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# The Covenant of Deuteronomy and the Study of the Ancient Israelite Jurisprudence

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SETON HALL UNIVERSITY

THE COVENANT OF DEUTERONOMY AND THE STUDY OF THE  
ANCIENT ISRAELITE JURISPRUDENCE.

A THESIS SUBMITTED TO THE FACULTY OF THE JEWISH- CHRISTIAN  
STUDIES PROGRAM IN THE DEPARTMENT OF RELIGION IN PARTIAL  
FULFILLMENT OF REQUIREMENTS FOR THE DEGREE OF MASTER OF  
ARTS IN JEWISH CHRISTIAN STUDIES.

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SOUTH ORANGE, NEW JERSEY

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## DEDICATION

THIS THESIS IS DEDICATED TO THE MOST PRECIOUS HOLY SPIRIT OF GOD, THE SPIRIT OF WISDOM AND OF UNDERSTANDING, THE SPIRIT OF COUNSEL AND OF MIGHT (ISAIAH 11:3) AND TO ALL LOVERS OF WISDOM, KNOWLEDGE AND LEARNING.

## ACKNOWLEDGEMENTS

Wisdom is inestimable, it is valued more than gold and understanding is priceless and regarded more than silver (Proverb 16:16); this enterprise is inspired by almighty God who is wisdom par excellence. It is undertaking in consonance with his injunction “Be eager to present yourself as acceptable to God, a workman who causes no disgrace, imparting the word of truth without deviation.” (2 Timothy 2:15)

As a sequel to this, I want first and foremost to express my deep, sincere and unalloyed gratitude and appreciation to the Alpha and Omega, the Ancient of the Days, God the Almighty, who made this adventure a grand success. It is indeed a dream come true and I remain indebted to God for the particular concern he has shown me all through this exhilarating but challenging program.

I remember in a special way, the Director of the Institute of Judaeo – Christian Studies, the Rev. Dr. Lawrence Frizzell, whom I describe as a living encyclopedia. I am very grateful for the great opportunity to participate in this program and benefit from his vast wealth of knowledge. I am indeed gratified. In the same vein, I thank my other professors, Rev. Dr. David Bossman and Rabbi Brill. I very much ename your tutorial and pedagogical prowess. I thank also the vessel whom God used to avail me with the contact to the program, in the person of Sr. Rose Ahaneku; I am indeed grateful.

Worthy of mention is the Secretary of the institute of Judaeo - Christian Studies, my good friend Jay Wolferman, who has been a great source of support and assistance to me all through this period. In fact, I have imbibed his philosophy of “Do it yourself “and that has now become my guiding principle. I am indeed very grateful. I thank my family for their support and prayers. I remember

my friends and classmates, Fr. John Opara, Irmina Czapiewska, Eve Shea, Ravan Cottrell and Fr Everest Baniyet- Njei. Finally, I thank all those who in one way or the other contributed in making my study at the Seton Hall University ( South Orange New Jersey) an impressive success, I pray that the good Lord will bless and reward you all abundantly.

## ABSTRACT

*“Happy are those whose way is blameless, who walk in the law of the LORD. Happy are those who keep his decrees, who seek him with their whole heart, who also do no wrong, but walk in his ways. (Psalm 119: 1 – 3)*

All through the ages, law and justice has been a condition for a smooth, egalitarian and peaceful society. A society devoid of law and justice is not only unthinkable but a bedlam of chaos, anarchy and disorder. No wonder the ancient Greek philosopher and sage, Aristotle said, “At his best, man is the noblest of all animals; separated from law and justice he is the worst.” Generally speaking, law moves those who are subject to it to act aright. It belongs to the law to command and to forbid. Law is a rule and measure of acts, whereby man is induced to act or is restrained from acting: for “*lex*” [law] is derived from “*ligare*” [to bind], because it binds one to act.

Justice is a concept that applies only to other-directed human actions. The question of justice and injustice only arises when there are multiple individuals and some practical considerations regarding their situations and or interactions with one another. In one sense, it is a concrete, objective, and recognizable principle (i.e., respect for individual rights) that provide the foundation for a free society

According to Jochen Boecher in his book, *The Administration of Justice in the Old Testament*, “There is neither doubt nor dispute among scholars over the enormous importance of law in ancient Israel. The law influenced the life and thought of Old Testament man to an amazing extent. The consequence of this is that even the theological concepts of the Old Testament were essentially molded by Israel’s thinking on the Law.” (27)

The concept of covenant is at the basis of ancient Israelite law and justice. The Israelites had to keep this covenant by obeying the laws of God in order to enjoy the blessings attached to them. In the context of the ancient Israelite law and justice, the Law is not merely a binding force but a loving guide offered by God to his people.

Just as a parent provides guidance for a child, so the Lord provides guidance for Israel. This guidance is loving and protective, even if at times it may be strict and even difficult (Deuteronomy 8:1 – 5); because this guidance is an expression of God’s benevolence, it is gracious. Similarly, just as a child experiences delight in following a parent’s guidance, so Israel may experience delight in following the Lord’s guidance (Psalm 19:8). Thus, both the giving and the receiving of the Torah are gestures of love and joy.

Jewish tradition has a festival called “*simhat torah*”, which means “rejoicing over Torah”. In this festival, the participants parade around the synagogue holding the sacred scroll of the Torah over their heads dancing and singing for joy. This festival, which continues to this day, has its roots in the Deuteronomic understanding of God’s will for Israel. At the beginning and at the end of law code ( Deut.12:7,12,18; and 26:11, respectively ) as well as in between ( 14:26;16:11,14 ), Israel is told to “rejoice “ or “celebrate.” While the gift of a bounteous land and its harvests is sometimes the immediate cause for celebration (14:26; 16:11, 14), in the end, Israel is also called to “rejoice in all the good which the Lord your God has given to you” (26:11RSV). For Deuteronomy, this gift of grace also includes the law itself.

The giving of the law is an expression of God’s love; thus, obedience to the law is a joyful act of love in response.

## ABBREVIATIONS

Chron.....	Chronicles
Col.....	Colossians
Deut.....	Deuteronomy
Eph.....	Ecclesiasticus
Exod.....	Exodus
Ezek.....	Ezekiel
Gen.....	Genesis
Hos.....	Hosea
Kgs.....	Kings
Lev.....	Leviticus
Matt.....	Matthew
Prov.....	Proverbs
Ps.....	Psalms
Rom.....	Romans
b. Talmud.....	Babylonian Talmud
BCE.....	Before Common Era
CCC.....	Catechism of the Catholic Church
CE.....	Common Era
Impf.....	Imperfect
JBL.....	Journal of Biblical Literature
Kid.....	Kiddushin
m. Avoth.....	Mishnah Avoth
NRSV.....	New Revised Standard Version
NAB.....	New American Bible



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## INTRODUCTION

Undoubtedly, the importance of the Book of Deuteronomy for the shape and substance of Israel's faith in their God, YHWH and in their overall life and existence as a nation cannot be overstated. The Book has given definitive articulation to the main themes distinguishing Judaism and derivatively, of Christianity. In a broader sense the book is a formulation of the covenant theology, whereby YHWH and Israel are vouchsafed to exclusive loyalty and fidelity to each other; YHWH is to assure the well-being and protection of Israel; Israel is to live in reliance and obedience to YHWH, (Deut. 26:16 – 19).

The biblical language of a promised land, a chosen people and the covenant theology of the Book of Deuteronomy has become a model for Judaism, Christianity, and other world religions and even for political communities and nations of the world today. Some scholars such as Daniel I. Block; describe the Book of Deuteronomy as the “The gospel according to Moses” others, instead of comparing Moses to a gospel writer, compare him to Paul, the great New Testament theoretician.

The image of entering into a promised land presented by this great Book of Deuteronomy can also have an eschatological understanding. Nonetheless, all these aspects does not in any way, exhaust the interpretative possibilities of the book of Deuteronomy. The adventure presented in this project was motivated by my deep interest and enthusiasm in regard to the Jewish law and ethics, its peculiarities and idiosyncrasies. Among other features, this project is a distillation of the ancient Israelite law and justice, its various nuances, variants and characteristics.

This thesis opens with a study of the book of the Covenant, (Exod 20 – 23), its historical locale and background and the nexus between the Book of Exodus and the Book of Deuteronomy. I go

into a historical excursus of the events leading to the covenant at Sinai. I also embark on an analysis of the Sinai theophany and covenant and its implications and relationship to the covenant of the book of Deuteronomy.

Finally for chapter one, I undertake a study of the parallels between the code of Hammurabi / other ancient Near Eastern treaties and the covenant between God and the Israelites. In the second chapter, I expand on the Book of Deuteronomy as the second Book of the Covenant. I look at its historical locale and context. I examine its authorship, structure and form coupled with the link between the Book of Deuteronomy and the reform carried out by king Josiah in Judah between 649–609 BCE ( 2 Kings 22 ). Finally for the second chapter, I take a survey of the kinds of laws in ancient Israel and their distinguishing features.

Chapter three is an in-depth study of the concept of law and justice in ancient Israel, its essence and characteristics. It is also a survey of the legal systems and the codification of the laws of the ancient Israel. I also look at the appointment of judges and the pursuit of justice in ancient Israel.

In the chapter four, I reflect on the administration of justice in ancient Israel, the role of monarchs or sovereigns in the administration of justice and some of the elements of the ancient Israelite judicial procedures. I also examine the family laws or laws protecting the family and the civil, criminal and military laws in ancient Israel.

In the concluding chapter, I offer an evaluation and appraisal of the book of Deuteronomy and its interconnection with the Book of the covenant (Exodus 20 – 23). I examine the link between the stipulations of the book of Deuteronomy, human rights and social justice in our contemporary society. I also looked at the theology of the Book of Deuteronomy and its relevance in the New Testament. Jesus made numerous references to the book of Deuteronomy, I enumerate some of

these references and their implications based on the laws of Deuteronomy and the Old Testament. In conclusion I look at the imperatives of the laws of Deuteronomy in the overall life and existence of ancient Israelites. There is neither doubt nor dispute among scholars over the enormous importance of law in ancient Israel. The law influenced the life and thought of Israelites of ancient times to an amazing extent. A consequence of this is that even the theological concepts of the Old Testament were essentially molded by Israel's thinking on law.

## Chapter i

The covenant of Deuteronomy and the study of the ancient Israelite Jurisprudence.

### 1:1 THE BOOK OF THE COVENANT (EXODUS 20 – 23) HISTORICAL BACKGROUND

The Book of Exodus is one of the best-known books of the Old Testament. The Book describes how God through Moses led the people of Israel out of slavery in Egypt and led them across the Red Sea to freedom, towards the Promised Land.

The **Book of Exodus** or, simply, **Exodus** (from Ancient Greek: ἔξοδος, *éxodos*, meaning "going out"; Hebrew: שְׁמוֹת, *Shamōt*, "Names", the second word of the beginning of the text: "These are the names of the sons of Israel" Hebrew: ואלה שמות בני ישראל), is the second book of the Torah and the Hebrew Bible (the Old Testament)<sup>1</sup>

The Exodus viewed as a complexus of choice, deliverance, and covenant, has long been hailed by biblical scholars as the cardinal dogma of the Old Testament religion. What the incarnation is to Christianity; the Exodus is to the Old Testament; without it, we cannot understand the history and religion of the Hebrews.<sup>2</sup>

The term “departure” from Egypt descriptive of the main theme of the book, reflects an ancient Hebrew title current among the Jews of Palestine and Alexandria; *seper ysirat misrayim*, “the book of the departure from Egypt. This title is still preserved in the 10<sup>th</sup> century C. E Ben Asher Masoretic text (Baer and Strack 1879: 57).<sup>3</sup>

The Book of Exodus is part of a larger literary unit known as the Torah or Pentateuch. As such, its opening section and subject matter have many points of contact with the preceding book of Genesis and its final pericope constitutes a transition to the following books of Leviticus and

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<sup>1</sup> Brevard S Childs, *The Book of Exodus: a Critical Theological Commentary* (Philadelphia: Westminster Press 1974) 9

<sup>2</sup> Raymond E. Brown, S.S, *The Jerome Biblical Commentary* (New Jersey: Prentice Hall Inc. 1968) 47

<sup>3</sup> David Noel Freedman et al, *The Anchor Yale Bible Dictionary*: Volume 2, (London: Yale University Press 1992), 690

Numbers. The links with Genesis are discernible in the initial verses. Verse 1 cites Genesis 46:1 and Verse 5 is dependent on Genesis 46:26 – 27. The list of tribes in Exodus 1:2 – 4 is drawn from Gen 35: 23 -26, because that chapter (verses 11 – 12 contains the divine promises to Jacob.<sup>4</sup>

Exodus lays a foundational theology in which God reveals his name, his attributes, his redemption, his law and how he is to be worshiped. It also reports the appointment and work of Moses as the mediator of the Sinaitic covenant, describes the beginnings of the priesthood in Israel, defines the role of the prophet and relates how the ancient covenant relationship between God and his people came under a new administration (the covenant given at Mount Sinai).

Exodus recounts the further fortunes of Jacob's sons and daughters, settled in Egypt as Pharaoh's honored guests (Gen 45:50) after and unspecified time perhaps some three centuries, the Egyptians grow alarmed at the Hebrews proliferation. A new pharaoh first enslaves them and then plots to kill all male newborns. Through an unusual sequence of events one child is spared and raised in Pharaoh's own place. This is Moses.<sup>5</sup>

At this point, a quick summary of the events leading to the covenant book (Exodus 20 – 23ff) is imperative, Moses kills an Egyptian taskmaster, and he flees into the desert, weds a Midianite and becomes a father. At mount Horeb (also called Sinai) Moses encounters God in a burning bush. God reveals his true name rendered orally in reverence as Adonai and grants Moses the power to work miracles with his rod. God sends Moses back to liberate the Israelites and to bring them through the desert to the land of Canaan.

Once in Egypt, Moses confronts yet another Pharaoh who only mocks and increases Israel's suffering. But Moses works signs and wonders against Egypt. The ten plagues follow the king's resistance which gradually erodes. The last straw is the death of the firstborn, from which Israel is spared when they mark their door frames with lamb's blood. (Exod 12:7). Pharaoh finally releases

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<sup>4</sup> Ibid. 690

<sup>5</sup> William H. C. Propp, *The Anchor Bible, Exodus 1 – 18*, (New York: Doubleday Publishers,1999) 31

Israel, but almost immediately repents his leniency. Moses leads the people to the Sea of Reeds with the Egyptian cavalry close behind. God parts the waters for Israel, and drowns the Egyptians when they in turn attempt the passage. Led by Moses and his sister, Miriam, the people break into song.

The Israelites then trek through the wilderness to God's mountain, on the way their trust in Moses and YHWH is repeatedly tested. God sends manna and quails to feed the people and at Horeb he creates a spring to slake their thirst. With divine help, Israel beats back the Amalekite's attack. Moses and his father in law, Jethro establishes the Israelite judiciary at the mountain and YHWH begins to reveal the terms of a covenant between himself and Israel which the people ratify by acclamation.

On the third new moon after the Israelites had gone out of the land of Egypt, on that very day, they came into the wilderness of Sinai. They had journeyed from Rephidim, entered the wilderness of Sinai, and camped in the wilderness; Israel camped there in front of the mountain. Then Moses went up to God; the LORD called to him from the mountain, saying, "Thus you shall say to the house of Jacob, and tell the Israelites: You have seen what I did to the Egyptians, and how I bore you on eagles' wings and brought you to myself. Now therefore, if you obey my voice and keep my covenant, you shall be my treasured possession out of all the peoples. Indeed, the whole earth is mine, but you shall be for me a priestly kingdom and a holy nation. These are the words that you shall speak to the Israelites." (Exodus 19: 1 – 6)<sup>6</sup>

Mount Sinai is called by the Arabs Jibel Mousa or the Mount of Moses or by way of eminence, El Tur, The Mount. It is one hill, with two peaks or summits. One is called Horeb, the other Sinai. Horeb was probably its most ancient name and might designate the whole mountain.<sup>7</sup> In verse 3 of Exodus 19, Moses went up unto God, it is likely that the cloud which had conducted the Israelite

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<sup>6</sup> The Holy Bible, *New Revised Standard Version* will be used for quotations unless noted otherwise.

<sup>7</sup> Adam Clarke, *The Holy Bible containing the Old and New Testaments with commentary and critical notes*, Abingdon Press, Nashville 397

camp through the wilderness had now removed to the top of Sinai and as this was the symbol of the Divine presence, Moses went up to the place there to meet the Lord.<sup>8</sup>

At Mt. Sinai God formalized his covenant relationship with his people in the simplest of terms: “Now therefore, if you will indeed obey my voice and keep my covenant, you shall be my treasured possession among all peoples, for all the earth is mine; and you shall be to me a kingdom of priests and a holy nation” (Ex. 19:5, 6).

The Hebrew word *berit*, which is used most often to express the idea of a covenant, originally meant a “shackle” or “chain” but it came to designate any form of binding agreement. It expresses the solemn contract between Jacob and Laban in Genesis 31:44, or the alliance of friendship between David and Jonathan in 1 Samuel 18:3. It describes the peace pact made by Abraham with a whole tribe of Amorites in Genesis 14:13, and the bond of marriage in Proverbs 2:17 or Malachi 2:14. And it can be a solemn treaty between kings, as is the case with Solomon and Hiram of Tyre in 1 Kings 5, or with Ahab and Benhadad of Syria in 1 Kings 20:34. But most often it is used of the special alliance between YHWH and Israel.<sup>9</sup>

Exodus 19:1-8 constitutes the making and the establishment of the covenant between Yahweh and his people, Israel. This section is the introduction to what may be called the Sinai narrative sequence. This is the narrative beginning with Israel’s long awaited arrival at Sinai, then the text goes on to include accounts of God’s advent there, the making of the covenant between YHWH and Israel, Israel’s first disobedience and YHWH subsequent judgement, and finally, the renewed covenant and the qualified relationship of the presence of God.<sup>10</sup>

Many remarkable events took place at Sinai that shaped the religious, social cultural, ethical and in fact the entire experience of the life of the Israelites. Notable among them are: (a) the making of the covenant between God and Israel, the divine promise where the almighty God makes an astounding offer that if the Israelites will choose to abide by his special covenant, they will in turn

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<sup>8</sup> Ibid. 397

<sup>9</sup> Ibid. 175

<sup>10</sup> John I Durham, *Word Biblical Commentary*, volume 3, (Waco Texas: Word Books Publisher, 1974 ), 258

become something very special, God's own people. (b) The theophany of Sinai. The divine presence here is to confirm Moses in his role of prophet, the special spokesman of YHWH. (c) The Decalogue, the text of the Ten Commandments has evolved in two forms (Exod 20 and Dt 5:6-21). A harmonization of the two appears in the Nash Papyrus of the second century BC found in the Fayyum area of Egypt in 1902. A third form is the so called Ritual Decalogue in Exod 34: 11 – 26.<sup>11</sup>

Moses accepts this task and receives further instructions and laws from God (the so called book of covenant.) Thereupon he leads Israel in a covenant conclusion ceremony that includes a communion meal and a blood ritual. Then he follows God's order to ascend the mountain to hear further instructions. During forty days and nights on the mountain, God gives Moses detailed instructions regarding the building of a tent sanctuary (tabernacle). The latter is rich in symbolism. It is to be the means to accommodate the presence of the holy God amidst his people.<sup>12</sup>

These become a culminating point in the covenant, which is a sacred agreement between God and the people of Israel. Here God sets specific conditions, and promises to bless the Israelites if they obey those conditions. This means that if they choose not to keep the covenant they cannot receive the blessings, and in some instances they will suffer penalty as a consequence of their disobedience. The Anchor Bible Dictionary defines covenant thus:

A "covenant" is an agreement enacted between two parties in which one or both make promises under oath to perform or refrain from certain actions stipulated in the advance. As indicated by the designation of the two sections of the Christian Bible – Old Testament (= covenant) and New Testament – "covenant" in the Bible is the major metaphor used to describe the relation between God and Israel (the people of God).<sup>13</sup>

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<sup>11</sup> Raymond E. Brown, S.S, Joseph A Fitzmyer. S. J. (ed), *The New Jerome Biblical commentary*, ( Englewood Cliffs, New Jersey: Prentice Hall Inc. Englewood.1999) 56

<sup>12</sup>: Waldemar Janzen, Exodus Series: *Believers Church Bible Commentary*. Scottdale, Pa : Herald Press. 2000.

**eBook.**, 22

<sup>13</sup> *Ibid*, 1179

The expression in Hebrew “to cut a covenant” originates from an Ancient Near Eastern practice of cutting an offering into two pieces when an important covenant was established (Gen 15:10; Jer 34:18). This act signified that if the subordinate of the two parties in the agreement does not keep his part of the agreement, he will also be cut into two pieces like the offering

In Exodus 19:10–15 God instructed Moses to consecrate the people. After three days they were to approach the mountain. When the Lord descended in fire and the mountain was wrapped in smoke. God called Moses to the top (v. 20) and sent him down again with the warning to the people not to break through and perish (vv. 21, 24). Then God himself (20:22) addressed the people in 20:1–17 and gave the Ten Commandments. The people were so terrified at the voice of God (20:18 – 19) that they pleaded with Moses, "You speak to us and we will hear, but let not God speak to us lest we die." So in 20:21 Moses drew near to the thick darkness and received the rest of the ordinances from the Lord. These are given in chapters 21–23 and include many more specifics than the Ten Commandments.

In Exodus 24:1–2 God tells Moses to call the priests and the elders and to come up on the mountain. But first in Exodus 24:3 Moses reported all the ordinances to the people, and again they accepted the terms of the covenant: "All the words which the Lord has spoken we will do." Then Moses wrote the words he had received in a book (v. 4), built an altar, sacrificed several oxen, and sealed the covenant with blood. He threw some blood on the altar, read the book to the people, and sprinkled some blood on the people (vv. 5–8). Probably the people understood that the rite symbolized the union with God affected by the sacrifice (L. Frizzell).

The terrifying God of Ex 19 who appeared in his theophany has not changed. He returns at the end of chapter 24 once again in majesty and awe inspiring terror. What has changed is his relation to Israel. This is dramatically portrayed in the covenant meal of vv 9 – 11. But

in the light of God's complete otherness, the all-encompassing, focus of the chapter falls on God's mercy and gracious condescension. This is the theme which lies at the heart of the witness of the Sinai covenant.<sup>14</sup>

Then (in Ex 24:4–10) Moses and Aaron and Nadab and Abihu and the seventy elders went part way up the mountain and had a feast and saw God's glory. But in verse 12 the Lord called Moses further up to receive the "tables of stone" written by God. So Moses went up into the cloud (v. 18) and remained forty days. Chapters 25–31 give the message God spoke to Moses, mainly a plan for the tabernacle to be built and for the ministry of the priests. When he was done speaking, God gave Moses the two tables of testimony (31:18) to carry back to the people—a kind of personally signed covenant document from the Lord.

The Decalogue is a list of commandments addressed to the adult Israelite. They are worded in the second person singular masculine. Their form is categorical, without nuances or consideration of special circumstances. They do not indicate penalties to be applied in case of violation. As a whole they constitute Yahweh's solemn declaration of the condition for membership in this new people. Anyone not living by these norms is deprived of membership in this new people of Israel. Elsewhere, there will be laws instructing judges on the procedures to follow with criminals; here the sole concern is to set limits for the new society now being founded.<sup>15</sup>

The Book of the Covenant demonstrates all of those characteristics that distinguish biblical law (Torah as a whole as well as the older legal corpora preserved within it) so profoundly from all the other ancient Near Eastern legal documents. Along with the actual judicial pronouncements, there are cultic and religious, ethical and social demands together with their theological and historical foundations. The entire composition is dominated by the first and second commandments (20:23,

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<sup>14</sup> William T. Miller, *The Book of Exodus*, (New York / Mahwah NJ: Paulist Press 1991) 162

<sup>15</sup> George V. Pixley, *On Exodus, A liberation perspective*, (Maryknoll New York: Orbis Books, 2000,) 126

22:19; 23:13, 24,32f) and they appear as the words of God which were given to Israel through the mediation of Moses at Sinai.<sup>16</sup>

## 1:2 MOUNT SINAI AND THE BOOK OF THE COVENANT,

The Sinai covenant was considered by scholars to be a type of “suzerainty treaty” establishing Yahweh as King and Israel as vassal. There is a nexus between the Sinai covenant and the Mountain called Mount Sinai. The Sinai Peninsula of Egypt is a possible location of the biblical Mount Sinai. It is mentioned many times in the Book of Exodus and other books of the Bible, and the Quran. According to Jewish, Christian, and Islamic tradition, the biblical Mount Sinai was the place where Moses received the Ten Commandments.

Mount Sinai is mentioned fifteen times in the books of Exodus, Leviticus and Numbers as the place where Yahweh met with Israel and revealed his law, and in three poetic passages it is more generally the place where Yahweh dwells or from which he comes (Deut 33:2 Judges 5:5; Ps 68:9 ) In Numbers 10:33 Sinai is called the mountain of Yahweh, (elsewhere this name refers to Mount Zion in Jerusalem) In Deuteronomy 1-28 and some passages in Exodus 3:1;17:6;33:6; and elsewhere 1Kgs 8:9;19:8;2 Chr 5:10;Ps 106:9; Mal, the name Horeb is used, apparently for the same place.<sup>17</sup>

After the journey from Rephidim to the desert of Sinai, Moses ascended the mountain of Gods (v 3) some scholars still attempt to locate Mt, Sinai at Kadesh, or Petra or somewhere else east of the Sinai Peninsula, their most pressing reason being the seeming presence of volcanic activity in the narrative (e.g., 19:18)<sup>18</sup>

According to the Pentateuch. Torah was given to Israel on the mountain of God Sinai / Horeb with Moses as mediator. This place is a very special part of the mystery of Torah. The fact that Israel understood the own legal system as more than just an arrangement of

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<sup>16</sup> Frank Crusemann, *The Torah, theology and Social History of Old Testament Law*, (Minneapolis Fortress Press,1996 ) 109

<sup>17</sup> David Noel Freedman et al; *The Anchor Yale Bible Dictionary: Volume 6*, ( London: University Press, 1992 ) 47

<sup>18</sup> Ibid, 56

God is part of the uniqueness of their legal and religious history more precisely, it was an arrangement connected with a special moment in Israelite's early history.<sup>19</sup>

While Israel, guided by Moses, has represented the human actor of the sacred story so far, the arrival at Sinai fundamentally changes the roles. Moses is the hero of close encounter, while the people are confined to a lower level of reality. On the other hand, the narrative tension established by the earlier stories is continued. At Sinai too, the people of Israel remain the central human actors of the drama. But the established relationships of the earlier story cycles have been disturbed. This is also reflected by the presentation of the divine actor. The divine presence is now confined to the mountain.<sup>20</sup> Mt. Sinai occupies an important place in human history, as well as in the history of God's people. Most significantly, apart from being the place where God appeared in person to Moses and gave him the Law, this falls within the ambience of the historical mountain of God tradition in the Bible. Earlier, at the end of Moses' 40-year exile in Midian, God appeared to him in a burning bush at the base of the Mountain of God and called him to return to Egypt to lead the Israelites to freedom (Ex 3:1–4:17). When the Israelites first arrived at Mt. Sinai, Moses struck a rock at Horeb to provide water for the multitude (Ex 17:6). They then spent eleven months at the holy mountain before breaking camp and moving on to Kadesh Barnea.

Finally, we can hardly overestimate the importance of the mountain of God tradition in Ex 3f. Here Moses, a shepherd for his father in law in Midian accidentally set foot on the Mount of God, and God spoke to him out of the burning bush. He was assigned the task of leading the oppressed people out of Egypt and was honored by a revelation of the divine name.<sup>21</sup>

Phenomenologists have long recognized the central role played by mountains in theophanies throughout the ancient near East and in the Bible as well. Often sacred mountains are called

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<sup>19</sup> Ibid, 27

<sup>20</sup> Martin Ravndal Hauge, *The Descent from the Mountain, Narrative Patterns in Exodus 19 – 40*, (London: Sheffield Academic Press Ltd, 2001) 33

<sup>21</sup> Ibid, 36

“cosmic mountains” because of their physical elevations, mountains are often viewed as meeting place between the heavens and the earth, a link from the mundane to the sublime.<sup>22</sup>

The presupposition of the Sinai tradition as a whole is a God of majesty and holiness who demands from his people not only exclusive worship but a life regulated by justice. At the same time, he is a God who has chosen to meet with and remain with his people both the tent of meeting and the ark of the older tradition (Exodus 33:7-11; Num 10:33-36) and the priestly tabernacle symbolize this commitment. It is a place where Yahweh allows himself (Exodus 34:5-7) it is also where he reveals his will in a succession of legal collection. It is also the place where the regular worship of Yahweh is inaugurated and regulated, and where a pattern of leadership, priestly and lay is established.<sup>23</sup>

Because across the Near East, even where mountains play little or no role in the geography, sacred mountains are closely associated with theophany, cosmology, mythology, and temples, it is not surprising that the same is true in ancient Israel.<sup>24</sup>

Furthermore, the mountains associated with theophany and the dwellings of deity, be they Olympus, Zaphon, Zion, Barkal or the peaks of Hammamat, are located in geographical space as we know. They are not mythological in the sense of belonging to the world of the gods but are also be a mountain in a specific area that the ancient Israelites could have identified. Certainly from the phenomenological perspective the mountain of God should be so understood, as it was the place of ancient Israel’s ultimate theophany.<sup>25</sup>

In line with the historical mountain of God tradition, YHWH the God of Israel is referred to as the God of Sinai in the book of Judges.

“When you, LORD, went out from Seir, when you marched from the land of Edom, the earth shook, the heavens poured, the clouds poured down water. The mountains quaked before the LORD, the One of Sinai, before the LORD, the God of Israel. (Judges 5: 4 – 5)<sup>26</sup>

In the Book of Psalms this same tradition was also very explicit.

Mount Bashan, majestic mountain, Mount Bashan, rugged mountain, why gaze in envy, you rugged mountain, at the mountain where God chooses to reign where the LORD himself

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<sup>22</sup> James K. Hoffmeier, *Ancient Israel in Sinai*(Oxford: University Press 2005,) 111

<sup>23</sup> Ibid. 49

<sup>24</sup> Ibid. 113

<sup>25</sup> Ibid. 113

will dwell forever? The chariots of God are tens of thousands and thousands of thousands; the Lord has come from Sinai into his sanctuary (Psalm 68: 15 – 17).

There is an important pre-exilic mountain of God tradition in 1kgs 19. Here, the prophet Elijah flees in despair to the mountain of God and there laments his persecution and the backsliding of the people. The narrative amounts to a three - fold commissioning of Elijah. His assignment was to go and anoint Hazael, Jehu and Elisha as executioners of God's judgment. However, he also received a promise that there would be 7000 left alive in Israel who had not bowed down before Baal, (1kgs 19: 15 – 18).

The experience of God on Sinai became the decisive symbol in Israelite religion and theology. If we wish to understand Israel we must understand Sinai. Judaism as we know it today began with the experience recorded in chapters 19 - 20 of Exodus, and Christianity can claim to be nothing else but a continuation of the Sinai experience. If someone from the outside wishes to understand either Judaism or Christianity he must first comprehend Sinai and if the Jew or the Christian wishes to understand who and what he is, he too must comprehend Sinai, for on that mountain, El Shaddai, the God of the fruitful Mountain, became YHWH, the one who causes things to be, and the history of the human race was changed decisively.<sup>27</sup>

### 1:3 THE BOOK OF THE COVENANT AND THE CODE OF HAMMURABI

Hammurabi was a Babylonian king who reigned from 1795 to 1750 B.C. He is remembered today for promoting and enforcing an organized code of laws. The Code of Hammurabi, discovered on

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<sup>27</sup> Andrew M. Greeley, *The Sinai Myth*, (New York: Doubleday 1972.) 9

a stele in 1901, is one of the best preserved and comprehensive of ancient writings of significant length ever found.

Hammurabi was the sixth member of what is called ‘‘the first Dynasty of Babylon ‘’ five of his ancestors bore Semitic Babylonian names. His family had ruled in the city of Babylon over a hundred years. It should therefore, be unnecessary to add that Hammurabi was undoubtedly a Semitic Babylonian by race. The events of his reign are known chiefly from the dates upon his contract tablets.<sup>28</sup>

The Hammurabian code is divided into 12 sections and consists of 282 laws, 34 of which are unreadable. The code is primarily a case-by-case formula of customary law covering administrative, civil, and criminal issues. The complexity of the laws and their subject matter reveal much about ancient Babylonian culture.

The Code of Hammurabi is by far the most famous, but the existence of the others shows the importance given to written law in the wider region. Geographically they stem from the various parts of Mesopotamia as well as what is now Turkey (Hittites). The two Sumerian lists are incomplete: 37 laws in the Ur –Namma collection, and 44 in Lipit-Ishtar. Eshnunna contains some 60 laws. Hammurabi is the longest with 282 laws as well as perhaps another 29 restored from other sources to fill in a gap in the stele<sup>29</sup>

Several of the collections (Ur- Namma, Lipit – Istar, Eshnunna, and Hammurabi) include a prologue and in some cases in epilogue. The Hammurabi stele goes into detail extolling both the gods and Hammurabi, giving some general history, and calling down the wrath of the gods on those who do not obey the laws.<sup>30</sup>

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<sup>28</sup> Chilperic Edwards, *The Hammurabi Code and the Sinaitic Legislation*, (London: Kennikat Press 1971) 16

<sup>29</sup> Ibid. 109

<sup>30</sup> Ibid. 109

In ancient Babylonia, the business of the law was almost exclusively in the hands of the priesthood, for they included in their ranks the scribes, without whom there could be no books and no records. The halls of justice were usually at the gates of the temples, and the judges, the scribes, and the elders assembled”<sup>31</sup>.

The code recognizes many ways of disposing of the property sale, lease barter, gift, dedication, deposit, loan, pledge, all of which were matters of contract. Sale was the delivery of the purchase (in the case of real estate symbolized by a staff, a key or deed of conveyance) in return for the purchase money, receipts being given for both. Credit, if given, was treated as a debt, and secured as loan by the seller to be repaid by the buyer, for which he gave a bond. The code admits no claim unsubstantiated by documents or oath of witnesses. A buyer had to convince himself of the seller’s title. If he bought (or received on deposit) from a minor or a slave without power of attorney, he would be executed as a thief. If the goods were stolen and the rightful owner reclaimed, then he had to prove his purchase by producing the seller and the deed of sale or witnesses to it. Otherwise he would be adjudged a thief and die. If he proved his purchase, he had to go give up the property but had his remedy against the seller or, if he had died, could reclaim five-fold from his estate.<sup>32</sup>

Even with the difference between the polytheistic background of these other texts and the monotheism evident in the Hebrew Bible, parallels exist between the prologues and epilogues of the Southwest Asian law codes and parts of the biblical legal texts. For example, Hammurabi’s epilogue includes the following;<sup>33</sup>

I am Hammurabi, noble king, I have not been careless or negligent toward humankind, granted to my care by the god Enlil, and with whose shepherding the god Marduk charge me.....<sup>34</sup>

Similar texts promising reward for obedience and punishment for rebellion are plentiful in the biblical literature, such as this statement in Exodus 34: 6-7 <sup>35</sup>

YHWH, YHWH, A God merciful and gracious, slow to anger and abounding in steadfast love and faithfulness, keeping steadfast love for the thousandth generation, for forgiving iniquity and transgression and sin, yet be no means clearing the guilty, but visiting the iniquity of the parents upon the children and the children’s children to the third and fourth generation. (Exodus 34: 6 – 7)

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<sup>31</sup> Ibid.9

<sup>32</sup> Charles F. Horne, *The Code of Hammurabi, Introduction*, Champaign, 61825 project Gutenberg. E Book, 7

<sup>33</sup> Ibid. 109

<sup>34</sup> Ibid. 110

<sup>35</sup> Ibid 110

In addition, the Book of Deuteronomy conforms to the general format of the code of Hammurabi. It begins with a long prologue (Deut 1 – 11) in which Moses recounts Gods acts of delivering and aiding the Israelites and exhorts them to respond with obedience. The lengthy section of laws follows in Deuteronomy 12 – 26, concluding with a type of epilogue in Deuteronomy 27 – 34, which reminds the people of the consequences of obeying and disobeying the laws.<sup>36</sup>

Due to some similarities between the laws of the Book of the Covenant and Hammurabi's Code, some scholars such as David P. Wright believe that Moses must have been influenced by the Hammurabian Code. If they're right, the implication will be that Moses simply copied from the Babylonians, then that will cast aspersions to the whole episode at Mount Sinai and in fact, the inspiration of Scripture is suspect.

Nevertheless, Babylon and other ancient Near Eastern nations shared with Israel an ideal of justice for the nation, and especially for the ruler who is responsible for just government. Hammurabi brags at the end of his law code that he has written the precious words of the law in order that the strong might not oppress the weak, that justice might be dealt the orphan and the widow.<sup>37</sup>

Both the laws of Moses and Hammurabi's Code impose the death penalty in cases of adultery and kidnapping (Lev 20:10; Exod 21:16; cf. Statutes 129 and 14). Also, there are similarities in the law of retaliation, such as "an eye for an eye" (Lev 21:23-25; cf. Statute 196). Statute 206 of the Hammurabian Code says, "If during a quarrel one-man strike another and wound him, then he shall swear, 'I did not injure him wittingly,' and pay the physicians." The Law of Moses is comparable: "If people quarrel and one person hits another with a stone or with their fist and the victim does not die but is confined to bed, the one who struck the blow will not be held liable if the other can get up and walk around outside with a staff; however, the guilty party must pay the

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<sup>36</sup> Ibid 111

<sup>37</sup> Lawrence Boadt, *Reading the Old Testament: An Introduction*, (New York: Paulist Press, 1984) 187

injured person for any loss of time and see that the victim is completely healed” (Exodus 21:18-19). In the Old Testament it was one of the duties of the next of kin, to avenge murder; and the Pentateuch is quite uncompromising upon the subject. Exodus 21:12, 14, denies all sanctuary to the murderer.<sup>38</sup>

There are also some striking parallels when it comes to the phenomenon of sorcery both in the Code of Hammurabi and the covenant code given to Moses on Mount Sinai.

If a man charges a man of being a sorcerer, and is unable to sustain such a charge, the one who is accused shall go to the river, he shall plunge himself into the river, and if he sinks into the river, his accuser shall take his house. If, however, the river shows forth the innocence of this man, and he escape unhurt, then he who accused him of sorcery, shall be put to death, while he who plunged into the river shall appropriate the house of his accuser. (Statutes No 2)<sup>39</sup>

It will be noticed that the Babylonians employed ordeal to test the guilt or innocence of persons suspected of, or charged with, sorcery, and also in connection with women charged with marital infidelity. Such tests or ordeals in some form or another have been common to most nations, even down to comparatively recent times.

The command “Do not allow a sorceress to live”, (Exod 22: 18) bears the same connotation with the preceding code of Hammurabi. There are other examples, but in all truth, such resemblances do not demonstrate that Moses plagiarized Hammurabi’s Code. What the similarities do show is that murder, theft, adultery, and kidnapping are problems in every society and must be addressed. Even today, countries throughout the world have similar laws. Such parallels certainly don’t prove

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<sup>38</sup> Ibid. 109

<sup>39</sup> W. W. Davies., *The Code of Hammurabi*, Jennings and Graham (New York: Eaton and Mains, 1967 ) 23

“lifting”; rather the oral traditions of ancient cultures provided legal foundations with shared elements.

Using the benefit of natural laws, certain rights are inherent by virtue of human nature endowed by God or another "Divine" source, and can be understood universally through human reason.

Historically, natural law refers to the use of reason to analyze human nature to deduce binding rules of moral behavior from God's creation of humans. The law of nature, as determined by nature, is universal.<sup>40</sup>

These similarities prove to the more liberal critics that the Hebrews borrowed their religious ideas and laws wholesale from the Babylonians. This they maintain in spite of the great superiority of Hebrew institutions over those of the Babylonians. There is, however, not a scintilla of proof that the Pentateuch owes anything to Babylon. Many of the laws in both codes are the common property of mankind, and are such as would have naturally suggested themselves to any civilized people.<sup>41</sup>

Sometimes, Israelite law is even more demanding than Babylonian, Thus, Hammurabi law # 195 decrees “if a son has struck his father, they shall cut off his hand, “ but Exodus 21:15 demands, “whoever strikes his father or mother is to be put to death”<sup>42</sup>

This may seem harsh, but the Israelite law is humane compared to the even more drastic penalties commonly found in the Assyrian laws of the twelfth century B.C. And as a measure to end blood feuds between families and the power of the wealthy to force tenfold repayment of loans from the weak, it was a step forward. Generally speaking, the Babylonian laws often required money payments for injuries where the Israelite laws exacted physical punishment and had a rather higher percentage of death penalties. Unlike Babylon with large economy and customary use of money to pay for everything. Israel's laws reflect the still vibrant and proud sense of strict justice inherited from a tribal background.<sup>43</sup>

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<sup>40</sup> Strauss, Leo *"Natural Law"*. *International Encyclopedia of the Social Sciences*. New York: Macmillan. (1968). 54

<sup>41</sup> Davies, W. W. *Codes of Hammurabi and Moses with Copious Comments, Index, and Bible References*. Cincinnati, Ohio, Jennings and Graham. 1995, 9

<sup>42</sup> Ibid 187

<sup>43</sup> Ibid 187

In The Code of Hammurabi we are offered an example of a system of laws that represents man's best effort at justice...and it's colored profoundly by Hammurabi's self-promotion and self-interests. The Code of Hammurabi contrasts with the Code of Moses, which comes from the true God, is inspired and reflects his just and unchanging nature.<sup>44</sup>

Nevertheless, Babylon and other ancient Near Eastern nations shared with Israel and ideal of justice for the nation, and especially for the ruler who is responsible for just government.

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<sup>44</sup> Ibid 134

## CHAPTER II

# THE BOOK OF DEUTERONOMY AS THE SECOND BOOK OF THE COVENANT

### 2:1 The Book of Deuteronomy, historical locale and context

The fifth book of the Torah, *elleh ha – debarim* (“These are the words”) is called Deuteronomy in the Greek translation, This means “ the second giving of the Law.” The Hebrew title is taken from the opening phrase of the book, *Eleh ha- debarim*. The book consists of three sermons or speeches delivered to the Israelites by Moses on the plains of Moab, shortly before the people enter the Promised Land.

Both the Greek appellation of the book, “To deuteronomion (hence Latin Deuteronomium) and the Hebrew appellation, Mishneh Torah based on Deut. 17:18; Josh 8:32) mean repeated law or second law and allude to the fact that Deuteronomy is a revised repetition of the large part of the law and history of the Tetrateuch (the first four books) compare Nahmanides to Deut. 1:1 and Ibn Ezra to Deut. 1:5.<sup>45</sup>

It is impossible to overstate the importance of the Book of Deuteronomy for the shape and substance of Israel’s faith in the Old Testament. The book has given classic articulation to the main themes characteristic of Judaism and derivatively, of Christianity. In the broader sweep, the Book is a formulation of covenant theology, whereby YHWH and Israel are pledged to exclusive loyalty and fidelity to each other. YHWH is to assure the wellbeing of Israel, Israel is to live in trust in and obedience to YHWH.<sup>46</sup>

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<sup>45</sup> Moshe Weinfield, Deuteronomy 1 – 11, *The Anchor Bible Volume 5*, New York: Doubleday Publishers 1

<sup>46</sup> Walter Brueggemann, *Deuteronomy*, Abingdon Old Testament Commentaries, Nashville TN: Abingdon Press, 17

Although, the book of Deuteronomy is believed by many authors and traditions to be an eighth or seventh century document which originated from the Northern kingdom of Israel, its milieu, historical locale and background are the plains of Moab.

Deuteronomy was formed in all likelihood through a complex process that reached at least from the eighth century to the sixth century from the time of the divided monarchy into the exile. The book's affinities with other material that originated in the Northern kingdom, such as Hosea and the Elohist stratum of the Pentateuch, suggest the possibility that some of the traditions and materials originated there.<sup>47</sup>

The sons of Israel left Egypt and made their way to Mount Sinai, where God gave his laws to Moses. God made a covenant with the nation of Israel and the generations to come: because he rescued them from Egypt, Israel is to observe his rules. God addressed the Ten Commandments directly to the whole nation of Israel, and he relayed specific ordinances to Moses on the mountain.

The story begins just as the Israelites encamped on the plains of Moab, stand poised finally to enter the Promised Land. The entry into Canaan would provide the long awaited climax of the story that had begun with the promises to the ancestors in Genesis and whose fulfilment had been delayed by the enslavement in Egypt and the wandering in the wilderness.<sup>48</sup>

When they arrived the plains of Moab, Moses, portrayed as Deuteronomy's speaker was replaced by God.

The LORD said to Moses, "Go up this mountain of the Abarim range, and see the land that I have given to the Israelites. When you have seen it, you also shall be gathered to your people, as your brother Aaron was, because you rebelled against my word in the wilderness of Zin when the congregation quarreled with me. You did not show my holiness before their eyes at the waters." (These are the waters of Meribath-kadesh in the wilderness of Zin.) Moses spoke to the LORD, saying, "Let the LORD, the God of the spirits of all flesh, appoint someone over the congregation <sup>who</sup> shall go out before them and come in before

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<sup>47</sup> Patrick D Miller, *Deuteronomy Interpretation*, A bible commentary for the teaching and preaching, Louisville: John Knox Press 3

<sup>48</sup> Adele Berlin and Marc Zvi Brettler, *The Jewish Study Bible*, Jewish Publication Society, London: Oxford University Press 356

them, who shall lead them out and bring them in, so that the congregation of the LORD may not be like sheep without a shepherd.<sup>49</sup>

Before handing over the mantle of leadership to Joshua his successor, Moses reviewed the nation's history, expounded upon their laws and instructed them about the importance of loyalty to God. This is where the book of Deuteronomy took its historical context, background and setting. As the Israelites were about to enter the promised land without Moses, he used the admonitions, laws, edicts, rules, regulations, conventions and norms to prepare the people for a new life in the promised land.

## 2:2 THE AUTHORSHIP OF THE BOOK OF DEUTERONOMY

Before delving into the authorship of the Book of Deuteronomy, one should note that there are traditional and modern scholarly views on the authorship. That is seen as the words of Moses delivered before the conquest of Canaan. The Israelites even went beyond the authorship of Moses to believe that God himself prescribed the entire book.<sup>50</sup> Modern scholarship sees its origins in traditions from Israel (the northern kingdom) brought south to the Kingdom of Judah in the wake of the Assyrian destruction of Samaria (8th century BC) and then adapted to a program of nationalist reform in the time of King Josiah (late 7th century), with the final form of the modern book emerging in the milieu of the return from the Babylonian exile during the late 6th century.<sup>51</sup> This declares that it was a document of the northern kingdom. Lending credence to this theory, Moshe Weinfeld wrote, "The purification from Israel's cult of pagan elements, including the

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<sup>49</sup> Numbers 27: 13 - 17

<sup>50</sup> Joseph Grassi, *Children Liberation: A Biblical Perspective*, (Collegeville, MN: Liturgical Press 1991), 14

<sup>51</sup> E. W. Nicholson, *Deuteronomy and Tradition*, (London: The Alden Press 1967), 7

abolition of the high places associated with the Hezekianic – Josianic reforms has its roots in Northern Israel’’.<sup>52</sup>

Affinities between Deuteronomy and Hosea have led some to suggest that the authorship of Deuteronomy was the spiritual heir of this great northern prophet. Whether the prophetic affinities of the Book reflect the circles out of which it was created or are only a form of expression growing out of the widespread prophetic trend of the period, it is clear that the Book has some of the prophetic spirit. This is discernable in several of its emphases; its zeal for obedience to the covenant laws, its focus on the issue of apostasy; its insistent claim that the Lord is Israel’s only God; its concern for social justice, its criticism of a kingdom not guided by the Lord’s instruction, its conviction of Israel’s election by the Lord and what that says about the love of God; and certainly its interest in the prophetic roles, as reflected in Chapter 18 and in the portrayal of Moses as prophet.<sup>53</sup>

Deuteronomy is presented as a farewell speech delivered by Moses shortly before his death. The form of the testament given to the book looks peculiar but has its antecedents in the Egyptian method of diffusing moral teaching. Most of the Egyptian wisdom instructions were dressed in the form of testaments of kings and viziers to their successors.<sup>54</sup>

Prior to the rise of the source-critical method, both Jewish and Christian readers assumed Mosaic authorship of the book, a position reflected in the common designation of the Pentateuchal books outside the English speaking world as the five books of Moses. During the time in which Jesus ministered and spoke some looked on him as the eschatological prophet like Moses whom YHWH promised to raise up (Deut. 18:15, Matt.11:9; John 1:21, 25, 6:14; 7:40) while Jesus himself

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<sup>52</sup> Ibid. 44

<sup>53</sup> Ibid. 6

<sup>54</sup> Moshe Weinfield, *The Anchor Bible, Deuteronomy 1 – 11*, (New York: Double day, Volume 5 ) 4

rejected the interpretation. Judging from the number of quotations from the book of Deuteronomy, this was Jesus's favorite book.

## 2:3 THE STRUCTURE AND FORM OF THE BOOK OF DEUTERONOMY

Traditional analyses of Deuteronomy tend to view it as an address or collection of addresses delivered by Moses to a representative gathering of his Israelite compatriots, the whole of which was then put to "pen and ink". Thus, the book is viewed as homiletical in style with a strong hortatory or parenetic flavor.

Deuteronomy takes the form of a series of sermons delivered by Moses to the Israelites on the eve of their entrance into the Promised Land.<sup>55</sup>

Deuteronomy is distinguished among the books of the OT in several ways. The Pentateuch's basic narrative, stretches from the creation and the promise to the patriarchs in Genesis to the point at which the nation of Israel stands ready to take its promised land across the Jordan. Deuteronomy marks a pause. Its opening sentences (Deut. 1: 1 – 5) follow directly from the final verse of Numbers (Num 36:13) and prepare for an account of the words spoken by Moses to Israel there. The reader who is familiar with the story so far sees immediately that what is to come will have a certain resumptive character. This is because of the brief allusive recapitulation of the journey through the wilderness of Sinai, with only a few tantalizing geographical details. True to the announcement in the first verse, the book then consists largely of Moses's speeches and the narrative as such hardly progresses. The end of the book is marked definitely as the beginning, with its report of the death of Moses, which given his prominence in the Pentateuchal story as a whole, is a clear point of closure.<sup>56</sup>

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<sup>55</sup> Ibid 18

<sup>56</sup> J. G. McConville, *Deuteronomy*: (Illinois: Intervarsity Press 2002), 19

Many Scholars Identify the book of Deuteronomy as the “book of the law” found by Hilkiah in the Temple during the reign of Josiah (2 Kgs. 22; 2 Chron. 34) As many identify the book as Deuteronomy, however, what is meant by Deuteronomy varies greatly from one scholar to another. There are those who consider it to be the whole Mosaic Deuteronomy in its present form. In a similar vein there are those who affirm that the “book of the law” was probably a copy of, not only Deuteronomy, but the five books of the Law. Then there are those who say that only the song of Moses in Deuteronomy 32 was found. However, probably the most favored view by modern Old Testament scholars is that which was originally presented by W.M.L. de Wette in 1805, that the “book of the law” found by Hilkiah had been recently written (seventh-century) by prophets (or a prophet) with the purpose of promoting a religious reform which did indeed occur after Josiah had read the book. One last view was that it was not Deuteronomy which was found but the “Holiness Code” of Leviticus 17--26 because Deuteronomy is considered to be of post-exilic origin.<sup>57</sup>

It was a major breakthrough in the study of Pentateuchal literature when W.M.L de Wette, through his research, identified the book of the law discovered in the Temple (2 Kings 22:8) as the book of Deuteronomy. Nevertheless, de Wette was not the first person to say that the book discovered in 621 BC at the Temple during the reign of Josiah was Deuteronomy. The Law book was identified as Deuteronomy in the Patristic Era. Furthermore, it is evident that some scholars had already identified the book of the law as Deuteronomy before de Wette, but the method of approach was not as scientific.<sup>58</sup>

The biblical scholar and author, M. J. Paul in his book, “Hilkiah and the Law, (2 Kings 22) in the 17<sup>th</sup> and 18<sup>th</sup> Centuries, enumerates those who identified the book of the law with Deuteronomy as

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<sup>57</sup> Blenkinsopp, Joseph, *The Pentateuch: An Introduction to the First Five Books of the Bible*, Louisville: Westminster John Knox Press 1996, 215

<sup>58</sup> Moshe Weinfeid, *The Anchor Bible: Deuteronomy 1 – 11* Volume 5, New York: Double day publication, 1995, 16

follows: Chrysostom, Athanasius, Tostatus, Thomas Hobbes, and G. E Lessing.<sup>59</sup> The difference between all these names mentioned and de Wette may consist in the fact besides carrying out a core scientific study on the subject, de Wette supplied a clue to the date of the composition of Deuteronomy.

Trying to trace the historical circumstances underlying the book of Deuteronomy, de Wette found a correspondence between the reform of Hezekiah and Josiah and the legislation of Deuteronomy. This book would therefore be a model of inspiration of the reforms of Hezekiah and Josiah or a reflection of them. These reforms are reflected in Deuteronomy include not only in the law of centralization but also in the prohibition against pillars in the worship of YHWH (16:22)

A) The TRADITION THAT SUPPORTS THE RELATIONSHIP BETWEEN THE REFORMS OF  
KING JOSIAH AND DEUTERONOMY.

King Josiah's place in history is primarily due to the reforms which he carried through in 621 B.C., based on a law-book found in the Temple. Some scholars identify this document with Deuteronomy, or with a substantial portion of it, (the Code from Deut 12 – 26) mainly because the book demands that centralization of sacrifice. This was the outstanding feature of Josiah's reforms, and made modifications in existing practice which suggest that the principle was new. It is generally held that a study of the reforms which follow the discovery of the book of the law in the Temple compels the conclusion that, if the account is historical, the book in question was Deuteronomy, in whole or part.

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<sup>59</sup> N. Lohfink (Ed.), *Das Deuteronomium* (Leuven: Peeters, 1985) 12.

John Bright in his book “History of Israel” using 2 kg 23:8 stated that the major features of the reform of King Josiah are clear. It was first a consistent purge of foreign cults and practices. Assyrian cult objects, being anathema to all patriotic people, were doubtless the first to go. Josiah’s crowning measure, however, was to do what Hezekiah had attempted, but without permanent success: closing the outlying shrines of Yahweh throughout Judah, he centralized all public worship in Jerusalem. Rural priests were invited to come and take their place among the temple clergy.<sup>60</sup> Never had there been a reform so sweeping in its aims and so consistent in execution.

## B) THE OBJECTIONS TO THIS TRADITION

The postulate that Deuteronomy was the document at the heart of Josiah’s reform has remained a cornerstone of criticism (e. g Nicholson 1967; Clements 1989) in modern scholarship this postulate has been developed in several important ways; first, Deuteronomy has been thought to have had a decisive influence on the development of covenant theology itself; and secondly, the book in its present form is held to be the product of post – exilic period.<sup>61</sup>

We want to state at the outset that the identification of Josiah’s book of the law with Deuteronomy has in our opinion, the weight of probability on its side. Though we cannot decide this with absolute certainty. We must agree that the threats of curse in chapters 27 – 29 were suited to bring about a dismay such as that described in 2 Kings 22: 20, and also that the abolition of worship ‘on the high places ‘was a part of Josiah’s reformation (2 Kings 22:8). Nor can we deny that this abolition is demanded in Deuteronomy. But these arguments per se are insufficient.<sup>62</sup>

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<sup>60</sup> John Bright, *History of Israel*: (Louisville: Westminster John Knox Press, 1959 ) 516

<sup>61</sup> *Ibid*, p 24

<sup>62</sup> *Ibid*, p 22

According to the Book of Kings, Josiah's reform was the result of the discovery in the Temple of a book of the law, the prescription of which were put into practice by the king (2 kg 22:1 – 23:3; 23:21) The author of Chronicles (2 Chronicles 34 – 35) maintains that the reform had begun in the twelfth year of Josiah's reign, and that the discovery of the law in the eighteenth year marked only the second stage.<sup>63</sup>

At this point in the discussion, we must regard the old connection of Deuteronomy with the law of Josiah as essentially still valid, in fact, the most likely assumption. The question cannot be whether, but only to what degree the Deuteronomy known to us coincides with the text related to this event. We could hardly doubt that the Deuteronomistic narrator of the text of 2 kg 22f was talking about anything except Deuteronomy.<sup>64</sup>

## 2.5 THE TYPES OF LAWS IN ANCIENT ISRAEL

Two types of law are noted in the ancient Israelite law codes namely (1) Apodictic law and (2) Casuistic, or case, law. The essential distinction between them is that of form. Apodictic law is best illustrated by the Decalogue itself with its categorical imperatives and prohibitions: "Thou shalt not." Apodictic law is very ancient in Israelite tradition. Rather than giving a violation and its remedy or punishment, an apodictic law pronounces a global prohibition, "Do not murder; "Do not commit adultery", and so on. This type usually has the verb in the singular: it seems to address an individual, not a community. This rhetorical device and an effective one at that makes each person obligated to comply.

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<sup>63</sup> Roland De Vaux, John McHugh(trans), *Ancient Israel: Its Life and Institutions*, (Livonia, MI: Eerdmans) 1997, 337

<sup>64</sup> Ibid, 211

Some scholars following Alt (1934:134 – 71) have linked the covenant with biblical laws or precepts formulated in “Apodictic Style “. This term describes what Alt saw as categorical, unconditional formulations of laws, including those presented in the imperative forms; that is, words and commandments spoken by God in direct address to the Israelites. The subject matter of these laws, more often than not, could be described as dealing with the sacral realm of human relations with the divine that is moral pronouncements of general character rather than the illustrative situations of case law.<sup>65</sup>

The global aspect of apodictic laws, however, makes it difficult to know how they could have been enforced. The laws about murder serve as a good test case. The Ten Commandments proclaim, “You shall not commit murder (Exodus 20:13; Deut. 5:17). However, this injunction does not define murder. The KJV renders it “Thou shalt not kill” which could include capital punishment and killing in battle as well as voluntary and involuntary manslaughter.<sup>66</sup>

Casuistic law, otherwise known as case law, follows the structure, “If... then” or when.... then” The first part of the law specifies the violation or charge, and the second part indicates the consequence or punishment. For example: when someone borrows an animal from another and it is injured or dies, the owner not being present, full restitution shall be made, if it was hired, only the hiring fee is due.

Casuistic law assumes the existence of courts, and has many counterparts in Ancient Near Eastern law, so it was probably inherited by Israel from the Canaanites after the Israelites invasion of Canaan. By contrast, apodictic law is of pure Israelite origin, having its roots in the period in the desert before the invasion of Canaan.<sup>67</sup>

According to Douglas A. Knight and Amy Jill Levine, in the book *The Meaning of the Bible*, some other kinds of laws exist in the ancient laws, namely “participial law”. This is recognized because

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<sup>65</sup> Ibid, 245

<sup>66</sup> Douglas A. Knight and Amy Jill Levine, *The Meaning of the Bible*, New York: Harper Collins 2011, 112

<sup>67</sup> Seizo Sekine, *A Comparative Study of the Origins of Ethical Thought*, New York: Rowman and Littlefield 2005, 121

it begins with a participial verb, commonly translated into English as “Whoever does this.....” it parallels the apodictic form which also starts with a verb, sometimes preceded by the negative. But like casuistic law it specifies the offence and the penalty. The example of this is in Exodus 21:15 – 17, “Anyone who kidnaps someone is to be put to death, whether the victim has been sold or is still in the kidnapper’s possession.”

A few laws contain what is called a motive clause, a rhetorical device that aims to motivate hearers to comply. The fifth commandment in the Decalogue illustrates one type of motive clause, which is used to encourage compliance through a benefit offered,. e.g. “Honor your father and your mother, so that your days may be long in the land that YHWH your God is giving you”, (Ex 20:12), There is also another type which warns persons of undesirable consequences not just the specific punishment, but larger or vaguer results. For example, Leviticus 19:29 ““Do not degrade your daughter by making her a prostitute, or the land will turn to prostitution and be filled with wickedness.”<sup>68</sup>

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<sup>68</sup> Ibid 114

## CHAPTER III:

### ANCIENT ISRAELITE JURISPRUDENCE

#### 3:1 THE DEVELOPMENT OF LEGAL AND ETHICAL NORMS IN ISRAEL (PRE – STATE AND MOSAIC LAWS)

The ancient Israelites who settled in the land of Canaan sometime between 1300 and 1200 BC, trace their descent to Abraham, several centuries before, who had migrated to Canaan from Mesopotamia. His descendants had then migrated on to Egypt. Here, according to their ancestral records, they had been mistreated and enslaved, before escaping en masse and moving back up to Canaan.

Israel's mission to do "justice and righteousness" first appears in the Bible in God's call to the father of the nation, Abraham.

For I have chosen him, so that he will direct his children and his household after him to keep the way of the LORD by doing what is right and just, so that the LORD will bring about for Abraham what he has promised him. (Gen 18:19)

Israel's prophets saw the fulfilment of this goal as the basis of the nation's existence (Isa. 5:7, Jer 4:2) when ancient Israelites left Egypt, they brought with them a unique cultural facet, monotheism. For the first time in history, as far as we know, a religion had appeared which concerned the worship of only one god. By implication, this god was the universal God, the One who controlled all things.

The Hebrew Bible locates the origin of Israel's law at Sinai and attributes to Moses the role of lawgiver, or rather, of mediator, since the law is held to stem ultimately from Israel's God. The

law thereby acquires impressive authority and legitimacy, and violation of its precepts is intended to elicit direct and dire consequences, if not human then at divine hands.<sup>69</sup>

The Hebrew Bible has no question about the divine origin of the laws received at Mt. Sinai. God gives them to Moses, who in turn passes them on to the people. God is the ultimate source; Moses is the mediator ..... A mouthpiece, but one with a temper. As he descends from Mt. Sinai and sees Aaron and the Israelites worshiping the golden calf, Moses dashes to pieces the very two stone tables one which God had written the laws (Exod.31:18;32:15 – 19) Deuteronomy 10:4 states that God has to rewrite the laws on new tablets. Exodus 34:27 says it is Moses who writes at God's dictation.<sup>70</sup>

According to the Pentateuch, Torah (which means instruction) was transmitted to Israel by God through Moses. There was, after the arrival of the people at the mountain of God, a kind of prelude in which the legal organization was founded (Ex 18). Then, in connection with a theophany (Ex 19), we have the delivery of the Decalogue in direct, divine speech (Ex 20).in view of the people's reaction, they were unable to bear God's direct speech (Ex 20:18 – 21), the first block of laws was given to Moses (Ex 24: 7), called the book of the covenant (Ex 20:22 – 33). Before they could be carried out (Ex 35 – 40), we have the narrative of the golden calf as an interlude. Next we have God threaten to destroy the people, ultimately prevented by Moses, the destruction and renewal of the stone tablets of the law and the giving of a new block of divine laws (Ex 32 – 34). From Lev 1 through the departure of the people from Sinai in Num 10, God issued a great number of additional instructions through Moses. After the long journey through the desert, forty years later, Moses gave the people a second law in the long address of Deuteronomy before they crossed the Jordan river. He continued what he had received from God on Horeb (Deut 5:31)<sup>71</sup>

The law is a substantial component of the Hebrew Bible. Almost a full third of the great expanse of the Pentateuch consists of laws. The early rabbis tallied a total 613 biblical

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<sup>69</sup> Douglas A. Knight, *Law, Power and Justice in Ancient Israel*, Louisville: Westminster John Knox Press, 2011, 9

<sup>70</sup> *Ibid* 102

<sup>71</sup> *Ibid* 6

commandments. The Talmud (Makkot 23b) attributes to Rabbi Simlai in the third century CE the statement: six hundred thirteen commandments were revealed to Moses; 365 being prohibitions equal in number to the days of the year, and 248 being mandates corresponding in number to the bones of the human body.<sup>72</sup>

The Pharisees and the rabbis also revered the Oral Law which they believed reached all the way back to Moses and supplemented the written law of the Torah. It was eventually recorded in rabbinic literature in the Mishnah, codified around 200 CE, supplemented by the later Babylonian and Jerusalem Talmud and additional rabbinic writings. Law is the lifeblood of the tradition, the pulse that is continually checked, discussed, interpreted, and compared with other parts of the tradition.<sup>73</sup>

Some scholars believe that there are some other laws that arose to regulate behavior, adjudicate disputes and specify penalties or remedies. Such laws flourished among the wider population. For instance, before Moses received the laws from God at Sinai, he was already governing the Israelites under a set of laws that were not written.

The next day Moses took his seat to serve as judge for the people, and they stood around him from morning till evening. When his father-in-law saw all that Moses was doing for the people, he said, ‘What is this you are doing for the people? Why do you alone sit as judge, while all these people stand around you from morning till evening?’ ( Ex 18:13 – 14)

The biblical law collections, even when considered in its entirety, fall short of including all of the legal areas operative in ancient Israelite society. There are, first of all, categories which appear in the Ancient Near East laws but which are absent or unregulated in the Old Testament law collection. Many of these categories are however alluded to in the Bible thus; it is certain that they were operative in Israelite society. So, for example, robbery (tangentially mentioned in Lev 6:1 –

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<sup>72</sup> Ibid 103

<sup>73</sup> Ibid 103

26; 19:13) hire of wet nurses, lease and rental of property, surety (Gen 43:9; Prov 6:1; 20:16) hire of labor (Lev 19:13; Job 7:2) bride price and dowry (Ex 22:16; 1Sam 18:25) and sale (e.g. Isa 24:2 2 Sam 24:24 etc.) “In connection with sale, Jer 32:11, mentions the sealed deed of purchase ..... and the open copy.”<sup>74</sup> This custom finds parallels in the Dead Sea Scrolls (DJD 2:244 – 46)<sup>75</sup>

These laws, though not written and though not enacted by centralized authorities, nonetheless functioned as positive laws in their own regions and deserve also to be considered in the discussion of the laws of ancient Israel.

Biblical laws are thus not necessarily identical with all laws that functioned among the ancient Israelites. In some cases, the biblical laws may reflect the agenda of the specific elite group writing them and were not even known, let alone practiced, among the people at large. For example, the central priesthoods in Samaria and Jerusalem could have developed their own system of forbidden practices without successfully making the wider public follow them, or the elites in the cities may have had rules for property ownership that did not match the legal customs among villagers. For their own part, various Israelites, especially the mass of peasants living in the villages scattered around the country, probably had their own legal customs that were not preserved in the text.<sup>76</sup>

The earliest ethical systems in recorded history are religious ones. People were mostly concerned with pleasing the gods so that the gods would give them a good harvest or healthy children. This meant that sacrifices and rituals were highly moral, as was submission to the given social structure, and a separation from the practices of competing tribes.

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<sup>75</sup> David Noel Freedman (ed) *The Anchor Yale Bible Dictionary*, Volume 2 (New Heaven London: Yale University Press 1992) 243

<sup>76</sup> *Ibid* 104

Although Hebrew ethical thought should probably be characterized not as a practical philosophy but as a religious ethic, Abraham Herschel, a modern philosopher of Judaism, demonstrated that a “wonder “comparable to Greek *thaumazein* lies at the root of Hebrew ethical thought. He called attention to the fact that when religion loses the sense of wonder as a primal emotion before an established position of faith has been adopted, it has no option but to become an empty ritual. This same feeling of wonder should also constitute the source of religious ethics. For instance, the prophet Jeremiah extols the work of God who gives according to ethical doings as something wonderful. (Jer 32:17).<sup>77</sup>

In the ancient legal system, of Israel’s neighbors, where deities were regarded as part of the system and divine sanctions were deemed as efficacious as human sanctions, the distinction between law and morality cannot be so sharply defined. An exhortatory response unaccompanied by a sanction, a purely divine sanction, or the absence of a human sanction in the text of law, all these are rough criteria for identifying a rule as moral rather than legal.<sup>78</sup>

We cannot be sure of the extent to which the laws set out in the Bible were actually put into practice during the Iron Age, the time of ancient Israel and Judah. We shall see, some of the them may have been purely utopian; some were rules of practice transfigured by ideology, and others, although pragmatic in content were most probably the product of academic circles, that is groups of scribes engaged in a theoretical endeavor. Nonetheless, the laws in the Bible represent in many instances what people at the time considered the law to be and even if not always put into practice, they reveal the underlying process of juridical thought that were prevalent in the society.<sup>79</sup>

The linking of God to law added an important ethical dimension to the worldview of ancient Israel. Since God was the source of law, the failure to observe the law became an offense against the Deity. This linking, however, also succeeded to place ethics in the matrix of human history and fostered the concept of ethical standards to which God was also responsibly connected. One sees

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<sup>77</sup> Seizo Sekine, *A Comparative Study of the Origins of Ethical Thought: Hellenism and Hebraism* ( Maryland:, Rowman and Littlefield, 2005 ) 2

<sup>78</sup> Raymond Westbrook and Bruce Wells, *Everyday Law in Biblical Israel*: (Louisville: Westminster John Knox press 2009) 3

<sup>79</sup> Ibid 3

this for example, in the protestations of Job and in the argument of Abraham (Gen 18:23 – 25) .... “Shall not the judge of all the earth do right?” This ethical idealism is very much present in the speeches of the prophets (for example 1 kg 21:17 – 19 Isa 1:15 – 17; Jer 22:13 – 17; Amos 5:12 – 15; 8:4 – 6; Micah3:9 – 11 etc.) the other Ancient Near East cultures of course also believed in ethics but they did not achieve this concept of an integrated moral universe.<sup>80</sup>

The Old Testament celebrates God for his personality, his infinite feelings of compassion. His graciousness, his presence and his acts of wisdom and power, but it is his holiness that it most decisive for Old Testament ethics. Holiness at once expresses the otherness of God and his moral character, and ontological and moral gap exists between God and humanity. God is Creator and humankind are creatures: therefore, this gap in being will remain forever. Since the fall, humanity is also morally distant from God, God remains pure, righteous and just, but people are deficient and practice less than their capabilities in each of these categories.<sup>81</sup>

### 3:2 THE CODIFICATION OF ANCIENT ISRAELITE LAWS

According to tradition all the regulations found in the Pentateuch were given by Moses to Israel at the command of God, hence the Torah includes only one code; but modern Bible criticism, whose results are still open to revision, finds in the Pentateuch at least four different codes, ascribable to different epochs and authors.

According to Louis Ginsberg,

A code is a unified and coordinated body of laws superseding all previous laws within its scope, or the reenactment of existing law in a systematic and improved form. There are few Jewish codes under the first head, but many more than is commonly comprehended

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<sup>80</sup> Ibid 245

<sup>81</sup> Walter C. Kaiser, Jr *Toward Old Testament Ethics*, (New York: Academy Books,1991) 6

under that name, therefore the material that is found in Jewish codes is of various kinds and different portions of it have frequently been treated in various legal works.<sup>82</sup>

The following ancient Israelite law codes are incorporated in the Old Testament: (1) the Book of the Covenant, or the Covenant Code; (2) the Deuteronomic Code; (3) The Holiness code and (4) the Priestly Code.

The covenant code refers to Exodus 21: 1 – 23:33 or beginning in 20:22. It is also called the book of the covenant, this collection takes its name from the statement shortly after its close: Then Moses took the book of the covenant and read it in the hearing of the people: and they said, “All that YHWH has spoken we will do, and we will be obedient” (Ex 24:7). The covenant Code is commonly thought to be Israel’s oldest assemblage of laws because it seems to fit an agricultural setting and to reflect practices antedating the foundation of the monarchy.

The laws of the covenant Code reflect the new agricultural situation faced by the Israelites when they left the desert and settled in Canaan, although some elements may go back to the earlier time of the patriarchs..... another remarkable feature of the covenant code may be seen in the laws that protect the weak and the poor. Nothing like them exists in any of the laws proper to the Mesopotamian law codes. For example, there is a prohibition against exacting interest from a poor Israelite and a command to return every evening a neighbor’s cloak taken in pledge, because it is his only source of covering (Exodus 22:24 – 26).<sup>83</sup>

The Holiness code is found in Leviticus 17 – 26. Its name derives from its frequent injunctions to be holy, both morally and ritually. Some of these laws deal with practices or behavior that in the priest’s view can compromise one’s sanctity; such as illicit sexual acts, immorality, and

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<sup>82</sup> Louis Ginsberg, *On the Jewish Law and Lore*, New York: Athenaeum, 1977, 153

<sup>83</sup> Carroll Stuhlmueller, C.P, *The Collegeville Pastoral Dictionary of Biblical Theology*, Minnesota: Liturgical press 1994, 539

blasphemy. Others lay out the proper procedures for sacrifices, observing religious festivals, and honoring the sabbatical and jubilee years of release.<sup>84</sup>

In these laws much stress is laid on the holiness of God. Compared with the book of the Covenant, this code deals much more with moral and ceremonial regulations than with civil and criminal matters. The religious as well as ethical point of view is a very advanced one and it is especially characteristic of the Holiness code that it endeavors to apply the moral principles of the Decalogue to practical legislation.<sup>85</sup>

The priestly code regulates religious behavior, prescribes the proper rituals and cultic paraphernalia, deals with norms regarding purity and impurity, and treats a variety of other matters, mostly but not all explicitly cultic in nature. Unlike the other codes it is not grouped in one place. Instead, these laws are scattered throughout Exodus, Leviticus, and Numbers.

This code includes the first part of Leviticus (1 – 17), Exodus, and the section on circumcision in Genesis. It is called “P” in full “Priestly Code” because the ceremonial laws relating to sacrifices and purity constitute the larger part of it.<sup>86</sup>

These codes are significantly different in the range of social activities that they cover, the style in which they are written, and the substantive rules they establish. Yet all of them are divinely commanded by the same God. There has not been a succession of gods, each with his own law, as in other countries of the Ancient Near East there was a succession of kings promulgating new and different legal codes, the most recent one replacing the one before.

The Deuteronomic Code is the name given to the law code set out in chapters 12 to 26 of the Book of Deuteronomy in the Hebrew Bible. The code outlines a special relationship between the people

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<sup>84</sup> Ibid, 105

<sup>85</sup> Ibid, 157

<sup>86</sup> Ibid, 157

of Israel and their God and provides instructions covering "a variety of topics including religious ceremonies and ritual purity, civil and criminal law, and the conduct of war."<sup>87</sup>

The Deuteronomic code broadly corresponds to Deuteronomy, but in the narrow sense it refers to its core, the part about laws in chapters 12 – 26.<sup>88</sup>

The Deuteronomic Code is more diverse than the covenant code, treating some of the same issues but additional topics as well, murder, warfare, property, marriage, sexual behavior, inheritance, slavery, judicial witnesses, refuge from blood vengeance, humanitarian protections, political leaders, judges, priests, and more.

Deuteronomy is more programmatic, aiming self-consciously at religious and perhaps also at political reformation. Its laws have been called prophetic, humanitarian, secular, liberal, redistributive, and even feminist-though many of them seem remarkably unsuited to such adjectives. In any case, if Exodus is the law of the tribes, and Leviticus the law of the temple, Deuteronomy is the law of the nation or, more specifically perhaps, of the royal court and the capital city, which stand for the nation. We might think of it (anachronistically, again) as one of the earliest examples in Western history of the work of urban intellectuals. It has often been said that Israelite law-the three codes taken together-is more "advanced," that is, more humanitarian, liberal, and so on, than that of other ancient peoples. .<sup>89</sup>

The Deuteronomic Code reflects particular social concerns, more specifically in dealing with the poor and underprivileged. The Deuteronomic Code places special emphasis on the lower class and marginalized. For example, women and children, widows, foreigners and the poor. Deuteronomy 15:12-15 illustrates one example in which a former slave is to receive gifts. The law code seems methodically to provide legal compensation for those who are victimized by the inequities and brutalities that may otherwise inhere in the social system. Duties involving directly the application of a moral principle are especially insisted on, particularly justice, integrity, equity, philanthropy,

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<sup>87</sup> Ibid., 155

<sup>88</sup> Ibid., 161

<sup>89</sup> Michael Walzer, "The Legal Codes of Ancient Israel", *Yale Journal of Law and Humanities*, Vol. 4: Iss. 2 , 1982

and generosity; for example, insisting on strict impartiality and judges being appointed in every city, as well as insisting that fathers are not to be condemned judicially for the sins of their children, nor vice versa, in stark contrast to the sins of the father being visited upon the children even unto the tenth generation, as elsewhere. Nevertheless, despite this general philanthropic nature, breaches of the moral code are punished severely: death is the penalty not only for murder, but also for unchastity, and even for disrespectful behavior by a son.

We must also consider the question of the precise literary and social character of the law code of chapters 12 – 26. In what sense is it a law code, and for whom, precisely, was it written? It has already been noted that its overall character can be described as one of prescribing a polity for a nation state. It is clearly not simply a handbook for legal officials, since it is addressed to responsible adult members of the Israelite community more widely. It deals with several matters that would broadly have come under the purview of the Levitical priests concerning the timing of the major religious festivals and the activities to be undertaken at them.<sup>90</sup>

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<sup>90</sup> Leander E. Keck, *The New Interpreter's Bible*, Volume 2 National Council of Churches of Christ, Nashville, Tennessee: Abingdon press. 2003, 379

### 3:3 COVENANT RENEWAL AND REAFFIRMATION (DEUT 29 – 32)

The third major section of the book of Deuteronomy given as Moses’s final address is found in chapters 29 – 32. This speech is given a heading at the beginning of chapter 29 (28:69 in the Hebrew text)<sup>91</sup>

“These are the terms of the covenant the LORD commanded Moses to make with the Israelites in Moab, in addition to the covenant he had made with them at Horeb”.( Deut 29:1 )

Whereas Moses’s memoir of the journey through the wilderness (1:1 – 4:43) is introduced as “these are the testimonies (stipulations), the statutes, and the ordinances” (4:44, 45), this section is introduced as “the words of the covenant.” The heading therefore gives us an indication of what the chapters are about. Because we do not encounter another redactional heading until chapter 33, it seems that chapter 31 and 32 were also meant to be included under the rubric of covenant, even though they are not a part of the speech that begins in chapter 29.<sup>92</sup>

On the assumption that these four chapters now have as their primary aim the presentation of the making of a covenant between the Lord and Israel, one that is explicitly differentiated from the Sinai covenant, Dean McBride has accurately summarized what this section is about.

Although aspects of this second covenant are strikingly similar to the first, there are some obvious differences. The main emphasis here falls on Moses’s imminent departure and how Israel can survive without his unifying leadership. What the assembled Israelites now accept on solemn oath on their own behalf and that of their descendants, as individuals, as separate tribes and as a federated nation is full accountability for the maintenance of their common life (29:2). Furthermore, Moses’s does not leave them leaderless; Joshua will oversee the conquest of their homeland (31:7 -8, 14 -15; 23) and Moses own guidance will

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<sup>91</sup> Ibid., 199

<sup>92</sup> Ibid., 199

remain forever with them in the form of the written constitutional Torah (31:9 – 13, 24-26) together with his prophetic witness to its efficacy (31: 16 – 22, 27-30; 32:1 -47<sup>93</sup>

Moses's achievements are summarized and his message to all future generations is set out in a farewell speech. It is one of the greatest of all the Bible's speeches, challenging the nation to choose between the paths either of obedience and life or disobedience and death.<sup>94</sup> Its concluding exhortation is unmistakably clear, "choose life so that you and your descendants may live" (30:19). The rhetorical assertions "you have seen (29:2) your eyes saw..... (29:3) but the Lord has not given you..... ears to hear (29:4 ) overlook the claim that during the forty years spent in the wilderness ( v 5 ) most of the generations that had fled from Egypt had died; nevertheless Israel is viewed as a spiritual unity, so that every generation of Israel ( v 15 ) faces the same choice of obeying or disobeying God."<sup>95</sup>

In 29:6 Moses affirmed that Israel's experience in the wilderness wanderings took place "in order that you might know (יָדַעְתֶּם) that I am the Lord your God." In 4:35 Moses declared that God had delivered Israel out of Egypt by means of powerful deeds and that "to you it was shown that you might know "Yada" that the Lord, He is God; there is no other besides Him".<sup>96</sup> In 4:39 he added, "Know (yada) therefore today, and take it to your heart that the Lord, He is God in heaven above and on the earth below, there is no other."<sup>97</sup> Moses , referring to those same events, commanded Israel, " know therefore that the Lord you God, he is God, the faithful God, who keeps His covenant and His lovingkindness to a thousand generation with those who love Him and keep His commandments." These and other passages affirm that God

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<sup>93</sup> Dean S. McBride , *Polity of the Covenant People*, *The Book of Deuteronomy, Interpretation: a Journal of Bible and Theology* 41:229-244 ( 1987 ) 235

<sup>94</sup> Walter J. Harrelson et al., *The New Interpreters Study Bible* ( Nashville: Abingdon Press 1989 )290

<sup>95</sup> Ibid. 290

<sup>96</sup> Michael A. Grisanti, *Bibliotheca Sacra*, *Dallas Theological Seminary Journal* ( April – June 2006 ) 176 -96

<sup>97</sup> Ibid. 180

expected His people to understand and acknowledge that the one they know as the Lord, who has acted powerfully, redemptively and providentially in their history, is God and God alone.<sup>98</sup>

However, according to 29:4, God did not give them a “heart to know” (Deut 8:2-5).<sup>99</sup> Later prophets declared that the day is coming when Yahweh will give Israel “a heart to know.” Through Jeremiah God affirmed, “I will give them a heart to know (יִדְעוּ) me, for I am the Lord, and they will be my people, and I will be their God, for they will return to me with their whole heart” (Jer 24:7)<sup>100</sup>

Deuteronomy presents the relationship between God and Israel as based on a single covenant revealed in three stages: the covenant oath sworn to the nation’s ancestors (Gen 15:1 – 20) is interpreted as a promise leading to the covenant of Horeb (Deut 5:1 – 3); only on Mt Horeb, when the laws of the covenant are made known (5:6 -21) is the covenant formally ratified (5:22- 33). The covenant made in the plains of Moab (29:1) is not a new covenant but a reaffirmation and renewal of this Horeb covenant made before the entry into the land.<sup>101</sup>

As Moses gives this third address and calls upon Israel to make covenant, an oath of allegiance to the Lord, the people are, as they have been all along in Deuteronomy, on the border between promise and fulfilment before the land, off the land, not yet having received the land, or if this text in its final form is exilic, as it likely the case, having lost the land. Participation in the salvation gift is possible only for those who bind themselves to the Lord of Israel.<sup>102</sup>

Deut. 29:18 -20 takes up the issue of individual responsibility for the observance of the covenant. It is stated that curse will fall on those individual Israelites who transgress the terms of the covenant. The curse that will fall on the whole people of Israel is equated to God’s wrath on its infidelity to the Lord, namely, serving other gods (29:21 – 22). The

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<sup>98</sup> Ibid 180

<sup>99</sup> Herbert B. Huffmon, *The Treaty Background of Hebrew Yada*, *Bulletin of the American Schools of Oriental Research* ( February 1966 ) 31 - 37

<sup>100</sup> Ibid. 181

<sup>101</sup> Ibid. 291

<sup>102</sup> Ibid. 200

curse will bring about calamities and diseases (29:21 -22) and the fall of the nation and the dispersion of the people (29:26 – 27).<sup>103</sup>

The theme of blessing and curse plays an important role in the Pentateuch. In the first creation story God blesses the reproductive power of the fish, birds and human beings (Gen. 1:22, 28; Gen 5:1). Moreover, God blesses and sanctifies the Sabbath (Gen2:3). In the second creation story, however, the curses on the snake and the earth are pronounced as a result of the fall (3:1 – 7). Human beings are destined for death (3:19). God, on the other hand, blesses Noah and his children at the end of the deluge story (9:1). In the primordial history (Genesis 1 – 11) blessings and curses exist side by side.<sup>104</sup>

The note of finality regarding God’s judgment is significant, since the emphasis upon Israel’s choice between blessing and curse leaves the final outcome open (30:19). That there is hope even when the situation appears hopeless is based on the merciful nature of God (4:31).<sup>105</sup> However, to presume upon that mercy would be to disregard the warnings that God has faithfully given under the terms of the covenant. “The LORD will single them out from all the tribes of Israel for calamity, in accordance with all the curses of the covenant written in this book of the law. The next generation, your children who rise up after you, as well as the foreigner who comes from a distant country, will see the devastation of that land and the afflictions with which the LORD has afflicted it” ( Deut 29:21 – 22 ).<sup>106</sup>

Dr. Scott Hahn in his book, “*Kinship by Covenant*” observes that there is not one simply “Mosaic covenant.” God made a covenant with Israel after he delivered them from Egypt when he presented

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<sup>103</sup> P.C. Craigie, *The Book of Deuteronomy* ( Grand Rapids: Eerdmans, 1976 ) 358

<sup>104</sup> Takaaki Haraguchi, *A Rhetorical Analysis of Deuteronomy 29 – 30*, *Asia Journal of Theology*, 24

<sup>105</sup> *Ibid.* 291

<sup>106</sup> *Ibid.* 291

the Ten Commandments at Sinai. However, the law of Deuteronomy delivered at Moab is not merely a second version of this law, it is actually another covenant – what Hahn calls Sinai “reconfigured” on account of the idolatry and apostasy of Israel in the wilderness.

When compared to the covenant and legislation given earlier at Sinai, the Deuteronomic covenant is marked by less intimacy, greater severity, and a lesser level of cultic purity. At Sinai, covenant communion was expressed in terms of an intimate familial relationship (i.e., father – son). God revealed his glory to Israel and spoke directly to them. God called Israel to serve him as a “firstborn son” (Ex 4:22) and as a “kingdom of priests” (Ex 19:6). These features are conspicuously missing from the covenant made on the plains of Moab. Further, the Sinai covenant was ratified by mutual oath swearing, apart from any curses being threatened, much less guaranteed. The ratification of Deuteronomic covenant stands in stark contrast to this (Deut 27 – 32).<sup>107</sup>

Against Hahn’s insinuation that the kingship status of the Israelites was lost due to the golden calf idolatry, Warner E. Lemke in his essay titled *the circumcision of the heart* which is a consideration of the metaphor of (Deut 10:16; 30:6 with Jer 4:4, 9:25) argues that this circumcision of the heart injunction signals a return of all the covenant blessings and privileges.<sup>108</sup>

“The LORD your God will circumcise your hearts and the hearts of your descendants, so that you may love him with all your heart and with all your soul, and live”. (Deut 30: 9) This text is part of a passage envisaging the future restoration of Israel following her destruction and exile (Deut 30: 1 – 10).<sup>109</sup>

While on first sight the use of the circumcision metaphor in v 6 appears to be simply an echo of Deut 10:16 the circumcision of the heart was an action enjoined upon human beings (as in Jer 4:4), in Deut 30:6 it has become an action which God will perform for human beings, thus enabling them to love God with all their heart and soul.<sup>110</sup>

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<sup>107</sup> Scott W. Hahn, *Kinship by Covenant, A Canonical Approach to the Fulfillment of God’s Saving Promises*, New Haven and London: Yale University Press, 2009, 74

<sup>108</sup> Lemke E. Werner, *Circumcision of the heart, A God so Near: Essays on the Old Testament Theology in Honor of Patrick D Miller*, Winona Lake, Eisenbrauns 2003, 302

<sup>109</sup> *Ibid.*, 308

<sup>110</sup> *Ibid.*, 309

Thus, in Deuteronomy Israel did not forfeit its status and vocation to serve as God's firstborn son. The distinctive features of the Deuteronomic covenant are not the result of switching from a kinship - type covenant at Sinai to a treaty - type covenant on the plains of Moab (though this shift is clearly evident and theologically significant).<sup>111</sup>

The covenant configuration of Deuteronomy was not only less intimate and more severe than Sinai, but the unique laws of Deuteronomy established practices that were deficient vis a vis the cultic sensibilities outlined in the renewed Sinaitic (i.e. Levitical covenant (Ex 34 – Lev 27))<sup>112</sup>

From a canonical critical perspective, the Deuteronomic covenant is programmed for future renewal. Through a decisive act of God, a future renewal will transcend the initial promulgation, effecting a radical internalization of the law, Deuteronomy 30:6 -10 conveys a profound eschatological promise, and a new covenant is to be established in order to fulfill the violated Deuteronomic covenant.<sup>113</sup>

This future restoration is strongly affirmed by Olson, who also explains its covenantal implications for God's plan of salvation. "Through daring discourse and powerful poetry, these chapters (Deut 29 – 30) proclaim a new covenant. It is a new relationship based not as much on human abilities and faithfulness as on the promise of God's faithfulness and God's active transformation of people and communities..... The command has become a promise..... Commanded human action has now become a promised divine gift<sup>114</sup>.

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<sup>111</sup> Ibid., 74

<sup>112</sup> Ibid., 74

<sup>113</sup> Ibid. 79

<sup>114</sup> Olson, D. T, Deuteronomy and the Death of Moses: A Theological Reading, Minneapolis: Fortress, 1994, 79

### 3:4 THE APPOINTMENT OF JUDGES BY MOSES AND THE PURSUIT OF JUSTICE IN ANCIENT ISRAEL

“” You shall appoint judges and officials throughout your tribes, in all your towns that the LORD your God is giving you, and they shall render just decisions for the people. You must not distort justice; you must not show partiality; and you must not accept bribes, for a bribe blinds the eyes of the wise and subverts the cause of those who are in the right. Justice, and only justice, you shall pursue, so that you may live and occupy the land that the LORD your God is giving you.”(Deut. 16:18 – 20)

For the due administration of justice, Moses was instructed by God to appoint judges and officials to assist him in the proper dispensation of justice and to provide governance to the people. All personal regards must be laid aside, so that right is done to all, and wrong to none. We have little information regarding the judicial system of Israel. Judges and officers probably subordinate officers; scribes or clerks are to exist in every city (vs 18). How they were appointed is not stated, but the wording suggests some sort of popular consent in their selection. Moses had appointed leaders at Sinai to help him in the administration of the people (1:13) here, he specified that such important leadership should continue in each city. Judges were those who adjudicated cases with the application of law. Officials were subordinate leaders of various kinds.<sup>115</sup>

It is not improbable that the judges here mentioned were simply the leaders of the local councils of elders. In the latter resided all local authority, which included judicial as well as political and economic decisions (19:12). In 17:8 – 13 provision is made for a supreme court of appeal: Ch. 19 and 25: 1-3 present regulations regarding manslaughter, proper testimony in court and the administration of penalty.<sup>116</sup>

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<sup>115</sup> John Mac Arthur, *The MacArthur Bible Commentary* (Tennessee: Nelson 2005 )218

<sup>116</sup> George Arthur Buttrick, et al, *The interpreters Bible*, (New York: Abingdon Press 1953 )436

This law commands the establishment of judges and officials throughout the settlements of the people of Israel, and the rigorous practice of justice. It links both commands to the reward of the land that is being given by God.<sup>117</sup>

For modern scholars, several key questions stand out with regard to the context of Deut. 16:18-20 within the legal corpus of Deuteronomy. Why the apparent change in subject from cultic laws (12:1 -16:17) to the topic of local judiciaries in Deut. 16:18 – 20? Why does a short sequence of material related to cultic matters (16:21-17:7) stand between the laws concerned with the administration of justice at local level (Deut. 16:18 – 20) and at the central sanctuary (17:8 – 13). Given the striking connections between the cultic materials that stands between the legal corpus in Deut 12- 13, it has often been proposed that 16:21-17:7 with its pronounced cultic interests, may have originally belonged between 13:1 and 13:2 or with other cultic material in Deuteronomy.<sup>118</sup>

Deuteronomy commands the appointment of judges and officials in all your gates, but it does not refer to elders as part of the organization. Some of the other laws of Deuteronomy accord a judicial role to the local elders in cases of homicide and in matters of family and marriage law. Most scholars take the view that these laws preserve earlier traditions. Alternatively, the inclusion of such traditions may represent a deliberate attempt on the part of Deuteronomy's authors to restrict the judicial authority of the elders; if so, the elders are still accorded responsibility in some of the most crucial matters.<sup>119</sup>

The city gate was the normal place for trials (Deut 21:19: Amos 5:10. One layer of laws in Deuteronomy, esp. the collection of family laws is built upon the judicial authority of elders (zeqenim) of a town who may have been a more traditional body, v 19 is a concise expression of the juridical ethos which, in 10:17-18 is even related to God as example. Taking a bribe (Ex23:8 is condemned as a threat to justice in all currents of Israel's religious thought.<sup>120</sup>

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<sup>117</sup> Sarah J.K. Pearce, *The Words of Moses: Studies in the Reception of Deuteronomy in the Second Temple Period*, (Tübingen: Mohr Siebeck , 2013) 43

<sup>118</sup> Driver SR, *Deuteronomy*, (London: Charles Scribner's, 2002) 199

<sup>119</sup> Moshe Weinfeld, *Deuteronomy and Deuteronomy School*, (London: Oxford 1972) 234

<sup>120</sup> John Barton and John Muddiman, *The Oxford Bible Commentary*, (New York: Oxford 2007) 148

While judges and officials appear in a variety of contexts in the Pentateuch, they are found in combination only in Deuteronomy. Outside the Pentateuch, this group of offices appears only in passages that seem to be based on the traditions of Deuteronomy. In MT Deuteronomy, judges and officials are otherwise presented together in the narrative of Moses, appointment of assistants to help him, Deut 1:9-18).<sup>121</sup>

According to the narrative of Deuteronomy, the appointment of leaders and judges constitutes the first action taken by Moses after he and the people of Israel leave the mountain on which the divine laws were revealed. Deuteronomy's report of events develops existing accounts of the appointment of leaders to share with Moses the burden of government or judgment (Ex, 18:13 – 27; Num. 11:14-17)<sup>122</sup> In contrast with these earlier models, however, Deuteronomy locates the beginnings of this institution after the revelation at Sinai, not before it.

In its presentation of the Mosaic institution of judges and leaders, Deuteronomy also differs from the traditions of Exodus and Numbers in other respects. According to Deuteronomy, it is Moses who instructs the people to select their own leaders. "Choose for yourself from each of your tribe's men who are wise, discerning and well informed, and I will appoint them as your leaders. In Ex 18, by contrast, Moses follows the advice of his father in law in choosing the leaders himself, on the basis, Moses is to choose from among all the people, men who are able and God fearing, men who are trustworthy and hate unlawful gain (Exod 18:21,25). The book of Numbers presents yet another model, according to which God instructs Moses to select seventy elders of Israel of whom you have experiences as elders and officials of the people; God is the one who will transfer some of the spirit that is on Moses to them so that they may share with Moses the burden of leading the people (Num 11:16 – 17. In Deuteronomy, in contrast, the initiative is entirely with Moses, as he delegates to the people the task of choosing those who are to be appointed over them.<sup>123</sup>

Of the three narratives, only Deuteronomy refers to the organization of the leaders and officials on a tribal basis (Deut. 1: 13, 15). In contrast to the Exodus narrative, which emphasizes the piety and

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<sup>121</sup> Ibid 46

<sup>122</sup> Ibid 47

<sup>123</sup> Ibid 47

ethical character of those to be appointed, and also in contrast to the seventy elders of Numbers 11 who are chosen on the basis of their administrative experience. Deuteronomy emphasizes the intellectual qualities of those who will share the task of government with Moses.

Deuteronomy follows Exodus in dividing the judicial task between Moses and his appointees. The nature of the division is expressed in slightly different terms in Deuteronomy: the distinction between major and minor (lit. big and small) cases (Exod 18:22) is replaced in Deuteronomy by assigning to Moses those matters that are too difficult for the judges. While Exod 18:26 expresses the same distinction in terms of division between the difficult matter (for Moses) and the little matter (for the judges). It does not clarify, as Deuteronomy does, that those matters referred to Moses are too difficult for the other judges. Of the two traditions, Deuteronomy gives greater emphasis to the superiority of Moses as the judge who will hear those cases that are too difficult for anyone else. This emphasis is also very significant in Deut 17:8 – 13, which commands that any matter that is too difficult for you must be referred to the judicial authorities at the central sanctuary.<sup>124</sup>

The imperative commanding the appointment of judiciaries, “you shall appoint” is closely paralleled twice in the characteristically Deuteronomic formula proclaiming the divine promise of the land; “in all the settlements that the Lord your God is giving you”. (Deut 16:20).<sup>125</sup> The use of the verb “to appoint “or to set in place, also looks back to Deut. 1:15 in which the same verb is used of Moses’s appointment of leaders.

When Moses first set up judges at Sinai, the people brought to him the cases that were too difficult for them to decide. After his death there would be no one to take his place. Therefore, Moses established a high court that was to be located at the central place of worship. The local judges were to bring their difficult cases there. The phrase too hard for thee in judgment referred to a matter too incomprehensible to understand. Therefore, judges were set up at the place. This superior court was not a court of appeal, for it did not review a local courts verdict. The superior court only took cases which the lower court referred to them.<sup>126</sup>

For Bernard M. Levinson, this judicial strategy of Moses is not without obvious implications.

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<sup>124</sup> Ibid 48

<sup>125</sup> Ibid 52

<sup>126</sup> Edward G. Dobson et al, Bible Commentary (Tennessee: Thomas Nelson, 1975) 164

The authors begin the unit concerned with the implications of centralization for judicial procedure with paragraphs that deny, by means of polemical silence, any role for the elders. Indeed, the authors impose their professionalized judicial system upon the city gate as if it were a tabula rasa without traditional legal-historical occupants: "Judges and judicial officers shall you appoint for yourself in each of your city-gates" (Deut 16:18).<sup>127</sup>

What the text here presents as simple installation actually involves the replacement of one system of justice with another, as the elders are silently evicted from their customary place of honor. The deliberate non-mention of the elders in the very site where they customarily exercised their judicial function can only constitute a deliberate polemic. As such, legal history is rewritten by means of the textual strategy of exegetical silence.<sup>128</sup>

One of the imperatives of setting up this judicial structure is for the prohibition of corrupt judging (Deut 1:13 – 18, 16:19.). It is widely recognized that all three Deuteronomic prohibitions adapt and develop the laws of the covenant code (Exod.20:9-23:33)<sup>129</sup>

The first, represents a more absolute expression of Exod 23:6, "You shall not pervert the justice that belongs to your poor in his dispute. The use of the hiphil in the prohibition refers to the definitive perversion of justice, thereby depriving the plaintiff or defendant of what is due to them. In comparison with Exod 23:6, Deut. 16:19 extends the application of the prohibition to include all kinds of perversion of justice. The laws of Deuteronomy also include a more specific prohibition of perverting the justice due to the stranger, orphan and widow (24:17) and in the closing part of Moses address to the people, as presented in Deuteronomy, he makes anyone who violates this prohibition the subject of a curse (27:19). The absolute form of the prohibition in Deut. 16:19 is reflected in 1 Sam. 8:3, in which the Deuteronomistic Historian portrays the corrupt sons of the prophet Samuel as

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<sup>127</sup> Levinson, Bernard M, *Deuteronomy and the Hermeneutics of Legal Innovation*. Cary, New York: Oxford University Press, 1997. 125

<sup>128</sup> Ibid 126

<sup>129</sup> DRIVER, S.R, DRIVER, *Critical & Exegetical Commentary on Deuteronomy*. Jan. 1895. 1-554.

judges, these men have failed to observe the commands of Deut 16:19, because they turned aside after unlawful gain and they took bribes and they perverted justice.<sup>130</sup>

The second prohibition is partiality. “You shall not show partiality”, is like the first, formulated as an absolute, without specifying any particular conditions to which the command is to be applied. The prohibition of partiality is expressed in different terms in Ex 23:3 “You shall not show deferential regard for a poor man in his dispute; a more detailed expression of the same principle, again using different terms, appears in Lev. 19:15, “You shall not show partiality to the poor and you shall not show deferential regard to the great”.

The third and final prohibition is in regard to bribe, this is closely modeled on that of Ex 23:8 as the following comparison indicates. “You shall not take a bribe, because the bribe blinds the eyes of the wise, and subverts the cause of the just” (Deut. 16:19)

Compared with the formulation in Exodus, the prohibition of Deut. 16:19 represents a more precise definition of what it means to be clear sighted, the possession of wisdom.<sup>131</sup> Deuteronomy’s emphasis on the requirement of wisdom and the power of the intellect in judgment is consistent with its presentation of the characteristic qualities which Moses demands of the first leaders of Israel; that they should be wise, discerning and well informed ( Deut 1:13,15 ). Wisdom is to be the defining characteristic of the people of Israel in the sight of other nations and this wisdom must be proved by Israel’s faithful observance of the laws of Moses in the Promised Land.<sup>132</sup>

Deuteronomy stresses above all that wisdom is a fundamental requirement of the leaders of Israel.<sup>133</sup> Israel’s first generation of leaders was appointed because of their wisdom and

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<sup>130</sup> Ibid., 139 – 140

<sup>131</sup> Ibid., 403

<sup>132</sup> Ibid., 55

<sup>133</sup> Ibid., 217

discernment (Deut 1). Those who give judgment for the people in the future must have the same qualities (Deut 16:19). Moreover, this was the possession of Joshua as the successor to Moses (Deut.34:9). The earlier tradition of Num 27:18 speaks of Joshua as a man in whom is the spirit rested as he was commissioned by Moses through the laying on hands. It is stated that “Joshua son of Nun was filled with the spirit of wisdom because Moses had laid his hands on him, and the children of Israel obeyed him, doing as the Lord had commanded Moses” (Deut 34:9)

The law on the appointment of local judiciaries closes with this positive statement of the requirement to practice justice, formulated as an exhortation encouraging the intense and active pursuit of justice. Deut 16:18 -20 qualifies the justice or judgment that is right, and which is to be the object of judicial activity. In Deut. 16:20 it is “what is right”, “what is just” that is in itself the object that must be attained. The double repetition of the *sedeq sedeq* in the Hebrew texts emphasizes the keen and constant urgency with which justice must be pursued.<sup>134</sup>

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<sup>134</sup> Ibid 56

## Chapter IV

### THE ADMINISTRATION OF JUSTICE IN ANCIENT ISRAEL

The Israelites came from the eastern or southeastern and southern steppe countries and penetrated the cultivated areas of Palestine. They were not originally inhabitants of cultivated land; they were nomads, and their legal arrangements were typical of nomads. What were they like? Nomadic culture was based on the family. So was their law.<sup>135</sup>

It had its roots on the one hand in the family or house (Hebr bayit), on the other in the clan. The family included members of three to four generations. It was not therefore a family in the modern nuclear sense, but an extended version. The head of it was the father or the *paterfamilias*. In ancient times he enjoyed unrestricted authority. Disputes within the family were decided authoritatively and absolutely by the father or the *paterfamilias*.<sup>136</sup>

In its narrative sections, the OT does not mention this form of jurisdiction very often. One case, and a clear one, in which it does is Gen. 16:5-6). The narrative concerns Hagar. In v. 5, Sarah appealed to the *paterfamilias*, who was the guardian of the family members' legal interests, with the words; “<sup>Then</sup> Sarai said to Abram, “You are responsible for the wrong I am suffering. I put my slave in your arms, and now that she knows she is pregnant, she despises me. May the LORD judge between you and me?” (Gen 16:5 – 6)

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<sup>135</sup> THW Wolff, *Law and the Administration of Justice in The Old Testament and Ancient East*, (Minneapolis: Augsburg Publishing 1980) 8

<sup>136</sup> *Ibid* 8

In other words, you are responsible; as the father you must see to it that the wrong is put right and justice done. And Abraham did just that. He gave his decision; no discussion or further inquiry is necessary “Your slave is in your hands,” Abram said. “Do with her whatever you think best.” Then Sarai mistreated Hagar; so she fled from her”. (v 6)

Abram handed Hagar over to the authority of Sarai, who treated her so harshly that she ran away. The legal situation was an initial transfer of authority from Sarai, who owned Hagar, to Abram to whom she gave Hagar. When the gift had bad consequences for Sarai, she complained to Abram.<sup>137</sup>

Another example of the absolute power of the *paterfamilias* is found in the story of Judah and Tamar in Gen. 38. Although the precise legal significance of the case as described in the narrative (vv. 24-26) is not totally clear, this much we can say with certainty: as head of the family, Judah exercised legal authority over the women who belonged to the family unit. A complaint is lodged with him (his daughter-in-law Tamar had behaved like a common prostitute, and through her wanton conduct was with child, v. 24a), and he pronounced judicial sentence: “Bring her out so that she may be burnt” (v. 24b).

The father’s absolute jurisdiction over the members of his family did not continue. This is quite clear, for example, from the following text: “If someone has a stubborn and rebellious son who will not obey his father and mother, who does not heed them when they discipline him, then his father and his mother shall take hold of him and bring him out to the elders of his town at the gate of that place. They shall say to the elders of his town, “This son of ours is stubborn and rebellious. He will not obey us. He is a glutton and a drunkard.” Then all the men of the town shall stone him

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<sup>137</sup> Raymond Westbrook and Bruce Wells, *Everyday law in Biblical Israel: An Introduction*, (Louisville: Westminster John Knox Press, 2009) 37

to death. So you shall purge the evil from your midst; and all Israel will hear, and be afraid". (Deut 21:18 – 21)

This text shows that the concept of family justice which gave the father's sovereign power over the members of the family had disappeared by the time Deuteronomy was written. Although this text relates a case apparently confined to the family, the father's authority had passed to another institution. On the other hand, we cannot overlook the fact that the father retained far-reaching authority within the family for specific areas of law.<sup>138</sup>

In Genesis 38, Judah orders the summary execution of Tamar, when she is discovered to be pregnant, evidently by adultery. Tamar, however is not his daughter but his daughter in law, and at the material time she is not even living in his house but in the house of her own father. His entitlement to pronounce punishment arises from his standing not as patriarch but as the injured party, Tamar is betrothed to his son Shelah, who is still under his authority and whose interests he represents.<sup>139</sup>

In tribal law, the *sib* or the kindred head was the highest body. A sib consisted of a number of blood-related family units. The resulting bodies could be very extensive. We must of course reckon with considerable fluctuations in the size of sibs, but as a general rule we can probably reckon twenty families to a sib.<sup>140</sup>

The legal authority of the sib was invested in the elders. The obvious assumption that the elders were the heads of the families that made up the sib must be basically correct. The college of elders managed the sib's affairs, and this meant in particular dealing with disputes. This sums up the tribal law of the nomadic period. The passage to settled living then brought with it an important development in legal structure. The nomadic jurisdiction of the family or sib gave way to the jurisdiction of the local community, which by now

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<sup>138</sup> Ibid 9

<sup>139</sup> Ibid 37

<sup>140</sup> H.W Wolff., *Anthropologie des Alten Testaments*, Gütersloher Verlagshaus 1973,225

consisted almost wholly of permanent settlers. There arose the famous Hebrew legal assembly, no real parallel of which has yet been discovered in the ancient east.<sup>141</sup>

The geographical reality of the countryside favored the newly developing judicial organization.

The land of Israel is a mountainous country. It is cut by numerous valleys which, apart from the Jordan valley, nearly all run east to west or west to east. The natural result was a large number of semi-independent districts. They have been estimated at over forty.<sup>142</sup>

These districts formed natural, manageable areas in which the nomads, by then sedentary, settled and prospered. The nomadic origin of the Israelite *sibs* and the geographical realities of the country are thus the two main causes of the rise of the Hebrew legal assembly, which must be regarded as the most important legal institution of ancient Israel. It essentially molded Old Testament legal life.

How was the process of legal investigation conducted in the legal assembly? We can hardly imagine how unstructured and unbureaucratic it must all have been. There were no set times or places reserved for the processes of law. Judicial investigation was an important part of life. The place of law frequently mentioned in the OT is the "gate" (Deut. 21:15; 25:7; Amos 5:10; Ruth 4:1, 11). By this was meant the open space immediately behind the city gates, and also the inner recesses of the passageway where there was some seating accommodation. In pre-Greek times, this was the only large open space in the small, cramped cities of Palestine where the inhabitants could congregate. It was not, however, a place reserved for legal events. It was simply the place of assembly for small cities. It was also the place through which the inhabitants had to pass on their way to the fields in the morning and on their way home in the evening. "The Lord will guard your going and your coming," says Ps. 121:8.<sup>143</sup>

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<sup>141</sup> Ibid 31

<sup>142</sup> Kohler l., *Hebrew Man. Lectures delivered at the invitation of the University of Tubingen* December 1-16, 1952, with an Appendix on Justice in the Gate, London 1956, 149

<sup>143</sup> Ibid 31

The system of local courts brought an extension of legal involvement in comparison with tribal law. In the local courts, all the citizens of the place concerned, and not just the *sib* elders, were entitled to take an active part in the trial and verdict. All citizens were therefore legally competent, which naturally does not mean that all potential participants had to be actively involved in any particular case. From the sheer practical point of view there had to be some selection.<sup>144</sup> Taking part in such trials was felt to be not a burden but a privilege. Jeremiah, according to the tradition of author of Lamentations, lamented that elders had left off their sessions in the gate (Lam. 5:14). This whole chapter is a lamentation which describes the frightful conditions sometime after the conquest and destruction of Jerusalem and its environs in 587 B.C. Everything that had once brought joy was at an end. It is significant that in this context, when talking about the elderly, “Jeremiah” should mention the assemblies at the gate.

L. Kohler has described the social significance of participation in court proceedings as follows: “The supreme right, in which is experienced the pride and worth of a healthy man, who is of age, has his own property and is recognized by his fellows, is the right to take part and to speak in the legal assembly. It is the meeting place of those who really matter.”<sup>145</sup>

It was one of the hardships and disadvantages of the alien not to have this privilege. Women and children and, of course, slaves were also excluded from any active part in legal trials. Old Testament laws therefore stress again and again the duty not to withhold their right from precisely these persons. We may quote the following text by way of example: “You shall not deprive aliens

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<sup>144</sup> Ibid 32

<sup>145</sup> Ibid 153

and orphans of justice nor take a widow's cloak in pledge" (Deut. 24 17). Ruth 4:1-2 gives us a graphic picture of how a forum was constituted at the gate.<sup>146</sup>

"Then Boaz took ten men of the elders of the city, and said, "Sit down here"; so they sat down. He then said to the next-of-kin,<sup>l</sup> "Naomi, who has come back from the country of Moab, is selling the parcel of land that belonged to our kinsman Elimelech. So I thought I would tell you of it, and say: Buy it in the presence of those sitting here, and in the presence of the elders of my people. If you will redeem it, redeem it; but if you will not, tell me, so that I may know; for there is no one prior to you to redeem it, and I come after you." So he said, "I will redeem it." Then Boaz said, "The day you acquire the field from the hand of Naomi, you are also acquiring Ruth the Moabite, the widow of the dead man, to maintain the dead man's name on his inheritance." At this, the next-of-kin said, "I cannot redeem it for myself without damaging my own inheritance. Take my right of redemption yourself, for I cannot redeem it."(Ruth 4:2 – 6)".

To assemble a forum, the individual sat at the gate and called the passers-by. He asked them to sit at the gate. Without necessary cause no Hebrew would refuse such an invitation. In Ruth 4 ten elders are mentioned, called by Boaz. This is the only OT passage which specifically mentions the number ten in this connexion. It should not be accorded excessive importance. There must frequently have been more, and occasionally perhaps fewer, elders present. Many other Old Testament passages also testify to the fact that the judges remained seated during the hearing (e.g. Exod. 18:13; Ps. 122:5; Prov. 20:8; Dan. 7:9f), while the suing parties stood (Exod.18:13; 1 Kings 3:16; Zech.3: 1).<sup>147</sup>

The forum was constituted without any further act being necessary. F. Horst's suggestion that the parties in law agreed on oath at the start of the proceedings to abide by the verdict lacks sufficient textual evidence. Horst cites Jer. 42:5. The people promised the prophet that they would act according to the word of God however it turned out: "Whether we like it or not, we will obey the Lord our God to whom we send you . . . we will obey the Lord our God" (v. 6).<sup>148</sup>

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<sup>146</sup> Ibid 32

<sup>147</sup> Ibid 33

<sup>148</sup> Horst F., "Das Privilegrecht Jahwes. Rechtsgeschichtliche Untersuchungen zum Deuteronomium," 1930 = GR, 17-154.

In the context, however, the text is intelligible even without supposing that it records a judicial custom not mentioned elsewhere. It is self-evident that no special procedure is needed before the verdict of a regularly assembled court is accepted.

Finally, however, the point would come when one of the parties was not satisfied with informal proceedings. He would want the matter decided by a court of law. He would therefore appeal to a legal decision. The appeal could in fact be made by the accused or by the accuser.

An example may clarify this. Gen. 31:25-42 describes the quarrel between Jacob and Laban, Presented at its complicated denouement as if it were an official suit;

Laban had accused Jacob of stealing his household gods and making off with them. Jacob, who did not know that Rachel had stolen them, prepared to contest the accusation. The matter proceeds up to v. 37, which reads: “What is my offence that you have come after me in hot pursuit and gone through all my possessions? Have you found anything belonging to your household? If so, set it here in front of my kinsmen and yours.” And then we read the crucial sentence: “Let them judge between the two of us”. This is an appeal. A court thereby came into being, and the dispute could be dealt with and decided at a higher level.<sup>149</sup>

It was possible for the accuser to pronounce sentence as judge with others. Nothing was predetermined, everything was open, and it was this which gave the Hebrew legal assembly its vitality and color, its-to use a modern term-democratic character. In consequence, Hebrew trials were fundamentally oral processes.<sup>150</sup>

In certain defined cases, an accused person could exculpate himself with an oath. The path was therefore purgative and usually took the form of a conditional self-cursing on the part of the accused. It was determinant; that is, it decided the case. There are examples of the use of oaths in trials in Exod. 22:8 and 22 :11 (cf. also Lev. 5:21-6). Exod. 22 :7-13 deals with goods entrusted to

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<sup>149</sup> Ibid.34

<sup>150</sup> Ibid. 35

others and lost or damaged while on loan. If the neighbor to whom the goods were handed over and entrusted could not prove his innocence, he could vindicate himself by swearing an oath.<sup>151</sup>

The purpose of a Hebrew trial was to settle a dispute between members of the community so that prosperous coexistence was possible. L. Kohler puts it tellingly:

The legal assembly is the organization for reconciliation. It grows up out of a practical need. It does not go beyond this in its actions nor in its outlooks. It intervenes when it must, but does not intervene any further than it must. It has no desire to provide systematic law. Nor does it act in systematic legal ways, but its sole endeavor is to settle quarrels and to guard the well-being of the community. To judge means here to settle.<sup>152</sup>

It is therefore understandable that in the Hebrew legal assembly there was no public prosecutor, that the one who had suffered brought the case himself and the witness of a misdeed became the accuser. As a witness, he was duty-bound to report a crime (cf. in this connexion Lev. 5: 1 and Prov. 29:24). The Hebrew word for witness therefore often meant the same as accuser.<sup>153</sup>

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<sup>151</sup> *Ibid.* 36

<sup>152</sup> *Ibid.* 156

<sup>153</sup> *Ibid.* 37

## THE ROLE OF KINGS IN THE ADMINISTRATION OF JUSTICE IN ANCIENT ISRAEL

Monarchical judicial authority, far from developing in a vacuum, had to contend with these already well- developed and complex judicial systems in early Israel.

During the monarchic and imperial times, all cities, towns and villages were subservient to the central power to which allegiance, obedience, taxes or tributes and military and labor services were due. The monarchy had ultimate authority over the royal house and the courtiers, though certainly with the aid of counselors, administrators and officers. Rules controlled the terms of succession and inheritance, the women and children of the palace, the privileges and limitations of the court attendants and many other aspects of royal functioning.<sup>154</sup>

The development of Israel from a profusion of autonomous groups to the highly centralized and bureaucratic kingdom of Solomon did not take place overnight. The monarchy of Saul was the beginning of a protracted process that laid the foundations of the later Davidic empire. It has often been pointed out that the administration of Saul was a time of transition from the so-called period of the judges to the fully developed institution of the monarchy under David and Solomon.<sup>155</sup>

Thus, early Israel is seen as a village society of the central hill country that had no permanent ruler. According the Hebrew Bible or the Old Testament, the time when these villages operated without a head, when there was no king in Israel (Judges 21:25) came to an end with Saul.<sup>156</sup>

The book of 1 Samuel tells of how the elders of Israel asked Samuel for a king to rule them and fight for them so that Israel could be like other nations (1 Sam.8). Saul becomes the first king, but according to the stories, he has too many flaws and thus he does not establish a dynasty (1 Sam. 9 – 15). This honor goes to David, who is successful in keeping the Philistines and other enemies in check, and who governs a territory larger than Saul's now from Jerusalem (1 Sam. 16 – 1 Kg 2) then David's son Solomon becomes king, and he possesses great power and wealth. He builds a spectacular palace and a temple in Jerusalem

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<sup>154</sup> Ibid 76

<sup>155</sup> Keith Whitelam, *The Just King: Monarchical judicial Authority in Ancient Israel*, (Sheffield: JSOT Press 1979) 71

<sup>156</sup> Megan Bishop Moore and Brad E. Kelle, *Biblical History and Israel's Past* (Grand Rapids: Eerdmans 2011 ) 145

and rules not only the core agricultural territories of earliest Israel but also some of the cities that were strongholds of the Canaanites in earlier eras (1 Kings 2 – 11)<sup>157</sup>

Although the royal house represented a limited world with relatively few actors, its relation to and general exclusion of all non-royals meant that its practices had at the minimum an implicit bearing on the affairs of the rest of the population.

Certainly the story of the intervention of Bathsheba, the queen mother, in securing Solomon's succession to David's throne (1 Kings 1:11 – 31) and then Solomon's brutal slaying of any possible threats to the throne (1 Kings 2:13 – 46) these stand out as dramatic object lessons about the ways in which palace affairs could exist as a closed jurisdiction with no need to answer to another legal body.<sup>158</sup>

Outside the royal palace and beyond the personnel attached to it, the monarch had final authority over the legal system of the state. With familial and other local conflicts handled by traditional authorities within the clans, villages and urban neighborhoods, the monarch's legal power focused on state interests.

The monarch certainly had the power to intervene in local matters and perhaps did so in certain instances, but on the whole there was little royal interest in local conflicts so long as they were settled at their level and did not impinge upon national affairs. The monarch could appropriate land for the crown, even if it was necessary to go through the motions of a sham trial, the story of Ahab and Jezebel's seizure of Naboth's vineyard (1 Kings 21: 1 – 16) could have been played out by any number of monarchs. The extent of their power is evident, for example, in the list of the high officials on whom David (2 Sam 8:15 – 18; 20:23-26) and later Solomon (1 Kings 4:1 – 19) reportedly relied in governance. Royal judges could also act on behalf of the monarch in administering justice, but again they limited their cases to matters of state interest and certainly personal interest as well, given the number of biblical allusions to the bribery of judges.<sup>159</sup>

Furthermore, according to the tradition of royal ideology in the region, the monarch was envisioned as the judicial head and preserver of justice throughout the land: texts from

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<sup>157</sup> *Ibid.*, 145

<sup>158</sup> *Ibid.*, 76

<sup>159</sup> *Ibid.*, 77

Mesopotamia to Egypt, and Israel in between, often refer to the symbolic and actual roles of monarchs in law making and law enforcing.<sup>160</sup>

The Hebrew bible does not attribute any of the biblical laws to the kings, they are proclaimed by Moses, the people's chief leader at that time. But while called a prophet, Moses leadership style matched that of a monarch, the military commander the jealous guardian of centralized power, (e.g. the uprising subdued in Num 16) the chief administrator of justice, the leader of the cult. To the extent that traditions about a legendary lawgiver such as Moses circulated during the monarchy, inhabitants of the royal throne could point to this figure as the warrant for their political and judicial powers.<sup>161</sup>

According to biblical reports, prophets such as Nathan, Elijah, Micaiah ben Imlah, Elisha, Isaiah of Jerusalem, Jeremiah, and others voiced resounding critiques of royalty on theological and ethical grounds but the actual extent to which kings and queens were influenced by these religious leaders was, while no longer measureable, probably not significant. Monarchs had supreme power in their lands.<sup>162</sup>

Among the governing class or elites, the group of powerful and privileged persons alongside but separate from the monarch. There may have been less need for rules or laws that was the case for the monarch. They were subject to the precepts of the monarch, from whom they derived benefits as a result of patron – client relationship. Presumably their personal and familial situation was defined along patriarchal lines, with a male head of household in the dominant role, similar to the rest of the Israelite society. Amos (4:1) suggests, however that wives in these wealthier context could also exercise substantial power within the family.<sup>163</sup>

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<sup>160</sup> Ibid., 39

<sup>161</sup> Ibid., 77

<sup>162</sup> Ibid., 78

<sup>163</sup> Niels Peter Lemche, *Kings and Clients: On Loyalty between the Ruler and the Ruled in Ancient Israel* (Bristol CT: Sheffield, 1994) 119

The kings of Israel succeeded to the army command of the pre-state period not only as the leaders of military expeditions; they also created for themselves a standing army and thereby went far beyond the prevailing fashion.

With Saul, the professional army must have been a relatively small body (1 Sam.14 :52); with David, the troops (“the king and his men” :2 Sam.5:6) became the decisive military and political power factor. There is no doubt that the king enjoyed a comprehensive jurisdiction over his soldiers. But he did not conflict with the permanent rights of the courts because these latter were not and could not be responsible for the newly arisen body. The soldier was essentially a non-Israelite institution. He was taken over from the world of the Canaanite city-kings, where the king had very extensive jurisdiction.<sup>164</sup>

There is another area in which the king enjoyed extensive legal authority. It must be defined locally. When David and his personal troops took the Jebusite royal city of Jerusalem (2 Sam. 5 :6-10), he made Jerusalem his city. He took over the legal competence of his Canaanite predecessors. The same applied to Samaria. The founding of this city by Omri on a hill acquired from the king (1 Kings 16 :24) resulted in a special legal status for the capital of the northern kingdom.<sup>165</sup> In Jerusalem the Judean king was henceforth the supreme ruler who then increasingly delegated authority to officials; in Samaria the Israelite king was to possess comparable legal powers.

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<sup>164</sup> Ibid., 42

<sup>165</sup> Ibid., 43

## ANCIENT ISRAELITE SYSTEM OF JUDICIAL PROCEDURE

Several principles underlie ancient Israel's system of judicial procedure whether the cases involve physical injury to others, violation of property or contracts, other action for which a person is considered legally liable, or religious infractions.

**TRIAL WITHOUT DELAY:** Unlike the modern tardiness in the administration of justice, in ancient Israel and among its neighbors, any prisons that existed in these countries largely served the special interests of the kings who could confine and release at will. For instance, when the wife of Joseph's Egyptian master falsely accuse him of making advances toward her, Joseph was thrown into the place where the king's prisoners were confined (Gen. 39:20). The prophet Jeremiah was imprisoned by officers who charged him with treason and the king also confine him to the court of the guards (32:2- 3; 37:13-16, 21; 38:6 – 13)<sup>166</sup>

**EVIDENCE:** The testimony of witnesses was sufficient for determining a conviction in many cases, but other forms of evidence could make the difference in other instances. Two types of evidence were possible only the first of which would be credited in most courts today, that is physical evidence, something that could establish the truthfulness of one party's claim at least in the eyes of the ancients (Exodus 22:10 – 13). In another case in Deut 22:13-21 a woman married a man who subsequently claimed that she was not a virgin when they were married. Her parents then had the chance to present to the elders the cloth showing blood from the bridal night, and the cloth serves as evidence to dispute the charge.<sup>167</sup>

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<sup>166</sup> *Ibid.*, 118

<sup>167</sup> *Ibid.*, 120

Another form of evidence, focusing on divine judgment or communication, would be the use of Urim and Thummim (Exodus 28:30; Lev.8:8). The story in 1 Samuel 14:24 – 46 demonstrates their use in indicating the guilty party. This brings to another form of evidence, the oath taking.

The other divine evidence, the oath, is a more common means in the Hebrew Bible for invoking God's judgment when other forms of enforcement or punishment are unavailable. In Solomon's prayer dedicating the temple, he mentions God's role in ensuring judgment; if someone sins against a neighbor and is given an oath to swear, and comes and swears before your altar in this house, then hear in heaven, and act, and judge your servants, condemning the guilty by bringing their conduct on their own head, and vindicating the righteous by rewarding them according to their righteousness (1 Kgs 8: 31 – 32).<sup>168</sup>

CAPITAL PUNISHMENT, BLOOD VENGEANCE, AND CITIES OF REFUGE: The Hebrew Bible prescribes capital punishment for a variety of offences, not all of them related to personal injury or death, intentional homicide and kidnapping (e.g., Exod. 21:12,16) adultery, certain religious violations (e.g. blasphemy, Lev. 24:10 – 23, although the definition of blasphemy is not clear) and certain other specific crimes. However, unlike the situation in neighboring cultures, destruction or theft of property is not a capital offence in biblical law.<sup>169</sup>

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<sup>168</sup> *Ibid.*, 121

<sup>169</sup> *Ibid.*, 127

There is no word in Hebrew or Greek that precisely corresponds to the English word “family.” In both languages, the closest word could be translated “house” or “household”: (*bayit* in Hebrew and *oikos* or *oikia* in Greek). The same word can be used for the building or for the people who live in it. This term focuses on the household as a social and economic unit.<sup>170</sup>

The ancient Hebrew family included husband and wife, their children (and if their sons were married, their wives and children), the husband's parents, the husband's brothers and their families, the husband's unmarried sisters, and other relatives. It might also include multiple wives and concubines, with their children and their children's families. Besides those related by blood or marriage, the household would include servants and slaves, guests (who were bound to the family by the obligations of hospitality), and sojourners (aliens resident in the household and under its ongoing protection, often employees of the household). In a Greco-Roman context, the household would include the extended family, servants or slaves, clients, and guests. Families might include children by adoption, although that practice was much more rare in the Old Testament period than in the New Testament period.<sup>171</sup>

The Old Testament affirms the biological family, which is assumed to be the basic unit of society. Israelite society was structured along kinship lines.<sup>172</sup> Much of Old Testament law regulates and protects family life. But more than this basic affirmation and pragmatic regulation, the family is regarded as a source of divine blessing. This perspective begins in Genesis, when God creates and blesses the first family and gives them the command to be fruitful and multiply (Gen. 1:27-28). Children are a blessing from the Lord (Ps. 127:3-5).

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<sup>170</sup> Brenda Colijn Ph.D. *Family in the Bible, A brief Survey*, (Cornell; Ashland Theological Journal 2004) 73

<sup>171</sup> Rodney Clapp, *Families at the Crossroads: Beyond Traditional and Modern Options* (Downers Grove, IL: InterVarsity Press, 1993), 35

<sup>172</sup> Christopher I. H. Wright, *An Eye for an Eye: The Place of Old Testament Ethics Today* (Downers Grove, IL: InterVarsity Press, 1983), 37.

128). The gift of children to barren women is a particular blessing, since God contravenes nature to show his grace (I Sam. 2:5; Ps. 113:9).<sup>173</sup>

Old Testament faith had a strong corporate dimension. People did not participate in the covenant as isolated individuals, but as members of families, clans, and tribes. Religious commitments made by the head of the household involved the whole family. For example, Joshua spoke for his whole family when he said that he and his house would serve the Lord (Josh. 24:15). In early Old Testament times, the family was the center of worship. The father, as head of the household, was the priest for the household (Gen. 22: 1-14; 26:23-25; Ex. 12:3-11).<sup>174</sup>

Later the center of worship shifted to the tabernacle and the Temple, and an official priesthood was established. Even after the Temple was built, however, families continued to observe Passover, perform circumcisions, marriages, and funerals, observe the dietary laws, and engage in religious instruction.<sup>175</sup> Teaching the law to one's children was one of the obligations of the covenant. The biological family played an important role in Old Testament salvation history. God's promise to Abraham was a promise of many descendants, land, and blessing—the very things any ancient family would want. The purpose of this promise was to bless Abraham's family, through him to bless the whole of Israel, and through Israel to bless all the families of the earth (Gen. 12:1-3). (God's promise to David to put a son on his throne who would have an everlasting

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<sup>173</sup> Ibid. 154

<sup>174</sup> Colin Brown, ed., *New International Dictionary of New Testament Theology, volume 1* (Grand Rapids: Zondervan, 1975-1978), 120

<sup>175</sup> Arland D. Jacobson, *Divided Families and Christian Origins*, (Leiden: Brill, 1995), 378.

kingdom was finally fulfilled in the Messiah, who was both David's son and God's). God built David a house, and through that house, he offered a blessing to all households (2 Sam. 7: 11-16).

In addition to the area of state and public authorities, Deuteronomy included a second great area of human life within the law- giving of Torah, the family.<sup>176</sup> There is only one single law dealing with it in the Book of the Covenant- the law against sleeping with an unbetrothed girl (Exod 22:15f).<sup>177</sup> The concern there was with the question of the bride which fits within the area of personal property, with the result that this perspective dominates the discussion. On the other hand, Deuteronomy law operates on a broad front, dealing with themes of marriage, sexuality, marriage regulations regarding inheritance and thus also the legal status of women in society.<sup>178</sup>

Under family law, the courts had no jurisdiction; the matter is entirely in the hands of the individual head of the house. The reasons for this is that only a free adult male had legal status in ancient Israel, and so the right to appear before the elders in court. All other persons, whether women, children or slaves, were in effect regarded as the personal property of the head of the household, and were dependent on him, not the courts, for their protection.<sup>179</sup>

The book of the covenant provides ample evidence that a woman had no independent legal status but was treated as the personal property first of her father, and then of her husband. Thus a man who seduced an unmarried or unbetrothed girl would be sued as a tortfeasor, and would have had to compensate her father for damage to his property, namely the loss of his daughter's virginity, and so of her eligibility as a bride. Accordingly, Ex 22:15 provides that the seducer must pay the father by way of damages the price which the father could have expected to receive for his daughter in marriage, and which he would not now get. The seducer was also to take the girl as his wife, though the father had the power to withhold her.<sup>180</sup>

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<sup>176</sup> Ibid. 249

<sup>177</sup> Ibid. 249

<sup>178</sup> Ibid. 249

<sup>179</sup> F.C. Fensham, *Widow, Orphan and the Poor in Ancient Near Eastern Legal and Wisdom Literature* ( Dallas: Dallas Theological Seminary. 1962 ) 129

<sup>180</sup>A. Phillips, and L. Phillips,, *The Origin of "IAM " in Exodus*, ( JSOT 78, 1998 ) 81

Similarly, when a man injured another's wife, he would have had to compensate her husband. So Exod 21:22 provides that where a man strikes a pregnant woman who thereby suffers a miscarriage but no further hurt, then damages must be paid. The husband evidently sued for a specific sum, which on the case being proved, was scrutinized by court assessors who determined the actual amount payable.<sup>181</sup>

In view of these precedents, it comes as no surprise to find that a man had an unfettered right to dispose of the women under his protection as he liked, whether as a father making a marriage for his daughter, or as a husband divorcing his wife. Neither the daughter nor the wife had any ultimate say in the matter, nor could they appeal to the courts. Their future was determined by family law, and that was an entirely domestic matter.<sup>182</sup>

Lending credence to this, Victor H. Matthews has this to say:

The stereotypical image of women in the world of the Bible is that they are generally silent, often nameless, helping characters, whose primary task is to produce an heir for their husband. This typically stands in contrast to the public posturing of the male, whose honor is based on public speech and activity (Gilmore: 250). Occasionally, women are portrayed in public as singers but this celebrates the victories of their husbands, their leaders, or their God (Ex 15:20 -21; Judg. 11:34; 1 Sam 18:6 – 7). They also serve as prophets (Miriam, Huldah), midwives, and mourners (Frymer-Kensky: 129)<sup>183</sup>

The Bible uses many words to describe the marriage relationship and process; in Genesis becoming married is described in terms of physical action, first as a man "taking (Heb. *laqach*) a wife," an idiomatic expression for consummation (Gen 4:19; 6:2; 11:29; 12:19; 20:2-3; 21:21; 24:4, 7, 40, 48). Marriage is also described as a woman being "given (Heb. *nathan*) as a wife," alluding to a

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<sup>181</sup> Ibid., 88 - 89

<sup>182</sup> Z. W. Falk, *Hebrew Law in Biblical Times* ( Jerusalem: Warman Books 1964 ) 54

<sup>183</sup> Victor Matthews, *Female voices upholding the honor of the Household* Biblical Theological Bulletin, Vol.24 Spring 1994 No 1, 8

father conveying his daughter to a man as a bride (Gen 29:19, 28; 34:8-9, 12, 14, 16). Jesus used this same expression when he referred to the antediluvian generation as "giving in marriage (Matt 24:38)<sup>184</sup>.

Though a man left his parents when he married (Gen. 2:24), he normally remained a member of his father's family. In relation to his wife, he was "master" (*ba'al*; e.g., Gen. 20:3; Ex. 21:3, 22; Lev. 21:4; Deut. 24:4). He "took" her from her parents, or she was "given" to him by her father, or by her master or mistress, if she was a slave (Gen. 2:22; 16:3; 34:9, 21). The marriage agreement, which, judging from neighboring cultures, was probably set down in a written contract, was made between the husband and either the bride's father alone (Gen. 29; 34:16; Ex. 22:16; Deut. 22:29; Ruth 4:10) or both her parents (Gen. 21:21; 24). The marriage negotiations might result from an attraction that had already developed between two young people (e.g., Samson and the Philistine girl, Judg. 14), but generally the father must have taken the initiative since evidently he had the right to determine who would be his daughter's spouse (Caleb, Josh. 15:16; Saul, I Sam. 18:17, 19, 21, 27; 25:44).<sup>185</sup>

By marriage, the husband and wife are one person in law; That is , the very being , or existence of the woman is suspended during the marriages or at least is incorporated ..... into that of the husband.<sup>186</sup>

Both betrothal and marriage are part of family law. An example of the former occurs in 1 Sam. 18:21, there Saul pronounces a formal declaration over David which secures his betrothal to Michal, "today you shall be my son in law"<sup>187</sup> the only outstanding issue is the bride price. David knows that he cannot possibly provide a sufficient mohar to wed a king's daughter. But Saul, hoping to secure David's death at the hands of the Philistines, provides a way in which David can marry Michal, a bride price of 100 Philistine foreskins (1 Sam.18 25); while it was normal for the bride price to be a monetary sum, this was by no means always the case (Gen. 29: 18) Nor is there

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<sup>184</sup> Ibid., 212

<sup>185</sup> Ibid., 45

<sup>186</sup> Blackstone, *Commentaries on the Law of England* ( Oxford: Clarendon 1769 ) 503

<sup>187</sup> H.P. Smith, *The Books of Samuel* ( ICC: Edinburgh: T and T Clark, 1912 ) 174

anything in 1 Sam. 18 to indicate that Saul is acting other than as a father disposing of his daughter as was his right, and it must therefore be assumed that Saul, although king, is following the normal practice of family law.<sup>188</sup>

Hosea 2:21 also appears to contain an echo of a betrothal formula in YHWH addressed to Israel, “I will betroth you to me forever “. <sup>189</sup> *Olam* (forever) is here used in legal sense.<sup>190</sup>

In ancient Israel, there is what is called levirate marriages where someone is obliged to marry the widow of his brother in order to raise children for his deceased brother.

The custom that the brother of a deceased man should beget children with the dead man’s childless wife is connected with patrilineal right of inheritance, patrilineal family structure and the great significance of name. In the narrative of Gen 38, the father compels his adult sons to fulfil the levirate function (verses 8ff); the story of Onan shows that this is not necessarily enforceable. Ultimately, Tamar was able to secure her rights only by deceitful action. All mention of levirate in the Old Testament deals with the problem of the refusal of the affected men or the difficulties, which the women encounter carrying out the law.<sup>191</sup>

In Deut. 25:5 – 10, there is first a description of the levirate rule and its purpose (verses 5f), and from verse 7 the concomitant problems are discussed,<sup>192</sup> whereas a wife could never divorce her husband, the latter had an absolute right to divorce his wife at any time and for any reason whatsoever.<sup>193</sup> Probably childlessness was the chief ground for divorce.<sup>194</sup> Another instance comes from the narrow area of sexual law. In Deut.22: 13 – 21 a young wife is defamed; ...A man marries a woman, but after going into her, he dislikes her and makes up charges against her, saying “I did not find evidence of her virginity”.<sup>195</sup>

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<sup>188</sup> E. Neufeld *Ancient Hebrew Marriage Laws* ( London: Longmans, Green, 1944 ) 135

<sup>189</sup> *Ibid.* 147

<sup>190</sup> H.W. Wolf , *Hosea* ( Philadelphia: Fortress Press, 1974 ) 52

<sup>191</sup> *Ibid* 245

<sup>192</sup> *Ibid* 254

<sup>193</sup> *Ibid* 156

<sup>194</sup> J. Pederson, *Israel: its Life and Culture 1 – 2* ( New York: Oxford University Press 1926 ) 71

<sup>195</sup> *Ibid.* 255

Contrary to ancient Near Eastern parallels, such activity here is not simply grounds for divorce; it is regarded as the equivalent of adultery, a capital offence. In addition, this can lead to the death penalty for the guilty woman (verse 21). The girl's parents go before the elders of the city and say that the man had falsely accused their daughter. The parents are then to offer public proof of her virginity (verses 15 – 17). If the proof is sufficient, the man who made the charge, which was proven false, should be whipped and made to pay a fine of 100 shekels. According to verse 29, this is double the bride price. Furthermore, he may not divorce her. If the charge cannot be disproved, the girl is to be taken to the door of her father's house where she will be stoned (verse 20f).<sup>196</sup>

This formulation shows clearly that for a legal description of the act of adultery, reference is only to the woman, of course because polygamy was permitted. Not the man need be described as married. He can only disrupt other people's marriages, not his own. The structure of patriarchal marriage, with its great emphasis upon the securing of the legitimacy of heirs, etc. is clearly recognizable.<sup>197</sup> Of course both Lev. 20:10 and Deut. 22:22 enact that the wife as well as her lover should be executed for the crime of adultery, but these measures reflect the later Deuteronomic law whereby a number of provisions previously restricted to men were extended to apply to woman as well (e.g. Deut 15: 12 – 18).<sup>198</sup> As Hosea 2:4 and Jer.3:8 confirm, under earlier law divorce execution was not the consequence of the wife's adultery, her lover alone being put to death. Indeed it is clear that when Lev. 20:10 was originally drawn up, it only provided for the execution of one person, namely the husband, the wife being added later. This explains why there is no suggestion that Sarah would have been in any way liable for her adultery with Abimelech nor was Bathsheba condemned for her infidelity with David. Probably a woman was assumed to have been forced.<sup>199</sup> Clearly as Israelite society became more complex, the simple divorce procedure proved extremely unsatisfactory, especially when it is remembered that to have sexual intercourse with a married

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<sup>196</sup> *Ibid.*, 380

<sup>197</sup> *Ibid.*, 256

<sup>198</sup> *Ibid.*, 110 - 111

<sup>199</sup> *Ibid.*, 115

woman would result in a prosecution on a capital charge of adultery. It was therefore extremely important that a divorced woman should have proof that her marriage had been dissolved in order that she might marry again without fear that her former husband should suddenly claim rights over her.<sup>200</sup> This led to the introduction of the bill of divorce, called literally deed of cutting. This either replaced or supplemented the simply divorce formula of family law spoken by the husband before the wife's expulsion from the matrimonial home (Hosea 2:4 ). Certainly by the time of Jeremiah (3:8) and the Deuteronomic legislation ( 24: 1- 4 ) such deeds were regularly given by the husband on divorce. However, divorce itself continued to remain an entirely private affair and no resort was made to the courts.<sup>201</sup>

Accordingly, the husband's absolute right to divorce his wife remained entirely unfettered, and he continued to act solely on his own initiative without recourse to any public body. Divorce remained part of family law and family law was no concern of the courts.<sup>202</sup>

Another aspect of family law is the law regarding slavery in ancient Israel. Like a wife or daughter, a slave was treated as part of his master's personal property. Thus Exodus 21:32 enacts that if a slave was gored to death by an ox, the owner of the ox had to compensate the master for his loss.<sup>203</sup> By the payment of damages, fixed at the current purchase price of a slave, harmony was restored within the community.

After six years' service, a Hebrew slave was entitled as of right to freedom. His master had to release him without any payment from the slave, who thereby recovered his status as a free adult male within the community (Exodus 21:2). But a slave could renounce his right to freedom and indeed, it would often have been in his interests to do so. For not only would his wife and children have remained his master's property if he had married after his enslavement, but his master was under no obligation to make any financial provision

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<sup>200</sup> D. Daube, *Studies in Biblical Law* ( Cambridge: Cambridge University Press, 1947 ) 89

<sup>201</sup> *Ibid.*, 117

<sup>202</sup> *Ibid.*, 118

<sup>203</sup> *Ibid.*, 90

for him on release ( Exodus 21:4 ) there was therefore little point in exchanging security without freedom for freedom without security.<sup>204</sup>

Exodus 21:6 describes the ceremony whereby the slave became a permanent member of his master's household. This ceremony is another example of family law. The courts are not involved because the slave has no legal status. He was his master's property to do with as he liked. Whether the slave renounced his right to freedom or not, this did not affect the welfare of the local community at large. It therefore remained a private matter between the master and the slave over which the community as a whole exercised no jurisdiction.<sup>205</sup>

More still, there is yet another very important aspect of family law, that regarding children in the family. Children were, of course, like wives and slaves under their father's protection having no legal status. While a daughter would remain her father's personal property until marriage, a son would with puberty become a free adult.<sup>206</sup> But until then it seems certain that were he to suffer any injury then it would have been his father who would have been compensated by the payment of damages. In view of this, one would expect to find that like divorce and making slavery permanent, the adoption of a child was part of family law taking place in the home.<sup>207</sup> The Old Testament itself contains no laws governing adoption. But considering its widespread practice throughout the ancient Near East, it is inconceivable that it was not also undertaken in Israel. Its purpose would have been to provide a childless man with a son who would both bury his father on death, and inherit his name and property.<sup>208</sup>

The procedure for adoption has then to be gleaned from evidence outside the legal corpus of the Old Testament. In the first place, it seems probable that like divorce adoption was in fact effected through the pronouncement of a simple legal formula. This can be deduced from

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<sup>204</sup>. Ibid. 119

<sup>205</sup>. Ibid. 136

<sup>206</sup>. L. Kohler, *Hebrew Man* ( London: SCM Press, 1956 ) 87

<sup>207</sup> Ibid. 120

<sup>208</sup> L. Mendelsohn, *Slavery in the Ancient Near East* ( Oxford: Oxford University Press 1955 ) 26

two passages dealing with Israel's understanding of her king's relationship to YHWH in which he was undoubtedly seen as God's adopted son. Thus in the original account of the institution of Davidic covenant, Yahweh says of David, I will be his father, and he shall be my son (2. Sam. 7: 14) which is again mirrored in Ps 2:7 where Yahweh addresses the king: you are my son to day I have begotten you. Such an adoption formula must have been in regular use for it to have been taken over in this way.<sup>209</sup>

The only apparent instance of the adoption of an adult rather than a child is Abraham's adoption of his slave Eliezer (Gen. 15: 2 -3), concerning which comparison has been made with the Nuzi material.<sup>210</sup> Since a slave had no legal status, his adoption would in any event have fallen within the sphere of family law, it would seem that such an adoption was conditional on his master having no subsequent children of his own (Gen 15:4). There is however, no actual evidence that this Mesopotamian custom of adopting a slave as one's heir was ever practiced in Israel itself and comparison with the Nuzi material may not, in fact be justified.<sup>211</sup> Whether in normal cases of adoption, the adoptive tie could be severed and if so on what conditions, we cannot know.

It should be noted that as in the case of husbands and masters, parent's authority was similarly severely limited by law. Thus, even though repudiation of parental authority carried the death penalty (Exod 21:15, 17; Deut. 21:18 – 21), the parents themselves could not take the law into their own hands, but had to secure a criminal conviction in the courts in the usual manner. On a verdict of guilty, execution would take place by communal stoning. Parents had no power of life or death over their children.<sup>212</sup>

Sexual taboos are another aspect of the laws protecting the family. There are shared norms in the sphere of incest taboos.<sup>213</sup> One thus finds common prohibitions against a man having sexual

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<sup>209</sup> Ibid. 121

<sup>210</sup> C. H Gordon, *Biblical customs and the Nuzi Tablets* ( Connecticut: American schools of Oriental research: 1940 ) 1 – 12

<sup>211</sup> De Vaux. *Ancient Israel: Its Life and Institutions* ( London: Darton, Longman and Todd 1961 ) 236

<sup>212</sup> Ibid. 80

<sup>213</sup> Ibid. 246

relations with his mother ( Lev 18:7 ) daughter in law Lev 18:15;20:12 Deut 27:23; daughter ( Lev 18:10- actually for a granddaughter; there is no statement on a daughter but the taboo can be inferred *a fortiori* and stepdaughter or father's wife Lev 18:8,20:12 Deut 27:20 ) for this last offence, a less severe penalty is given , namely being expelled as an heir.<sup>214</sup>

## 4:3 CIVIL, CRIMINAL AND MILITARY LAWS IN ANCIENT ISRAEL.

### CIVIL LAWS (OVERVIEW)

There are three main divisions within the Old Testament law. The main differences between the civil, ceremonial, and moral aspects of the Law of Moses as revealed in the Pentateuch are in their purposes. The civil law deals mainly with relationships between individuals, the settling of disputes, and the description of proper behavior. The ceremonial law deals with the priesthood initiation and the priestly procedures as they related to the various sacrifices through which the people of the Old Testament were cleansed of their sins. The moral law is based on the character of God and extends from the OT into the NT.

The third category is civil law (labeled judicial law, Civil laws are regulations to be enforced by the theocratic, national state of Israel in order to maintain a civil society. These include laws prescribing penalties for theft or murder or kidnapping or adultery. Civil laws ordinarily go on to include the penalties associated with violation of the law. Hence, "Do not commit murder is moral law, but making premeditated murder punishable by death while making unintentional manslaughter punishable by confinement to a city of refuge until the death of the high priest represents civil law."<sup>215</sup>

Division of the law into the categories moral, civil, and ceremonial is of heuristic value in allowing us to discuss different kinds of laws with differing degrees of direct application, but the categories

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<sup>214</sup> Ibid. 246

<sup>215</sup> Joe M. Sprinkle, *How Should the Old Testament Civil Laws Apply Today*. *Liberty University Law Review* 2.3 (2008): 909-928

are not wholly distinct. There are many examples that show this. For instance, the ceremonial Sabbath law. The only one of the Ten Commandments (Exodus 20:8 – 11) that is nowhere repeated in the New Testament, keeping the Sabbath is among the moral precepts of the Decalogue.<sup>216</sup> Also, the civil goring ox law (Exodus 21:28) has a ceremonial aspect in that the flesh of the stoned animal could not be eaten, presumably because of impurity. The civil law on murder (Numbers 35:16 - 28) allows freedom for a manslayer to leave the city of refuge conditioned upon a ceremonial element: the death of the high priest. (Num 35:25)<sup>217</sup>

Here are some examples of the ancient Israelite biblical civil laws;

Justice with the poor, (Lev. 19:15) of a neighbor's cattle, (Deut. 22:1-4), rebellious children, (Deut. 21:18-21), debt (Lev. 23:34-43; Deut. 31:10) divorce (Deut. 22:19) dress, attire (Deut. 22:5), no hatred in the heart (Lev. 19:17), inheritance (Num. 18:26; 26:53-56; 36:8-12), justice practices (Lev. 24:17-23) kidnapping (Ex 21:16) landmarks (Deut 19:14), property redemption (Lev. 25), murder and killing (Deut. 21:1-4), just scales in commerce (Lev. 19:35f), robbery, extortion, false witness, and restitution (Lev. 6:1-7), Sabbath breaking punishment (Num. 15:32-36), theft (Deut. 5:19; Lev. 19:11), warfare (Deut. 20:1-20).<sup>218</sup>

This list shows that many offences were regarded as torts, wrongs against individual private citizens, for which the injured party had to seek redress on his own initiative through the courts.

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<sup>216</sup> John Frame, *Towards a Theology of the State*, 51 Westminster Theological J.(1989) 199,

<sup>217</sup> Numbers 35:25

<sup>218</sup> *Ibid.* 120

## CRIMINAL LAWS

Before delving into the practical details of what constituted a criminal law in the ancient Israelite context, it will be good to consider the basic concept of a crime.

The only adequate definition of a crime is that conduct which the state prohibits. Thus, there are as many criminal law codes as where are states to enact them. The criminal law of any one state is therefore peculiar to that state, and like any other national feature can indicate much about it, both concerning its political and religious ideologies, as well as the value it places on the individual within the state.<sup>219</sup>

The number of offences, which can properly be called crimes, actions which the state itself forbids and seeks to stamp out, is very limited in ancient Near Eastern law as well as that of Israel. However, this is considerably augmented in the Old Testament by the large number of religious crimes. It is somewhat artificial to attempt to distinguish civil, criminal law in the Old Testament, since the whole of life is viewed as being lived under God, and therefore all wrongdoing is sin. No sin can be viewed with equanimity by the community, since it is likely to provoke God's wrath. Nevertheless if one wishes to distinguish the criminal and civil law elements, the type of penalty imposed may provide a criterion.<sup>220</sup>

Monetary compensation suggests that the offence should be regarded as falling within the realm of civil law, while the death penalty or corporal punishment suggests that the offence should be viewed as a crime. The prosecution of murderers, however, shows how foreign the civil/criminal law distinction is in biblical thinking. Though murder is viewed as a crime, in that the payment of damages to the victim's family is prohibited, the state does not take a hand in prosecuting the criminal. It is left to a relative, the avenger of blood, to kill the murderer if he can, or if he cannot, to chase him to the city of refuge and there convince the city authorities that the homicide is a murderer. The avenger of blood must then execute him (Ex. 21:12-14; Num. 35:10ff. Deut. 19).<sup>221</sup>

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<sup>219</sup> Anthony Phillips, *Ancient Israel's Criminal Law: A new Approach to the Decalogue* ( Oxford: Basil Blackwell 1970) 2

<sup>220</sup> M. Greenberg, *Some Postulates of Biblical Criminal Law* ( Jerusalem: Magnes Press 1960 ) 25

<sup>221</sup> E. M. Good, *Capital Punishment and its Alternatives in Ancient Near Eastern Law* , *Stanford Law Review* 19, 1967 947-977

It is clear that ancient Israel's laws are inextricably linked to their covenant with God. (Exodus 19: 5 – 6) it was G. E Mendenhall was the first to relate the Decalogue to the Hittite suzerainty treaties, in which the vassal, consequent upon certain historical events enumerated in the prologue to the treaty, bound himself in absolute obedience to the Hittite king, but was left free to determine his state's internal affairs. While it was presupposed that the Hittite king would give to the vassal his protection, no specific obligations were laid upon him and he was not party to the treaty.<sup>222</sup>

It is Mendenhall's contention that it is in the light of these treaties that the covenant relationship should be interpreted. YHWH is to be understood as fulfilling the role of the Hittite king, and the clans that of his vassal who as a result of the exodus from Egypt, agree to enter into the covenant with him and become absolutely liable in respect of the stipulations which he lays upon them namely the commandments of the Decalogue.<sup>223</sup>

The covenant is not a contractual agreement between partners, but the granting of a particular status by YHWH to a group of clans from whom certain obligations are required. Nonetheless, the fact that particular obligations are specified means that there should be no arbitrary exercise of divine power.<sup>224</sup>

A crime is a breach of an obligation imposed by the law which is felt to endanger the community and which results in the punishment of the offender in the name of the community, but which is not the personal concern of the individual who may have suffered injury, and who has no power to stop the prosecution not derive any gain from it.<sup>225</sup> From the point of view of YHWH, the Decalogue was Israel's constitution and any breach of it amounted to an act of apostasy which could lead to divine action both

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<sup>222</sup> G. E Mendenhall, *Ancient Oriental and Biblical Law* (Biblical Archaeologist Vol. XVII No. 2 1954 ) 26

<sup>223</sup> Ibid 55

<sup>224</sup> J. Begrich, *Berit* (Zeitschrift für die alttestamentliche Wissenschaft. N.F xix 1944 ) 1 – 11 )

<sup>225</sup> Ibid. 10

against the individual offender and the community, and might even result in YHWH's repudiation of the covenant itself.<sup>226</sup>

But it is the contention of this study that Israel herself understood the Decalogue as her criminal law code, and that the law contained in it and developed from it was sharply distinguished from her civil law. Thus breach of a commandment was not only regarded as an offence against Yahweh, but also since it endangered the community, as an offence against the latter, in other words a crime for which prosecution must be undertaken in the community's name. While an individual who was wronged by the act of the criminal may have acted as the prosecutor on behalf of the community, he derived no personal benefit from this prosecution, as he would from an action in tort. Following the conviction of the criminal, immediate execution was inflicted by the community, for the criminal could no longer be regarded as part of the covenant people. Outside breach of the Decalogue, the death penalty was never exacted.<sup>227</sup>

Thus the significance of the blood rite contained in Exodus 24:3ff now becomes apparent, for this was to be understood as constituting a self-imprecation.<sup>228</sup> Those who had the blood sprinkled upon them thereby undertook to obey the covenant law, or to pay for their act by a similar shedding of their own blood (Gen 15:9ff; Jer. 34:18). Consequently, the execution of the criminal at the hands of the community followed automatically on his conviction for breach of the covenant stipulations.<sup>229</sup>

But it is not only Israel's criminal law which is to be understood in relation to the Hittite suzerainty treaties, but also her civil law. While these treaties regulated the external relations of the vassal state, they did not seek to interfere in its internal affairs. It is in this light that one is to understand Israel's civil law, which, since it did not involve any infringement of the covenant stipulations, did not necessitate any recourse to YHWH.<sup>230</sup> Thus in contrast to the religious background of Israel's criminal law, that of her civil law was secular, and therefore the community as a whole in any action but merely resulted in a suit between individuals. Thus, where injury to persons or property occurred which did not constitute a crime; the

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<sup>226</sup> Ibid. 11

<sup>227</sup> Ibid. 11

<sup>228</sup> J. A Thompson, *The Ancient Near Eastern Treaties and the Old Testament*, ( London: Tyndale Press,1964 ) 25

<sup>229</sup> Ibid. 11

<sup>230</sup> Ibid. 12

inured party himself sued the tort-feasor for damages, which were awarded on the basis that was before the injury.<sup>231</sup>

Initially only free adult males were subject Israel's criminal law, for only they could have entered into the covenant relationship with YHWH. It was to them that the covenant stipulations of the Sinai Decalogue were addressed.<sup>232</sup> It was with puberty that an Israelite boy became an adult and consequently a full member of the covenant community, being able to take part in religious duties, marriage, law and warfare.<sup>233</sup> Initially it was the local community upon whom the responsibility for bringing the criminal to justice rested (Deut. 21: 1ff)<sup>234</sup> and who would first suffer divine punishment if this was not undertaken. Thus, the trial of the criminal took place in the gate of his town before the elders.<sup>235</sup> Conviction on a criminal charge could only be secured on the evidence of at least two witnesses (Deut. 17: 6; 19:15; Num. 35:30).<sup>236</sup>

It is, however, probable that originally the evidence of a single witness would have been sufficient. Deut. 19:16ff, which is in effect merely an expansion of the ninth commandment, seems to envisage such a situation, and verse 15 has all the marks of a later insertion in the light of which verses 16ff should now be understood.<sup>237</sup> Since the case of Naboth implies that at this time in the Northern Kingdom two witnesses were necessary to secure a conviction (1 kgs 21:10,13 ), it has been held that this reform was carried out during the period of the united monarchy by Solomon<sup>238</sup>

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<sup>231</sup> Ibid. 12

<sup>232</sup> Ibid. 14

<sup>233</sup> L. Kohler, *Hebrew Man*, Lectures delivered at the invitation of the University of Tubingen December 1-16, 1952, with an Appendix on Justice in the Gate, London 1956, 87

<sup>234</sup> C.H Gordon, *An Akkadian Parallel to Deuteronomy 21:1ff* *Revue d'Assyriologie et d'archéologie orientale* Vol. 33, No. 1 (1936), pp. 1-6

<sup>235</sup> C. U. Wolf, *Traces of Primitive Democracy in Ancient Israel* ( *Journal of Near Eastern Studies*, vi, 1947 ) 99ff

<sup>236</sup> Ibid. 23

<sup>237</sup> J. Morgenstern, *The Book of the Covenant – part ii* ( *Hebrew Union College Annual* vii, 1930, ) 75

<sup>238</sup> M. Sulzberger, *The Ancient Hebrew Law of Homicide*, ( Philadelphia: University of Pennsylvania Press 1915 ) 70

The prescribed penalty for breach of the criminal law during the pre-exilic period was death, for only in this way, could the community propitiate YHWH, and thus secure the maintenance of the covenant relationship. This was inflicted by communal stoning (Deut 13:10; 17:5; 21:21; 22: 21, 24)<sup>239</sup>

Once the witnesses had begun the stoning, all the adult male members of the community joined in. Thus Deut. 21:21 and 22:21 with their reference to men emphasis that in spite of the fact that Deuteronomy made women equal members of the covenant community with men, women still took no part in the execution. The criminal was executed outside his city not because of any symbolic thought of expulsion from the community, but because this was the only practical place for execution by communal stoning, both as regards space and materials.<sup>240</sup>

When the history of Israel's criminal law is investigated, it will be recognized that with the destruction of Jerusalem by the Babylonians, the Mosaic covenant concept came to an end, and was replaced by the priestly legislation. (Lev. 17 – 26).<sup>241</sup> This provided that Israel's relationship with YHWH should no longer be conditional on obedience to the stipulations of the Decalogue, but should exist independently of any obligations on Israel part, being guaranteed by the cult with its Day of Atonement. The priestly legislation was therefore designed to act as the guardian of the proper ordering and purity of the cult, through which the divine blessing was secured, and from which the offender must be excluded ( Ez 20:35ff ).<sup>242</sup>

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<sup>239</sup> Ibid., 23

<sup>240</sup> Ibid., 25

<sup>241</sup> Ibid.,28

<sup>242</sup> Ibid., 28

## MILITARY LAWS

“He will judge between the nations and will settle disputes for many peoples. They will beat their swords into plowshares and their spears into pruning hooks. Nation will not take up sword against nation, nor will they train for war anymore”. (Isaiah 2:4)

The above- mentioned statement expresses the eschatological expectations of many people. They hope for a time when nations of the world shall live in an impeccable peace and harmony with one another. While nations of the world eagerly await for this time, the reality of war and conflicts has continued to be a recurring phenomenon since the beginning of time.

War has been a phenomenon ever present in human society, and as such it fills the pages of the Old Testament also. While militaristic rulers and states have at various times glorified war and attempted to interpret it as noble and as pleasing to the higher powers, most men at most times have considered it a scourge and an evil, though they have generally failed to find ways of eliminating it for any length of time. The Old Testament shares this attitude with the rest of mankind.<sup>243</sup>

In such circumstances, *halakhah* views war as a necessity, and participation therein as an obligation under certain circumstances.<sup>244</sup>

A soldier acting in accordance with *halakhah* may not indulge in the naked exercise of force, brutality, or vandalism, but rather must be guided by the recognition of an obligation imposed by an exigency brought about by reality. The Torah establishes the boundaries of what is permitted and forbidden in war for both individual and for society, with the view of achieving the military objective while striking a balance between recognition of the nature of soldiers in war – who must, at times, be permitted to behave in ways that would be forbidden in peacetime – and the need to imbue those soldiers with the qualities of compassion and holiness, even during times of war. It is instructive that the laws of prayer and of the sanctity of the synagogue are derived from the laws governing a military camp (Ber. 25a). Although under certain circumstances the Torah views war as an obligation incumbent upon every man in Israel, King David was not allowed to build the Temple

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<sup>243</sup> Janzen, Waldemar. 1972. "War in the Old Testament." *The Mennonite Quarterly Review* 46, no. 2: 155-166. *ATLA Religion Database with ATLASerials*, EBSCOhost (accessed April 18, 2017).

<sup>244</sup> Menachem Elon et al, *Jewish Law (Mishpat Ivri): Cases and Materials* ( New York: Lexis Nexis 1999 ) 539

because he had fought many wars (I Chron. 22:7–10). This exemplifies the potentially problematic nature of war, and the need to strike an appropriate balance between single-minded combat against the enemy and preserving the moral standards of the combatants.<sup>245</sup>

The Bible does envision greater Israel as a nation born into military conflict and embroiled in it or its possibility throughout its existence. War, according to the Bible, brought the scattered tribes together (Judges), prompted Israel to entreat YHWH for a king (1 Sam 8: 20), and brought on the great catastrophes of Israel's and Judah's history, namely, the destructions of the kingdom of Israel (2 Kgs 17) and Jerusalem (2 Kgs 24: 13–25: 21). Israel's God, YHWH, is presented as a war-god who fights alongside his people (e.g., Josh 3:10), or against them, if necessary (e.g., Jer 21:3–6).<sup>246</sup>

The prominence of war in evidence for ancient Israel might lead one to assume that modern histories of Israel are dominated by war. This is not the case. War and battles rarely command special attention; rather, warfare typically is mentioned in service of a larger question.<sup>247</sup>

One impetus for scholarly consideration of Deuteronomy's date, among others, revolves around the laws of warfare in Deuteronomy. According to Gerhard von Rad, the laws of warfare in Deuteronomy "presuppose conditions regarding politics and strategy such as are inconceivable before the period of the monarchy."<sup>248</sup>

The Torah states (Deut. 23:10): "When you go forth against your enemies and are in camp, then you shall keep yourself from every evil thing." In the tannaitic Midrash, the Sages interpreted this verse as

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<sup>245</sup> Ibid. 540

<sup>246</sup> Kelle, Brad E., and Frank Ritzel Ames. 2008. *Writing and Reading War: Rhetoric, Gender, and Ethics in Biblical and Modern Contexts*. Atlanta: Society of Biblical Literature, 2008. *EBook Collection (EBSCOhost)*, EBSCOhost (accessed January 21, 2017).

<sup>247</sup> E. Brad Kelle, *Ancient Israel at war 853 – 586 BC* ( Oxford: Osprey 2007 ) 67

<sup>248</sup> Gerhard von Rad, *Deuteronomy: A Commentary* ( Philadelphia: Westminster, 1966), 132–33

implying a special warning in time of war to be careful regarding matters of defilement and purity, tithes, incest, idolatry, bloodshed, and slander.<sup>249</sup>

The Mishnah (Sot. 8:7) distinguishes between two types of war: discretionary war and obligatory war. According to Maimonides, an obligatory war is like that fought by Joshua to liberate the land of Israel from the Seven Nations, the war to eradicate Amalek, or a war "to defend Israel against an enemy that attacks them." A discretionary war is one undertaken to extend the borders of the state, such as the wars fought by King David (Yad, Melakhim 5:1; Sot. 44b; TJ, Sot. 8:10).<sup>250</sup>

According to the Torah, the minimum age for military service is 20 (Num. 1:3, The Torah does not expressly establish a maximum age. Some hold that the maximum age for military service is 60 (, Num. 1:45), while others suggest that it was 40.<sup>251</sup>

The book of Deuteronomy provides guidelines for exemption from military service. The Torah (Deut. 20) provides that, before venturing into battle, the priest—referred to in the Mishnah as the "Anointed for Battle" (Sot. 8:1) – must speak to the people and encourage them so that they not fear the enemy and to place their trust in God, as the Torah expressly forbids fear of the enemy in war (Maimonides, *Sefer ha-Mitzvot*, negative precept 58; *Sefer ha-Hinnukh*, 525).<sup>252</sup> Following the priest's speech, the officers address the people and exempt the following four categories of people: (a) one who has built a home and not dedicated it; (b) one who has planted a vineyard but not yet enjoyed its fruit (the fruit can only be used after the fourth year); (c) one who has betrothed a woman but not yet married her (d) one who is afraid and fainthearted, "lest he cause his comrades to be afraid." Later sources explain the application of these exemptions in practice. Thus, prior to

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<sup>249</sup> Louis Finkelstein, *Sifre on Deuteronomy* ( New York: Jewish Theological Seminary of America, 1969 ) 25

<sup>250</sup> *Ibid.*, 543

<sup>251</sup> *Ibid.*, 27

<sup>252</sup> *Ibid.*, 37

the battle with the Midianites, God commands Gideon to tell the fearful to return home; more than one third of the force leaves (Judges 7:3). The Book of Maccabees (I Maccabees 3:55) relates that soldiers were exempted for the same reasons.<sup>253</sup>

From the Mishnah's statement that "all go forth, even the bridegroom out of his chamber and the bride from her bridal pavilion," one may conclude that both men and women are required to serve in an obligatory war. Certain later rabbinical authorities sought to limit this rule by saying that women are only required to help provision the troops (Rashash on Sot. 44b), while others opined that only the bridegroom goes to war, whereas the bride merely cancels her wedding (Radbaz on Maimonides, Melakhim 7:4).<sup>254</sup>

The verse that forbids a woman from wearing a man's garments (Deut. 22:5) has been interpreted as prohibiting a woman from carrying arms, and thus prohibiting her going to war (Ibn Ezra). Others saw the verse as limited to matters of modesty, and therefore not to be taken as forbidding the participation of women in war (Rabbenu Perez, in *Shitat Kadmonim le-Nazir*, 1972).<sup>255</sup> The subject assumed practical significance in the Modern State of Israel with regard to the question of the conscription of women. Some authorities, relying upon some of the above-mentioned sources, argued that it is prohibited, while others expressed the view that it is not, so long as modesty is preserved.<sup>256</sup>

The Bible however has account of some women, who did remarkable exploits in warfare, in the 13th century BC – Deborah, Judge of Israel, traveled with Barak, who led her army, on a military campaign in Qadesh, according to Judges 4:6-10, Jael assassinated Sisera, a retreating general who was the enemy of the Israelites, according to Judges 4:17–21.<sup>257</sup>

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<sup>253</sup> Ibid. 28

<sup>254</sup> Ibid. 543

<sup>255</sup> Ibid. 29

<sup>256</sup> Ibid. 29

<sup>257</sup> E. Watson Mills; Roger Aubrey Bullard, *Mercer Dictionary of the Bible*. (Atlanta Georgia: Mercer University Press 1990) 779.

The book of Deuteronomy drew our attention to what is called the commandment to sue for peace before embarking on any warfare.

"When you draw near to a city to fight against it, offer terms of peace to it" (Deut. 20:10). Before launching war against a city or placing it under siege, the Torah requires an offer of peace. There is dispute as to whether this duty *also* applies to an obligatory war, as held by Maimonides (Melakhim 6:1), or only applies to a discretionary war, as is the view of Rashi (Deut. 20:10, based upon Sif. Deut., ed. Finkelstein, 199, and Rabad, on Maimonides ad loc.).<sup>258</sup>

From the Torah, it would appear that the taking of spoils was common, and was viewed as an integral part of war (I Samuel 30:24). This conclusion can also be reached on the basis of the prohibition against destroying trees, In Deuteronomy, following the command to sue for peace, we are told that Israel shall enjoy the spoils of a city that refuses the offer of peace (Deut. 20:14). In the Midrash, the Sages emphasized that it was not only permissible to plunder, but that the spoils could be taken for the personal use of the soldiers (Sif. Deut., ed. Finkelstein)<sup>259</sup>

According to Maimonides, the spoils were intended solely for the soldiers, and might be described as their payment (Maimonides, Melakhim 4:9). In accordance with David's instruction that the spoils be divided equally between the front-line soldiers and those in the rear who stay "on the baggage" (I Samuel 30:24), Maimonides ruled that the spoils must be equally apportioned.<sup>260</sup>

The language of the Torah leads to the conclusion that if, in a discretionary war, the enemy does not accept the terms of surrender offered by the Israelite army, then all the men are to be killed: "But if it makes no peace with you... you shall put all its males to the sword" (Deut. 20:12–13). This is the conclusion drawn by Maimonides (Melakhim 6:4), who emphasizes the corollary that women and children are not to be killed.<sup>261</sup>

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<sup>258</sup> Ibid. 30

<sup>259</sup> Ibid 200

<sup>260</sup> Ibid 31

<sup>261</sup> Ibid 34

## CHAPTER V

### 5:1 EXTRAPOLATION, EXPANSION AND THE RELATIONSHIP BETWEEN THE BOOKS OF DEUTERONOMY AND THE BOOK OF THE COVENANT

(EXODUS 21 – 23)

Careful reading of the Pentateuch shows clearly that stories often are repeated. For example, there are two creation narratives and two Flood stories, among several others. The same is true for Israelite law.<sup>262</sup> The book of Deuteronomy is, as its title suggests, a “repetition” or “second-giving” of laws already given earlier in the Exodus, and represents Moses’ final testament to the people of Israel. Some laws are the same, some are revised slightly, and others are unique.<sup>263</sup> For instance, the Deuteronomic code of Deuteronomy 12 – 26 bears some resemblance, parallels and similarities with the laws of the book of the covenant of Exodus 21 – 23.

The Deuteronomic laws are explications and new applications of the book of the covenant in view of Israel’s new historical situation. Israel was about to enter the promised land when Moses outlined to them the Law of God ( Dt 1:5 ) the impersonal element of the book of the covenant is here transformed by personal appeal. Moses strongly appeals to Israel to be loyal to the Lord, the covenant and covenant stipulations.<sup>264</sup>

The Deuteronomic laws envision the people in the land of promise, with a central sanctuary ( 12:5;11,14,18; 14:23;15:20;16:5 – 7,16/21) and with a king ( 17:14;20 ). The blessings and the

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<sup>262</sup> Ibid. 542

<sup>263</sup> Ibid. 542

<sup>264</sup> Walter A. Elwell, et al, *Baker Encyclopedia of the Bible: Volume 2 J- Z* ( Michigan: Baker Book House 1988 ) 1316

courses motivate covenant loyalty (ch 28) however; Israel is also here assured that even if it breaks God's law, the Lord remains gracious and forgiving.<sup>265</sup>

Deuteronomy repeatedly stresses that covenant law continues to be valid for each generation up to the present day.<sup>266</sup>

Moses summoned all Israel and said to them, "Hear, O Israel, the statutes and decrees that you may learn them and take care to observe them. The Lord, our God, made a covenant with us at Horeb, not with our father's did he make this covenant, but with us, all of us who are alive here this day." (Deut 5:1 – 3; 26:16 – 19; 29:13 – 14)<sup>267</sup>

A highly distinctive feature of Deuteronomy is its laws seeking to alleviate the lot of the poor. In its attempt to outline a world where poverty will no longer exist, it goes even beyond the laws found in the covenant code (Deut 15). God's covenant blessings are to be available to every individual.<sup>268</sup>

Deuteronomy 12:1 introduces a new section leading readers to expect a formal series of Laws comparable to those found in the book of the covenant (Ex 20; 22 – 23; 19) however, in tone and style much of this material bears a closer resemblance to Moses preaching in chapter 6 – 11 than to the covenant code, the Holiness code (Lev 17 – 25) or Mesopotamian law code.<sup>269</sup>

"These are the statutes and the ordinances that you shall be careful to do in the land" (Deut 12:1).

These words introduce the Deuteronomic code (ch. 12 – 26) the books major collection of laws expanding upon the Decalogue (ch. 5) the covenant code is similarly introduced in Exodus 21:1

"Now these are the ordinances that you shall set before them. Other Deuteronomic statements of

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<sup>265</sup> Ibid. 1316

<sup>266</sup> Carroll Stuhlmeuller, C.P, et al, *The Collegeville Pastoral Dictionary of Biblical Theology* ( Minnesota: The Liturgical Press 1996 ) 540

<sup>267</sup> Ibid 540

<sup>268</sup> Ibid 541

<sup>269</sup> Daniel I Brock: Deuteronomy, *The NIV Application commentary*, (Grand Rapids Michigan: Zondervan, 1978 ) 304

introduction and conclusion have similar wording e.g. Deut. 4:45 (conclusion): 5:1 introduction and Deut 6: 1 (introduction).<sup>270</sup>

The close link between literary and theological or ideological interpretation emerges also in the study of the literary origins and development of the law code. The similarities between Deut. 12 – 26 and the laws in the book of the covenant (Ex 20:22 – 23;19) have long been observed (S. R Driver 1895), and remain the subject of analysis. In recent discussion the Deuteronomic code has been traced not only to BC but also to Exodus 34; 10 – 26 held to be an ancient Privilege law (that is a law asserting the unique rights of YHWH in Israel's worship).<sup>271</sup>

Here are some parallels and similarities between the book of the covenant Ex 21 – 23 and the Deuteronomic code, Deut 12 – 26.

Exodus 20:23 – 26 states the principles of worship highlighting Israel's ethical expression of devotion to YHWH while Deuteronomy 12: 2 – 26;17 also lists principles of worship highlighting Israel's cultic expression of devotion to YHWH. Exodus 21:1- 23; 9 enumerates the casuistic and apodictic laws highlighting Israel's ethical expression of devotion to Yahweh while Deuteronomy 16:18 – 25; 19 also enumerates the casuistic and apodictic instructions highlighting Israel's ethical and civil expression of devotion to YHWH. Exodus 23:10 – 19 lists principles of worship, highlighting Israel's cultic expression of devotion to YHWH while Deuteronomy 26: 1 – 15 does the same.

Some argue that Moses's presentation of the covenant obligations in Deuteronomy 12 – 26 is structured after the Decalogue. However, this approach seems forced. The flow of thought is best grasped by outlining the material on the basis of content. The logic of the overall structure is clear. Viewing Israel as a theocracy, Moses begins with the nation's direct obligations to Yahweh (12:2 – 16;17) then moves successively to the offices through which Yahweh will exercise his kingship once the people have settled in the promised land..... apparently taking cues from both the Decalogue and the book of the

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<sup>270</sup> Jack R. Lundbom, *Deuteronomy a Commentary*, Grand Rapids, Michigan: Eerdmans 2013 ) 422

<sup>271</sup> Ibid. 29

covenant, Moses begins his exposition with the vertical dimensions of covenant relationship.<sup>272</sup>

There is also a parallel regarding the laws concerning slavery both in the book of the covenant and the Deuteronomic code. For instance, the book of the covenant states that when one buys a Hebrew slave, he is to serve for six years; then in the seventh he is to leave as a free man-without paying anything. If he arrives alone, he is to leave alone; if he arrives with a wife, his wife is to leave with him. If his master gives him a wife and she bears him sons or daughters, the wife and her children belong to her master, and the man must leave alone.

“But if the slave declares: ‘I love my master, my wife, and my children; I do not want to leave as a free man, his master is to bring him to the judges and then bring him to the door or doorpost. His master must pierce his ear with an awl, and he will serve his master for life. (Exodus 21: 2 – 6)

Similarly, the Deuteronomic code states thus,

“If your fellow Hebrew, a man or woman, is sold to you and serves you six years, you must set him free in the seventh year. When you set him free, do not send him away empty-handed. Give generously to him from your flock, your threshing floor, and your winepress. You are to give him whatever the LORD your God has blessed you with. Remember that you were a slave in the land of Egypt and the LORD your God redeemed you; that is why I am giving you this command today. But if your slave says to you, ‘I don’t want to leave you,’ because he loves you and your family, and is well off with you, take an awl and pierce through his ear into the door, and he will become your slave for life. Also, treat your female slave the same way.” (Deut. 15: 12 – 17)

There is also a striking parallel in the law of retributive justice, (*lex talionis*) “an eye for an eye and a tooth for a tooth” in the book of the covenant, Exodus 21:23 -25 and the Deuteronomic code, (Deut. 19:21).

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<sup>272</sup> Ibid., 302

It is widely believed that the makers of the Declaration on Human Rights also known as the Human Rights Charter of December 10, 1948, either took a cue from or were influenced by the stipulations enunciated in the book of Deuteronomy. This is because of many correspondences and common tendencies in the two documents. George Braulik in his book, *“The theology of Deuteronomy,”* enumerated some of these striking resemblances and parallels.

Article Number 2 of the Human Rights Charter, which stipulated the prohibition of discrimination regarding women has a parallel in Deut.15:12; 22:13 – 19; regarding an escaped slave, 23:16 – 17 regarding aliens and former enemies 23:8 – 9. Article 3: The rights to life and liberty, Deut. 5:17; 18:10;22:8 27:24 – 25 (life) Deut 15:12;23: 16 – 17 (liberty) Article 5: The prohibition of inhumane and degrading punishment, Deut 25:3 Article 7: Equality before the law, Deut1:17;16:19;24:17;27:19:29: - 14 (all free people are included in the covenant with YHWH and enjoy the benefits of the law.) Article 11: conviction only after guilt has been proved and only according to a law that was in force at the time when the act was committed. Deut 13:15; 17:4,6; 19:15;24:16.<sup>273</sup>

Both Philo, Josephus, and the Tannaitic rabbis, wrote commentaries that offer their own interpretations and reworking of the book of Deuteronomy for their communities. Josephus rewrote biblical narratives and gave allusions to Deuteronomy’s law into his explanations of Jewish life and his histories of post biblical times.<sup>274</sup>

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<sup>273</sup> O.S.B Georg Braulik, *The Theology of Deuteronomy, collected Essays,* ( Richmond, TX: Bibal Press, 1994 ) 132

<sup>274</sup> Caryn A. Reeder, *The Enemy in the Household,* ( Grand Rapids: Baker Academic 2013 ) 9

The book of Deuteronomy is very important in many respects. It presents the pivot or fulcrum upon which Israel's monotheism hinges. During his temptations in the desert, Jesus also quoted texts near the Shema and used them to defeat the devil's antics. "Jesus said to him, Away from me, Satan! For it is written: 'Worship the Lord your God, and serve him only.'" (Mt 4:10). Furthermore in his temptation at the desert "Jesus answered the devil (Luke 4:4) by quoting Deuteronomy 8:3, "It is written, 'man does not live by bread alone'".

The Book of Deuteronomy is often alluded to and quoted in the New Testament, as noted in the following three examples. When Jesus Christ named the first of the two greatest commandments (Matthew 22:37, Mark 12:30, Luke 10:27), he referenced Deuteronomy 6:4-5 - "Hear, O Israel! The Lord is our God, the Lord alone. Therefore, you shall love the Lord your God with all your heart, and with all your soul, and with all your strength." As noted above, Moses is quoted in Acts when he gave the definition and promise of a prophet in Deuteronomy 18:15-19.

Deuteronomy is one of the great theological documents of the Bible or of any time. The mere fact that Jesus quotes more often from it than from any other book of the Old Testament is perhaps a sufficient invitation to a study of its theology. Its effect on his mind is also a symptom of its massive importance in forming the thinking of ancient Israel and in serving as backdrop of many of the discussions in later Judaism.<sup>275</sup>

It is also worth remembering that the Gospels represent Jesus positively as the fulfillment of the law ( especially Matt. 5:17 – 20 ), and that , when asked for the great commandment, “ Jesus responded precisely the way that Deuteronomy would suggest

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<sup>275</sup> J Gordon McConville, *Grace in the End, A study in Deuteronomistic Theology* ( Grand Rapids: Zondervan 1993 ) 9

by citing the “creed” of Deuteronomy 6:4 – 5 and adding to it the law of the neighbor from Leviticus 19:18.<sup>276</sup>

Although the term “gospel” derives from Christian tradition, it would even be appropriate theologically to say that Deuteronomy sees the law as “gospel” since the covenant law is an expression of divine love and provides the parameters for the peaceable kingdom, it is received and celebrated as “good news” The law provides the means by which the redeemed people of the Exodus may become the sanctified community of the covenant. Indeed, the people’s salvation is incomplete without this sanctification, just as freedom from tyranny is incomplete without a new constitution to prevent a new tyranny.<sup>277</sup>

There are, however, also specific ways in which Deuteronomy becomes visible in the NT. One straightforward way is in terms of ethics. The way this happens is complex, being partly by contrast and partly by assimilation. An example of the contrast is Jesus’s citation of the divorce law of Deuteronomy 24:1 – 4 (Mt 19:7 – 9; 5:31 – 32), in which he appears to set a higher standard than the OT law.<sup>278</sup> His treatment of the divorce law, using Gen 2:23f to correct another Torah text resembles the “But I tell you” sayings of the sermon on the Mount (Mt 5:21 – 48) Deuteronomy, for example, has its version of the so-called *lex talionis* (Deut 19:21), the law that Jesus famously he put a hedge around as the Rabbis did, was superseded by Jesus’s command to turn the other cheek to an aggressor and even to lend him assistance. (Mt 5:38 – 42). In a similar way, a prohibition of oath breaking (Dt 23:21) becomes a prohibition of oath making (Mt 5:33 – 37)<sup>279</sup>

R. Eliezer (1<sup>st</sup> / 2<sup>nd</sup> c) is the only rabbinic authority reported to have insisted on the literal meaning of “an eye for an eye” He may as *Billerbeck* another Jewish scholar, suggested represent an old legal position of the School of Shammai. With this exception, the tannaitic and later rabbinic sources are in agreement that “an eye for an eye, a tooth for a tooth” refers to the legal principle,

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<sup>276</sup> Thomas W. Mann, *Deuteronomy* ( Louisville : Westminster John Knox Press 1995 ) 17

<sup>277</sup> *Ibid.*, 17

<sup>278</sup> *Ibid.*, 147

<sup>279</sup> *Ibid.*, 147

which enjoins accurate reparation by means of monetary compensation. The source material is of so elaborate and subtle a nature ..... That we must allow a long time for its growth.<sup>280</sup>

For these reasons it is sound to assume that at the time of the New Testament the biblical *lex talionis* was not practiced according to its literal meaning and that physical harm to a person was settled by pecuniary penalties.<sup>281</sup> In all probability Matt 5:38 presupposes this view.. in line with the general tannaitic understanding, Targum, Pseudo- Jonathan interprets the Lex talionis of Exodus 21:24 as “the equivalent value of an eye for an eye.....” Neofiti interprets “an eye as monetary compensation for an eye....”<sup>282</sup>

Jesus’s response to the case of *lex talionis* is quite antithetical to the interpretations of the Pharisees and the scribes. (Matt 5:39- 42) “But I say to you: do not resist one who is evil”, by applying to him the principle, “An eye for an eye and a tooth for a tooth” rather if anyone insulting you, strikes you on the right cheek, turn to him the other also, and if anyone would sue you and take your undergarment, let him have your cloak as well; and if anyone forces you to go with him one mile, go two miles with him. Give to one who having harmed or insulted you begs from you, and do not refuse one (i.e. such a person) who wants to borrow from you. In order to interpret verses 39b – 42 within Matthew’s context, we have to carry over the “one who is evil” from 39a and furthermore, place these verses in the context of non-retaliation. This interpretation fits in well with Luke 6:29-30 where the logia of Matt 5:39b.40.42 serve as examples of loving one’s enemies.<sup>283</sup>

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<sup>280</sup> Ibid., 100

<sup>281</sup> Ibid., 100.

<sup>282</sup> Ibid., 101

<sup>283</sup> Ibid, 105

The specific application does not come into conflict with Torah, they go beyond it. They do not place Matthew's Jesus outside the range of Jewish discussion of the time. They run in the direction of asking more of people, rather than less. Far from abrogating or watering down Torah, they are making Torah stricter at this point. This is consistent with the previous five antitheses. Matthews Jesus is concerned with heightening Torah's demand, even when such strict interpretation effectively rules out certain Torah provisions.<sup>284</sup>

The focus throughout is on having a more generous, positive attitude towards people. This is obvious in the first and the last two antitheses, murder, retaliation, loving neighbor. It is probably also determining those on adultery and divorce, if the concern is about wronging people. It is also present in the forbidding oaths as a means of manipulation. The attitude coheres with the focus in the beatitudes on positive behaviors and attitudes towards people and with the Matthean version of the Golden Rule in Matt.7:12.<sup>285</sup>

The cases of retaliation (Matt 5:38 – 42) and divorce (Matt 5:31 – 32) seem at first sight to contradict Matt 5:17 – 18. In other words, it seems that in these two cases Jesus stands indeed in contrast to the Torah. How can we explain this seeming inconsistency? As to the case of retaliation, we can assume that Jesus did not understand “an eye for an eye, a tooth for a tooth” in its literal meaning. In all likelihood he agreed with the rabbinic interpretation, according to which “an eye for an eye, a tooth for a tooth” expressed the legal principle that enjoined exact reparation. A parallel to such an interpretation, which supersedes the literal meaning (*Peshat*) of the Bible, can be seen in the following *Baraita of R. Ishmael* (2<sup>nd</sup> c.) “ in three passages the Halakha (Practical law ) overrides the biblical texts (Miqra ).....( in one of these passages ) the Torah says,

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<sup>284</sup> William R. G. Loader, *Jesus's Attitude towards the Law: A Study of the Gospels* (Grand Rapids: Eerdmans 1997 ) 177

<sup>285</sup> *Ibid.* 180

the bill of divorce should be written on a book i.e. a parchment ( Deut 24,1 ), whereas the Halakha says on anything on which one can write.....<sup>286</sup>

As to divorce, for Jesus the law of Deut 24 :1 – 4 goes back to Moses, not God, and it does not fulfill God's, original intention as expressed in the first chapters of Genesis "for your hardness of heart Moses allowed you to send your wives away, but from the beginning it was not so " ( Matt 19:8 )<sup>287</sup>

Jesus's teaching seems to be in contradistinction to the scribal and Pharisaic interpretations, legislations, or practices of the Torah. We have to note that Jesus does not oppose the Torah itself. He did not come to annul it but to fulfill it (Matt.5:17) This applies even to the least of the commandments of the Torah, and one who puts them into practice and teaches them shall be called great in the kingdom of heaven. (Matt 5:19).

In this context, Matt 5:20 criticizes the Scribes and Pharisees for not truly fulfilling but rather relaxing the Torah. Their approach to the biblical commands reveals a righteousness which the followers of Jesus, teachings are called upon to exceed.<sup>288</sup>

Thus the basic structure of the Matthews antithesis is the following,

a) you have heard that it was said to the men of the old (i.e. the generation at Mount Sinai) This introductory statements are followed by one or more biblical injunctions.

b) An interpretation, legislation or practice of the Scribes and Pharisees which in most cases is not fully spelled out or has to be supplied completely.

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<sup>286</sup> I. Kalimi, *Targumic and Midrashic Exegesis in Contradiction to the Peshat of Biblical Text*, Biblical Interpretation in Judaism and Christianity,) New York – London 2006 13

<sup>287</sup> Ibid, P 41

<sup>288</sup> Reinhard Neudecker, *Moses interpreted by the Pharisees and Jesus*, Matthew's Antitheses in the light of early rabbinic literature. ( Rome Italy: Gregorian Biblical Press, 2012 ) 39

c) But I say to you ..... This expression introduces the response to the positions of the Scribes and Pharisees by Matthew's Jesus. (Matt 5:39).<sup>289</sup>

Some modern theologians increasingly attempt to define the message of Jesus over against Judaism, Jesus is said to have taught something quite different, something original which was unacceptable to the rest of the Jews. In a one-sided view, the strong Jewish opposition to Jesus's proclamation is emphasized. To deal with such a conception does not belong to New Testament scholarship but would be a topic of modern research in ideology. The Jewish parallels to the words of Jesus and the manner in which Jesus reworked the inherited material clearly refute the above assumptions. Even where Jesus gave his own personal bent to Jewish ideas, where he selected from among them, where he purged received traditions and reinterpreted some of them, there is as I honestly confess, not a single word of Jesus that would have seriously exasperated a well-intentioned Jew. Also Jesus's criticism of the Pharisees cannot in principle be objected it has indeed important parallels in rabbinic literature ..... By his thinking and his message, Jesus proved himself a true son of his people and a representative of its faith and hopes. It would be absurd and somehow malicious to construe a contrast where it did not exist.<sup>290</sup>

On the issue of murder (Matt 5:21 – 26) Jesus's standpoint was also presented in the Gospel of Matthew thus, "You have heard that it was said to the men of old, you shall not kill ( Ex 20: 13, Deut 5:17 ), and whoever kills shall be liable to judgment ( Gen 9:6)....."<sup>291</sup>

Matthew's thesis consists of two injunctions, both of which are understood as having been received by the men of old. i.e. the generation at Mount Sinai. While the first injunction is a literal biblical quotation, which contains the warning not to murder, the second is a reference most likely to Gen 9:6, which spells out the punishment for killing. The relationship between the two injunction is explained in the following early rabbinic passage on Exodus 20:13.

"You shall not kill" why is this stated? Because from the verse "whoever sheds the blood of man, by man shall his blood be shed..... (Gen (9:6) we have been informed about the punishment but we have not been informed about the warning. Therefore, Scripture states in Exodus 20:13 "You shall not murder "This passage spells out the rabbinic principle that

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<sup>289</sup> Ibid. 40

<sup>290</sup> D. Flusser, *A New Sensitivity in Judaism and the Christian Message*, ( New York: Harvard University Press 1968) 107

<sup>291</sup> Ibid. 49

a crime cannot be punished unless there exists an explicit warning against committing it, for “God does not punish unless he has previously issued the warning”.<sup>292</sup>

5:4

## CONCLUSION

The Book of Deuteronomy in a sense provides a bridge from Torah to the prophets, for it serves both as a summary of the Providence of God towards his chosen people in the Pentateuch, and as a prologue to the theological History of the Israelites in the Promised Land as recorded in the Historical Books of the Old Testament. For example, Deuteronomy 12:17 points to one Sanctuary, "the place where he dwells," a place of centralized worship, accomplished with the building of Solomon's Temple (I Kg 5-8); chapter 17 speaks of the role of a King should the people decide on one and the three provisions of a just king; and chapters 28-30 prophetically warn of an Exile if the people forsake their Covenant with God.

For the Christian Deuteronomy is also an unusually significant and meaningful book since it highlights what it means for the Christian to describe the Hebrew Bible as the Old Testament. It is not God's final word to us, but represents a provisional and incomplete revelation of divine truth which requires to be complemented by the fuller truth of the life and teaching of Jesus of Nazareth.

Even today Christian theology is in danger of judging the Torah of Moses in accordance with the New Testament antithesis directed against “legalism,” Usually, this must be blamed on some form of retrojection and generalization of the Pauline polemics against Jewish legalism or of Jesus confrontation with the literalism and rigid learning of the scribes. But the responsibility for this state of affairs is shared by a scheme of evolution which is problematic even from the point of view of the history of religion.<sup>293</sup>

Among other features, the book of Deuteronomy displays an aggressive, passionate and uncompromising nature, indicating its zeal for reform and religious purity. Central to this zeal is

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<sup>292</sup> Ibid 49

<sup>293</sup> Ibid,1

its demand that all formal worship must be centralized at one single sanctuary, which has at least since the days of David and Solomon, been identified with Jerusalem. This zeal for one pre-eminent place of worship is linked inseparably to the maintenance of consistency and purity of faith in Israel. This feature of the book associates it closely with the story of the great reform carried out by King Josiah in 622 BCE which is told in 2 Kings 22 – 23. Until this reform it is evident that in Israel demands for the centralization of worship either did not apply, or were largely ignored.

The book of Deuteronomy has a theological connection with the land of Israel, the Promised Land and its meaning and faith of the entire Israelite nation. Land in general is not the concern; it is rather the land where Israel dwelt and which in the Deuteronomy era was in danger of being taken away from God's people who had lived for centuries on it.<sup>294</sup> The land is characteristically described in Deuteronomy as Yahweh's gift to Israel.<sup>295</sup>

The central affirmation about the land is that it is the gift of God to Israel. All description of it of Israel's relation to it, and of Israel's life in it grow out of this fundamental presupposition. Statements to that effect are frequent in all parts of Deuteronomy. There are of course, other things that the lord gives, cities ( 20:16 ) gates or town ( 16:5, 18; 17:2 ) peoples ( 7:16 ) booty (20:14), rest and inheritance ( 12:9), blessing ( 12:15 ), herds and flocks ( 12:21 ), sons and daughters (28:53) strength to get wealth ( 8:18 ). The preeminent gift, however, is the land. Most other benefits are related to it.<sup>296</sup>

The goal and desire of the people of God is life in the land God gives. Israel's existence as a people depends upon the land the grace God.<sup>297</sup> For Deuteronomy proclaims that Israel's acquisition and possession of the land do not rest on prior claims of sequence of generation or blood relationship,

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<sup>294</sup> Patrick D. Miller, *Deuteronomy: Interpretation, A Bible Commentary for Teaching and Preaching* ( Louisville: John Knox Press 1989 ) 44

<sup>295</sup> J.G. McConville, *Law and Theology in Deuteronomy* (England: JSOT Press 1984 )11

<sup>296</sup> *Ibid.*, 44

<sup>297</sup> *Ibid.*,44

or on any just deserts (9:4 – 6) because of their size or their conduct as a people. Before Israel's entry the land belonged to many nations (7:11; 9:1; 11:23), and it came to Israel's only by the desire of the Lord to give it and by God's willing faithfulness to the promises (7:8).<sup>298</sup>

In the land theme, therefore, we have a clear case of Deuteronomy's insistence on the prior action of Yahweh in Israel's affairs. Equally, however, there is an emphasis on the fact that Israel's possession of the land depends upon its obedience.<sup>299</sup>

The land is not only the context in which blessing and life and prosperity take place. It is also the sphere in which Israel does what the Lord requires. The obedience of the people shall be visible there (4:5, 14; 5:31; 5:12; 12:1). In 12:1, the whole law corpus is set in relation to the land: "These are the statutes and ordinances that you must diligently observe in the land that the Lord, the God of your ancestors, has given you to occupy, all the days' that you live on the earth".<sup>300</sup>

Obedience is the *sine qua non* for continuing existence in the land, for Israel's life. Disobedience leads to war, catastrophe, loss of land and death (4:26), the people have not life apart from the land, for their national existence depends on it.<sup>301</sup>

The land is characteristically described in Deuteronomy as Yahweh's gift to Israel. The phrase which is repeatedly applied to it is *ha'ares ser noten elohe boteka leka*. Indeed the qualifying clause seems to be considered so essential to a proper understanding of what the land is that the whole expression becomes simply the normal way of referring to it. Israel's possession of the land, therefore, has to be traced supremely to Yahweh's giving of it, as is emphasized by the recurrence of the reference to the promise to the fathers. Furthermore, not only the land itself but everything in it is a gift. It contains cities which you did not build, and houses full of all good things, which you did not fill, and cisterns hewn out, which you did not hew, and vineyards and olive trees, which you did not plant.<sup>302</sup>

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<sup>298</sup> Ibid., 44

<sup>299</sup> Ibid., 11

<sup>300</sup> Ibid., 48

<sup>301</sup> Ibid., 48

<sup>302</sup> Ibid. 11

Deuteronomy thus represents a ratification of the treaty between God and Israel. At the same time, it also presents a reinterpretation of what that treaty means, not only for the Israel's of Moses's time but for the Israel of all generations<sup>303</sup>

Laws that were known earlier in Exodus appear in Deuteronomy in a different way. For example, the law on freeing slaves is extended to cover women as well as men (Deut. 15:12 – 19), thus making justice more inclusive (contrast Exod. 21:7). In the regulations of Passover, the festival is prohibited from local celebrations and reserved for one location, conforming to one of the major reforms championed by the book – the centralization of all worship in one sanctuary ( Deut. 16: 5- 6; contrast the household celebration in Exod. 12:1 – 11 ).<sup>304</sup>

The reinterpretation of stories and laws lies at the heart of the meaning of Deuteronomy. The book is a record of evaluations of Israel's central traditions in the light of changing situations, stretching over a period of at least several hundred years. Like most of the biblical books, Deuteronomy is not a "book "in the modern sense. It was not written by a single individual at a single time, much less by Moses. While some traditions described in it may well go back to Moses and his time, much of the book comes from later times, after the people had settled in the land. Indeed, many events that occurred after the time of Moses appear to be reflected; the institution of a monarchy, the construction of temple, the rise of a commercial economy, conflicts with Canaanite culture and religion, the activity of prophets, civil way and by no means least, the threat of exile imposed by powerful empires in Assyria and Babylonia<sup>305</sup>

The long process of reinterpretation that produced Deuteronomy presents us with a curious irony. On the one hand, our critical understanding of the book as the product of such a process suggests that contemporary interpreter's within the Church or Synagogue have a warrant for imitating the process itself.<sup>306</sup> In other words, just as the biblical authors reinterpreted this ancient book in our own time and in the light of the rest of Scripture. That may even entail changes or outright

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<sup>303</sup> Ibid. 5

<sup>304</sup> Ibid. 5

<sup>305</sup> Ibid. 5

<sup>306</sup> Ibid., 6

rejections of material that we find objectionable. For example, no one would want to punish rebellious teenagers by stoning them to death in public (Deut.21:18 – 20; perhaps the front steps of a courthouse would be a location in present day society corresponding to the ancient city gate).<sup>307</sup>

Similarly, we may find some of the dietary laws irrelevant. On a broader scale, we may denounce as inhuman the militant demands that all the Canaanite natives be slaughtered (as in 7:16). We may have problem accepting a religious model of government that our own ancestors replaced with the separation of church and state.<sup>308</sup>

It should not be clear that the book of Deuteronomy presents a political theology. It models its understanding of God and Israel in terms of a political treaty. The Lord is the Great king and Israel's is the vassal. Accordingly, Deuteronomy itself, in large part, represents the polity of Israel similar to the way that the Declaration of Independence and the Constitution represent the polity of the United States of America.<sup>309</sup>

That is, much of Deuteronomy represents the form of government of the realm of God. In interpreting this book one cannot separate the theological from the social and political without doing serious damage to Deuteronomy's meaning and significance.<sup>310</sup>

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<sup>307</sup> Ibid., 6

<sup>308</sup> Ibid., 7

<sup>309</sup> Ibid., 9

<sup>310</sup> Ibid., 9

One could summarize the theology of Deuteronomy by saying that it represents a sermon and legal extension of the “two tables” of the Decalogue. The first part concerns allegiance to the Lord; the second concerns communal responsibility.<sup>311</sup>

For the Deuteronomists no tradition out of Israel’s past was more central than the opening lines of this treaty document “I am the Lord your God, who brought you out of the land of Egypt, out of the house of slavery, you shall have no other gods before me” ( Deut 5: 6 – 7 ). This one verse combines story and law.<sup>312</sup> The historical prologue of the treaty leads immediately to its most important stipulation (law). Because of the Lord’s gracious act of salvation in the exodus from Egypt, Israel must now pledge allegiance to the Lord alone if the people want to continue within the Lord’s protective sovereignty. The phrase “no other gods” is the heart of Deuteronomic theology.<sup>313</sup>

“No other gods” “Justice, and only justice”. These are the two principal theological themes of the book. Over half a millennium later their dual centrality would be reaffirmed by the rabbis of first century Judaism and in the teachings of Jesus, where the “great commandment” (a quotation from Deut. 6: 4 – 5) would be supplemented with the “golden rule”. (Lev 19:18) Love of God and love of neighbor constitute the vertical and horizontal pillars of the covenant community.<sup>314</sup>

The result in Deuteronomy is a profoundly social ethic that concerns virtually every dimension of Israelite society, from sexual mores to sacral calendars. Within the covenant community, every

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<sup>311</sup> *Ibid.*, 9

<sup>312</sup> *Ibid.*, 9

<sup>313</sup> *Ibid.*, 10

<sup>314</sup> *Ibid.*, 12

individual act has a social consequence, every individual act of sin contains the potential for national disaster.<sup>315</sup>

It would be unfortunate if the preceding overview of Deuteronomic theology left the impression that the book is full of gloom and doom and of much else. It is true that its authors intended Deuteronomy to be read with the utmost seriousness, indeed, with a sense of anguish.<sup>316</sup>

The emphasis on repentance, however, should not obscure one of the other dominant moods in Deuteronomy, namely, joy. Deuteronomy agrees with the psalmist who writes, “The precepts of the Lord are right, rejoicing the heart” (Psalms 19:8).<sup>317</sup> In its broadest sense, the Hebrew word Torah means “guidance “or “instruction “. In its most narrow sense, it can refer to a specific law. Just as a parent provide guidance for a child, so the Lord provides guidance for Israel.<sup>318</sup>

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<sup>315</sup> *Ibid.*, 12

<sup>316</sup> *Ibid.*, 15

<sup>317</sup> *Ibid.*, 16

<sup>318</sup> *Ibid.*, 16

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