1, at 7-8 (Bruce Wells ed., 2024), noting the gulf between modern and ancient conceptions of law; and SIMON, *supra* note 29, at xiii, noting the great distance between ancient and modern readers, which makes an “unmediated and naïve reading” unattainable.

³⁷ Inevitably, any inquiry into the biblical legal text is caught within what has been called the “hermeneutical circle.” Any reading depends on prior understandings and judgments, which themselves can only be explained by appeal to other readings or other understandings and judgments. See CHARLES TAYLOR, *PHILOSOPHY AND THE HUMAN SCIENCES: PHILOSOPHICAL PAPERS* 2 17-18 (1985).

³⁸ BARAK-EREZ, *supra* note 1, at 3.

³⁹ *Id.*

⁴⁰ ASSNAT BARTOR, *READING LAW AS NARRATIVE* (2010), and Chaya Halberstam, *Law in Biblical Israel*, in THE CAMBRIDGE COMPANION TO JUDAISM AND LAW 19 (Christine Hayes ed., 2017).

Apart from one additional reference to one of the two studies, they are not discussed further in the book, making it difficult to determine the extent to which her analysis depends on them. What remains is not the biblical legal text itself but mediated versions of it. Ultimately, she views the biblical text as a “blueprint for dilemmas,” serving as a starting point for exploring universal and enduring legal issues.⁴¹ Approaching the biblical legal text this way, however, pushes it to the margins of modern legal discourse.⁴²

In my view, however, the biblical legal text possesses distinctive qualities as a source of legal and political thought that go beyond serving merely as a point of departure for modern legal reflection. These features bear directly on the gap between the ancient text and our modern legal conceptions. First, the biblical legal text is a legal masterpiece characterized by sophistication and plurality, weaving together theological, moral, political, and legal themes through covenants, laws, speeches, narratives, and metaphors.⁴³ Second, biblical law is integrated into a larger narrative of national history—the collective journey of the people—where norms and principles emerge from foundational events, patterns, and documents, and become embedded in collective memory rather than in abstract principles or natural order.⁴⁴ Third, the biblical legal text has also been absorbed into Western legal traditions, where its stories

⁴¹ BARAK-EREZ, *supra* note 1, at 2.

⁴² See e.g., Adam Dodek, *Daphne Barak Erez, Biblical Judgments: New Legal Readings in the Hebrew Bible*, 73 AM. J. COMP. L. 481, 484 (2025) (book review) (“Barak-Erez has succeeded in producing an engaging book that provides a useful starting point for critical inquiry. *Biblical Judgments* reminds us that after two millennia, the Bible may be even more important as a font of questions rather than as an authoritative source for answers.”).

⁴³ SCHNIEDEWIND, *supra* note 14, at 19; HAYES, *supra* note 15, at 8; JONATHAN BURNSIDE, GOD, JUSTICE, AND SOCIETY: ASPECTS OF LAW AND LEGALITY IN THE BIBLE xxv, xxxiii (2010) (“Biblical law is a truly remarkable body of law. ... It is precisely because... biblical law is an integration of many different kinds of legal phenomena and literary genres that handling biblical law is rather like grappling with a Rubik’s cube.”).

⁴⁴ Bruce Wells, *The Nature of the Collections*, in LAW IN THE HEBREW BIBLE 55, 61 (Bruce Wells ed., Cambridge Univ. Press 2023) (“If the biblical collections should be understood as belonging to the same tradition as the cuneiform collections [ancient Near East law collections written in cuneiform script, such as the Laws of Hammurabi], then it seems that the practice of putting a collection to use in a larger narrative of national history was an innovation on the part of the biblical authors.” (alteration from original quote in brackets)).

and norms have been invoked to justify legal arrangements and principles.⁴⁵

The distinctive features of the biblical legal text attest to its sophistication and depth. On the one hand, they highlight the substantial gap between the ancient world and our own; on the other hand, there is no complete foreignness, as biblical legal ideas have been absorbed into and continue to shape the Western legal tradition over the centuries. One way to address this gap is by comparing biblical law with other legal systems of the ancient world, from Mesopotamia in the east to Greece in the west. This approach clarifies the institutions and norms of ancient legal practice, situating the biblical legal text within a broader regional continuum. The significance lies not only in the similarities between the biblical legal text and these sources but also in their differences.

Another avenue for narrowing the gap is engagement with traditional interpretations, which provide perspectives closer to the social and political world in which the text was composed and reveal how it was read, interpreted, and even applied in earlier contexts. Comparison with modern law can also be illuminating, but only if conducted with caution and limited to basic legal concepts. Ancient societies already practiced core elements of legal life, including accusation and defense, testimony and evidence, resolution of disputes, as well as voluntary agreements and obligations.⁴⁶ By contrast, projecting modern institutions, such as judicial review, separation of powers, or public petitions, onto the biblical text becomes especially problematic when not carried out through a reflective process that acknowledges the historical distance involved. More fundamentally, even the very category of “law” requires caution, for we cannot assume that it accurately reflects how ancient legal texts were perceived or functioned in practice.⁴⁷

⁴⁵ On the absorption of the Bible into Western legal culture, see JOHN MARSHALL GEST, *THE INFLUENCE OF BIBLICAL TEXTS UPON ENGLISH LAW* (1910); Charles S. Lobinger, *The Bible as a Law Book*, 47 AM. L. REV. 556 (1913); DANIEL L. DREISBACH, *READING THE BIBLE WITH THE FOUNDING FATHERS* 17 (2017); J. Michael Medina, *The Bible Annotated: Use of the Bible in Reported American Decisions*, 12 N. ILL. U. L. REV. 187 (1991). More broadly, on the Bible’s integration into Western cultural memory, see WALTER DIETRICH, *THE EARLY MONARCHY IN ISRAEL* (2007), which shows how the figures of Israel’s first kings (Saul, David, and Solomon) have been absorbed into Western imagination through a long chain of retellings and reinterpretations that have shaped cultural, political, and religious thought to the present.

⁴⁶ Wells, *supra* note 44, at 7.

⁴⁷ JONATHAN VROOM, *THE AUTHORITY OF LAW IN THE HEBREW BIBLE AND EARLY JUDAISM* 8 (2018).

V. LIVING ORIGINALISM AS A METHOD OF READING THE
BIBLICAL LEGAL TEXT

From the early modern era to the present, legal, political, and social thinkers have invoked the Bible as a foundational source for their ideas.^{48,43} By contrast, modern biblical scholars have generally refrained from importing legal theory to their work, possibly due to their commitment to a “pure” scientific method that seeks to exclude any foreign ideas from the biblical text, and out of caution against adding further anachronisms already present in the study of ancient texts. However, in recent decades, biblical scholarship has increasingly drawn on legal theory to gain a deeper understanding of the Hebrew Bible and the dynamics of its interpretation.⁴⁹

Jonathan Vroom has demonstrated why such an approach is essential.⁵⁰ He draws on Joseph Raz’s distinction between practical authority and epistemic authority.⁵¹ Practical authority provides binding and preemptive reasons for action – like a teacher’s authority over a student, a parent’s over a child, an officer’s over a soldier, or the state and its officials over citizens. In contrast, epistemic authority provides guidance that can be evaluated alongside other considerations, such as a doctor’s recommendations or a sage’s counsel. Using this framework, Vroom contends that the biblical text was not always regarded as a source of binding obligation and often served as a source of useful instruction.⁵² Vroom applies this distinction in concrete ways, analyzing both biblical narratives and texts from the Qumran community.⁵³ He shows that many of these narratives treat Pentateuchal law as epistemic rather than practical authority, and argues that only in later periods, including post-exilic Judaism and Qumran, did the law come to be regarded as fully

48 See, e.g., THOMAS HOBBS, *LEVIATHAN* (1651); JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* (1690); WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* (1769); SIGMUND FREUD, *MOSES AND MONOTHEISM* (KATHERINE JONES TRANS., 1939); MAX WEBER, *ANCIENT JUDAISM* 153 (1952); MICHAEL WALZER, *EXODUS AND REVOLUTION* (1985); SANFORD LEVINSON, *CONSTITUTIONAL FAITH* (1988); STEPHEN HOLMES & MOSHE HALBERTAL, *THE BEGINNING OF POLITICS* (2017); JON ELSTER, *SOLOMONIC JUDGMENTS* (1989); ALAN M. DERSHOWITZ, *THE GENESIS OF JUSTICE* (2000).

49 See for example CHRISTINE ELIZABETH HAYES, *WHAT’S DIVINE ABOUT DIVINE LAW?* (PRINCETON: PRINCETON UNIV. PRESS, 2015).

50 VROOM, *supra* note 47

51 *Id.* at 16-21. See JOSEPH, *THE MORALITY OF FREEDOM* 38-69 (1986).

52 *Id.* at 208-212.

53 VROOM, *supra* note 47, at 50-55, 101-129, 174-201.

binding in the practical sense.⁵⁴ Legal theory thus functions as a set of “lenses”: rather than creating anachronism, it prevents it by clarifying what it would mean for an ancient text to be treated as law, and by helping us understand when biblical texts became binding obligations.⁵⁵

Much in the same way that Vroom has shown how legal theory helps to avoid anachronism and better understand how the biblical text functioned, we may ask whether theories of legal interpretation can also help us read the biblical legal text. Such theories could allow us to remain faithful to its original meaning while being attentive to the many ways it has been interpreted, appropriated, and absorbed into modern Western legal systems. Daphne Barak-Erez herself has suggested otherwise.⁵⁶ In an interview about her book, she explained:

“Well, this book is also a book about interpretation, but it’s not reflective of the interpretive tools I use in my everyday practice as a judge. The book is for me a way to think about the eternal moral dilemmas of law and not something that I developed in order to use as a judge.”⁵⁷

By clearly separating her biblical readings from the hermeneutic methods she uses on the bench, Barak-Erez resists the idea that legal theory should aid our understanding of the biblical legal text. I set aside the contested normative question of whether judges may or should invoke the Bible in their rulings.⁵⁸ Barak-Erez’s concern seems partly to be that engaging the Bible through legal theory would suggest a professional link to her judicial role. My focus here is

⁵⁴ *Id.* at 211-212.

⁵⁵ Joshua Berman similarly draws on legal theory—particularly the distinction between common-law and statutory approaches to jurisprudence—to illuminate modern debates over the nature of Pentateuchal law and its relationship to biblical narratives. He argues that the widespread assumption that the Pentateuchal law collections function as statutory codes reflects anachronistic conceptions of law shaped by nineteenth-century intellectual currents concerning the nature of law. See JOSHUA BERMAN, *THE HISTORY OF LEGAL THEORY AND THE STUDY OF BIBLICAL LAW*, 76 (Catholic Biblical Quarterly, 2014).

⁵⁶ Levi & Barak-Erez, *supra* note 35.

⁵⁷ *Id.* at 80.

⁵⁸ Adam Shinar & Anna Su, *Religious Law as Foreign Law in Constitutional Interpretation*, 11 INT’L J. CONST. L. 74 (2013); Sanja Zgonjanin, *Quoting the Bible: The Use of Religious References in Judicial Decision-Making*, 9 N.Y. CITY L. REV. 31 (2005).

different: whether theories of legal interpretation can shed light on the biblical legal text itself.

My proposal is not as radical as it might initially seem. Biblical scholars suggest that the functioning of the biblical text can be compared to constitutional documents like the Magna Carta, the Declaration of Independence, and even the U.S. Constitution. William Schniedewind, for instance, describes the biblical passage in 2 Samuel 7, where the prophet Nathan promises David an eternal dynasty, as a constitutional text for ancient Israel.⁵⁹ Its importance grew well beyond the immediate context of legitimating the Davidic monarchy: by the late Judean period, it was tied to the temple, its destruction created a constitutional crisis in the Babylonian exile, and the Promise ultimately outlived both throne and sanctuary.⁶⁰ It was reinterpreted in the eschatological hopes of the Qumran sect, the faith of the early church, and restorative forms of Judaism, and its formative power has endured ever since.⁶¹

Schniedewind explains that the Promise to David must be seen as an organic part of a broader social discourse. Texts, he argues, are products of society and acquire meaning only within particular historical moments.⁶² Schniedewind parallels the promise to David to the interpretation of the United States Constitution or the Declaration of Independence – which has varied dramatically over the years – and asks: what does the right to bear arms mean, or what does it mean that “all men are created equal”? The answers to such questions emerge from the dialogue between the text and society.⁶³ The same is true of the Promise to David, whose interpretation depended on shifting social and political contexts. It was read both in times of statehood and in times of national collapse, by insiders and by outsiders, in oral and in literate cultures. Its reception thus reflects the rise and fall of a millennium of Jewish history.

⁵⁹ WILLIAM M. SCHNIEDEWIND, *SOCIETY AND THE PROMISE TO DAVID* 3 (1999).

⁶⁰ *Id.*

⁶¹ *Id.* at 4.

⁶² Regarding Schniedewind's methodology: his analysis of the Promise to David relies on Hans Robert Jauss's reception theory, which emphasizes the changing “horizon of expectations” of successive audiences and considers literature as part of ongoing social discourse. *Id.* at 5-7. My approach, however, diverges from this literary hermeneutic by adopting living originalism as a more suitable framework for interpreting foundational legal texts.

⁶³ *Id.* at 5.

Jack Balkin's theory of *living originalism* provides precisely such a framework through which biblical legal text can be read.⁶⁴ Developed in the context of American constitutional law, it combines fidelity to the original meaning of the text with recognition that its application must evolve through political and judicial practice. For Balkin, the Constitution is not a static code but a framework that gains life through successive generations of interpretation and implementation. This approach avoids two pitfalls: on the one hand, it rejects the idea of freezing a text in its ancient form, detached from future development and concerns, while on the other, it resists the temptation to project modern institutions or values anachronistically onto the past. Instead, living originalism grounds interpretation in the text's historical meaning while allowing its principles to be reapplied in new circumstances.

In the case of the Hebrew Bible, there were no formal political or judicial institutions in the modern sense responsible for updating the text's meaning. However, royal scribes, prophetic circles, and temple staff collected, preserved, and reinterpreted legal traditions, often within the king's court or cultic centers. Through source and textual criticism, we can follow their editorial work and the layers of meaning they left behind. As noted earlier, the Hebrew Bible is not just a single book but a collection compiled over centuries by prophets, priests, and scribes. Modern biblical scholarship has identified distinct sources and traditions within this collection, such as prophetic cycles and royal records in the Book of Kings.

When applied to the biblical legal text, living originalism is especially apt because it mirrors the qualities that make the Bible distinctive. As noted in the previous chapter, the Hebrew Bible is marked by a plurality of voices, layered composition, and the embedding of law within broader historical and narrative frameworks. Like a constitution, it contains fixed formulations alongside open-ended principles that invite renewed interpretation. A living originalist approach allows us to remain faithful to the original public meaning of the biblical legal text while acknowledging how its authority has been reshaped by successive generations of readers, interpreters, and legal systems. It thus provides a framework that is both historically grounded and

⁶⁴ JACK M. BALKIN, *LIVING ORIGINALISM* (2011).

dynamically responsive, enabling the biblical legal text to be treated not merely as an ancient artifact but as a living legal tradition.

Now the difficulty with Barak-Erez's readings becomes clear. Unlike a living originalist approach, which seeks both to recover the original public meaning of a legal text and to trace how that meaning has been reinterpreted and absorbed over time, Barak-Erez places less emphasis on these dimensions. Her new legal readings fall short in two respects. First, they rest on the implicit assumption that the biblical legal text can be treated as if it were a single, unified work, rather than a library of texts whose meaning depends on the distinct historical, social, and political circumstances of their composition. Second, they assume that one may disregard two millennia of interpretation, application, and reception and approach these texts as if they could be read in a clean or naïve manner. These assumptions lead her to treat the biblical text primarily as a convenient point of departure for modern legal reflection rather than as a living legal text whose meaning is historically grounded and dynamically developed.

VI. A LIVING ORIGINALIST READING OF NABOTH'S VINEYARD

To see more concretely what a living originalist reading might look like, consider the story of Naboth, a narrative whose meaning was itself shaped and reshaped across centuries of composition, redaction, and reception. I do not attempt a comprehensive treatment of this complex narrative, as a complete study would require a book in itself.

At its core, the Naboth narrative seems to have originated in two separate older sources: an old Jehu source and an old Elijah source.⁶⁵ The old Jehu source recounts in detail Jehu's coup and the extermination of Ahab's house (2 KINGS 9–10: 21–26).⁶⁶ In this

⁶⁵ Most biblical scholars hold that the accounts of Naboth in 1 Kings 21 and 2 Kings 9:21–27 derive from different, independent sources that underwent substantial redaction. In addition, 1 Kings 21 itself appears to have been edited more than once, and some scholars identify more than a single source within it. In this framework I cannot enter into the method of dividing the text and will only note that the proposed divisions rest on both textual and thematic considerations. In preparing this study I have particularly benefited from: PATRICK T. CRONAUER, *THE STORIES ABOUT NABOTH THE JEZREELITE* (T&T Clark, 2005); MARSHA C. WHITE, *THE ELIJAH LEGENDS AND JEHU'S COUP* (Brown Judaic Stud. 1997); Alexander Rofé, *The Vineyard of Naboth: The Origin and Message of the Story*, 38 *Vetus Testamentum* 89 (1988).

⁶⁶ See T.C. VRIEZEN & A.S. VAN DER WOUDE, *ANCIENT ISRAELITE AND EARLY JEWISH LITERATURE* 299 (Francis R. Doyle trans., 2005).

version, the Naboth affair is mentioned only in passing: Jehu asserts that his murder of King Joram⁶⁷ is in fulfillment of a prophecy of YHWH spoken in Ahab's day.⁶⁸ Ahab is said to have ordered the murders of Naboth and his sons, carried out secretly at night. Jehu then instructed his adjutant to cast Joram's corpse onto Naboth's field, in accordance with the oracle. Notably, there was no reference to a staged trial, Elijah was absent, and the prophecy anonymous. The shocking killing of Naboth and his sons to seize property was presented as a cause célèbre of its time and likely not an isolated act of royal injustice.⁶⁹

Yet the account of the Naboth affair functions as part of an "apology," a political narrative framed in theological terms to justify a usurper's rise to power, much like the succession stories that legitimized David and Solomon,⁷⁰ and comparable to royal apologies known from the ancient Near East.⁷¹ For its earliest audiences, this pattern would have been immediately recognizable, signaling that Jehu's violent accession to the throne was lawful and that the will of the god of Israel guided the events.⁷² Furthermore,

67 For years, the Jehu source was viewed a more reliable historical account than the Elijah source. However, the Tel Dan inscription of Hazael, from the 9th century BCE, revealed significant difficulties in the Jehu source. Found in northern Israel, it states that Hazael killed both the king of Israel and the king of Judah, contradicting the biblical account which attributes Joram and Ahaziah's deaths to Jehu. This casts doubt on the historical accuracy of the biblical story and suggests that ideological motives may have influenced it. See Nadav Na'aman, *Naboth's Vineyard and the Foundation of Jezreel*, 33 J. STUDY OF THE OLD TESTAMENT 197, 212-213 (2008). Nevertheless, some believe that the inscription indicates Jehu's revolt against Joram in 841 B.C.E. was a collaboration with Hazael, aligning with the biblical narrative of Jehu assassinating Joram and Ahaziah and rising to power in Israel. William M. Schniedewind, *Tel Dan Stela: New Light on Aramaic and Jehu's Revolt*, 302 BULL. AM. SCH. ORIENTAL RSCH. 75, 83-85 (May 1996).

68 Jehu recalls a past event when he and Bidkar were charioteers behind Ahab, Joram's father, and claims that the Lord had raised an oracle against Ahab. This oracle supposedly promised divine vengeance for the blood of Naboth and his sons, which was spilled unjustly. Jehu interprets his actions as fulfilling this divine prophecy, presenting himself as an instrument of YHWH's justice. 2 Kings 10: 21-26.

69 MORDECHAI COGAN & HAYIM TADMOR, 2 KINGS: A NEW TRANSLATION WITH INTRODUCTION AND COMMENTARY 120 (2001).

70 See Leonhard Rost, *THE SUCCESSION TO THE THRONE OF DAVID* (2015); P. Kyle McCarter, Jr., *The Apology of David*, 99 JOURNAL OF BIBLICAL LITERATURE 489 (1980); D. M. Gunn, *Traditional Composition in the "Succession Narrative,"* 26 VETUS TESTAMENTUM 214 (1976).

71 Harry A. Hoffner, *Propaganda and Political Justification in Hittite Historiography*, in UNITY AND DIVERSITY: ESSAYS IN THE HISTORY, LITERATURE, AND RELIGION OF THE ANCIENT NEAR EAST 49, 49-50 (H. Goedicke & J.J.M. Roberts eds., 1975); Nadav Na'aman, *Game of Thrones: Solomon's 'Succession Narrative' and Esarhaddon's Accession to the Throne*, 45 TEL AVIV 89 (2018).

72 Marsha White argues for a clear connection between the accounts of Jehu's coup (2 KINGS 9-10), Naboth's vineyard (1 KINGS 21), and David and Bathsheba (2 SAMUEL 11-12). In her view,

for Jehu's contemporaries, his act of casting Joram's body into Naboth's field also sent a clear message of zeal and obedience.⁷³

The old Elijah source recounts the prophet's call to proclaim God's message to Ahab and to accuse and condemn him for the combined crimes of murdering Naboth and taking his vineyard (1 Kings 21: 17-20). Elijah delivers a furious admonition and prophecy: "Would you murder and take possession? . . . In the place where dogs licked the blood of Naboth shall dogs lick thy blood, even thine." Notably, there is no mention here of any criminal activity on the part of Jezebel, the false witnesses, and the nobles, and we learn of dogs licking Naboth's blood.⁷⁴ The prophecy is directed solely against Ahab himself, without reference to his son or to the downfall of the entire dynasty. The account also includes a short exchange between the king and the prophet, in which Ahab protests, "Have you found me, O my enemy?" to which Elijah replies, "I have found you, because you have given yourself over to do what is evil in the eyes of the LORD."

Royal prophets, also known as court prophets, were a well-established and widely accepted phenomenon in ancient Israel (1 KINGS 22) and the broader ancient Near East.⁷⁵ They provided theological and legal legitimacy to kings (e.g., Nathan's oracle about the promise to David), offered divine advice, and assured their success in governance, all within the king's service.⁷⁶ Some biblical and other Near Eastern texts even suggest prophetic influence on the

the vineyard story, modeled after the David and Bathsheba narrative, was composed to convict Ahab and to provide juridical legitimation for Jehu's extermination of the Omride dynasty. See Marsha White, *Naboth's Vineyard and Jehu's Coup: The Legitimation of a Dynastic Extermination*, 44 VETUS TESTAMENTUM 66 (1994); WHITE, *supra* note 16. Compare with, Na'aman, *supra* note 61, who argues that the David and Bathsheba narrative (2 Sam. 11-12) was a late insertion by the Deuteronomistic Historian to frame the succession struggles within a theological scheme of sin and punishment: David's sin with Bathsheba and Uriah is linked to the ensuing turmoil in his household and the eventual legitimation of Solomon's rise.

⁷³ While the old Jehu source frames Jehu's violence as zeal for YHWH and retribution for Naboth's blood, modern scholarship argues that his actions were driven primarily by political opportunism rather than by genuine religious or moral motives. Lerato L.D. Mokoena & Esias E. Meyer, *Jehu's Violent Coup and the Justification of Violence*, 75 HTS THEOLOGIES STUD./THEOLOGICAL STUD. TS THEOLOGIESE STUD./THEOLOGICAL STUD. 3 (2019).

⁷⁴ This detail never appeared in the story of vv. 1-16.

⁷⁵ Jonathan Stokl, *Prophecy and the Royal Court in the Ancient Near East*, 9(3) RELIGION COMPASS 955 (2015); HAYES, *supra* note 14, at 239-241; FRIEDMANN, *supra* note 17, at 82; BENJAMIN UFFENHEIMER, *EARLY PROPHECY IN ISRAEL* 285-301 (David Louvish trans., 1999).

⁷⁶ Stokl, *id.* at 59-62. Reinhard Achenbach, *Law and Prophecy*, in CAMBRIDGE COMPANION TO LAW IN THE HEBREW BIBLE 181, 182 (Bruce Wells ed., 2023).

selection of kings through anointing.⁷⁷ Yet prophetic texts that openly accuse the king of murder and dispossession and predict his downfall are exceedingly rare outside the Hebrew Bible. In fact, ancient Near Eastern law codes punished prophets who prophesied against the king. Even in the Bible, stories illustrate the physical danger prophets faced, such as Elijah, who fled to Mount Horeb (1 KINGS 19); Micaiah, son of Imlah, who was imprisoned for prophesying King Ahab's death in battle (1 KINGS 22); and Jeremiah, who was thrown into the courtyard of the guard after prophesying the destruction of Jerusalem by Babylon (JEREMIAH 37–38). For its earliest audiences, the Naboth story as narrated by the ancient Elijah source was particularly remarkable because it diverged from conventional norms: it depicted a legendary prophetic narrative of bravery and defiance against the monarch, emphasizing the primacy of God and His law over regal power. Although the Jehu source and the Elijah source are independent and ancient, they still share common motifs. Both emphasize prophecy and fulfillment, depicting God as the one who enthrones and dethrones kings. Both portray Elijah and Jehu as tools of Yahweh's will, driven by religious zeal and unwavering dedication to the laws of YHWH. Finally, both embody the principle of retributive justice: blood for blood, life for life.⁷⁸

These earlier sources were later heavily redacted. A later editor added a reprimand against idolatry into the older Naboth sources, shifting the blame from Ahab's crime to Jezebel (1 KINGS 21: 21–22, 24–26; 2 KINGS 9: 7–10, 22, 30–37). The emphasis is not on her role in Naboth's murder but on her introduction of Baal worship and the killing of YHWH's prophets, which is portrayed as the reason for the dynasty's fall. In this redaction, Elijah's role aligns with other stories and tales of early prophets, which focus on cultic offenses—offenses against God—

⁷⁷ *Id.*

⁷⁸ However, for modern readers, both sources have problems: the older Jehu source sounds like royal propaganda, and the older Elijah source sounds exaggerated if not totally unbelievable. But compare ALFRED JEPSEN, *NABI 72* (1934), who argued that the Naboth narrative presents Elijah in a more authentic light than the other Elijah stories. Jepsen attributed an early date to the Naboth account precisely because Elijah there is depicted simply as “the Tishbite,” a man of Yahweh, without the legendary features that later attached to his figure (e.g., miracle-working or ascension to heaven). In this account Elijah appears essentially as God's instrument, the servant of Yahweh, which Jepsen believed reflects an earlier stage in the development of the Elijah traditions. However, for modern readers, both sources have problems: the older Jehu source sounds like royal propaganda, and the older Elijah source sounds exaggerated if not totally unbelievable.

with less attention to conflicts between individuals.⁷⁹ We learn also that a son of the prophets, sent by Elisha, Elijah's successor, anointed Jehu to be king of Israel, and instructed Jehu to destroy Ahab's dynasty as punishment for Jezebel's crimes. Jehu carried out these instructions with uncompromising zeal, fulfilling the prophecy in its entirety without hesitation. This editorial layer presents the Naboth affair as a trigger for a religious war between Yahwism and Baalism – the injustice to Naboth and his family aroused popular outrage, enabling the Yahwists to rally support for their revolt.

However, modern research shows that the Northern Kingdom of Israel in the ninth century BCE was a multifaceted polity, with a heterogeneous population of diverse ethnic origins and cultural traditions, including groups of Canaanite descent.⁸⁰ Thus, it has been argued that it is unlikely that contemporaries would have seen the conflict with Baal worship alone as grounds for exterminating an entire dynasty.⁸¹ Accordingly, what lay at the heart of the matter was opposition to hereditary monarchy, understood as a breach of the traditional model of charismatic leadership. For Jehu's supporters, this meant the complete eradication of Ahab's house to ensure that dynastic succession would not survive. For Elijah's supporters, it represented loyalty to a charismatic form of kingship where the ruler became king through prophetic endorsement, divine inspiration, or popular approval.⁸² Thus, the prophets opposed Ahab and his house not only because of cultic or religious deviations, but because hereditary monarchy itself was perceived as undermining the conviction that YHWH alone chooses Israel's leaders. In summary, the prophecies about the fall of dynasties in Israel can be understood as expressions of the charismatic ideal and opposition to dynastic succession. They upheld the authority of Yahweh and the prophets while prophesying the total destruction of the royal house.

This anti-dynastic strand, visible in the editorial layer of the struggle against Baal and Jezebel, was later expanded into a broader framework, where the fall of dynasties was explained as part of God's punishment for covenantal violations. Another redactor integrated the two edited tales into the broader framework of the Book of Kings, in

⁷⁹ FRIEDMANN, *supra* note 17, at 175.

⁸⁰ Nadav Na'aman, *The Israelite-Judahite Struggle for the Patrimony of Ancient Israel*, 91 *BIBLICA* 1, 15 (2010). See also Israel Finkelstein, *State Formation in Israel and Judah: A Contrast in Context, a Contrast in Trajectory*, 62 *NEAR EASTERN ARCHEOLOGY* 39, 48 (1999).

⁸¹ J. M. Miller, *The Fall of the House of Ahab*, 17 *VETUS TESTAMENTUM* 307 (1967).

⁸² *Id.* at 320.

which the destruction of the kingdoms is portrayed as divine punishment for the violation of the covenant by the kings.⁸³ Ahab's crime is thus no longer an isolated royal abuse: just as Jeroboam and Baasha had brought ruin upon their houses, so too Ahab's dynasty is doomed because of his transgression. This revision reflects an anti-monarchical strand, where kingship itself is depicted as standing in tension with God's direct sovereignty and Israel's covenantal obligations.

The final redactor of the Naboth tales worked in the post-exilic period, against the background of the reforms of Ezra and Nehemiah and their campaign against intermarriage.⁸⁴ In this version, Jezebel is cast as the archetypal foreign wife whose presence introduces apostasy and corrupts the legal order and the justice system. The local notables of Jezreel appear as collaborators with this foreign corruption, reflecting the tensions between the upper classes and the ordinary people in Persian Yehud. In this setting, the Elijah edited version of the Naboth affair was reshaped again to reinforce the polemic against intermarriage, which aligns with the struggle of the returning exiles to preserve their covenantal identity. Importantly, it also expresses the complaint of the weak against the powerful and redefines the role of Elijah to include the responsibilities associated with classical prophets—those who educate the people, debate opponents, voice generalized grievances, and advocate for social change—yet within the context of overthrowing kings and a specific event.⁸⁵

Within this framework, I cannot offer a complete and nuanced originalist analysis of the ancient sources and the editorial layers of the Naboth story. The previous analysis aimed to show that the final product is a multi-layered legal text in the form of a historical narrative that incorporates diverse views on justice, kingship, prophecy, and law. These perspectives resist simple categorization and instead create a sense of explanations that move back and forth across the theological, political, and legal significance of the story. This is what gives the Naboth story its complexity and

⁸³ Yaira Amit, *Shaping and Meaning in the Story of Naboth's Vineyard (1 Kgs 21)*, 60 BEIT MIKRA 19 (2015).

⁸⁴ Rofé, *supra* note , at 101-102.

⁸⁵ Biblical scholars distinguish between former prophets – who foresee the future, perform miracles, and are assigned the role of king-makers and king-breakers – and classical prophets – who educate the people, debate their opponents, voice generalized grievances, and advocate social change.

sophistication, enabling later generations to see it as authoritative and to adapt it to their own needs.

Several examples illustrate its enduring power. In colonial America, the tale of Naboth—who relied on written law to defend his vineyard—was invoked to argue that surrendering the Massachusetts charter would constitute a breach of a sacred legal covenant.⁸⁶ In the American Revolution, Naboth's vineyard resonated in the struggle against King George III and the Declaration of Independence, where the abuse of royal power was framed in moral and even biblical terms.⁸⁷ In the early 1800s, opponents of President Thomas Jefferson compared him to King Ahab, accusing him of abusing the legal system to persecute innocent people.⁸⁸ It was also invoked in controversies over territorial expansion, such as the Louisiana Purchase and the annexation of Santo Domingo,⁸⁹ where issues of legitimacy, sovereignty, and dispossession again came to the fore. Beyond America, the tale of Jehu's revolt against the house of Ahab was cited during the French Revolution as a precedent for the right to resist tyrannical kings. A truly living originalist project applied to Naboth's tale, therefore, is immense: it reveals how a biblical tale, precisely because it was layered and reshaped over centuries, became a living constitutional text for struggles across time and space.⁹⁰

⁸⁶ This analogy underscored the necessity of a written constitution as a safeguard for individual rights and as a bulwark against arbitrary authority. Nikolas Bowie, *Why the Constitution Was Written Down*, 71 STAN. L. REV. 1397 (June 2019).

⁸⁷ Nathan R. Perl-Rosenthal, *The 'Divine Right of Republics': Hebraic Republicanism and the Debate over Kingless Government in Revolutionary America*, 66 WILLIAM & MARY Q. 535 (2009).

⁸⁸ *Very Singular Law Case! – Qui tam*, WASHINGTON FEDERALIST (May 18, 1804). The article sarcastically compares the legal dispute involving Richard Johnson and Thomas Jefferson to the biblical story of Naboth, who was falsely accused and stoned so King Ahab could acquire his vineyard. The critic of Jefferson suggests Johnson escaped such injustice, implying the legal actions against him were unfair but less severe. It mentions a “mahogany-colored Jezebel of modern sway,” possibly referencing someone orchestrating the legal actions against Johnson, likening her to Jezebel, Ahab's wife involved in Naboth's death. The tone is accusatory and mocking, hinting at a scheme to take Johnson's land unfairly. The identity of the “mahogany-colored Jezebel” and the author's full intent are not clarified and remain open to interpretation.

⁸⁹ CHARLES SUMNER, WORKS OF CHARLES SUMNER 91 (1870-1883).

⁹⁰ Richard L. Greaves, *Traditionalism and the Seeds of Revolution in the Social Principles of the Geneva Bible*, 7 THE SIXTEENTH CENTURY JOURNAL 94, 103 (1976); John Witte, *Rights, Resistance, and Revolution in the Western Tradition: Early Protestant Foundations*, 26 LAW AND HIST. REV. 545, 552 (2008); Jorge Cañizares-Esguerra, *The Core and Peripheries of Our National Narratives: A Response from IH-35*, 112 AM. HIST. REV. 1423, 1428 (December 2007).

VII. CONCLUSION

Daphne Barak-Erez has created a creative and thought-provoking work that succeeds in making the biblical legal text accessible to contemporary legal audiences. Her interpretations make complex narratives understandable and highlight their ongoing ability to inspire reflection. Even when she breaks down intricate stories, the process is often illuminating, drawing attention to essential dilemmas that might otherwise go unnoticed. At the same time, this review suggests that her approach leaves unexplored the historical layers of the biblical legal text and the interpretive traditions it has sparked. A living originalist approach could complement her project by revealing the legal significance of stories like Naboth's vineyard and explaining why these narratives continue to resonate in modern debates about law, authority, and justice.

In this sense, the Hebrew Bible may be understood as the earliest example of what Richard Albert has described as a "multi-textual constitution," a system that consists of multiple supreme legal sources enacted separately but sharing equal authority.⁹¹ The greatest challenge of such a framework lies not only in reconciling the tensions between its different foundational patterns, principles, and values, but also in weaving them into a coherent whole in which each text engages with, checks, and is checked by the others. Read in this light, *Biblical Judgments* is both a notable achievement in its own right and an invitation for further exploration of the Bible's legal traditions.

⁹¹ Richard Albert, *Constitutional Amendments and Multi-Textual Constitutions*, 109 VA. L. REV. 1 (2023).