

**LIVERPOOL HOPE UNIVERSITY
FACULTY OF ARTS AND HUMANITIES**

MA/PGCert in Jewish Studies

CPD for Credit and for CPE points (SRA): further information from Michael Boyle (boylem@hope.ac.uk)

Law and Narrative in the Hebrew Bible

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Course Information

<i>Course Code:</i>	JESM004
<i>Title:</i>	Law and Narrative in the Hebrew Bible
<i>Credits:</i>	15
<i>Level:</i>	PGCert/MA
<i>Course Lecturer</i>	Prof. Bernard Jackson
<i>Location</i>	Eden Building Room 005 (to be confirmed)
<i>Dates</i>	Monday evenings, 18 th November – 16 th December 2013 inclusive

Aims

This course aims to provide you with the opportunity to:

- 1 familiarise yourself with some of the legal institutions reflected in biblical narrative and appreciate the differences, substantive and presentational, between law in the Bible and modern concepts/assumptions about law
- 2 familiarise yourself and assess critically the claims made in biblical narratives about the nature of biblical law and legal adjudication;
- 3 familiarise yourself and assess critically the principal trends in modern scholarship on Biblical law;
- 4 obtain an enhanced ability to read biblical texts, both legal and narrative, and appreciate the manner in which their concerns are expressed.

Learning Outcomes

By the end of the course you should have

- 1 Acquired a systematic understanding of the nature of biblical law, informed by the issues debated in modern academic literature, together with a capacity to evaluate those debates critically;
2. Developed your powers to assimilate and process complex information, and to master sophisticated concepts and ideas;
- 3 Developed the techniques required to analyse key biblical texts critically and evaluate different interpretations offered of them;
- 4 Acquired an understanding of the methodological issues debated in the field, and enhanced your skills to conduct original research and present arguments in a sophisticated and effective way

Summary of Material

The five sessions will address the following issues

1. Methodological Issues in the relationship of law and narrative in the Hebrew Bible; Homicide and non-fatal assaults
2. Sexual relations, marriage and divorce
3. Inheritance
4. Legal Issues in the Book of Ruth
5. Legal Procedures and related theological issues within biblical law.

Learning and Teaching Methods

Classes will be a mixture of interactive lectures (2 hours) and seminars (1 hour), the latter for registered postgraduate students and legal CPD students only. The seminars will focus on discussing key primary sources. You are invited to read in advance the texts to be discussed in class, and to come prepared to take part in the discussion.

Bibliography

A. Basic Reading (specific references under individual topics)

- Boecker, H.J., *Law and the Administration of Justice in the Old Testament and Ancient East* (London: SPCK, 1980)
- Carmichael, C.M., *Women, Law, and the Genesis Traditions* (Edinburgh: Edinburgh University Press, 1979), [cited hereafter as Carmichael, *Women*]
- Carmichael, C.M., *The Origins of Biblical law: the Decalogues and the Book of the Covenant* (Ithaca, N.Y.: Cornell University Press, 1992) [cited hereafter as Carmichael, *Origins*]
- Carmichael, C.M., *Law and Narrative in the Bible* (Ithaca and London: Cornell University Press, 1985) [cited hereafter as Carmichael, *Law*]
- Daube, D., *Studies in Biblical Law* (Cambridge: Cambridge University Press, 1947), cited hereafter as Daube, *Studies*]
- Falk, Z.W., *Hebrew Law in Biblical Times*, 1964
- Jackson, B.S., *Studies in the Semiotics of Biblical Law* (Sheffield: Sheffield Academic Press, 2000).
- Patrick, D., *Old Testament Law* (Atlanta: John Knox Press, 1985)
- Westbrook, R., "Biblical Law", in *An Introduction to the History and Sources of Jewish Law*, ed. N.S. Hecht, B.S. Jackson et al., ch.1
- Whitelam, K., *The Just King. Monarchical Judicial Authority in Ancient Israel* (Sheffield: JSOT Press, 1979)

B. Further Reading (general):

- Driver, G.R. and J.C. Miles, *The Babylonian Laws* (1952-55), I, pp.1-26
NB: A translation and commentary on the Laws of Hammurabi may be found also at <http://www.soas.ac.uk/Centres/IslamicLaw/Materials.html#Ancient>
- Driver, G.R. and J.C. Miles, *The Assyrian Laws*, Oxford: Clarendon Press, 1935
- Greenberg, M., "Biblical Attitudes towards Power: Ideal and Reality in Law and Prophets" in *Religion and Law, Biblical-Judaic and Islamic Perspectives*, ed. E.B. Firmage, B.G. Weiss and J.W. Welch (Winona Lake: Eisenbrauns, 1990), pp.101-112; response by Welch at pp.113-119; reply by Greenberg at pp.120-125
- Jackson, B.S. *Essays in Jewish and Comparative Legal History*, Leiden: Brill, 1975
- Jackson, B.S., *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1-22:16* (Oxford: Oxford University Press, 2006) [hereafter, *Wisdom-Laws*]
- Jackson, B.S., "Practical Wisdom and Literary Artifice in the Covenant Code", in *The Jerusalem 1990 Conference Volume*, ed. B.S. Jackson and S.M. Passamaneck, 1992, 65-92
- Levinson, B.M., ed., *Theory and Method in Biblical and Cuneiform Law*, 1994
- Malul, M., *The Comparative Method in Ancient Near Eastern and Biblical Legal Studies*, Neukirchen-Vluyn: Neukirchener Verlag, 1990 (Alter Orient und Altes Testament, Bd 227)
- Otwell, John H., *And Sarah laughed: the status of woman in the Old Testament*, Philadelphia: Westminster Press, 1977
- Patrick, D., ed., *Thinking Biblical Law*, Missoula: Scholars Press, 1989
- Phillips, A., *Ancient Israel's Criminal Law*, Oxford: Blackwell, 1970
- Roth, M., *Law Collections from Mesopotamia and Asia Minor*, Atlanta: Scholars Press, 1995
- Segal, B.Z., ed., *The Ten Commandments in History and Tradition*, Jerusalem,: Magnes Press, 1990
- Westbrook, R., *Property and Family in Biblical Law*, Sheffield: JSOT Press, 1991
- Westbrook, R. *Studies in Biblical and Cuneiform Law*, Paris: Gabalda, 1988

Assessment

One 4000 word essay, such as:

Discuss the relationship between law and narrative in the Hebrew Bible (including one substantial case study), and the light this casts upon the differences between the biblical presentation of law and law in modern societies.

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FACULTY OF ARTS AND HUMANITIES

MA/PGCert in Jewish Studies

Law and Narrative in the Hebrew Bible

Week 1a: Introduction to Biblical Law and Narrative

1. Issues

- (a) Chronology
 - 1. Periods in Biblical History
 - 2. Literary History of Biblical Sources
 - (b) The Relationship between “laws” in the “Covenant Code” and ancient Near Eastern Law: **Texts (a)**
 - 1. Is there evidence of literary dependence?
 - 2. Are there common legal institutions?
 - 3. Is talion unique to the Bible? Does it have any unique features?
 - 4. In what sense are we dealing with ‘laws’ (a) in the Bible, (b) in the ancient Near East?
 - (c) Narrative allusions in the laws
 - 1. Explicit allusions: their function
 - 2. Implicit allusions
 - 3. What is the role of these allusions in the Decalogue?
 - (d) ‘Narrative’ v. ‘semantic’ readings of the law
 - 1. The characteristics of orality: narrative structure (Ong), “restricted code” (Bernstein)
 - 2. The characteristics of literacy: ‘logical’ structure (Ong), “elaborated code” (Bernstein)
 - 3. Example: “An eye for an eye”
 - (e) The role of reiteration in law and narrative
 - 1. What is the role of reiteration in Joseph’s decipherment of Pharaoh’s dreams?
 - 2. Might this provide a model for ‘reiteration’ in law (e.g. *Deut.*)
 - (f) Law and narrative in the Hebrew Bible
 - 1. ‘Integration’ of law and narrative in the Pentateuch
 - 2. Possible models of the relationship between law and narrative: what where they appear to diverge?
 - A. Chronological explanations
 - B. ‘Legal’ critiques of previous practice: Carmichael
 - C. More detail of actual practice? (But what is the relationship between ‘law’ and ‘practice’?)
 - D. And does the modern conception of ‘law’ fit the ‘laws’ of the Hebrew Bible?
- See further the analysis of the Book of Ruth in Week 4

2. Texts

(a) Examples of the Relationship between “laws” in the “Covenant Code” and ancient Near Eastern Law

- A LE 53 If an ox gores another ox and causes its death, both ox owners shall divide the price of the live ox and the flesh of the dead ox.

Ex. 21:35 When one man’s ox hurts another’s, so that it dies, then they shall sell the live ox and divide the price of it; and the dead beast also they shall divide.
- B LH 117 If a man becomes liable to arrest under a bond and has sold his wife his son or his daughter or gives (them) into servitude, for 3 years they shall do work in the house of him who has bought them or taken them into servitude; in the fourth year their release shall be granted.

Ex. 21:2 When you buy a Hebrew slave, he shall serve six years, and in the seventh he shall go out free, for nothing.

C LH 200 If a man has knocked out the tooth of a man of his own rank, they shall knock out his tooth.

LH 201 If he has knocked out a commoner's tooth, he shall pay one third of a mina of silver.

Ex. 21:22 When men strive together, and hurt a woman with child, so that there is a miscarriage, and yet no harm follows, the one who hurt her shall be fined, according as the woman's husband shall lay upon him; and he shall pay as the judges determine. 21:23 If any harm follows, then you shall give life for life, 21:24 eye for eye, tooth for tooth, hand for hand, foot for foot, 21:25 burn for burn, wound for wound, stripe for stripe.

- **What do you think might be the relationship between the biblical and ancient Near Eastern parallels?: Literary dependence, common custom, independent parallel development?**
- **What does it mean to claim that they are "laws"?**

(b) Narrative allusions in the laws

Explicit narrative allusions at the heads of sections

Exodus 22 (MT)

- 20 "You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt.
21 You shall not afflict any widow or orphan.
22 If you do afflict them, and they cry out to me, I will surely hear their cry;
23 and my wrath will burn, and I will kill you with the sword, and your wives shall become widows and your children fatherless.
24 "If you lend money to any of my people with you who is poor, you shall not be to him as a creditor, and you shall not exact interest from him.
25 If ever you take your neighbour's garment in pledge, you shall restore it to him before the sun goes down;
26 for that is his only covering, it is his mantle for his body; in what else shall he sleep? And if he cries to me, I will hear, for I am compassionate.
27 "You shall not revile God, nor curse a ruler of your people.
28 "You shall not delay to offer from the fullness of your harvest and from the outflow of your presses. "The first-born of your sons you shall give to me.
29 You shall do likewise with your oxen and with your sheep: seven days it shall be with its dam; on the eighth day you shall give it to me.
30 "You shall be men consecrated to me; therefore you shall not eat any flesh that is torn by beasts in the field; you shall cast it to the dogs.

Exodus 23:

- 9 "You shall not oppress a stranger; you know the heart of a stranger, for you were strangers in the land of Egypt.
10 "For six years you shall sow your land and gather in its yield;
11 but the seventh year you shall let it rest and lie fallow, that the poor of your people may eat; and what they leave the wild beasts may eat. You shall do likewise with your vineyard, and with your olive orchard.
12 "Six days you shall do your work, but on the seventh day you shall rest; that your ox and your ass may have rest, and the son of your bondmaid, and the alien, may be refreshed.
13 Take heed to all that I have said to you; and make no mention of the names of other gods, nor let such be heard out of your mouth.
14 "Three times in the year you shall keep a feast to me.
15 You shall keep the feast of unleavened bread; as I commanded you, you shall eat unleavened bread for seven days at the appointed time in the month of Abib, for in it you came out of Egypt. None shall appear before me empty-handed.
16 You shall keep the feast of harvest, of the first fruits of your labour, of what you sow in the field. You shall keep the feast of ingathering at the end of the year, when you gather in from the field the fruit of your labour.
17 Three times in the year shall all your males appear before the Lord GOD.
18 "You shall not offer the blood of my sacrifice with leavened bread, or let the fat of my feast remain until the morning.
19 "The first of the first fruits of your ground you shall bring into the house of the LORD your God.
• **What justifies our regarding Exodus 22:20-30 and 23:9-19 as discrete "sections"?**

Implicit narrative allusions at the heads of sections

Exodus 21:

- 2 When you acquire a Hebrew slave, he shall be your slave for six years, but in the seventh year he shall go free and pay nothing.

Exodus 21:

- 28 When an ox gores a man or a woman to death, the ox shall be stoned, and its flesh shall not be eaten; but the owner of the ox shall be clear.

- **Why was the goring ox to be stoned? Might there be some connection with:**

Exodus 19:12-13

And you shall set the people within limits round about, saying 'Guard yourselves from ascending the mountain or touching its edges. Everyone touching the mountain shall surely be put to death. A hand shall not touch him. But he shall surely be stoned, or he shall surely be shot; whether beast or man he shall not live.'

(c) 'Narrative' v. 'semantic' readings of the law

Exodus 21:

- 22 When men strive together, and hurt a woman with child, and her children come out, and yet no harm follows, the one who hurt her shall be fined, according as the woman's husband shall lay upon him; and he shall pay as the judges determine.
- 23 If any harm follows, then you shall give life for life,
- 24 eye for eye, tooth for tooth, hand for hand, foot for foot,
- 25 burn for burn, wound for wound, stripe for stripe.
- **Is the text likely to have meant that whenever (intentionally, accidentally?) one person caused the loss of the eye of another, he (even if he were already one-eyed) must lose his own eye?**
 - **See Materials C, below**

Exodus 21

- 35 When one man's ox hurts another's, so that it dies, then they shall sell the live ox and divide the price of it; and the dead beast also they shall divide.

Laws of Eshnunna (trld. Yaron, 2nd ed.)

- 53 If an ox gored and killed an ox, the price of the live ox and the carcass of the dead ox both ox owners shall divide.
- **What if the value of the dead ox was so much greater than that of the live ox that half its carcass was worth more than half the purchase price of live ox?**
 - **See Materials D, below**

(d) The role of reiteration in law and narrative

- Gen. 41 **1** After two whole years, Pharaoh dreamed that he was standing by the Nile, **2** and behold, there came up out of the Nile seven cows sleek and fat, and they fed in the reed grass. **3** And behold, seven other cows, gaunt and thin, came up out of the Nile after them, and stood by the other cows on the bank of the Nile. **4** And the gaunt and thin cows ate up the seven sleek and fat cows. And Pharaoh awoke. **5** And he fell asleep and dreamed a second time; and behold, seven ears of grain, plump and good, were growing on one stalk. **6** And behold, after them sprouted seven ears, thin and blighted by the east wind. **7** And the thin ears swallowed up the seven plump and full ears. And Pharaoh awoke, and behold, it was a dream. **25** Then Joseph said to Pharaoh, "The dream of Pharaoh is one; God has revealed to Pharaoh what he is about to do. **26** The seven good cows are seven years, and the seven good ears are seven years; the dream is one. **27** The seven lean and gaunt cows that came up after them are seven years, and the seven empty ears blighted by the east wind are also seven years of famine. **28** It is as I told Pharaoh, God has shown to Pharaoh what he is about to do. **29** There will come seven years of great plenty throughout all the land of Egypt, **30** but after them there will arise seven years of famine, and all the plenty will

be forgotten in the land of Egypt; the famine will consume the land, **31** and the plenty will be unknown in the land by reason of that famine which will follow, for it will be very grievous. **32** And the doubling of Pharaoh's dream means that the thing is fixed by God, and God will shortly bring it to pass.

- **What is the character of the reiteration of Pharaoh's dream?**
- **What meaning is here attached to it?**
- **Compare the other pairs of dreams with which Joseph is involved (see Materials E, below)**
- **Might this be a model for the reiteration of law, as presented in Deuteronomy?**

Deut. 1 **1** These are the words that Moses spoke to all Israel beyond the Jordan in the wilderness, in the Arabah over against Suph, between Paran and Tophel, Laban, Haze'roth, and Di'-zahab. **2** It is eleven days' journey from Horeb by the way of Mount Se'ir to Ka'desh-bar'nea. **3** And in the fortieth year, on the first day of the eleventh month, Moses spoke to the people of Israel according to all that the LORD had given him in commandment to them, **4** after he had defeated Sihon the king of the Amorites, who lived in Heshbon, and Og the king of Bashan, who lived in Ash'taroth and in Ed're-i. **5** Beyond the Jordan, in the land of Moab, Moses undertook to explain this law, saying, ...

- **What is the relationship between the "commandment" and the "explanation"?**
- **Are the laws of Deuteronomy presented as commanded by God or Moses? See Materials F, below.**

3. Materials and bibliography

A. B.S. Jackson, *Studies in the Semiotics of Biblical Law*, §7.2.3: The Structure of the Decalogue (footnotes omitted)

There is an integral relationship between law and narrative in the Bible. One of its manifestations is the use of allusion to narrative history in the context of the justification of particular laws. Two events within that narrative history stand out: the creation of the world (the foundation of universal history) and the exodus of the Israelites from Egypt (the foundation of their particular history, and the prelude to the Sinaitic covenant which imposed upon them normative patterns distinguishing them from all others). I suggest that this distinction forms the organising structure of the Decalogue itself: it speaks of the normative patterns expected of Israelites alone on the one hand, Israelites in common with all human beings on the other.

The name 'Ten Commandments' is, of course, problematic in both its aspects. Different denominational traditions have counted the 'ten' in different ways. In fact, the number 'ten' is not mentioned at all in the Exodus version of the Decalogue; it occurs in the Book of Exodus only in *Exod.* 34:28, the reference to the 'ritual decalogue' of that chapter. It is only in Deuteronomy that the tradition of 'ten' is applied, in historical retrospect, to 'the Decalogue' (*Deut.* 4:13, 10:4). The designation 'commandments', as Carmichael has rightly noted, has even less biblical warrant. The *devarim* are simply 'words' — more accurately, perhaps, in the light of modern linguistic concepts, 'utterances'.

On the other hand, the tradition that there were two tablets is found in the narrative first in *Exod.* 24:12, where Moses is commanded to ascend the mountain, in order to be given the tablets of stone (here said to contain *hatorah vehamitsvah*, which have been written there for the instruction of the people). After Moses broke the first set of tablets, in anger at the sin of the golden calf, he is ordered to prepare two further blank tablets, on which God himself promises to write 'the words that were on the first tables, which you broke' (*Exod.* 34:1). What is important for present purposes is that (at least) the original decalogue was clearly conceived to have been written upon two tablets. That implies an internal division of the material, into two groups. Where does that division come? Generally, the division has been based on mere inference from the nature of the subject matter and (even more dubious) an assumption that the 'ten' (however identified) should be divided into two groups of five. This view is found already in the *Mekhilta ad Exodus* 20:16 (Lauterbach II.262), and centuries of ecclesiastical and indeed synagogal art, equally premised upon such assumptions, have made us assume that the second group necessarily begins with the prohibition of murder. It is, indeed, easy enough to count five from there, however difficult it may be to compress the preceding material into five commandments. But this division has one very severe disadvantage: the length of the material in the second pentad is very considerably smaller than that in the first, even allowing for a much greater degree of secondary elaboration in the first tablet.

I would suggest that the original conception of the division into two groups is in fact signified by a clue in the text, one whose significance has — to my knowledge — universally been overlooked. There are two historical allusions in the text of the Decalogue. The first occurs at the very beginning, thus at the head of the first group (however one divides the text): 'I am the Lord your God, who brought you out of the land of Egypt, out of the house of bondage' (*Exod.* 20:2). We then have provisions relating to monotheism, idolatry, the divine name, and the sabbath day. And then, in verse 11, a second historical allusion, conventionally categorised as a 'motive clause'. But the opening word, *ki*, does not have to be translated 'for' or 'because'. It may be a deictic, rather than a connective expression: '*Behold*, in six days the Lord made heaven and earth ...'. The Deuteronomic version, we may recall, substitutes a further allusion to the Egyptian slavery: the sabbath is taken as a

symbol of freedom, denied the Israelites in Egypt, but now available to them (*Deut.* 5:15). And the opening injunction of the Exodus Decalogue, ‘Remember ... the sabbath day’ is transformed in Deuteronomy into an injunction to ‘Observe the sabbath day’, with the duty of remembrance now presented not as a motive (there is in Deuteronomy no *ki*, or anything comparable), but rather as a supplementary duty, ‘You shall remember’, *vezakharta*.

My suggestion, therefore, is that the Exodus Decalogue reveals the two groups destined for the two tablets as each headed by an historical allusion: redemption from Egypt in the first, creation of the world in the second. What might be the significance of this literary structure? I suggest that it concerns the opposition between insiders and outsiders, which is a theme also of the surrounding narrative. For it is an outsider, Jethro, who provides advice in *Exod.* 18 regarding the administration of justice. Next comes the arrival at Sinai (*Exod.* 19:1), and the immediate offer of a covenant. It too commences with an historical allusion to the exodus: ‘You have seen what I have done to Egypt ...’ (*Exod.* 19:4). In exchange for Israel’s observing the covenant, God promises that ‘You shall be my own possession among all peoples ...’ We are thus to witness the transformation of Israel’s identity: from a slave people, entirely subject to the jurisdiction of others, through an independent people, to whom others may give advice on jurisdictional matters, to a people whose identity is defined in terms of its special relationship with God.

The Decalogue continues this concern. The identity of Israel is to be established on two levels: that which is peculiar to it (to be defined in terms of the *ius divinum positivum*), and that which it shares with all mankind. I suggest that the two groups within the Decalogue, according to the division proposed above, reflect just this kind of concept. And the two historical allusions which head the two sections reflect these two dimensions of Israel’s identity. The first section is headed by the allusion to Israel’s particular history, the exodus from Egypt, and contains *ius civile* — provisions mostly concerning religious practices: monotheism, the ban on images, the ban on idolatry, misuse of the divine name, the sabbath (this last, to this very day, being regarded as a mark of the religious distinctiveness of Jews). Then we have the allusion to universal history, the creation of the world, at the beginning of the second group. What follows within it is *ius gentium*, matters having no connection whatsoever with Israel’s religious practices, but reflecting an ethic which may be assumed to have universal claims: honouring parents, the proscription of murder, adultery, theft, false witness (this last comes close to the concerns already identified with the non-Israelite, Jethro), coveting.

B. B.S. Jackson, *Studies in the Semiotics of Biblical Law*, §3.1 (footnotes omitted)

... literacy, as scholars like Walter Ong and Jack Goody stress, is not simply an alternative channel of transmission of meaning; it is a way of thought. ‘Writing restructures consciousness.’ Two aspects of the transformation of structures of consciousness, between orality and literacy, are particularly relevant here. First, orality favours events rather than concepts or system; the kind of connections we can best process through speech are those of narrative rather than logical sequence. We can tolerate a complex story told orally, but not a complex legal document. Secondly, the distinction between orality and literacy very frequently coincides with what the linguist Basil Bernstein has termed ‘restricted code’ rather than ‘elaborated code’; indeed, for Ong restricted and elaborated linguistic codes ‘could be relabelled ‘oral-based’ and ‘text-based’ codes respectively.’ In restricted code we need *not* say everything which we mean, because we can rely upon the shared social knowledge within a small community to fill in what, at the explicit level, would be gaps; elaborated code, by contrast, makes no such assumptions. Everything we want to say must be elaborated; the people with whom we are communicating are not expected to share our cultural, contextual assumptions; any such assumptions therefore need to be spelled out. This extends also to the pragmatics of communication (of which the illocutionary force of speech acts is one aspect). As Olson argues, many of those signs of an utterance’s illocutionary force which are available in direct, interpersonal oral communication are lost in the written form, and therefore have to be supplied (‘elaborated’) by the writer, failing which the reader must make judgments about them.

These two facets of the distinction between orality and literacy come together in the following opposition: literal meaning assumes elaborated code and is applicable in principle to any content, so long as we spell it out and expect the reader to pay full attention to everything we have written (and no attention to what we have not written); narrative meaning, by contrast, consists not in a paraphrase, the substitution of one set of words by another, but rather the typical stories, or narrative images evoked by the words within a group which shares the social knowledge necessary to evoke those images without fully spelling them out. Such a conception of narrative meaning is not, however, lost the moment speech is reduced to writing: in the early stages of literacy, we encounter what has been termed ‘oral residue’.

The claim that ‘writing restructures consciousness’, supported by considerable research into pre-literate peoples, is explained thus. In writing, as one reads through a text, that which has been read remains available for consultation. It is possible to engage in ‘backward scanning’. This is not possible in traditional oral cultures (though it is now possible with technologies which allow for the permanent recording of speech, as in film, video, tape recordings). In order to remain intelligible, therefore, oral language requires a great deal more repetition and redundancy, clues which allow the listener to grasp the direction of the ongoing argument. On the other hand, ‘sparsely linear or analytic thought and speech is an artificial creation, structured by the technology of writing’. The very act of writing (at least in traditional ways, before the use of modern computer keyboards) is so much more consuming of time and effort than is speech — it has been calculated that oral

speech is typically ten times faster than handwriting — that relative economy in the written word becomes a very practical necessity.

C. B.S. Jackson, *Studies in the Semiotics of Biblical Law*, §10.4: Talion, Semantic and Narrative Readings (footnotes omitted)

Consider, next, the type of meaning to be attributed to the talionic formulae. When we find them in the narratives, we have the context in which they are to be understood. What about the social context? As in the case of homicide, the nature of the intention with which the blow was struck is not determinative of legal categories: the law does not operate through legal categories at this stage; rather, it focuses upon the social experience of typical situations such as ambush, brawl, the wood-chopping accident. Intention is part and parcel of what makes such situations appear significantly different, but it is not utilised as a necessary condition (an ‘element’ of a crime) as in the modern, positivist model. The perceived intention of the offender might well influence the moral outrage felt by the victim, and thus his willingness to compromise. Thus, payment of *kofer* is that much more likely in practice the less the moral outrage felt by the victim, just as much as in the case of homicide. Conversely, the greater the moral outrage — whether in terms of the perceived intention of the offender or the gravity of the result of his activity — the more likely that talion will have been demanded.

The situation does not necessarily change, I would argue, as soon as the formula is incorporated into a written text. The phenomenon of ‘oral residue’ requires us to consider whether the text should be read ‘literally’ (semantically) or by reference to the typical narratives it evokes (§3.2). Take the *tahat* formula in *Exod.* 21:24-25:

eye for eye, tooth for tooth, hand for hand, foot for foot,
burn for burn, wound for wound, stripe for stripe.

It is partly through the Sermon on the Mount that this provision has been taken as representative of a crude and cruel legalism attributed to Jewish law. Whether Matthew was indeed referring to physical retaliation for loss of a limb has indeed been doubted. Suffice it to say that readers of the New Testament have adopted such a ‘literal’ reading of it, which makes, *inter alia*, the following assumptions: (a) it applies whatever the circumstances of the injury (deliberate or accidental); (b) it applies whatever the relative bodily conditions of offender and victim (c); the remedy is mandatory: you have to apply it.

In what circumstances may talionic punishment be demanded? Are we to take a ‘literal’ (semantic) view, and say that because the formula does not address the circumstances of the offence, the latter are irrelevant, so that the provision ‘applies’ whether the injury was inflicted deliberately or accidentally? Or are we to understand it narratively, in terms of the typical image of the infliction of bodily injury, which is a deliberate attack? As we have seen, there is only one mention of the actual *practice* of *talio* as a measure of human justice (though there the *ka’asher* formula is used): the story of the king Adoni-Bezek. His offence was clearly deliberate. By contrast, the *tahat* formula occurs in narratives where the wrongdoer is acting negligently. Whether talionic punishment could ever have been applied where the injury was caused accidentally is a matter for speculation. If the text is read narratively, we do not have to assume that it was intended for application way beyond the scope of the typical narrative images it evoked. That would be a matter for debate.

Similar considerations apply to the relative bodily conditions of offender and victim. Arguing that *ayin tahat ayin* refers to compensation rather than bodily retaliation, the Rabbis asked:

What then will you say where a blind man put out the eye of another man, or where a cripple cut off the hand of another or where a lame person broke the leg of another. How can I carry out in this case [the principle of retaliation of] ‘eye for eye’, seeing that the Torah says, *Ye shall have one manner of law*, implying that the manner of law should be the same in all cases.

Since the biblical text stated no limitations on the relative bodily conditions of offender and victim, the Rabbis understand that no such limitations can apply. But such a ‘literal’ application of *talio* would mean that the eye of the offender must be taken, notwithstanding the fact that he will thereby be rendered completely blind, etc., whereas his victim was left half-sighted. Such a conclusion is rejected as self-evidently impossible. The range of the biblical provision cannot however be restricted to exclude such cases (while preserving it for the ‘normal’ case), in the light of the ‘one law’ principle. If we cannot modify the range of the principle, we must then seek an alternative meaning for the penalty, one where the blind, crippled or lame offender will suffer no more than the able-bodied offender. *Ayin tahat ayin* must therefore mean compensation rather than retaliation.

This rabbinic argument, we may note, depends upon two aspects of the literary presentation of talion. First, the range of application of the formula is given a ‘literal’ reading: since no limitations on the relative bodily conditions of offender and victim have been stated, no limitations apply. Second, the justification for not making an exception for the atypical (blind, crippled, lame) offender is taken from the literary association between the talionic formula as it appears in *Lev.* 24:20 and the (closely juxtaposed) ‘one law’ principle (*Lev.* 24:22), even though the latter is actually used in the biblical text for a quite different purpose: to stress that the law of blasphemy applies equally to the *ger*, here the son of an Israelite woman and an Egyptian man. If, by contrast, we replace this by asking what would have been the meaning of the talionic formula as transmitted orally, and thus replace a literal by a narrative reading, we can hardly suggest that the image of the typical offender

was that of the blind, crippled or lame! The exception to which the Rabbis objected would have been implicit: physical retaliation (subject to the argument below) could be applied to the typical case; it need not be applied to the atypical case, notwithstanding the unqualified range of the words.

Such an argument would appear to support what is generally viewed as a ‘literal’ approach to the penalty: bodily retaliation rather than monetary compensation. But there is a further issue to be considered: whether such a sanction was mandatory or not. The view that talionic punishment is here presented as mandatory cannot in fact be based upon any notion of literal meaning, since there is no linguistic expression in the text on which it can be based. The Hebrew formula has no verb at all. Without a verb, there is nothing explicit to indicate which modality — prescription or permission — is intended. It is simply the assumption of a (modern, positivist) reader that ‘an eye for an eye’ means ‘you *must* give/take an eye for an eye’, rather than ‘you *may* give/take an eye for an eye’. In short, the mandatory character of talionic punishment derives from discourse assumptions, not literal meaning. And the particular discourse assumption here made turns out to be unjustified. As argued above, *kofer* appears always to have been an option.

D B.S. Jackson, *Studies in the Semiotics of Biblical Law*, §3.2: ‘Literal Meaning’: Narrative v. Semantic Models (footnotes omitted)

My second example concerns the civil liability of the owner of an ox which has killed another ox (*Exod.* 21:35):

When a man’s ox hurts another’s, so that it dies, then they shall sell the live ox and divide the price of it; and the dead beast also they shall divide.

Finkelstein has stressed the different approach to compensation in modern accident law compared with the principle found not only in this biblical provision but also in the Laws of Eshnunna §53. In the absence of negligence, modern law traditionally (that is, leaving aside the operation of insurance) lets losses lie where they fall, whereas ‘the aim of the rule, both in Exodus and the Eshnunna laws, is to achieve an equitable distribution of loss when the circumstances of the case suggest that there was no clear justification for shifting the burden of the loss from one party to the other.’ Thus far, I am fully in agreement. But how was such ‘equitable distribution’ to be achieved? As has been widely observed from the time of the earliest rabbinic commentaries, an equal division of the loss will result from the *literal* application of the ancient procedure (dividing the carcass and dividing the price of the live ox) only if the two oxen had been of equal value. If the dead ox had been worth more than the live, then the result of the procedure of division will be that the owner of the dead ox will lose more than the owner of the live, since half the price of the live ox will be less than half the price the dead ox would have commanded, had it been sold live. Conversely, if the surviving ox had been the more valuable of the two, its owner will lose half its value, whereas the owner of the dead ox will be compensated by more than half the original value of the latter. In the highly unlikely case of the surviving ox being worth more than double the value of the dead ox when alive, the owner of the dead ox will make a profit. Indeed, there is even a theoretical possibility that the owner of the gorer could make a profit, if the value of the carcass is worth more than the value of the gorer.

To avoid such results, both the Rabbis, and with a minor qualification Finkelstein, add a condition which is not found in the text: this procedure applies only when the two oxen (when both were alive) were of equal value. Where this was not the case, a court would have to calculate what sum of money would in fact produce equal loss division (this, of course, requiring them to decide how much the dead ox had been worth when it was alive — a decision quite unnecessary where the biblical procedure itself was applied). Finkelstein assumed that ‘the procedure is to be imposed by an impartial authority in the event that the two parties could not settle the matter amicably between themselves ... The court, or the public authority felt that it had the right and the duty to intervene in what in all respects was recognised as a private, that is, civil, matter in order to allocate loss.’

But the rule produces such objectionable consequences *only* if it is read ‘semantically’ (literally), i.e. as covering all cases which may be subsumed under the meanings of its words. Since no mention is made of the relative values of the two animals, the literal argument goes, that factor is irrelevant, and the rule applies whatever the relative values of the two animals. If, however, we adopt a narrative rather than a semantic approach to the meaning of the biblical text, then this problem largely disappears. It applied to the typical cases whose images are evoked by the words of the rule, and these typical cases will, indeed, be those where the relative values of the two animals are equal or roughly equivalent.

What, then, would have happened in practice where the values of the two animals were substantially unequal? On this, we have no direct knowledge. If the text does reflect a real social custom, I see no overriding reason to exclude its operation even in many cases where there was a reasonable degree of inequality in the values of the two oxen. For the possibility of resolving the dispute without the need for a formal adjudication is itself a benefit, and may well have been a necessity. That degree of ‘arbitrariness’ merely represents the price which has to be paid for such a benefit. There is no need to trouble ourselves with the highly unlikely cases (suggested above) of the owner of the victim or even the gorer making a profit. In such an instance we may assume that the parties would either agree to an *ad hoc* settlement or refer the matter to some form of third party arbitration.

E. B.S. Jackson, *Studies in the Semiotics of Biblical Law*, §8.1: (footnotes omitted)

A striking comment on the force of repetition is found in a source not commonly noted in this connection: Joseph's interpretation of Pharaoh's dreams. First Pharaoh dreams about the seven thin cows consuming the seven fat ones, then (a separate dream: we are told, 'And Pharaoh awoke. And he fell asleep and dreamed a second time') he dreams about the seven thin ears of corn swallowing up the seven fat ears (*Gen. 41:1-7*). Joseph is ultimately summoned to interpret them. He commences by saying (*Gen. 41:25*): 'The dream of Pharaoh is one; God has revealed to Pharaoh what he is about to do'. Two quite different dreams — presented explicitly as forms of divine revelation — with a single (very specific) message. Why were two dreams required? Joseph addresses the question directly: 'And the doubling of Pharaoh's dream means that the thing is fixed by God, and God will shortly bring it to pass' (*Gen. 41:32*). The effect of the doubling is a meta-message, a message about the force or status of the message: it is firmly determined, and to be implemented immediately.

Of course, pairs of dreams occur also elsewhere in the Joseph narrative: we may well regard them as a narrative theme. But within that theme, there are subtle variations. Consider first Joseph's own apparent megalomania. First, he tells his brothers: 'we were binding sheaves in the field, and lo, my sheaf arose and stood upright; and behold, your sheaves gathered round it, and bowed down to my sheaf' (*Gen. 37:7*). This dream is not symbolic; it is directly representational: Joseph and his brothers themselves figure in it. No need for any interpretation here; the brothers immediately get the message and are not best pleased. But Joseph is not finished. He has a second dream: 'the sun, the moon, and eleven stars were bowing down to me' (*Gen. 37:9*). This is not directly representational, but again needs no interpretation. The force of the repetition here is *not* that the dream is to be implemented immediately. There may, indeed, be an implication (again) that repetition of the message validates the communication as a divine revelation — even though the content here does add a new element: the relationship of Joseph not only to his brothers but also to his parents. But the repetition here also has another function. The second dream, though not directly representational, is nevertheless transparent in its meaning precisely because of its relationship to the first dream (which was directly representational). The two dreams, it may be added, are not here presented as 'one'. Not only is there a new element in the second. The temporal relationship between the two is not clear. Unlike Pharaoh, who wakes after the first dream, then falls asleep again and has the second dream, Joseph tells his brothers the dream about the sheaves of corn and receives their reaction (*Gen. 37:8*) before we are told that he dreams again. Nevertheless, the first dream provides the interpretive framework for the understanding of the second.

A similar structure informs the account of the third pair of dreams, though these are simultaneous messages received by different people: Pharaoh's chief butler and chief baker, with whom Joseph is incarcerated (*Gen. 40:1-19*). And though they concern the same theme — the future prospects of the respective dreamers — their interpretations are radically different. The text is interested in this issue. Even before Joseph offers his interpretation, we are told that the two prisoners dreamed 'each his own dream, and each dream with its own meaning' (*Gen. 40:5*). The two had, according to the narrative, sought interpretations of the dreams, without success. Again before hearing and interpreting the dreams, Joseph tells them: 'Do not interpretations belong to God?' (*Gen. 40:8*). The dream of the butler is directly representational in that the butler's restoration is depicted: 'Pharaoh's cup was in my hand; and I took the grapes and pressed them into Pharaoh's cup, and placed the cup in Pharaoh's hand' (*Gen. 40:11*); Joseph's insight is required only in interpreting the three branches in temporal terms, as three days. The baker's dream, by contrast, is far less directly representational: the birds eating out of the top (third) basket on his head (*Gen. 40:16-19*) are taken to represent birds eating his flesh after Pharaoh has him hanged. The narrative stresses, however, a unity between the dreams: we are told at the outset that the two dreams occurred on the same night (*Gen. 40:5*). The relationship between them is similar to that between Joseph's own pair of dreams: the first is more transparent than the second, and the symbolism of the second is decoded by reference to the transparency of the first. The thematic reiteration here is thus not concerned merely with the force, or content of the message, but also with the very means of ascribing meaning to it.

In this set of narratives concerning 'Joseph's dreams', there is thus no single meaning attached to the reiteration: we have to attend carefully to the indications provided by the text itself, indications which derive from the narrative framework, the story of the pragmatics of the dream: its perception, telling and interpretation. These are issues with which the texts are clearly interested: the dreams are revelations from God, who does not speak twice merely for literary effect: repetition may signify the force of an utterance, or it may contribute to the very process of interpretation, whether the message is the same, the same with supplementation, or different.

Are we to regard such issues as irrelevant when we turn from dreams to law? I doubt it. What is striking about the accounts of 'Joseph's dreams' is simply the explicitness with which these issues are raised. At the very least, they provide us with models or hypotheses for the consideration of other forms of thematic reiteration of divine messages, where the texts are less explicit. Is the reiteration which is represented by Deuteronomy (in the Decalogue, if not more generally) an indication of the 'immediacy' of the coming-into-force of the laws (like Pharaoh's dreams, according to *Gen. 41:32*) in the context of the imminent entry into the land? The reiteration of the giving of the tablets of the law — despite the uncertainties in the text as to whether the two sets carried the same text and whether the second was inscribed by God or Moses — may be taken to indicate that the second still carries the force of the first, notwithstanding the circumstances of the latter's destruction. We also have the account of the destruction by Jehoiakim of Jeremiah's scroll, as it was being read, by cutting it off column by column and casting the pieces in the fire (*Jer. 36:23*). Jeremiah is told: 'Take another scroll and write on it all the former words that were

in the first scroll' (*Jer.* 36:27). He does so, dictating to Baruch not only 'all the words of the scroll which Jehoiakim king of Judah had burned in the fire' but also 'many similar words ... added to them' (*Jer.* 36:32). Indeed, there is a hint of a further addition; God tells Jeremiah, immediately after instructing him to write the second scroll (*Jer.* 36:29-31):

And concerning Jehoiakim king of Judah you shall say, 'Thus says the LORD, You have burned this scroll, saying, "Why have you written in it that the king of Babylon will certainly come and destroy this land, and will cut off from it man and beast?" Therefore thus says the LORD concerning Jehoiakim king of Judah, He shall have none to sit upon the throne of David, and his dead body shall be cast out to the heat by day and the frost by night. And I will punish him and his offspring and his servants for their iniquity; I will bring upon them, and upon the inhabitants of Jerusalem, and upon the men of Judah, all the evil that I have pronounced against them, but they would not hear.'

It is not clear whether this further judgment on Jehoiakim, for having burned the scroll, is to be written into the second scroll. That the second scroll, which replaced the first, was a supplemented version, is not however in doubt. No *bal tosif* for Jeremiah: "Then Jeremiah took another scroll and gave it to Baruch the scribe, the son of Neri'ah, who wrote on it at the dictation of Jeremiah all the words of the scroll which Jehoi'akim king of Judah had burned in the fire; and many similar words were added to them" (*Jer.* 36:32). If anything, the supplemented text gains in force from its relationship to the original. It is not merely a replacement, regrettably required because of unfortunate events; it has the status of the original, its production being ordered by God, and it has a supplementary text, the latter perhaps reflecting the very circumstances of its initial rejection. There are striking similarities here to the history of the stone tablets.

Deuteronomy's self-presentation also has much in common with this. The first revelation may not here have been rejected, but the covenant in the land of Moab is explicitly described as additional to that at Horeb (*Deut.* 29:1). Moreover, the narrator introduces the first speech of Moses by saying that he 'undertook to explain (*be'er*) this law' (*Deut.* 1:5). *Hatorah hazot* can hardly be taken to refer to anything other than the speeches in Deuteronomy itself. So this additional covenant is also different in its pragmatics: it is explicitly expository — not only the laws but the reasons for their observance.

Commenting on this passage, Watts observes:

Ironically, awareness of change creates concern for the tradition's integrity within Deuteronomy itself, which contains the only Pentateuchal injunctions against modifications.

Certainly, Deuteronomy, which was concerned to indicate that God did not add anything to the Decalogue at the Horeb revelation (*Deut.* 5:22), seeks to stress (*Deut.* 4:2, 13:1, MT) that there should be no further addition to what is now being revealed. It does not follow, however, that the supplement represented by Deuteronomy itself was conceived as a 'change', any more than the inclusion of Joseph's parents in his second dream changed the meaning of the first. Here again, repetition of the message validates (recognises) the communication of the first as a divine revelation, albeit in a different 'voice'. In one respect, however, the relationship of Deuteronomy to the earlier revelation reverses that between Joseph's two dreams: here, it is the second which is the more transparent, being presented as containing its own explanation — a feature which many modern commentators, in remarking upon its hortatory and didactic character, effectively confirm.

Modern commentators address the significance of 'thematic repetition' of laws through a range of inferred models. Repetition is commonly viewed as a device particularly appropriate in oral literature, partly to assist the memorisation and transmission of the tradition. Such repetition is not necessarily exact: the words, the whole words and nothing but the words. When the tradition is first written down, such repetitions are not eliminated simply because their mnemonic function is no longer required, but their very character may appear different in their new literary form: repetition may then come to appear as textual quotation.

Particular attention has been paid of late to thematic reiterations of pentateuchal laws which include contradictions between the two versions. Reference has been made to the view that it was the policy of the Persian empire, in granting limited legal autonomy, which may have prompted the collation of the disparate texts which generated such contradictions, since Persian royal edicts were claimed to be irrevocable. Whatever the historical stimulus, it is no longer assumed that this process of collation of contradictory texts proceeded without any attempt to resolve such contradictions in the course of the editing process. Bernard Levinson, developing Michael Fishbane's notion of 'inner biblical exegesis', has pointed to some literary techniques (more systematic and sophisticated than those long claimed by the 'interpolationist' literary-historical tradition), which involve the partial repetition of the 'old' text, with elements which then transform its meaning.

Differences of approach to these matters reflect, of course, a basic ideological choice: must the model we choose account for all the data? Put differently, must we assume that our ancient authors and editors were capable of applying their own methods perfectly, almost seamlessly (though not, of course, without leaving sufficient clues for us to detect their activities!)? There are versions of both the literary-historical and the literary-holistic approaches which do appear to attribute such perfection to the human authors. On the one hand, some literary-historical approaches appear to assume that every change made in a text is deliberate, motivated; on the other, some literary-holistic approaches seek to apply a single model, irrespective of the (at times) relative inappropriateness of that model. Such different forms of perfectionism necessarily run the risk of imposition of theory upon the evidence. The search for perfectionism, however, may derive from current ideological positions (whether secular or religious). Without such an assumption, we are in a better position to evaluate the

application of models to particular texts on the basis of the merits of the individual case concerned. This allows both for pluralism in the choice of models applied to different texts, and for what may be termed semiotic errors and accidents. Or should we seek a psychoanalytical explanation for every scribal error?

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1b. Homicide and Vengeance

1. Issues

- (a) How was murder defined and what were its consequences?
 1. How do the various sources deal with (i) premeditated homicide, (ii) unpremeditated but intentional homicide, (iii) accidental homicide?:
Laws: **Exodus 21:13-14, Deut 19, Num 35**
Narratives: **Genesis 4:1-16, Exodus 2, I Kings 3**
 2. Are these categories defined or exemplified?
- (b) Who dealt with murder?
 1. Who is the *go'el hadam* ("redeemer of the blood")?
 2. What is the role of the state in the prosecution and adjudication of homicide?
 3. In the absence of family or state protectors?
- (c) What forms of mitigation existed from the legal consequences of homicide?
 1. "Ransom"?; **Num 35, Exodus 21:28-30, II Sam 21**
 2. Asylum? What different forms did it take?: **Genesis 4:1-16, Exodus 2, Exodus 21:13-14, Deut 19, Num 35 (see above)**
 3. Royal pardon?: **II Sam 14, I Kings 3**
- (d) What were the "legal" consequences of *non-fatal* assaults?
 1. Unlimited vengeance? **Genesis 4:23-24, Leviticus 19:18**
 2. Compensation (perhaps in kind)? **Exodus 21:18-19**
 3. Was physical retaliation (a) mandatory, (b) permitted, (c) discouraged? **Exodus 21:22-25, Judges 1:5-7, Prov. 24:29:**

2. Texts and Materials

(a) How was murder defined and what were its consequences?

Exodus 21:

- 12** Whoever strikes a man so that he dies shall be put to death.
- 13** But if he did not lie in wait for him, but God let him fall into his hand, then I will appoint for you a place to which he may flee.
- 14** But if a man wilfully attacks another to kill him treacherously, you shall take him from my altar, that he may die.
- **Would you describe this as a law of homicide, a law of murder or a law of manslaughter?**
 - **What distinctions regarding *mens rea* are made here? Does it cover the spur-of-the-moment intentional killer? If not, what kind of reasoning might have been used to resolve such cases?**
 - **How do you suppose that these procedures might have been used?**

B.S. Jackson, *Studies in the Semiotics of Biblical Law*, §3.2

I turn next to ... the homicide provisions of *Exod.* 21:12-14:

Whoever strikes a man so that he dies shall be put to death. But if he did not lie in wait for him, but God let him fall into his hand, then I will appoint for you a place to which he may flee. But if a man wilfully attacks another to kill him treacherously, you shall take him from my altar, that he may die.

Verse 12 is the first of a series of four 'participial' provisions, which continues in vv.15-17; vv.13-14 are generally viewed as a 'casuistic' interpolation (e.g. Patrick, *Old Testament Law* (1985), 73). But what was the meaning of verse 12, when it stood alone? A 'literal' (semantic) reading might lead us to conclude that the provision is 'absolute', applying to anyone 'who strikes a man so that he dies': no qualifications having been stated, it may be argued, none apply. Alt put the argument thus:

It refers to homicide; but it makes no distinction between murder and manslaughter, using expressions, indeed, which seem deliberately chosen to leave no doubt that both are included. It treats every killing as a crime punishable by death — and it does not restrict this by any reference to the possibility of allaying one's guilt by paying an indemnity or seeking sanctuary. Its content, then, is as unconditional as its form, and this is what distinguishes it so sharply from what follows. We must ask why it allows of no conditions. The outlook of the whole Old Testament leaves us in no doubt of the answer: it is Yahweh who demands a stern retribution for every drop of blood that is spilt ... ('Origins' (1989), 110)

Against this, Schenker has recently argued that vv.13-14 should be viewed not as a correction of verse 12, but rather as a process of making it more explicit: ('Intentionalität', *ZABR* IV (1998), 210f.) the institution of (altar) refuge in Israel is ancient, as is shown by the narratives regarding Adonijah and Joab (*1 Kgs* 1:50-53; *1 Kgs* 2:28-35). *Exod.* 21:12 should be understood against the background of the contemporaneous institution of places of refuge, and the distinction between intentional and unintentional killing is implicit in that institution. Such an approach rightly takes account of the institutional context and use of *Exod.* 21:12. That is part of the social knowledge which we rightly impute into the meaning of the provision when we apply the notions of 'narrative reading' and 'restricted code'. If, then, we ask what was the typical narrative image evoked by the words, the case of homicide which would typically generate a demand for death, the most likely answer is a direct, deliberate assault accompanied by an intention to kill. The further we move away from the case of the typical killer, the less strongly will the normal expectation regarding the penalty hold good. Again, we may reasonably assume such implications as to the typical case and its typical treatment to have been encoded in the original, oral use of the apodictic formulation.

Deut 19

4 This is the provision for the manslayer, who by fleeing there may save his life. If any one kills his neighbour unintentionally without having been at enmity with him in time past — **5** as when a man goes into the forest with his neighbour to cut wood, and his hand swings the axe to cut down a tree, and the head slips from the handle and strikes his neighbour so that he dies — he may flee to one of these cities and save his life; **6** lest the avenger of blood in hot anger pursue the manslayer and overtake him, because the way is long, and wound him mortally, though the man did not deserve to die, since he was not at enmity with his neighbour in time past. **7** Therefore I command you, You shall set apart three cities. **8** And if the LORD your God enlarges your border, as he has sworn to your fathers, and gives you all the land which he promised to give to your fathers — **9** provided you are careful to keep all this commandment, which I command you this day, by loving the LORD your God and by walking ever in his ways — then you shall add three other cities to these three, **10** lest innocent blood be shed in your land which the LORD your God gives you for an inheritance, and so the guilt of bloodshed be upon you. **11** But if any man hates his neighbour, and lies in wait for him, and attacks him, and wounds him mortally so that he dies, and the man flees into one of these cities, **12** then the elders of his city shall send and fetch him from there, and hand him over to the avenger of blood, so that he may die. **13** Your eye shall not pity him, but you shall purge the guilt of innocent blood from Israel, so that it may be well with you.

- **What is presented as the paradigm case of intentional homicide? How would you define intention in it?**
- **What is presented as the paradigm case of non-intentional homicide? What are the legal consequences?**
- **Are there likely to be cases falling between the two paradigms — difficult cases? How would you analyse conceptually such a *casus omissus*?**
- **What is the relationship between this passage of Deuteronomy and Exodus 21:12-14?**
- **What procedure of adjudication is there to decide whether the homicide is entitled to stay in a city of refuge?**

Num 35

16 But if he struck him down with an instrument of iron, so that he died, he is a murderer; the murderer shall be put to death. **17** And if he struck him down with a stone in the hand, by which a man may die, and he died, he is a murderer; the murderer shall be put to death. **18** Or if he struck him down with a weapon of wood in the hand, by which a man may die, and he died, he is a murderer; the murderer shall be put to death. **19** The avenger of blood shall himself put the murderer to death; when he meets him, he shall put him to death. **20** And if he stabbed him from hatred, or hurled at him, lying in wait, so that he died, **21** or in enmity struck him down with his hand, so that he died, then he who struck the blow shall be put to death; he is a murderer; the avenger of blood shall put the murderer to death, when he meets him. **22** But if he stabbed him suddenly without enmity, or hurled anything on him without lying in wait, **23** or used a stone, by which a man may die, and without seeing him cast it upon him, so that he died, though he was not his enemy, and did not seek his harm; **24** then the congregation shall judge between the manslayer and the avenger of blood, in accordance with these ordinances; **25** and the congregation shall rescue the manslayer from the hand of the avenger of blood, and the congregation shall restore him to his city of refuge, to which he had fled, and he shall live in it until the death of the high priest who was anointed with the holy oil. **26** But if the manslayer shall at any time go beyond the bounds of his city of refuge to which he fled, **27** and the avenger of blood finds him outside the bounds of his city of refuge, and the avenger of blood slays the manslayer, he shall not be guilty of blood. **28** For the man must remain in his city of refuge until the death of the high priest; but after the death of the high priest the manslayer

may return to the land of his possession. **29** And these things shall be for a statute and ordinance to you throughout your generations in all your dwellings. **30** If any one kills a person, the murderer shall be put to death on the evidence of witnesses; but no person shall be put to death on the testimony of one witness. **31** Moreover you shall accept no ransom for the life of a murderer, who is guilty of death; but he shall be put to death. **32** And you shall accept no ransom for him who has fled to his city of refuge, that he may return to dwell in the land before the death of the high priest. **33** You shall not thus pollute the land in which you live; for blood pollutes the land, and no expiation can be made for the land, for the blood that is shed in it, except by the blood of him who shed it. **34** You shall not defile the land in which you live, in the midst of which I dwell; for I the LORD dwell in the midst of the people of Israel.

NB The distinction between “murderer” and “manslayer” is *not* represented in the original Hebrew. The same term, *rotseach*, is used throughout — with the single exception of verse 24, where the Hebrew here translated “manslayer” is *makeh* (the same verb as in Exodus 21:12), literally “striker”, “attacker”.

- **What is particularly striking about the formulation of vv.16-18? How might we explain its unusual drafting? (see Jackson below on the “Diagnosis” form)**
- **To what extent does this text re-present the paradigm cases of Deuteronomy?**
- **To what extent does this text address the non-paradigm cases — those missing in Exodus and Deuteronomy?**
- **How do the procedures differ from those in the earlier texts?**

B.S. Jackson, *Studies in the Semiotics of Biblical Law*, §2.2 (diagnosis)

Num. 35:16-18 contains a sequence of homicide provisions, expressed in the following form: ‘But if he struck him down with an instrument of iron, so that he died, he is a murderer — *rotseach hu* — the murderer shall be put to death’ (v.16). Daube observed that *rotseach hu* is logically superfluous. Why not merely say, as in the normal casuistic form, ‘If he struck him down with an instrument of iron, so that he died, he shall be put to death’? Daube called this the ‘diagnosis form’ (*Ancient Jewish Law* (1981), 100-106). Between the statement of the facts, and the provision of the legal remedy, a diagnosis of the legal condition is inserted. Its origin, he suggested, lies in medical texts. Between the description of the symptoms, and the prescription of a treatment, we have a diagnosis of the ailment. Yet here too, one might conclude, the diagnosis is logically redundant. If we know that a raw egg will cure a hangover, the treatment is not the product of discovery that the symptoms are ‘a hangover’; it is the result of experience that those symptoms are relieved by that treatment. Generations of patients, and perhaps as many generations of doctors, have successfully relieved medical conditions while being totally wrong in their diagnosis of what that condition was. The diagnosis, we may think, is a matter of medical science, the treatment a matter of medical practice, just as the classification of the offender here as a ‘murderer’ may be a matter of legal theory, while what matters for legal practice is purely the punishment.

But such an analysis, Daube claimed, neglects the ancient medical idea that to conquer a sickness it is necessary to discover its name or that of the demon which causes it. If correct, this means that the naming of the disease was not merely a matter of scientific speculation, but a speech act which formed a necessary part of the treatment. But when the form is transferred to the legal context, the need for such a speech act largely disappears. The diagnosis form is very much the exception, rather than the rule. We find it in circumstances where the facts go beyond the normal image of the offence in question. It is not self-evident that a man who strikes another with an iron instrument, but without the evidence of ambush or prior hatred which the biblical sources normally require for the offence of murder, should be so treated. Here, a decision is taken to that effect. To make this offender into a murderer, a speech act is necessary.

But where do we find evidence for such a speech act? Though there is a possibility that *rotseach hu* originates in the formal pronouncement of a court (or perhaps an oracular decision), the text of *Num.* 35 neither presents it as a direct speech act formula (*oratio directa*), nor does it refer to the performance of a speech act, as in the case of the naming of Moses. But reference to the speech act is, I maintain, present, if we take the total narrative context into account. God instructs Moses to tell the children of Israel that he, God, says that the accused in these circumstances is a murderer. The institutional speech act of naming is here incorporated into the narrative structure, and indeed into the very structure of the legal norm itself. The audience will not doubt that this offender now really is a murderer, given that it is God who has applied that name to him.

B.S. Jackson, “The Mental State in Homicide”, from *Wisdom-Laws*, 2006, §4.2

Exod. 21:12 opens in an entirely neutral way: “Whoever strikes a man so that he dies shall be put to death.” The verb here rendered “strikes” (*makeh*) is not the verb commonly translated “murder” (*ratsaʿ*) although that latter verb is itself, as we shall see, equivocal. No particular conclusion, therefore, can be drawn from the choice of verb as to the mental state required of the offender to whom verse 12 (taken alone) applies.

A “literal” (semantic) reading of v.12, taken alone, might lead us to conclude that the provision is, indeed, “absolute”, applying to anyone “who strikes a man so that he dies”: no qualifications having been stated, it may be argued, none apply. At

one time, it was fashionable to interpret provisions like this as exhibiting *Erfolgshaftung*, strict liability for results (irrespective of intention), and to suggest that this represents a primitive stage of legal evolution, before the capacity to distinguish between different mental states has developed. But such an interpretation today lacks credibility. Against the “absolute” interpretation, Schenker has recently argued that vv.13-14 should be viewed not as a correction of verse 12, but rather as a process of making it more explicit (1998a:210f.): the institution of refuge in Israel is ancient, as is shown by the narratives regarding Adonijah and Joab (discussed further below). *Exod.* 21:12 should be understood against the background of the contemporaneous institution of places of refuge, and the distinction between intentional and unintentional killing is implicit in that institution. Such an approach takes account of the institutional context and use of *Exod.* 21:12. That is part of the social knowledge which we rightly impute into the meaning of the provision when we apply the notions of “narrative reading” and “restricted code”. If, then, we ask what was the typical narrative image evoked by the words, the case of homicide which would generate a demand for death, the most likely answer is a direct, deliberate assault probably accompanied by an intention to kill. The further we move away from the case of the typical killer, the less strongly will the normal expectation regarding the penalty hold good.

I turn now to the nature of the distinction proposed in vv.13-14. In v.13, which authorises a form of asylum, the offender is said not to have “lain in wait” — a paradigm case, as we shall see, of premeditation; this negative specification is accompanied by a positive one: “But God let him fall into his hand.” This is commonly described in terms of — and may no doubt represent the historical origin of — the concept of “act of God”, still often used as a paradigm of pure accident. These two specifications are linked by a simple *vav* conjunctive — *veha’elohim inah leyado*. Modern translations tend to render this *vav* “but”. There is, however, an alternative, which receives support from the best possible source — a parallel (perhaps the very same) editorial hand. Verse 16, the third in the sequence of four participial norms, is translated (RSV): “Whoever steals a man, whether he sells him or is found in possession of him, shall be put to death.” Here, the two alternatives — “sells him” and “is found in possession of him” — are mutually incompatible. But exactly the same *vav* conjunctive as in v.13 is used to link them: *umekharo venimtsa beyado*. In v.16, the *vav* must therefore be disjunctive, introducing a separate case rather than further specifying the first; it can only mean “or”. At the very least, we are entitled to consider the possibility that the *vav* in v.13 has the same meaning — not “but” but “or”. If so, v.13 authorises flight to the *makom* for anyone who satisfies either of two independent conditions: either he did not act with premeditation or (which would normally, though not necessarily, be included in the former) he killed through an act of God.

Verse 14, read in its present context, tells us when the protection of the asylum need *not* be respected. Undoubtedly, it refers to a homicide who acted with premeditation: “But if a man wilfully attacks another to kill him treacherously.” The word here translated as “treacherously”, *be’armah*, is sometimes rendered, “with guile”. It involves the notion of a plot, something which requires premeditation, and thereby excludes a spur-of-the-moment killing. This receives some support from the narrative of the death of Joab, in the reign of Solomon, who takes refuge at an altar, but where that refuge proves of no avail. Joab is accused of political murders, which are unlikely to have been unpremeditated.

What results when we take vv.13 and 14 together? In the spectrum of intention, there are — as we see through a Roman source — three, rather than two, focal points. Premeditation is one, accident another. Verses 13-14 certainly present these two opposed poles. But what if the killing is neither premeditated, nor accidental? Suppose that it does occur on the spur-of-the-moment, the result, perhaps, of a sudden quarrel? If we take the traditional view, that the *vav* in v.13 is conjunctive (so that “God let him fall into his hand” is not an alternative to, but rather an explanation of, “But if he did not lie in wait for him”), then this case is not contemplated at all. We are told on the one hand (v.13) that asylum is available for purely accidental homicide, and on the other (v.14) that the premeditated murderer who tries to seek such asylum may be taken from the very horns of the altar to his death. Spur-of-the-moment killing, on this argument, falls into a gap between these polar extremes. If, on the other hand, we take the *vav* to be disjunctive, then spur-of-the-moment killing is included (though not narratively depicted) as one of the cases where he may flee to a place of refuge, since “he did not lie in wait for him”. Our choice between these two readings raises further issues regarding the nature, transmission and use of the text (addressed below). Suffice it to say, for the moment, that the predominant view (or assumption), both in biblical and modern times, has been that the *vav* is conjunctive: only two cases are here contemplated: either ambush or accident.

The succeeding paragraphs deal primarily with the consequences of non-fatal assaults, but the contingency that the assault may prove fatal does receive incidental attention. In the case of injuries arising from a quarrel (vv.18-19), we are told when the offender is “clear” of liability for a subsequent fatality, but there is no explicit reference to the nature of his liability if he is in fact legally responsible for the death: knowledge of the expected consequences in such a case appears to be taken for granted. In the case of death caused to a third-party caught up in someone else’s brawl, the penalty is “life for life” (v.23, as normally interpreted); there is no greater reason to take this as “absolute” than *mot yumot*. In the case of the owner of a homicidal ox, we do have explicit information on the operation of the sanction: the capital liability in v.29 is tempered by the institution of “ransom” (v.30). In principle, there would appear little reason to exclude any of these cases from the operation of the asylum rules, even though they are not mentioned in these contexts. In practice, we may suspect that these cases — especially the latter two — are so far distant from the paradigm case that the offender may have felt confident enough to stay at home and negotiate rather than run for his life. Two further cases are considered in order to distinguish circumstances where the homicide is justified from those where it is not: a thief caught breaking in at night may be killed, but not when he is caught

during the day (*Exod.* 22:1-2, MT); a master is not entitled to kill his slave outright, but if disciplinary measures lead to the slave's death a day or so later, the master is exempt (*Exod.* 21:20-21). In such cases, the language clearly suggests the availability of the blood feud where the killing is unjustified.

Later biblical texts support the view that a distinction was drawn between premeditated homicide on the one hand and unpremeditated, but yet intentional (i.e., spur-of-the-moment) homicide on the other. *Deuteronomy* 19 requires the designation of three cities of refuge in the territory which the Israelites are promised, cities to which any *rotsea5* may flee. The text then goes on to define who is the "manslayer" who may take advantage of this form of asylum:

This is the provision for the manslayer, who by fleeing there may save his life. If any one kills his neighbour unintentionally without having been at enmity with him in time past . . .

The text then goes on to an example — a classical case of pure accident — but interestingly conceptualises this example not as an "Act of God" but rather as a lack of premeditation (as evidenced by previous hatred):

. . . as when a man goes into the forest with his neighbour to cut wood, and his hand swings the axe to cut down a tree, and the head slips from the handle and strikes his neighbour so that he dies — he may flee to one of these cities and save his life; lest the avenger of blood in hot anger pursue the manslayer and overtake him, because the way is long, and wound him mortally, though the man did not deserve to die, since he was not at enmity with his neighbour in time past. (*Deut.* 19:5-6).

A few verses later, the converse case (following, incidentally, the same order as that of the Covenant Code) is dealt with, and again it is the presence of previous hatred which shows that the homicide is premeditated (*Deut.* 19:11-12):

But if any man hates his neighbour, and lies in wait for him and attacks him, and wounds him mortally so that he dies, and the man flees into one of these cities, then the elders of his city shall send and fetch him from there, and hand him over to the avenger of blood, so that he may die.

As in the Covenant Code, the focus here is upon premeditated homicide on the one hand, pure accident on the other. This is the binary opposition which both *Exod.* 21:13-14 and *Deuteronomy* use. The middle case, even if it is contemplated in *Exod.* 21:13, receives no narrative description; it is an inference (on the disjunctive reading of the *vav*) only from the negation of lying-in-wait. There is clearly a close connection between the cases presented in *Deut.* 19:5f., 11f. and *Exod.* 21:13-14; on formal grounds, it appears likely that the Deuteronomic text has influenced the interpolation(s) in the *Mishpatim*.

The most detailed elaboration of these laws is found in *Numbers* 35. There is one significant terminological link between them and the Covenant Code: the verb to "lie in wait", *tsidah*, used in *Exod.* 21:13, occurs in a nominalised, abstract form, *tsdiyah* in *Num.* 35:20, 22 (but nowhere else). This in itself may be insufficient to establish that the text of the Covenant Code was available to the author of *Numbers*. But inspection of the structure of *Numbers* 35 more generally suggests the possibility that we have here a literary elaboration of the earlier text. For the priestly author maintains a binary oppositional structure of the classification of mental states, while at the same time expressing explicitly the previously excluded middle (that is, the intentional but unpremeditated act) and making it quite clear on which side of the divide he places it. To do this, he uses a chiasmus, though this literary structure has been slightly obscured by some elaborations and further repetitions which have crept into the text. But the original chiasmus is clear enough. First we have a group of cases where the court (by implication) must hand over the murderer to the *go'el hadam*, in verses 16-21. Then we have a group where the court is bade to protect the killer (*rotsea5*), by returning him to his city of refuge, where (alone) he will be free from the attentions of the "redeemer of blood". A chiastic arrangement underlies the presentation of these two groups of examples. Thus:

- A1 If he kills him with a stone in his hand, the stone being sufficient (normally) to cause death, he is not protected. (v.17)
- B1 If he killed him in an ambush by throwing something at him, he is not protected. (v.20)
- C1 If he killed him with his fists out of enmity, he is not protected. (v.21)
- C2 If he stabbed him not from enmity but suddenly, he is to be protected. (v.22)
- B2 If he threw anything at him not in an ambush, he is to be protected. (v.22)
- A2 If he killed him with a stone, even one with which one may normally cause death, but without seeing him, and without previous enmity or having sought him out, he is to be protected. (v.23)

The draftsman takes care, in the second series, to negate explicitly the terms used in the first. And it is clear from the case of sudden stabbing without previous enmity (C2), or throwing something without having lain in wait (B2), that intentional but unpremeditated homicide falls into the protected category, along with cases of "pure" accident (A2, "without seeing him"). Thus by the use of a literary device, the draftsman has sought to preserve the traditional binary oppositional structure, while at the same time offering a more comprehensive and explicit account of the range of possible situations. The binary oppositional structure is based upon the legal effects of the classification of cases: in the first group, the "redeemer of the blood" may kill the homicide with impunity; in the second, the homicide may seek adjudication and (if successful) protection at a city of refuge.

The draftsman shows not the slightest hesitation in classifying even the offender who *is* to be protected in the cities of refuge as a *rotsea5*, along with those who are to be handed over to the "avenger of blood". This suggests that, at the

terminological level, there is no distinction between “murder” and “manslaughter”: all are “killers”, and liable to pursuit and the threat of blood vengeance, even though some may seek asylum (whether at the altar or a city of refuge). Yet that “privilege” clearly prompted practical difficulties. What if the “redeemer of the blood” did catch the accidental or unpremeditated killer en route? There is a fear that the *go’el* will kill him “in hot anger”. *Deuteronomy* seeks to reduce the risk: the original three cities of refuge are to be supplemented by a further three after the full conquest: “lest innocent blood be shed in your land (*bekerev artsekha*) which the LORD your God gives you for an inheritance, and so the guilt of bloodshed be upon you” (*Deut.* 19:10). Thus the blood of such an accidental or unpremeditated killer is “innocent”; he is a victim who “did not deserve to die” (*velo eyn mishpat mavet*), and any such shedding of his blood en route seemingly gives rise to the threat of divine punishment (if not a further round of blood vengeance). Yet even if he “did not deserve to die”, he is still a *rotsea*⁵, who must remain in exile in order to save his life.

Genesis 4:

- 1 Now Adam knew Eve his wife, and she conceived and bore Cain, saying, “I have gotten a man with the help of the LORD.”
- 2 And again, she bore his brother Abel. Now Abel was a keeper of sheep, and Cain a tiller of the ground.
- 3 In the course of time Cain brought to the LORD an offering of the fruit of the ground,
- 4 and Abel brought of the firstlings of his flock and of their fat portions. And the LORD had regard for Abel and his offering,
- 5 but for Cain and his offering he had no regard. So Cain was very angry, and his countenance fell.
- 6 The LORD said to Cain, “Why are you angry, and why has your countenance fallen?
- 7 If you do well, will you not be accepted? And if you do not do well, sin is couching at the door; its desire is for you, but you must master it.”
- 8 Cain said to Abel his brother, “Let us go out to the field.” And when they were in the field, Cain rose up against his brother Abel, and killed him.
- 9 Then the LORD said to Cain, “Where is Abel your brother?” He said, “I do not know; am I my brother’s keeper?”
- 10 And the LORD said, “What have you done? The voice of your brother’s blood is crying to me from the ground.
- 11 And now you are cursed from the ground, which has opened its mouth to receive your brother’s blood from your hand.
- 12 When you till the ground, it shall no longer yield to you its strength; you shall be a fugitive and a wanderer on the earth.”
- 13 Cain said to the LORD, “My punishment is greater than I can bear.
- 14 Behold, thou hast driven me this day away from the ground; and from thy face I shall be hidden; and I shall be a fugitive and a wanderer on the earth, and whoever finds me will slay me.”
- 15 Then the LORD said to him, “Not so! If any one slays Cain, vengeance shall be taken on him sevenfold.” And the LORD put a mark on Cain, lest any who came upon him should kill him.
- 16 Then Cain went away from the presence of the LORD, and dwelt in the land of Nod, east of Eden.
 - **How would you characterise the killing by Cain of Abel, in terms of the legal definitions applied to different types of homicide in the legal sources (above)?**
 - **Is there any legal significance in the expression “am I my brother’s keeper?” (see Daube)?**
 - **Who would you expect to take action against Cain? Compare the story told by the woman of Tekoah (II Sam 14, below).**
 - **Did Cain get off lightly, by comparison with the rules in the law codes? If so, why?**
 - **What other biblical story does Cain’s “mark” remind you of?**
 - **What narrative anomaly do you detect in the treatment of Cain?**

II Sam 14

1 Now Jo’ab the son of Zeru’iah perceived that the king’s heart went out to Ab’salom. 2 And Jo’ab sent to Teko’a, and fetched from there a wise woman, and said to her, “Pretend to be a mourner, and put on mourning garments; do not anoint yourself with oil, but behave like a woman who has been mourning many days for the dead; 3 and go to the king, and speak thus to him.” So Jo’ab put the words in her mouth. 4 When the woman of Teko’a came to the king, she fell on her face to the ground, and did obeisance, and said, “Help, O king.” 5 And the king said to her, “What is your trouble?” She answered, “Alas, I am a widow; my husband is dead. 6 And your handmaid had two sons, and they quarrelled with one another in the field; there was no one to part them, and one struck the other and killed him. 7 And now the whole family has risen against your handmaid, and they say, ‘Give up the man who struck his brother, that we may kill him for the life of his brother whom he slew’; and so they would destroy the heir also. Thus they would quench my coal which is left, and leave to my husband neither name nor remnant

upon the face of the earth.” **8** Then the king said to the woman, “Go to your house, and I will give orders concerning you.” **9** And the woman of Teko’a said to the king, “On me be the guilt, my lord the king, and on my father’s house; let the king and his throne be guiltless.” **10** The king said, “If any one says anything to you, bring him to me, and he shall never touch you again.” **11** Then she said, “Pray let the king invoke the LORD your God, that the avenger of blood slay no more, and my son be not destroyed.” He said, “As the LORD lives, not one hair of your son shall fall to the ground.”

- **Was the attitude of the family in conformity with the biblical norms on homicide?**
- **Does David’s ultimate decision reflect special powers of the king, or is it consistent with the approach expected of any judge?**
- **For the circumstances which drove Absalom into exile (for killing Amnon), see 2 Sam. 13 (Week 4 texts, below)**

Exodus 2:

11 One day, when Moses had grown up, he went out to his people and looked on their burdens; and he saw an Egyptian beating a Hebrew, one of his people. **12** He looked this way and that, and seeing no one he killed the Egyptian and hid him in the sand. **13** When he went out the next day, behold, two Hebrews were struggling together; and he said to the man that did the wrong, “Why do you strike your fellow?” **14** He answered, “Who made you a prince and a judge over us? Do you mean to kill me as you killed the Egyptian?” Then Moses was afraid, and thought, “Surely the thing is known.” **15** When Pharaoh heard of it, he sought to kill Moses. But Moses fled from Pharaoh, and stayed in the land of Mid’ian; and he sat down by a well. **16** Now the priest of Mid’ian had seven daughters; and they came and drew water, and filled the troughs to water their father’s flock. **17** The shepherds came and drove them away; but Moses stood up and helped them, and watered their flock. **18** When they came to their father Reu’el, he said, “How is it that you have come so soon today?” **19** They said, “An Egyptian delivered us out of the hand of the shepherds, and even drew water for us and watered the flock.” **20** He said to his daughters, “And where is he? Why have you left the man? Call him, that he may eat bread.” **21** And Moses was content to dwell with the man, and he gave Moses his daughter Zippo’rah. **22** She bore a son, and he called his name Gershom; for he said, “I have been a sojourner in a foreign land.”

- **How would you characterise Moses’ action? Was it justified? Consider this in the light of the comments of Jonathan Miller (below). Can you think of any modern parallels?**

“Moses’ Killing of the Egyptian”, by Jonathan Fisher, Barrister (Reproduced with permission from Daf Hashavuah, Vol 11 No 17, 9 January 1999, Copyright 1999 United Synagogue Publications Ltd., distributed electronically by Brijnet_

It is extraordinary that the first recorded event of Moses' adulthood appears to present the world's greatest lawgiver as a lawbreaker. Having grown up in Pharaoh's palace, Moses goes out and sees an Egyptian striking a Hebrew. Moses looks around, and when he sees there are no witnesses Moses kills the Egyptian and hides the body in the sand. The next day two Hebrews accuse Moses of murder. Appreciating that Pharaoh will punish him by execution, Moses flees to Midian. (Exod. 2:11-15).

The case for the prosecution is not difficult to present. A defendant deliberately commits a murder, conceals the body and leaves the jurisdiction when the crime is discovered.

Seeking to justify Moses' furtive behaviour, Rashi explains that Moses was looking around to see if there was any good destined to come from the Egyptian before killing him. Jewish philosophy teaches that when one person murders another, a whole world is deemed to have been lost. It is not only the victim, but also the victim's descendants, who are lost (M. Sanhedrin 4:5). The sanctity of human life is paramount, but as Rashi intimates, the murder by Moses of the Egyptian is not a case in which to use the language of Cain, “the blood of thy brother cries out from the ground” (Gen. 4:10).

Other interpretations of Moses' conduct focus on Moses taking refuge in Midian. Moses used physical force to stop the Egyptian from striking the Hebrew. The force was excessive and Moses accidentally killed the Egyptian. The killing was not premeditated murder but accidental manslaughter, for which punishment was exile to a city of refuge. As Moses explained in later life, cities of refuge offered the involuntary murderer an opportunity to escape his past, “so that he may live” (Deut. 4:42).

...

Defence counsel would argue that Moses was acting to protect the life of the Hebrew. Modern legal systems recognise necessary killing as a justification for murder. The defence does not reduce murder to manslaughter but confers an absolute defence. Where necessary killing is established, a defendant is acquitted of the charge. In England and Wales, for example, Parliament has recognised that a person may use reasonable force in the prevention of crime. Similarly, in Israel the Penal Law provides that a person will not be criminally responsible where he acts against an unlawful attack in which the life, body or liberty of another is placed at risk. The juridical basis of necessary killing is rooted in the Torah, in particular, the Mosaic injunction that a person must not stand aside while his brother's blood is shed (Vayikra 19:16). The Gemara (BT Sanhedrin

73a) relies on this injunction when establishing the principle in Jewish law that an individual's responsibility is not limited to saving his own life but extends to that of his brother. Although Jewish law does not impose a punishment for failure to fulfil this societal obligation, the obligatory approach of Jewish law contrasts sharply with the permissive approach of modern secular legal systems.

Moses was fully aware of his responsibilities in Jewish law. By the time of the incident Moses had grown up in physical stature as well as rank and position.

I Kings 3

16 Then two harlots came to the king, and stood before him. **17** The one woman said, "Oh, my lord, this woman and I dwell in the same house; and I gave birth to a child while she was in the house. **18** Then on the third day after I was delivered, this woman also gave birth; and we were alone; there was no one else with us in the house, only we two were in the house. **19** And this woman's son died in the night, because she lay on it. **20** And she arose at midnight, and took my son from beside me, while your maidservant slept, and laid it in her bosom, and laid her dead son in my bosom. **21** When I rose in the morning to nurse my child, behold, it was dead; but when I looked at it closely in the morning, behold, it was not the child that I had borne." **22** But the other woman said, "No, the living child is mine, and the dead child is yours." The first said, "No, the dead child is yours, and the living child is mine." Thus they spoke before the king. **23** Then the king said, "The one says, 'This is my son that is alive, and your son is dead'; and the other says, 'No; but your son is dead, and my son is the living one.'" **24** And the king said, "Bring me a sword." So a sword was brought before the king. **25** And the king said, "Divide the living child in two, and give half to the one, and half to the other." **26** Then the woman whose son was alive said to the king, because her heart yearned for her son, "Oh, my lord, give her the living child, and by no means slay it." But the other said, "It shall be neither mine nor yours; divide it." **27** Then the king answered and said, "Give the living child to the first woman, and by no means slay it; she is its mother." **28** And all Israel heard of the judgment which the king had rendered; and they stood in awe of the king, because they perceived that the wisdom of God was in him, to render justice.

- **What ought Solomon to have done to the mother of the dead child?**
- **Why didn't he do it?**
- **What does this narrative have in common with that the woman of Tekoah (above), as regards the jurisdiction of the king?**

(b) Who dealt with murder?

Deut. 19 (above)

Num. 35 (above)

Genesis 4 (above)

Genesis 9

1 And God blessed Noah and his sons, and said to them, "Be fruitful and multiply, and fill the earth. **2** The fear of you and the dread of you shall be upon every beast of the earth, and upon every bird of the air, upon everything that creeps on the ground and all the fish of the sea; into your hand they are delivered. **3** Every moving thing that lives shall be food for you; and as I gave you the green plants, I give you everything. **4** Only you shall not eat flesh with its life, that is, its blood. **5** For your lifeblood I will surely require a reckoning; of every beast I will require it and of man; of every man's brother I will require the life of man. **6** Whoever sheds the blood of man, by (??) man shall his blood be shed; for God made man in his own image. **7** And you, be fruitful and multiply, bring forth abundantly on the earth and multiply in it."

- **What is the meaning of verse 6? (see materials, below)**
- **What mode of enforcement is envisaged for verse 6?**
- **What is the role God promises to play in the protection of human life?**
- **What is the relationship between this and the narrative context (the flood)?**

(c) What forms of mitigation existed from the legal consequences of homicide?

Num 35

31 Moreover you shall accept no ransom for the life of a murderer, who is guilty of death; but he shall be

put to death. **32** And you shall accept no ransom for him who has fled to his city of refuge, that he may return to dwell in the land before the death of the high priest. **33** You shall not thus pollute the land in which you live; for blood pollutes the land, and no expiation can be made for the land, for the blood that is shed in it, except by the blood of him who shed it. **34** You shall not defile the land in which you live, in the midst of which I dwell; for I the LORD dwell in the midst of the people of Israel.

- **What is the relationship between vv.31-32 (the ban on ransom) and its occurrence in the next two sources?**

Exodus 21

28 When an ox gores a man or a woman to death, the ox shall be stoned, and its flesh shall not be eaten; but the owner of the ox shall be clear. **29** But if the ox has been accustomed to gore in the past, and its owner has been warned but has not kept it in, and it kills a man or a woman, the ox shall be stoned, and its owner also shall be put to death. **30** If a ransom is laid on him, then he shall give for the redemption of his life whatever is laid upon him.

- **Is “ransom” here “normal” or “exceptional”?**

II Sam 21

1 Now there was a famine in the days of David for three years, year after year; and David sought the face of the LORD. And the LORD said, "There is bloodguilt on Saul and on his house, because he put the Gibeonites to death." **2** So the king called the Gibeonites. Now the Gibeonites were not of the people of Israel, but of the remnant of the Amorites; although the people of Israel had sworn to spare them, Saul had sought to slay them in his zeal for the people of Israel and Judah. **3** And David said to the Gibeonites, "What shall I do for you? And how shall I make expiation, that you may bless the heritage of the LORD?" **4** The Gibeonites said to him, "It is not a matter of silver or gold between us and Saul or his house; neither is it for us to put any man to death in Israel." And he said, "What do you say that I shall do for you?" **5** They said to the king, "The man who consumed us and planned to destroy us, so that we should have no place in all the territory of Israel, **6** let seven of his sons be given to us, so that we may hang them up before the LORD at Gibeon on the mountain of the LORD." And the king said, "I will give them."

- **Is “ransom” here “normal” or “exceptional”?**

(d) What were the “legal” consequences of *non*-fatal assaults?

Genesis 4:

23 Lamech said to his wives: “Adah and Zillah, hear my voice; you wives of Lamech, hearken to what I say: I have slain a man for wounding me, a young man for striking me.

24 If Cain is avenged sevenfold, truly Lamech seventy-sevenfold.”

- **Was Lamech entitled to exact vengeance in this form, according to the rules in the law codes (see Exodus 21:18-19, 24-25, below)**
- **Lamech was a descendant of Cain, and thus the incident is “antediluvian”. Does this have any significance as to how it was viewed by the biblical writer?**
For a totally different interpretation of this incident, based on midrashic sources, see http://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0012_0_11781.html (from Lamech, in Encyclopedia Judaica)

Leviticus 19:

18 You shall not take vengeance or bear any grudge against the sons of your own people, but you shall love your neighbour as yourself: I am the LORD.

- **How restricted is vengeance?**
- **Is this a legal, a moral or a religious command?**
- **Where is the relationship between this and Exodus 21:14 (above) taken up in the New Testament?**

Exodus 21:

18 When men quarrel and one strikes the other with a stone or with his fist and the man does not die but keeps his bed

19 then if the man rises again and walks abroad with his staff, he that struck him shall be clear; only he shall pay for the loss of his time, and shall have him thoroughly healed

...

- 22 When men strive together, and hurt a woman with child, and her children come out, and yet no harm follows, the one who hurt her shall be fined, according as the woman's husband shall lay upon him; and he shall pay as the judges determine.
- 23 If any harm follows, then you shall give life for life,
- 24 eye for eye, tooth for tooth, hand for hand, foot for foot,
- 25 burn for burn, wound for wound, stripe for stripe.
- **What is the relationship between vv.18-19 and vv.24-25?**
 - **What are the alternative interpretations of "life for life"?**
 - **Suppose the woman dies. What would happen? What is the relationship between this passage and the laws on homicide elsewhere?**

Judges 1:

5 ... They (the tribe of Judah) came upon Ado'ni-be'zek at Bezek, and fought against him, and defeated the Canaanites and the Per'izzites. 6 Ado'ni-be'zek fled; but they pursued him, and caught him, and cut off his thumbs and his great toes. 7 And Ado'ni-be'zek said, "Seventy kings with their thumbs and their great toes cut off used to pick up scraps under my table; as I have done, so God has requited me." And they brought him to Jerusalem, and he died there.

- **What view of talionic punishment is reflected in this passage?**

Prov. 24:29:

Do not say, 'I will do to him as he has done to me;
I will pay the man back for what he has done.'

- **Is this directed against talion as found in social practice or narrative sources?**

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LIVERPOOL HOPE UNIVERSITY
FACULTY OF ARTS AND HUMANITIES
MA/PGCert in Jewish Studies
Law and Narrative in the Hebrew Bible

Week 2a: Sexual offences

1. Issues

- (a) The focus of biblical family law: prohibited relationships
- (b) How was adultery defined? **Deut 22:23-27**
 - Did the woman have to be married?
 - Is it committed by a married man with an unmarried woman?: if not, why not?
 - What defence might a married woman have to a charge of adultery?
- (c) Was it regarded as a public or private matter?
 - Who initiates, or may compromise, proceedings?: **Proverbs 6, Num. 5**
 - Is state involvement implied in Deut 22:22?
- (d) What procedures were used in relation to it?:
 - Might **Num. 5** reflect the growth of institutionalisation which might have benefited the woman?
- (e) What kind of offence was rape?: **Deut. 22:28-29**
 - What was Tamar's attitude to it in **2 Sam 13**?
- (f) What procedures were used in relation to it?
 - How might it be dealt with inside the family: **2 Sam 13**
 - How might it be dealt with in inter-group relations: **Genesis 34**
- (g) What value was placed on virginity?
 - A capital matter?: **Deut. 22:13-21** (but is virginity really the issue?)
 - An economic value?: **Exod. 22:16-17 (15-16 in MT)**

2. Texts and Materials

(b) How was adultery defined?

Deut. 22:

- 23 If there is a betrothed virgin, and a man meets her in the city and lies with her,
- 24 then you shall bring them both out to the gate of that city, and you shall stone them to death with stones, the young woman because she did not cry for help though she was in the city, and the man because he violated his neighbour's wife; so you shall purge the evil from the midst of you.
- 25 But if in the open country a man meets a young woman who is betrothed, and the man seizes her and lies with her, then only the man who lay with her shall die.
- 26 But to the young woman you shall do nothing; in the young woman there is no offense punishable by death, for this case is like that of a man attacking and murdering his neighbour;
- 27 because he came upon her in the open country, and though the betrothed young woman cried for help there was no one to rescue her.
 - **Is the concern here adultery or rape?**
 - **What if the betrothed woman did cry out when raped in the city?**
 - **What if the betrothed woman in the country was not heard to cry out?**

Deut. 22:

- 22 If a man is found lying with the wife of another man, both of them shall die, the man who lay with the woman, and the woman; so you shall purge the evil from Israel.

- **What is the argument that this reflects an *elevation* of the status of married women?**
- **Does this law prohibit the operation of “compensation”, as envisaged in Proverbs 6 (below)?**

(c) Was adultery regarded as a public or private matter?

Proverbs 6:

32 He who commits adultery has no sense;
he who does it destroys himself.

33 Wounds and dishonour will he get,
and his disgrace will not be wiped away.

34 For jealousy makes a man furious,
and he will not spare when he takes revenge.

35 He will accept no compensation,
nor be appeased though you multiply gifts.

- **Who is the “victim” of adultery?**
- **What does this tell us about the manner in which the “victim” of adultery may seek to exact revenge ?**
- **What does this tell us about the relationship between “revenge” and “compensation” (*kofer*)?**

Num. 5:

- 11 And the LORD said to Moses,
- 12 “Say to the people of Israel, If any man’s wife goes astray and acts unfaithfully against him,
- 13 if a man lies with her carnally, and it is hidden from the eyes of her husband, and she is undetected though she has defiled herself, and there is no witness against her, since she was not taken in the act;
- 14 and if the spirit of jealousy comes upon him, and he is jealous of his wife who has defiled herself; or if the spirit of jealousy comes upon him, and he is jealous of his wife, though she has not defiled herself;
- 15 then the man shall bring his wife to the priest, and bring the offering required of her, a tenth of an ephah of barley meal; he shall pour no oil upon it and put no frankincense on it, for it is a cereal offering of jealousy, a cereal offering of remembrance, bringing iniquity to remembrance.
- 16 And the priest shall bring her near, and set her before the LORD;
- 17 and the priest shall take holy water in an earthen vessel, and take some of the dust that is on the floor of the tabernacle and put it into the water.
- 18 And the priest shall set the woman before the LORD, and unbind the hair of the woman’s head, and place in her hands the cereal offering of remembrance, which is the cereal offering of jealousy. And in his hand the priest shall have the water of bitterness that brings the curse.
- 19 Then the priest shall make her take an oath, saying, ‘If no man has lain with you, and if you have not turned aside to uncleanness, while you were under your husband’s authority, be free from this water of bitterness that brings the curse.
- 20 But if you have gone astray, though you are under your husband’s authority, and if you have defiled yourself, and some man other than your husband has lain with you,
- 21 then’ (let the priest make the woman take the oath of the curse, and say to the woman) ‘the LORD make you an execration and an oath among your people, when the LORD makes your thigh fall away and your body swell;
- 22 may this water that brings the curse pass into your bowels and make your body swell and your thigh fall away.’ And the woman shall say, ‘Amen, Amen.’
- 23 Then the priest shall write these curses in a book, and wash them off into the water of bitterness;
- 24 and he shall make the woman drink the water of bitterness that brings the curse, and the water that brings the curse shall enter into her and cause bitter pain.
- 25 And the priest shall take the cereal offering of jealousy out of the woman’s hand, and shall wave the cereal offering before the LORD and bring it to the altar;
- 26 and the priest shall take a handful of the cereal offering, as its memorial portion, and burn it upon the altar, and afterward shall make the woman drink the water.
- 27 And when he has made her drink the water, then, if she has defiled herself and has acted unfaithfully against her husband, the water that brings the curse shall enter into her and cause bitter pain, and her body shall swell, and her thigh shall fall away, and the woman shall become an execration among her people.
- 28 But if the woman has not defiled herself and is clean, then she shall be free and shall conceive children.
- 29 This is the law in cases of jealousy, when a wife, though under her husband’s authority, goes astray and defiles

- herself,
- 30 or when the spirit of jealousy comes upon a man and he is jealous of his wife; then he shall set the woman before the LORD, and the priest shall execute upon her all this law.
- 31 The man shall be free from iniquity, but the woman shall bear her iniquity.
- **Can the husband really put his wife through this ordeal if he has no grounds for his suspicion? Does the text contain an indirect hint as to what the grounds might be?**
 - **What incentive, if any, does the woman have to confess and avoid the ordeal?**
 - **Might the introduction of this procedure be regarded as a *protection* for the woman?**

Deut 22:22 (p.26, above)

(d) What procedures were used in relation to it?:

Might **Num. 5 (pp.27-28 above)** reflect the growth of institutionalisation which might have benefited the woman?

(e) What kind of offence was rape?:

Deut. 22:

- 28 If a man meets a virgin who is not betrothed, and seizes her and lies with her, and they are found,
- 29 then the man who lay with her shall give to the father of the young woman fifty shekels of silver, and she shall be his wife, because he has violated her; he may not put her away all his days.
- **What does this, compared to vv.23-27, tell us about the respective evaluation of adultery and rape in the Bible?**
 - **Compare also the seduction law of Exodus 22:16-17 (p.32 below, and see further Materials, pp. 32-33, below)**

2 Sam 13:

- 1 Now Ab'salom, David's son, had a beautiful sister, whose name was Tamar; and after a time Amnon, David's son, loved her.
- 2 And Amnon was so tormented that he made himself ill because of his sister Tamar; for she was a virgin, and it seemed impossible to Amnon to do anything to her.
- 3 But Amnon had a friend, whose name was Jon'adab, the son of Shim'e-ah, David's brother; and Jon'adab was a very crafty man.
- 4 And he said to him, "O son of the king, why are you so haggard morning after morning? Will you not tell me?" Amnon said to him, "I love Tamar, my brother Ab'salom's sister."
- 5 Jon'adab said to him, "Lie down on your bed, and pretend to be ill; and when your father comes to see you, say to him, 'Let my sister Tamar come and give me bread to eat, and prepare the food in my sight, that I may see it, and eat it from her hand.'"
- 6 So Amnon lay down, and pretended to be ill; and when the king came to see him, Amnon said to the king, "Pray let my sister Tamar come and make a couple of cakes in my sight, that I may eat from her hand."
- 7 Then David sent home to Tamar, saying, "Go to your brother Amnon's house, and prepare food for him."
- 8 So Tamar went to her brother Amnon's house, where he was lying down. And she took dough, and kneaded it, and made cakes in his sight, and baked the cakes.
- 9 And she took the pan and emptied it out before him, but he refused to eat. And Amnon said, "Send out every one from me." So every one went out from him.
- 10 Then Amnon said to Tamar, "Bring the food into the chamber, that I may eat from your hand." And Tamar took the cakes she had made, and brought them into the chamber to Amnon her brother.
- 11 But when she brought them near him to eat, he took hold of her, and said to her, "Come, lie with me, my sister."
- 12 She answered him, "No, my brother, do not force me; for such a thing is not done in Israel; do not do this wanton folly.
- 13 As for me, where could I carry my shame? And as for you, you would be as one of the wanton fools in Israel. Now therefore, I pray you, speak to the king; for he will not withhold me from you."
- 14 But he would not listen to her; and being stronger than she, he forced her, and lay with her.
- 15 Then Amnon hated her with very great hatred; so that the hatred with which he hated her was greater than the love with which he had loved her. And Amnon said to her, "Arise, be gone."

- 16 But she said to him, “No, my brother; for this wrong in sending me away is greater than the other which you did to me.” But he would not listen to her.
- 17 He called the young man who served him and said, “Put this woman out of my presence, and bolt the door after her.”
- 18 Now she was wearing a long robe with sleeves; for thus were the virgin daughters of the king clad of old. So his servant put her out, and bolted the door after her.
- 19 And Tamar put ashes on her head, and rent the long robe which she wore; and she laid her hand on her head, and went away, crying aloud as she went.
- 20 And her brother Ab’salom said to her, “Has Amnon your brother been with you? Now hold your peace, my sister; he is your brother; do not take this to heart.” So Tamar dwelt, a desolate woman, in her brother Ab’salom’s house.
- 21 When King David heard of all these things, he was very angry.
- 22 But Ab’salom spoke to Amnon neither good nor bad; for Ab’salom hated Amnon, because he had forced his sister Tamar.
- 23 After two full years Ab’salom had sheepshearers at Ba’al-ha’zor, which is near E’phraim, and Ab’salom invited all the king’s sons.
- 24 And Ab’salom came to the king, and said, “Behold, your servant has sheepshearers; pray let the king and his servants go with your servant.”
- 25 But the king said to Ab’salom, “No, my son, let us not all go, lest we be burdensome to you.” He pressed him, but he would not go but gave him his blessing.
- 26 Then Ab’salom said, “If not, pray let my brother Amnon go with us.” And the king said to him, “Why should he go with you?”
- 27 But Ab’salom pressed him until he let Amnon and all the king’s sons go with him.
- 28 Then Ab’salom commanded his servants, “Mark when Amnon’s heart is merry with wine, and when I say to you, ‘Strike Amnon,’ then kill him. Fear not; have I not commanded you? Be courageous and be valiant.”
- 29 So the servants of Ab’salom did to Amnon as Ab’salom had commanded. Then all the king’s sons arose, and each mounted his mule and fled.
- 30 While they were on the way, tidings came to David, “Ab’salom has slain all the king’s sons, and not one of them is left.”
- 31 Then the king arose, and rent his garments, and lay on the earth; and all his servants who were standing by rent their garments.
- 32 But Jon’adab the son of Shim’e-ah, David’s brother, said, “Let not my lord suppose that they have killed all the young men the king’s sons, for Amnon alone is dead, for by the command of Ab’salom this has been determined from the day he forced his sister Tamar.
- 33 Now therefore let not my lord the king so take it to heart as to suppose that all the king’s sons are dead; for Amnon alone is dead.”
- 34 But Ab’salom fled ...
- **What was Tamar’s initial attitude to Amnon’s approach?**
 - **What does verse 16 indicate about biblical values?**
 - **Is there a legal as well as a narrative significance in Amnon’s “sending away” of Tamar? (see, e.g., *Gen. 21:14*, Week 5 texts)**
 - **Why is it Absalom rather than David who seeks redress for Amnon’s rape of Tamar?**

(f) What procedures were used in relation to rape?

2 Sam 13 (pp.28-29 above)

Genesis 34:

- 1 Now Dinah the daughter of Leah, whom she had borne to Jacob, went out to visit the women of the land;
- 2 and when Shechem the son of Hamor the Hivite, the prince of the land, saw her, he seized her and lay with her and humbled her.
- 3 And his soul was drawn to Dinah the daughter of Jacob; he loved the maiden and spoke tenderly to her.
- 4 So Shechem spoke to his father Hamor, saying, “Get me this maiden for my wife.”
- 5 Now Jacob heard that he had defiled his daughter Dinah; but his sons were with his cattle in the field, so Jacob held his peace until they came.
- 6 And Hamor the father of Shechem went out to Jacob to speak with him.

- 7 The sons of Jacob came in from the field when they heard of it; and the men were indignant and very angry, because he had wrought folly in Israel by lying with Jacob's daughter, for such a thing ought not to be done.
- 8 But Hamor spoke with them, saying, "The soul of my son Shechem longs for your daughter; I pray you, give her to him in marriage.
- 9 Make marriages with us; give your daughters to us, and take our daughters for yourselves.
- 10 You shall dwell with us; and the land shall be open to you; dwell and trade in it, and get property in it."
- 11 Shechem also said to her father and to her brothers, "Let me find favour in your eyes, and whatever you say to me I will give.
- 12 Ask of me ever so much as marriage present and gift, and I will give according as you say to me; only give me the maiden to be my wife."
- 13 The sons of Jacob answered Shechem and his father Hamor deceitfully, because he had defiled their sister Dinah.
- 14 They said to them, "We cannot do this thing, to give our sister to one who is uncircumcised, for that would be a disgrace to us.
- 15 Only on this condition will we consent to you: that you will become as we are and every male of you be circumcised.
- 16 Then we will give our daughters to you, and we will take your daughters to ourselves, and we will dwell with you and become one people.
- 17 But if you will not listen to us and be circumcised, then we will take our daughter, and we will be gone."
- 18 Their words pleased Hamor and Hamor's son Shechem.
- 19 And the young man did not delay to do the thing, because he had delight in Jacob's daughter. Now he was the most honoured of all his family.
- 20 So Hamor and his son Shechem came to the gate of their city and spoke to the men of their city, saying,
- 21 "These men are friendly with us; let them dwell in the land and trade in it, for behold, the land is large enough for them; let us take their daughters in marriage, and let us give them our daughters.
- 22 Only on this condition will the men agree to dwell with us, to become one people: that every male among us be circumcised as they are circumcised.
- 23 Will not their cattle, their property and all their beasts be ours? Only let us agree with them, and they will dwell with us."
- 24 And all who went out of the gate of his city hearkened to Hamor and his son Shechem; and every male was circumcised, all who went out of the gate of his city.
- 25 On the third day, when they were sore, two of the sons of Jacob, Simeon and Levi, Dinah's brothers, took their swords and came upon the city unawares, and killed all the males.
- 26 They slew Hamor and his son Shechem with the sword, and took Dinah out of Shechem's house, and went away.
- 27 And the sons of Jacob came upon the slain, and plundered the city, because their sister had been defiled;
- 28 they took their flocks and their herds, their asses, and whatever was in the city and in the field;
- 29 all their wealth, all their little ones and their wives, all that was in the houses, they captured and made their prey.
- 30 Then Jacob said to Simeon and Levi, "You have brought trouble on me by making me odious to the inhabitants of the land, the Canaanites and the Perizzites; my numbers are few, and if they gather themselves against me and attack me, I shall be destroyed, both I and my household."
- 31 But they said, "Should he treat our sister as a harlot?"
- **Would there have been a problem had the marriage proposal been genuinely accepted?**
 - **What does the story tell us about patriarchal authority?**
 - **Was Shechem's desire to marry the woman he had raped unusual? (Compare Amnon and Tamar, below)**
 - **Who "prosecuted" the rape and what sanction was imposed?**
 - **Contrast the attitudes of Jacob and his sons.**

(g) What value was placed on virginity?

Deut. 22:

- 13 If any man takes a wife, and goes in to her, and then spurns her,
- 14 and charges her with shameful conduct, and brings an evil name upon her, saying, 'I took this woman, and when I came near her, I did not find in her the tokens of virginity,'
- 15 then the father of the young woman and her mother shall take and bring out the tokens of her virginity to the elders

- of the city in the gate;
- 16 and the father of the young woman shall say to the elders, ‘I gave my daughter to this man to wife, and he spurns her;
- 17 and lo, he has made shameful charges against her, saying, “I did not find in your daughter the tokens of virginity.” And yet these are the tokens of my daughter’s virginity.’ And they shall spread the garment before the elders of the city.
- 18 Then the elders of that city shall take the man and whip him;
- 19 and they shall fine him a hundred shekels of silver, and give them to the father of the young woman, because he has brought an evil name upon a virgin of Israel; and she shall be his wife; he may not put her away all his days.
- 20 But if the thing is true, that the tokens of virginity were not found in the young woman,
- 21 then they shall bring out the young woman to the door of her father’s house, and the men of her city shall stone her to death with stones, because she has wrought folly in Israel by playing the harlot in her father’s house; so you shall purge the evil from the midst of you.
- **If this is really a “virginity test”, is it practical?**
 - **What do other texts suggest about the value placed on virginity (see also vv.28-29, below)**
 - **If *betulah* here does *not* mean “virgin”, can you think of an alternative explanation of the text? Does Num.5 (pp.27-28, above) provide a possible clue?**
 - **What principle underlies the sanction applied to the husband, if his accusation proves to be false?**

Exodus 22:

- 16 If a man seduces a virgin who is not betrothed, and lies with her, he shall give the marriage present for her, and make her his wife.
- 17 If her father utterly refuses to give her to him, he shall pay money equivalent to the marriage present for virgins.
- **What is this law about, and how would you classify it?**
 - **What is its relationship, if any, to the slavery laws at the beginning of the Covenant Code?**

Materials:

Jackson, *Wisdom-Laws* (2006), 370-73 (footnotes omitted)

In my view, the case is not made out that *Deut.* 22:28-29 covers seduction as well as rape. The verbs used are distinct, as are their respective connotations. The distinction between rape and seduction is strongly supported by MAL 55-56, which likewise combines the issues of financial payments to the father with (in the case of rape only) marriage to the rapist — a marriage which the latter cannot reject though the father (in MAL) can.

Both laws are clearly concerned with the financial consequences of the irregular liaison, in respect of the *mohar* (even though that term is not used of the 50 shekels in *Deut.* 22:29). But does the irregular liaison in itself create some form of marital status, or is the latter constituted by or conditional on the payment of the *mohar*? Normally, the latter view is taken, and indeed is strongly suggested by the following features of the language:

- in *Exod.* 22:15: “he shall give the marriage present for her” (מָהָר יְמַהֲרֶנָּה לוֹ לְאִשָּׁה);
- in v.16 the possibility that the father may refuse “to give her to him” ;
- in *Deut.* 22:29 the occurrence of the statement “he shall be his wife” *after* payment of the money.

This, indeed, may well reflect the normal two-stage procedure for entering into a marriage: first a betrothal, accompanied by (at least the promise of) *mohar*; later the marriage itself, signified by the wife’s move from her father’s house to that of her husband, consummation and, very often, a feast.

But if that is so, it does not appear to represent universal practice. Compare two narratives which involve the relationship between rape and marriage: the rape (and abduction) of Dinah by Shechem (*Gen.* 34) on the one hand, the rape of Tamar by Amnon (2 *Sam.* 13) on the other. In the former, the story seems to presuppose that the rape was not understood as constituting a “Raubehē”: Hamor, the father of Shechem, approaches Jacob with a proposal for the marriage of the (happy?) couple (and, indeed, a much wider agreement between the two clans). But it is not to be excluded here that this was simply to “regularise” a union which, from the viewpoint of the Hivites at least, had already been established and would in any event continue. (The sequel need not here concern us.)

The story of Tamar and Amnon is more subtle. On realising that Amnon (her stepbrother) wished to have relations with her,

Tamar pleads that he go to David and negotiate a marriage. Amnon proceeds, instead, to rape her. Here, however, the satisfaction of lust leads not (as with Shechem) to love but rather to hatred, and Amnon tells her: “Arise, be gone” (2 Sam. 13:15). Tamar’s response might appear somewhat odd: “No, my brother; for this wrong in sending me away (לשלחני) is greater than the other which you did to me” (13:16). It becomes understandable, however, when we realise that “sending away” is a normal expression used for divorce. Tamar is claiming that the rape did in fact create a marriage, and that Amnon is now publicly humiliating her by divorcing her immediately after he has thus initiated the relationship. Some such institution may lie, historically, behind the mishnaic acceptance that *kiddushin* may be established by *biyah*.

3. Bibliography

Recommended Reading: Materials (above) +

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2b: Marriage and Divorce

1. Issues

- (a) Who normally were the parties to a marriage?
Jacob and Laban?
- (b) In what circumstances might it come about?
by purchase (even on credit)?
by imposition??
- (c) What 'rights' did a wife have and why, particularly, did she need them?
- (d) What is meant by a 'matrilocal' marriage?
- (e) How was divorce effected?
How is Hagar 'divorced'?
Oral formula?
Delivery of a document?
- (f) What grounds, if any, were required for divorce?
- (g) Could the wife divorce her husband?

2. Texts

(a) Who normally were the parties to a marriage?

Genesis 29:

- 13 When Laban heard the tidings of Jacob his sister's son, he ran to meet him, and embraced him and kissed him, and brought him to his house. Jacob told Laban all these things,
14 and Laban said to him, "Surely you are my bone and my flesh!" And he stayed with him a month.
15 Then Laban said to Jacob, "Because you are my kinsman, should you therefore serve me for nothing? Tell me, what shall your wages be?"
16 Now Laban had two daughters; the name of the older was Leah, and the name of the younger was Rachel.
17 Leah's eyes were weak, but Rachel was beautiful and lovely.
18 Jacob loved Rachel; and he said, "I will serve you seven years for your younger daughter Rachel."
19 Laban said, "It is better that I give her to you than that I should give her to any other man; stay with me."
20 So Jacob served seven years for Rachel, and they seemed to him but a few days because of the love he had for her.
21 Then Jacob said to Laban, "Give me my wife that I may go in to her, for my time is completed."
22 So Laban gathered together all the men of the place, and made a feast.
23 But in the evening he took his daughter Leah and brought her to Jacob; and he went in to her.
24 (Laban gave his maid Zilpah to his daughter Leah to be her maid.)
25 And in the morning, behold, it was Leah; and Jacob said to Laban, "What is this you have done to me? Did I not serve with you for Rachel? Why then have you deceived me?"
26 Laban said, "It is not so done in our country, to give the younger before the first-born.
27 Complete the week of this one, and we will give you the other also in return for serving me another seven years."
28 Jacob did so, and completed her week; then Laban gave him his daughter Rachel to wife.
29 (Laban gave his maid Bilhah to his daughter Rachel to be her maid.)
30 So Jacob went in to Rachel also, and he loved Rachel more than Leah, and served Laban for another seven years.

- **On what kind of (non-marital) transactions are these marriages based?**
- **Did Jacob get Rachel on credit?**
- **Are we supposed to have sympathy with Jacob, in being deceived, or did he get his just deserts?**
- **Compare the status of Jacob with that of the debt-slave in Exodus 21:2-6:**
 - 2 When you acquire a Hebrew slave, he shall be your slave for six years, but in the seventh year he shall go free and pay nothing.
 - 3 If he comes to you alone, he shall go away alone; but if he is married, his wife shall go away with him.
 - 4 If his master gives him a wife, and she bears him sons or daughters, the woman and her children shall belong to her master, and the man shall go away alone.

- 5 But if the slave should say, 'I love my master, my wife, and my children; I will not go free',
- 6 then his master shall bring him to God: he shall bring him to the door or the door-post, and his master shall pierce his ear with an awl, and the man shall be his slave for life.

Judges 14:

- 1 Samson went down to Timnah, and at Timnah he saw one of the daughters of the Philistines.
- 2 Then he came up, and told his father and mother, "I saw one of the daughters of the Philistines at Timnah; now get her for me as my wife."
-
- 19 And the Spirit of the LORD came mightily upon him, and he went down to Ash'kelon and killed thirty men of the town, and took their spoil and gave the festal garments to those who had told the riddle. In hot anger he went back to his father's house.
- 20 And Samson's wife was given to his companion, who had been his best man.
-
- 15:1 After a while, at the time of wheat harvest, Samson went to visit his wife with a kid; and he said, "I will go in to my wife in the chamber." But her father would not allow him to go in.
- 2 And her father said, "I really thought that you utterly hated her; so I gave her to your companion. Is not her younger sister fairer than she? Pray take her instead."
 - **What kind of marriage did Samson enter into?**
 - **What interpretation was placed upon Samson's going back to his father's house?**
 - **What were the consequences for his wife?**

(b) In what circumstances might it come about?

Genesis 29 (p.33 above)

Exodus 21:4 (p.33 above)

Surrogacy: see Materials, s.V, p.39, below

Marriage Contract, Kraeling Papyrus 7, translated Ginsburg:

(1) On (the first day of) the month of Tishri, that is Epiphi, the year 4 of King Darius, in the fortress Elephantine, said Ananiah son of Haggai, (2) an Aramean of the fortress Elephantine, [of] the detachment of [Iddin]-Nabu, to Zakkur son of Me[shullam, *an Arame*]an of Syene, of the same detachment, as follows: (3) I have come to your [hous]e and asked you for your sister the woman Yehoyishma' (as she is called) in marriage, and you have given her (4) to me. She is my wife and I am [her] husband from this day to eternity. I have paid to you as the bride price of your sister Yehoyishma' (5) I karsh of silver; you have received it [and have been satisfied therewi]th. Your sister Yehoyishma' has brought into my house a cash sum (6a) of two karsh, (two) 2 shekels, and 5 hallurs of silver

- **What is the relationship between the underlined declaration and Hosea 2:4 (above)?**

((21 cont.) If at some future date Ananiah should arise **in an/the assembly** and declare, "I divorce my wife Yehoyishma'; (25) she shall not be a wife to me," he shall become liable for divorce money. < He shall forfeit her bride price > he must surrender to her all that she brought into his house. Her dowry of cash (23) and clothing, worth karsh seven, sh[ekels eight, and hallurs 5] of silver, and the rest of the goods listed (above) (24a-b) he must hand over to her on one day and in a single act, and she may [leave him for where]ver [she will]....

- **In what sense is divorce now "supervised"?**

(24c) If, on the other hand, Yehoyishma' should divorce her husband (25) Ananiah and say to him, "I divorce you, I will not be wife to you," she shall become liable for divorce money. []. (26) She shall sit by the scales and weigh out to her husband Ananiah 7 shekels and 2 R and shall leave him with the balance of her (27) cash, goods, and pos[sessions, worth karsh 7; shekels 5+] 3, and hallurs 5; and the rest of her goods, (28) which are listed (above), he shall hand over to her on one day and in a single act, and she shall depart for her father's house.

- **Is the wife's right exactly equivalent to that of the husband?**
- **Note that this occurs in a marriage contract. What conclusions does that permit as to the status of**

the wife in relation to divorce?

...

Further, Ananiah (38) may not omit to accord to his wife Yehoyishma' the right of any of the wives of his fellows. Should (39) he fail to do so, that shall constitute a divorce, and he shall implement for her the provisions for divorcement. Neither may Yehoyishma' (40) omit to accord to her husband Ananiah the right of any (husband). Should she fail to accord it to him, that shall constitute a divorce.

- **What situation is here contemplated?**
- **What is the relationship of the wife's rights here to (a) the Bible and (b) the Mishnah?**
- **What does this suggest about the procedure for divorce in these circumstances?**

(c) What 'rights' did a wife have and why, particularly, did she need them?

Exodus 21:10

- 7 When a man sells his daughter into slavery, she shall not go free as a male slave may.
- 8 If her master has not had intercourse with her and she does not please him, he shall let her be ransomed. He has treated her unfairly and therefore has no right to sell her to strangers.
- 9 If he assigns her to his son, he shall allow her the rights of a daughter.
- 10 If he takes another woman, he shall not deprive the first of meat, clothes, and conjugal rights (*onatah*).
- 11 If he does not provide her with these three things, she shall go free without any payment.

- **What kind of a 'marriage' is this?**
- **Nevertheless, it is the closest biblical law gets to regulations regarding marriage**
- **The threefold formula of v.10 is still found in the Jewish marriage contract (*ketubah*)**
- **There is, however, controversy over the original meaning of *onatah***

Kraeling Papyrus 7 (above)

(d) What is meant by a 'matrilocal' marriage?

Genesis 29-31: Jacob's marriages, and note particularly:

Genesis 31:

- 1 Now Jacob heard that the sons of Laban were saying, "Jacob has taken all that was our father's; and from what was our father's he has gained all this wealth."
- 2 And Jacob saw that Laban did not regard him with favour as before.
- 3 Then the LORD said to Jacob, "Return to the land of your fathers and to your kindred, and I will be with you."
- 4 So Jacob sent and called Rachel and Leah into the field where his flock was,
- 5 and said to them, "I see that your father does not regard me with favour as he did before. But the God of my father has been with me.
- 6 You know that I have served your father with all my strength;
- 7 yet your father has cheated me and changed my wages ten times, but God did not permit him to harm me.
-
- 14 Then Rachel and Leah answered him, "Is there any portion or inheritance left to us in our father's house?
- 15 Are we not regarded by him as foreigners? For he has sold us, and he has been using up the money given for us.
- 16 All the property which God has taken away from our father belongs to us and to our children; now then, whatever God has said to you, do."
- 17 So Jacob arose, and set his sons and his wives on camels;
 - **Jacob goes to some lengths to persuade Rachel and Leah to return with him. Why do you think this was necessary?**
 - **How do Rachel and Leah view their status? Is there any connection here to the law of the female slave (*amah*) in the Covenant Code? (Exodus 21:7-11, above)**

Judges 14 (p.34 above)

(e) **How was divorce effected?**

Genesis 21

- 8 And the child grew, and was weaned; and Abraham made a great feast on the day that Isaac was weaned.
9 But Sarah saw the son of Hagar the Egyptian, whom she had borne to Abraham, playing with her son Isaac.
10 So she said to Abraham, "Cast out this slave woman with her son; for the son of this slave woman shall not be heir with my son Isaac."
11 And the thing was very displeasing to Abraham on account of his son.
12 But God said to Abraham, "Be not displeased because of the lad and because of your slave woman (*amatekha*); whatever Sarah says to you, do as she tells you, for through Isaac shall your descendants be named.
13 And I will make a nation of the son of the slave woman also, because he is your offspring."
14 So Abraham rose early in the morning, and took bread and a skin of water, and gave it to Hagar, putting it on her shoulder, along with the child, and sent her away. And she departed, and wandered in the wilderness of Beer-sheba
- **Here Hagar is described as the *amah* of Abraham. He "sends her away". What does this mean? Is it compatible with *Exod. 21:7-11* (below)?**
 - **Why was Abraham displeased?**
 - **What is the significance of the divine promise in relation to Ishmael?**

Judges 14 (p.34above)

Kraeling Papyrus 7 (pp.34-35 above)

Hos. 2:4 Plead with your mother, plead; for she is not my wife, nor am I her husband; let her therefore put away her harlotry away from of her sight, and her adulteries from between her breast.

Deut. 24.

- 1 When a man takes a wife and marries her, if then she finds no favour in his eyes because he has found some indecency in her, and he writes her a bill of divorce and puts it in her hand and sends her out of his house, and she departs out of his house,
 - 2 and if she goes and becomes another man's wife,
 - 3 and the latter husband dislikes her and writes her a bill of divorce and puts it in her hand and sends her out of his house, or if the latter husband dies, who took her to be his wife,
 - 4 then her former husband, who sent her away, may not take her again to be his wife, after she has been defiled; for that is an abomination before the LORD, and you shall not bring guilt upon the land which the LORD your God gives you for an inheritance.
- **What does this text imply about the normal *procedure* of divorce? Note *Hos. 2:4* above and *Isa. 50:1* below.**
 - **Should we infer from the text that this was the *exclusive* form of divorce?**
 - **What is the point of the law? Why is "palingamy" prohibited?**

Isa. 50:1: Thus says the Lord, Where is the bill of your mother's divorcement, with which I have put her away? or which of my creditors is it to whom I have sold you? Behold, for your iniquities have you sold yourselves, and for your transgressions your mother was put away.

(f) **What grounds, if any, were required for divorce?**

Deut. 24 (above)

Materials: B.S. Jackson, "Gender Critical Observations on Tripartite Breeding Relationships in the Hebrew Bible", in *A Question of Sex?: Gender and Difference in the Hebrew Bible and Beyond*, ed. D. Rooke (Sheffield: Sheffield Phoenix Press, 2007), 39-52 (footnotes omitted)

I. Introduction

A "tripartite breeding relationship" may be defined as an arrangement to use the reproductive capacities of two

members of a household for the benefit of a third member. In this paper, I shall juxtapose a number of legal and narrative texts which manifest such relationships, explicitly or implicitly. They involve use of the reproductive capacities of both males and females, free and slave. In order to compare them, the following four “systematic” questions may be posed:

- (a) Who may be used for breeding?
- (b) What is the effect of this on the dependency relationship within the household, between master (or mistress) and dependent? We may term this the vertical relationship.
- (c) What status between the breeding partners results from this relationship? Is it a marriage, and if so what kind of marriage? We may term this the horizontal relationship.
- (d) What is the status of the children so produced?

The biblical texts are not systematic in providing answers to these questions: indeed, none answer explicitly all four questions. Nevertheless, we may attempt to elucidate the what is implicit in some texts from what is explicit in others. We may also pose to the texts a gender critical question: is there a difference in the terms on which the reproductive capacities of males and females (both free and dependent) may be deployed?

II. The male Hebrew debt-slave (*Exod.* 21:2-6)

Exod. 21:2-7 deals with the position of the male Hebrew debt-slave, whom you “acquire”. The law is addressed to the creditor and the paragraph as a whole may be taken to reflect this interest as much as those of the debt-slave. This is particularly important when we consider the implications of *Exod.* 21:4:

If his master gives him a woman and she bears him sons or daughters, the woman and her children shall be her master’s and he shall go out alone.

If we ask, *cui bono?*, the answer is that this is clearly for the benefit of the master, who may use his debt-slave for reproductive as for any other kind of labour during the six years of his service. Unless the debt-slave exercises the option given to him in vv.5-6 to remain as a permanent slave in his master’s household, such familial ties as may have been created in this context are severed when the debt-slave goes free: the children he produced during his service remain the property of his master. It is difficult, realistically, to view them as incidental benefits of the humanitarian companionship afforded by the master to his debt-slave. Rather, this was the whole object of giving him a “woman”. The Hebrew debt-slave may be used, quite simply, for breeding.

The status of the “woman” given to the debt-slave is not here mentioned. She is generally regarded as a gentile permanent slave, deriving ultimately from capture (as in *Deut* 24), though the present owner may have acquired her by purchase on the slave market, or she may have been bred from a slave so acquired (perhaps, even, in just the circumstances to which she herself is now subjected).

We may now seek to answer our four “systematic” questions:

- (a) Clearly, here, a Hebrew male debt-slave may be used for breeding purposes, within the maximum six years of his service. Before he became a debt-slave, he was free, and he reverts to his free status at the end of his service (unless he opts otherwise). The fact that he has been used for breeding has no impact on this.
- (b) What matters to the writer is the vertical relationship between owner and female slave (and her children) on the one hand, owner and debt-slave on the other.
- (c) Conversely, there is no concern with the horizontal relationship: the status of the relationship between the debt-slave and the woman. Clearly, it is not a marriage; it is temporary and terminates automatically on the debt-slave’s departure.
- (d) As for the status of the children, the implication is they follow the status of their mother: thus they are permanent slaves if she is.

III. The female Hebrew debt-slave (*Exod.* 21:7-11)

Immediately following the paragraph of the *eved ivri* in the *Mishpatim* is that of the female Hebrew debt-slave, sold *le’amah*. It is clear that she is sold for sexual services, and that this entails the creation of a permanent relationship, with no *ex lege* release after six years. There is in fact evidence that debt-slavery terminable after six years did apply to women as well as men, and that the status of *amah* was a distinct form of dependence. Indeed, the documentary evidence from the ancient Near East indicates that women were actually taken as debt-slaves (for general, not sexual services) more often than were men. In the Bible, Jeremiah refers to the *deror* under King Zedekiah as involving the setting free of both male and female debt-slaves, the latter here being referred to not by the term *amah*, but rather *shifḥah* (*Jer.* 34:9); the same appears from the complaint made to Nehemiah (5:2, 5). The existence of a social institution of debt-slavery for women, distinct from the form mentioned in the *amah* paragraph, thus appears certain. Indeed, it is clear from *Deut* 15:12 that a female Hebrew debt-slave (עֶבֶדָּה) does go

out free after six years, along with the male Hebrew debt-slave, if she is used for purely domestic services: "If your brother, a Hebrew man, or a Hebrew woman, is sold to you, he shall serve you six years, and in the seventh year you shall let him go free from you." The very omission of this (perhaps the more common) case from the juxtaposed paragraphs of the *Mishpatim* serves to convey an important message: the creditor may use the reproductive capacities of the Hebrew male debt-slave without altering his long-term status; he may use the reproductive capacities of the Hebrew female debt-slave only if he does alter her long-term status.

It is true that breeding is not mentioned in *Exod.* 21:7-11; there is no reference to any children which may be born to the *amah*. But this is hardly significant: even if the primary object here is the sexual relationship itself, the likelihood of reproduction is obvious, and must have been in contemplation.

The text is subject to a number of difficulties, particularly in the phrase *אִם-לֹא יַעֲדָהּ* in v.8 (here translated: "If her master has not had intercourse with her"). I take the *kere* (לֹא rather than אִם) rather than the *ketiv*, and interpret the verb euphemistically: the text tells us what the master may and may not do if he is displeased with her after he *has* had relations with her. Our present concern, however, is with the basic relationship rather than with what should happen should it go wrong. In this context, we may address our systematic questions:

- (a) A Hebrew female debt-slave may be used for breeding: this is the implication of the juxtaposition with the *eved ivri* paragraph, even though children are not here mentioned explicitly.
- (b) A tripartite relationship is contemplated here too, if the purchaser designates her for his son (*Exod.* 21:9). But again, what matters, even without that, is the vertical (dependency) relationship between owner and slave (and her children), rather than the horizontal relationship between the debt-slave and her partner. Although the "woman" was originally a free Israelite woman, she clearly has an inferior status as *amah* while in the household, but because she was originally a free Hebrew woman who has been purchased for sexual/reproductive services, both her rights and (by implication) those of her children are superior to those of an ordinary *amah*.
- (c) Despite the fact that rabbinic sources incorporate, to this very day, the threefold rights of *Exod.* 21:10 into the traditional marriage contract, there is debate as to whether the horizontal relationship is indeed a marriage and if so what is its form (or status): although it not a temporary relationship (like that of the male debt-slave in *Exod.* 21:4), it terminates on redemption or failure to maintain, rather than divorce. The law gives her a status somewhat akin to that of a secondary wife, but the context of debt-slavery continues to inform her situation: ultimately she will be released and the debtor retains a residual right to redeem her.
- (d) What is the status of the children? This question is not often asked, because children are not mentioned in the text, but if they follow the status of their mother, they will also be debt-slaves who are not themselves disposable on the market but who gain their freedom on the death of the purchaser. Thus, they too will ultimately become free, and return to their mother's original household.

IV. The foreign female captive (*Deut.* 21:10-14)

Thematically, the law of the foreign female captive in *Deut.* 21:10-14 has much in common with the law of the Hebrew *amah* in *Exod.* 21:7-11, and may well have been conceived as a humanitarian extension of the latter. Here, too, the contingency that the captor, after (here, unambiguously) having relations with her, loses sexual interest in her; protection is afforded here too, in that she may not be traded on the slave market, but may be released for nothing. Indeed, the main difference between the two laws resides in the circumstances of the original enslavement: internal debt-slavery on the one hand, external capture in warfare on the other, corresponding to the original status of the woman as an insider on the one hand, outsider on the other. This latter distinction informs the ultimate disposition of the slave (and any children she may produce): it is assumed that she has no right (or prospect) to return home, and thus will remain in the captor's family as an inheritance. Against this background, we may consider the four systematic questions:

- (a) Gentile female captives may be used for breeding (again, here by implication, though children not here mentioned explicitly).
- (b) No tripartite relationship is mentioned here, in that no designation for someone else is contemplated. But surely it must have been possible here, if it was possible in the case of the Hebrew *amah*? In any event, the issue of the vertical relationship still arises: what matters more, the captor's relationship with her as owner or as "husband"? There is no suggestion that any "marital" relationship with her captor renders her free, either during the relationship or even after its termination.
- (c) Here too there is uncertainty as to the nature of the horizontal relationship indicated by *le'ishah* in v.13: it can hardly be a primary marriage (and what might the captor's primary wife think?). However, here again it is (in principle) a permanent relationship. Sale on the market is excluded by law; redemption is not mentioned (unlikely in the circumstances) but may not be excluded. Termination without payment is contemplated if the

captor gets fed up with her, and terminology *akin* to divorce, *veshilaḥtah lenafshah*, is used. Probably, her status is that of slave concubine. The important thing, however, is that she may not be traded on the slave market (v.14). Here, too, the sexual/reproductive relationship has altered the terms of slavery. There can be no doubt that a foreign captive woman not used for sexual services could be traded on the slave market.

- (d) What is the status of the children?: This question is not often asked, because children are not here mentioned, but if they follow the status of their mother, presumably they here are permanent slaves and probably *may* be sold on the market, in that the captor has committed no offence against them.

V. The (foreign) *amah* used as surrogate

The narratives of Hagar, Bilhah and Zilpah provide perhaps our clearest example of a “tripartite breeding relationship”. They differ from the other cases of women used for breeding in the circumstances in which the relationship arises: here, they come into the household as the permanent, foreign domestic slaves of a primary wife. But because of the infertility of the primary wife, the foreign *amah* is given to her husband as a surrogate, to produce children who will have the status of children of the primary wife. That creates a tension between the “vertical” and “horizontal” relationships, in that the *amah* here enjoys what Westbrook has aptly termed a “split legal personality”. In other circumstances, where the “split” is not so manifest (the Hebrew *amah* and the foreign captive woman), we have seen that the “horizontal” (sexual/reproductive) relationship has an effect on the vertical (the terms of slavery). Here, however, it appears that the “vertical” relationship is clearly more important than the “horizontal”. Thus:

- (a) Foreign slaves of the primary wife may be used for breeding: *Gen.* 16:2 (Hagar), *Gen.* 30:3-4 (Bilhah), 9 (Zilpah).
- (b) As for the vertical relationship, the woman remains a slave of her mistress. There is no suggestion that any “marital” relationship with her captor renders her free. Indeed, when it comes to a conflict between the vertical and horizontal relationships, the former clearly prevails. When in *Gen.* 16:5-6 Sarai complains to Abram that Hagar (having conceived) no longer respects her, Abram replies: “Behold, your maid (*shifḥateikh*) is in your power (*beyadeikh*); do to her as you please.”
- (c) Here too, the nature of the horizontal relationship is left unclear and generates debate in the modern literature: is this a primary marriage, a secondary marriage or concubinage? Arguing from LH 146-147, Westbrook maintains that it must have been a full marriage, to explain the legitimacy of the offspring: “the offspring of a free concubine had no better right to inherit than the offspring of a slave concubine”, unless explicitly adopted (as in LH 170-71). He seeks to apply LH 146-147 (text 5, below). Against this, he acknowledges that Hagar is referred to subsequently as *amah* (*Gen.* 21:12), and Zilpah and Bilhah are referred to as the *shifḥataṯ Jacob* (*Gen.* 32:23). Westbrook tries to avoid the implication by attributing this “albeit reluctantly” to “an inconsistent narrative”: “Either there was some confusion in the tradition as to whether they had been given as concubines or wives, or the author of these passages was concerned to maximise the status of the primary wives at the expense of the secondary wives.” I do not think we should so readily impose an external model on to the biblical text. The status of Hagar clearly appears inferior to that of the primary wife, Sarah. Moreover, even in LH 146-47, the surrogate achieves this equality only by bearing children; she clearly does not have a full marital status before then. And even then he may treat her merely as a maidservant rather than a full wife.

In fact, what appears to matter here is (a) the relationship between the primary wife and the *amah* and (b) and the relationship between the “husband” and the children of the *amah*; there is little concern with the status of relationship between the “husband” and the *amah*.

- (d) What is the status of the children? Here, clearly, the whole object of this “surrogacy” relationship is to produce children who would have the same status as those of the primary wife (*Gen.* 16:2, 30:3, 9). Indeed, the children of Zilpah and Bilhah are fully legitimate, and constitute four of the twelve tribes of Israel. It is also clear that without the expulsion of Hagar and Ishmael, the latter would have been an heir, alongside Isaac (*Gen.* 21:10). The same appears to apply to the children of Keturah (described as a *pilegash*), who are sent away with a payoff, in order not to share the inheritance with Isaac (*Gen.* 25:6).

Nevertheless, there does seem to have been a social ranking as between the sons of primary wives and the sons of surrogates (even though theoretically these are the sons of the wives who “own” those surrogates). In *Deut.* 27:12-13, the six tribes associated with “blessing” (located on Mount Gerizim) are all children of primary wives; those associated with curses (on Mount Ebal) are (i) the four children of the surrogates, (ii) Reuben, who had blotted his copybook and been deprived of the birthright; (iii) Zebulun, the youngest of the sons of Leah (*Gen.* 30:20).

VI. The Patriarch

There is a sense in which the Patriarch is himself used for breeding purposes in the narratives of Hagar, Bilhah and Zilpah. In the first case, Sarai uses the language of request to Abram to fulfil this role (*bo nah*, Gen. 16:2); the language used by Rachel and Leah is less petitionary, but there is no implication that they had a right to demand this, or that the Patriarch's compliance was involuntary.

On the other hand, the story in Gen. 30:14-16 of Leah's one-night "hire" of Jacob's reproductive services from Rachel does conclude with the language of command: When Jacob came from the field in the evening, Leah went out to meet him, and said, "You must come in to me (*eilai tavo*); for I have hired you (*sakhor sekhartikha*) with my son's mandrakes" (RSV). Just as in the case of the *eved ivri*, where the reproductive capacities of the debt-slave may be used by his master to produce children for him (without affecting his status within the household), so here Rachel "hires" Jacob for a night from Leah, and Issachar (note the name) is born. Clearly, neither this one night stand, nor the surrogacy relationships, had any effect on the patriarch's vertical relationships within the household.

VII. Conclusions

Comparison of these different forms of breeding relationships yields the following conclusions:

- (a) Hebrew males (slave and free) and both Hebrew and foreign female slaves are used for breeding.
- (b) Whereas this has a fundamental effect on the status of the female (with the exception of the surrogate, whose "mistress" is still present in the household), it has no fundamental effect on the status of the male. However, the status which is affected is not the "horizontal" relationship of marriage but rather the "vertical" relationship of slavery.
- (c) The horizontal ("marital") relationship so produced is in all cases less clear, and apparently of less concern.
- (d) Of greater concern is the status of the children (a vertical relationship), whether as permanent slaves who will remain in the household or be disposable on the slave market, as debt-slaves like the mother, or as legitimate heirs (albeit of lower social status).

I would suggest that the main reason for (c) is not the liminal character of the particular marital relationships here involved, but rather the weak level of institutionalisation of marriage as a whole in much of the Hebrew Bible. Marriage, like inheritance, is a "social" rather than a legal institution: certain facts on the ground are socially recognised: love and retention on the one hand, hatred and expulsion on the other. It is not surprising that the same applies to inheritance. As the story of Hagar and Ishmael indicates, the two often go together; and, as the story of Jephthah indicates, they share a common terminology.

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LIVERPOOL HOPE UNIVERSITY
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Law and Narrative in the Hebrew Bible

Week 3: Succession

1. Issues

- (a) What was the scope and purpose of a father's right to choose on which son to confer a "blessing" or "birthright"?
- (b) If in principle all sons inherited, would the land not be divided into ever smaller portions?
- (c) What issues for succession derive from the fact that marriage could be polygamous?
- (d) Are there any recorded instances of the "double portion" ("primogeniture")?
- (e) Did a father have an unfettered right to "disinherit" a son?
- (f) Did a father have a right to adopt others for the purposes of succession?
- (g) In what circumstances could daughters inherit?
- (h) In what circumstances could widows inherit?
- (i) Is there any evidence of the use of wills ("testate" as against "intestate" succession) in the Hebrew Bible?
- (j) What was the purpose of the law of the levirate?
- (k) Is there a relationship between the laws of levirate and redemption?
- (l) What light is cast on the status (and influence) of women by (i) the narratives and (ii) the laws?

2. Texts and Materials

- (a) **What was the scope and purpose of a father's right to choose on which son to confer a "blessing" or "birthright"?**

Gen. 25

- 27 When the boys grew up, Esau was a skilful hunter, a man of the field, while Jacob was a quiet man, dwelling in tents.
- 28 Isaac loved Esau, because he ate of his game; but Rebekah loved Jacob.
- 29 Once when Jacob was boiling pottage, Esau came in from the field, and he was famished.
- 30 And Esau said to Jacob, "Let me eat some of that red pottage, for I am famished!" (Therefore his name was called Edom.)
- 31 Jacob said, "First sell me your birthright."
- 32 Esau said, "I am about to die; of what use is a birthright (*bekhorah*) to me?"
- 33 Jacob said, "Swear to me first." So he swore to him, and sold his birthright to Jacob.
- 34 Then Jacob gave Esau bread and pottage of lentils, and he ate and drank, and rose and went his way. Thus Esau despised his birthright.
- **What is it that Esau sells to Jacob?**
 - **Is the transaction fair?**
 - **Is it a case of deception or (only) duress (see Daube)?**

Gen. 27

- 1 When Isaac was old and his eyes were dim so that he could not see, he called Esau his older son, and said to him, "My son"; and he answered, "Here I am."
- 2 He said, "Behold, I am old; I do not know the day of my death.
- 3 Now then, take your weapons, your quiver and your bow, and go out to the field, and hunt game for me,
- 4 and prepare for me savoury food, such as I love, and bring it to me that I may eat; that I may bless you before I die."

5 Now Rebekah was listening when Isaac spoke to his son Esau. So when Esau went to the field to hunt for game and bring it,

6 Rebekah said to her son Jacob, "I heard your father speak to your brother Esau,

7 'Bring me game, and prepare for me savoury food, that I may eat it, and bless you before the LORD before I die.'

8 Now therefore, my son, obey my word as I command you.

9 Go to the flock, and fetch me two good kids, that I may prepare from them savoury food for your father, such as he loves;

10 and you shall bring it to your father to eat, so that he may bless you before he dies."

11 But Jacob said to Rebekah his mother, "Behold, my brother Esau is a hairy man, and I am a smooth man.

12 Perhaps my father will feel me, and I shall seem to be mocking him, and bring a curse upon myself and not a blessing."

13 His mother said to him, "Upon me be your curse, my son; only obey my word, and go, fetch them to me."

14 So he went and took them and brought them to his mother; and his mother prepared savoury food, such as his father loved.

15 Then Rebekah took the best garments of Esau her older son, which were with her in the house, and put them on Jacob her younger son;

16 and the skins of the kids she put upon his hands and upon the smooth part of his neck;

17 and she gave the savoury food and the bread, which she had prepared, into the hand of her son Jacob.

18 So he went in to his father, and said, "My father"; and he said, "Here I am; who are you, my son?"

19 Jacob said to his father, "I am Esau your first-born. I have done as you told me; now sit up and eat of my game, that you may bless me."

20 But Isaac said to his son, "How is it that you have found it so quickly, my son?" He answered, "Because the LORD your God granted me success."

21 Then Isaac said to Jacob, "Come near, that I may feel you, my son, to know whether you are really my son Esau or not."

22 So Jacob went near to Isaac his father, who felt him and said, "The voice is Jacob's voice, but the hands are the hands of Esau."

23 And he did not recognize him, because his hands were hairy like his brother Esau's hands; so he blessed him.

24 He said, "Are you really my son Esau?" He answered, "I am."

25 Then he said, "Bring it to me, that I may eat of my son's game and bless you." So he brought it to him, and he ate; and he brought him wine, and he drank.

26 Then his father Isaac said to him, "Come near and kiss me, my son."

27 So he came near and kissed him; and he smelled the smell of his garments, and blessed him, and said,

"See, the smell of my son
is as the smell of a field which the LORD has blessed!

28 May God give you of the dew of heaven,
and of the fatness of the earth,
and plenty of grain and wine.

29 Let peoples serve you,
and nations bow down to you.
Be lord over your brothers,
and may your mother's sons bow down to you.
Cursed be every one who curses you,
and blessed be every one who blesses you!"

30 As soon as Isaac had finished blessing Jacob, when Jacob had scarcely gone out from the presence of Isaac his father, Esau his brother came in from his hunting.

31 He also prepared savoury food, and brought it to his father. And he said to his father, "Let my father arise, and eat of his son's game, that you may bless me."

32 His father Isaac said to him, "Who are you?" He answered, "I am your son, your first-born, Esau."

33 Then Isaac trembled violently, and said, "Who was it then that hunted game and brought it to me, and I ate it all before you came, and I have blessed him? — yes, and he shall be blessed."

34 When Esau heard the words of his father, he cried out with an exceedingly great and bitter cry, and said to his father, "Bless me, even me also, O my father!"

35 But he said, "Your brother came with guile, and he has taken away your blessing."

36 Esau said, "Is he not rightly named Jacob? For he has supplanted me these two times. He took away my birthright; and behold, now he has taken away my blessing." Then he said, "Have you not reserved a blessing for me?"

37 Isaac answered Esau, "Behold, I have made him your lord, and all his brothers I have given to him for servants,

- and with grain and wine I have sustained him. What then can I do for you, my son?"
- 38 Esau said to his father, "Have you but one blessing, my father? Bless me, even me also, O my father." And Esau lifted up his voice and wept.
- 39 Then Isaac his father answered him:
 "Behold, away from the fatness of the earth shall
 your dwelling be, and away from the dew of heaven on high.
 40 By your sword you shall live,
 and you shall serve your brother;
 but when you break loose
 you shall break his yoke from your neck."
- 41 Now Esau hated Jacob because of the blessing with which his father had blessed him, and Esau said to himself,
 "The days of mourning for my father are approaching; then I will kill my brother Jacob."
- 42 But the words of Esau her older son were told to Rebekah; so she sent and called Jacob her younger son, and said to him, "Behold, your brother Esau comforts himself by planning to kill you.
 43 Now therefore, my son, obey my voice; arise, flee to Laban my brother in Haran,
 44 and stay with him a while, until your brother's fury turns away;
 45 until your brother's anger turns away, and he forgets what you have done to him; then I will send, and fetch you from there. Why should I be bereft of you both in one day?"
- **What is it that Isaac gave to Jacob rather than Esau?**
 - **Was the deceit regarded as justified by the biblical writer? If so, how?**
 - **We may note that the two terms have the same three letters in their root, though in a different order: בכרה and ברכה. It has been suggested that "the switching of the order of letters subtly reflects and underscores the switching of the order of the sons".**

Gen. 49

- 3 Reuben, you are my first-born,
 my might, and the first fruits of my strength,
 pre-eminent in pride and pre-eminent in power.
- 4 Unstable as water, you shall not have pre-eminence
 because you went up to your father's bed; [see Gen. 35:22]
 then you defiled it — you went up to my couch!
- **This is part of the "blessings" of Jacob to his sons shortly before his death.**
 - **It does not deal with property, but (here) with leadership and spiritual messages (cf. Moses later in Deut. 33)**
 - **In postbiblical times there developed a genre of "testamentary literature", as in the Testaments of the Twelve Patriarchs (one reason why the Church came to describe the Bible as the Old and New "Testaments")**

(b) If in principle all sons inherited, would the land not be divided into ever smaller portions?

Is the solution to this problem hinted at in the levirate law of Deut. 25 (see p.48 .below)?

(c) What issues for succession derive from the fact that marriage could be polygamous?

Gen. 29

- 31 When the LORD saw that Leah was hated, he opened her womb; but Rachel was barren.
 32 And Leah conceived and bore a son, and she called his name Reuben; for she said, "Because the LORD has looked upon my affliction; surely now my husband will love me."
- **Even worse earlier: Sarah and Hagar**

(d) Are there any recorded instances of the "double portion" ("primogeniture")?

Deut 21

- 15 If a man has two wives, the one loved and the other disliked, and they have borne him children, both the loved and

the disliked, and if the first-born son is hers that is disliked,

- 16 then on the day when he assigns his possessions as an inheritance to his sons, he may not treat the son of the loved as the first-born in preference to the son of the disliked, who is the first-born,
- 17 but he shall acknowledge the first-born, the son of the disliked, by giving him a double portion of all that he has, for he is the first issue of his strength; the right of the first-born is his.

- **Is this a restriction on the father's power to "assign his possessions as an inheritance to his sons"?**
- **What might we suppose the nature of this power of the father to be?**
- **What is the relationship between this law and the narratives of succession amongst the patriarchs?**
- **Of what is the eldest son supposed to receive a double portion?**

Gen.48

- 1 After this Joseph was told, "Behold, your father is ill"; so he took with him his two sons, Manas'seh and E'phraim.
- 2 And it was told to Jacob, "Your son Joseph has come to you"; then Israel summoned his strength, and sat up in bed.
- 3 And Jacob said to Joseph, "God Almighty appeared to me at Luz in the land of Canaan and blessed me,
- 4 and said to me, 'Behold, I will make you fruitful, and multiply you, and I will make of you a company of peoples, and will give this land to your descendants after you for an everlasting possession.'
- 5 And now your two sons, who were born to you in the land of Egypt before I came to you in Egypt, are mine; E'phraim and Manas'seh shall be mine, as Reuben and Simeon are.
- 6 And the offspring born to you after them shall be yours; they shall be called by the name of their brothers in their inheritance.

- **What is it that Jacob gives to Ephraim and Menasseh (excluding Joseph)?**
- **What does Jacob mean in v.5?**

...

- 10 Now the eyes of Israel were dim with age, so that he could not see. So Joseph brought them near him; and he kissed them and embraced them.
- 11 And Israel said to Joseph, "I had not thought to see your face; and lo, God has let me see your children also."
- 12 Then Joseph removed them from his knees, and he bowed himself with his face to the earth.
- 13 And Joseph took them both, E'phraim in his right hand toward Israel's left hand, and Manas'seh in his left hand toward Israel's right hand, and brought them near him.
- 14 And Israel stretched out his right hand and laid it upon the head of E'phraim, who was the younger, and his left hand upon the head of Manas'seh, crossing his hands, for Manas'seh was the first-born.
- 15 And he blessed Joseph, and said,
"The God before whom my fathers Abraham and Isaac walked,
the God who has led me all my life long to this day,
the angel who has redeemed me from all evil, bless the lads;
and in them let my name be perpetuated, and the name of my
fathers Abraham and Isaac;
and let them grow into a multitude in the midst of the earth."
- 17 When Joseph saw that his father laid his right hand upon the head of E'phraim, it displeased him; and he took his father's hand, to remove it from E'phraim's head to Manas'seh's head.
- 18 And Joseph said to his father, "Not so, my father; for this one is the first-born; put your right hand upon his head."
- 19 But his father refused, and said, "I know, my son, I know; he also shall become a people, and he also shall be great; nevertheless his younger brother shall be greater than he, and his descendants shall become a multitude of nations."

- **What are the connections between this story and that of Jacob's own succession to Isaac?**
- **Is there any attempt here to justify the preference for the younger son?**
- **What might have prompted it?**

(e) Did a father have an unfettered right to "disinherit" a son?

1 Chron 5:

- 1 The sons of Reuben the first-born of Israel (for he was the first-born; but because he polluted his father's couch, his birthright was given to the sons of Joseph the son of Israel, so that he is not enrolled in the genealogy according to the birthright (*bekhorah*));

- 2 though Judah became strong among his brothers and a prince was from him, yet the birthright belonged to Joseph),
- **The above sources indicate that Jacob withheld the birthright from his oldest son (Reuben)**
 - **Is it implied that the father can do this at will, or does he need some justification?**

Deut 21

- 18 “If a man has a stubborn and rebellious son, who will not obey the voice of his father or the voice of his mother, and, though they chastise him, will not give heed to them,
- 19 then his father and his mother shall take hold of him and bring him out to the elders of his city at the gate of the place where he lives,
- 20 and they shall say to the elders of his city, ‘This our son is stubborn and rebellious, he will not obey our voice; he is a glutton and a drunkard.’
- 21 Then all the men of the city shall stone him to death with stones; so you shall purge the evil from your midst; and all Israel shall hear, and fear.
- **This law follows immediately that on primogeniture. Might this law also be relevant to succession? Compare:**
- LH 168 If a man decides to disinherit his son and declares to the judges, “I will disinherit my son,” the judges shall investigate his case and if the son does not deserve the severe penalty of disinheritance, the father may not disinherit his son.
- LH 169 If he had committed a grave offence against his father deserving the severe penalty of disinheritance, they shall pardon him once; if he is worthy of bearing the severe penalty a second time, the father may disinherit his son.

(f) Did a father have a right to adopt others for the purposes of succession?

Gen. 48 (p.45 above)

(g) In what circumstances could daughters inherit?

Num. 27

- 1 Then drew near the daughters of Zeloph'ehad the son of Hephher, son of Gilead, son of Machir, son of Manas'seh, from the families of Manas'seh the son of Joseph. The names of his daughters were: Mahlah, Noah, Hoglah, Milcah, and Tirzah.
- 2 And they stood before Moses, and before Elea'zar the priest, and before the leaders and all the congregation, at the door of the tent of meeting, saying,
- 3 “Our father died in the wilderness; he was not among the company of those who gathered themselves together against the LORD in the company of Korah, but died for his own sin; and he had no sons.
- 4 Why should the name of our father be taken away from his family, because he had no son? Give to us a possession among our father's brethren.”
- 5 Moses brought their case before the LORD.
- 6 And the LORD said to Moses,
- 7 “The daughters of Zeloph'ehad are right; you shall give them possession of an inheritance among (*betokh*) their father's brethren and cause the inheritance of their father to pass to them.
- 8 And you shall say to the people of Israel, ‘If a man dies, and has no son, then you shall cause his inheritance to pass to his daughter.
- 9 And if he has no daughter, then you shall give his inheritance to his brothers.
- 10 And if he has no brothers, then you shall give his inheritance to his father's brothers.
- 11 And if his father has no brothers, then you shall give his inheritance to his kinsman that is next to him of his family, and he shall possess it. And it shall be to the people of Israel a statute and ordinance, as the LORD commanded Moses.”
- **Note there is no issue of parental preference here. This is a case of pure “intestacy”**
 - **What is it that the daughters are claiming? See also Num.36, below.**
 - **Does this suggest that a system of “precedent” existed?**
 - **Is the decision as regards the daughters the same as the rule laid down for the future? (compare Job 42, below)**

Num.36

- 1 The heads of the fathers' houses of the families of the sons of Gilead the son of Machir, son of Manas'seh, of the

fathers' houses of the sons of Joseph, came near and spoke before Moses and before the leaders, the heads of the fathers' houses of the people of Israel;

- 2 they said, "The LORD commanded my lord to give the land for inheritance by lot to the people of Israel; and my lord was commanded by the LORD to give the inheritance of Zeloph'ehad our brother to his daughters.
- 3 But if they are married to any of the sons of the other tribes of the people of Israel then their inheritance will be taken from the inheritance of our fathers, and added to the inheritance of the tribe to which they belong; so it will be taken away from the lot of our inheritance.
- 4 And when the jubilee of the people of Israel comes, then their inheritance will be added to the inheritance of the tribe to which they belong; and their inheritance will be taken from the inheritance of the tribe of our fathers."
- 5 And Moses commanded the people of Israel according to the word of the LORD, saying, "The tribe of the sons of Joseph is right.
- 6 This is what the LORD commands concerning the daughters of Zeloph'ehad, 'Let them marry whom they think best; only, they shall marry within the family of the tribe of their father.
- 7 The inheritance of the people of Israel shall not be transferred from one tribe to another; for every one of the people of Israel shall cleave to the inheritance of the tribe of his fathers.
- 8 And every daughter who possesses an inheritance in any tribe of the people of Israel shall be wife to one of the family of the tribe of her father, so that every one of the people of Israel may possess the inheritance of his fathers.
- 9 So no inheritance shall be transferred from one tribe to another; for each of the tribes of the people of Israel shall cleave to its own inheritance.'"

- **What is implied here about the effect on landholding of the year of the jubilee (v.4)?**
- **Possible relevance for the Book of Ruth??**

Job 42

- 12 And the LORD blessed the latter days of Job more than his beginning; and he had fourteen thousand sheep, six thousand camels, a thousand yoke of oxen, and a thousand she-asses.
 - 13 He had also seven sons and three daughters.
 - 14 And he called the name of the first Jemi'mah; and the name of the second Kezi'ah; and the name of the third Ker'en-hap'puch.
 - 15 And in all the land there were no women so fair as Job's daughters; and their father gave them inheritance among their brothers.
- **What distinguishes the position of Job's daughters from that of the daughters of Zeloph'ehad?**
 - **What does this suggest regarding the status of the rules of succession?**
 - **Was Job making a will?**

(h) In what circumstances could widows inherit?

2 Kings 8

8:1 Now Eli'sha had said to the woman whose son he had restored to life, "Arise, and depart with your household, and sojourn wherever you can; for the LORD has called for a famine, and it will come upon the land for seven years." 8:2 So the woman arose, and did according to the word of the man of God; she went with her household and sojourned in the land of the Philistines seven years. 8:3 And at the end of the seven years, when the woman returned from the land of the Philistines, she went forth to appeal to the king for her house and her land. 8:4 Now the king was talking with Geha'zi the servant of the man of God, saying, "Tell me all the great things that Eli'sha has done." 8:5 And while he was telling the king how Eli'sha had restored the dead to life, behold, the woman whose son he had restored to life appealed to the king for her house and her land. And Geha'zi said, "My lord, O king, here is the woman, and here is her son whom Eli'sha restored to life." 8:6 And when the king asked the woman, she told him. So the king appointed an official for her, saying, "Restore all that was hers, together with all the produce of the fields from the day that she left the land until now."

- **The woman was a widow, with a living son (see previous chapter). But the widow is awarded the property.**
- **Note who makes and executes the decision and compare the 8th cent. Ostrakon below.**
- **Note the parallels with the situation of Naomi in the Book of Ruth**

8th Century Petition (Hebrew Ostrakon, published 1997)

- 1 May my lord the officer hear your maidservant
- 2 My husband died childless; and your hand/authority was
- 3 with me, and you gave into the hand/authority of your maidservant
- 4 the inheritance/family landholding (*nahalah*) about which you spoke
- 5 to Amasyahu, and the field of wheat that is in Naamah
- 6 you gave to his brother

- **Note that the husband's estate was actually divided: cf. *Num. 27:7* above.**

(i) Is there any evidence of the use of wills ("testate" as against "intestate" succession) in the Hebrew Bible?

Gen. 25

25:1 Abraham took another wife, whose name was Ketu'rah. 25:2 She bore him Zimran, Jokshan, Medan, Mid'ian, Ishbak, and Shuah. 25:3 Jokshan was the father of Sheba and Dedan. The sons of Dedan were Asshu'rim, Letu'shim, and Le-um'mim. 25:4 The sons of Mid'ian were Ephah, Ephher, Hanoch, Abi'da, and Elda'ah. All these were the children of Ketu'rah. 25:5 Abraham gave all he had to Isaac. 25:6 But to the sons of his concubines Abraham gave gifts, and while he was still living he sent them away from his son Isaac, eastward to the east country.

- **What is Abraham doing here?**
- **When do the gifts take effect?**
- **What is meant by Abraham's "sending away" the sons of his concubines (including Ishmael?)?**
Midrash Rabbah (LXI:7) on *Gen. 25:6*: "In the days of Alexander of Macedon the Ishmaelites came to dispute the birthright with Israel ... Said Alexander of Macedon to them: 'Who is the plaintiff, and who the defendant?' Said the Ishmaelites: 'We are the claimants, and we base our claim on their own laws. It is written, *But he shall acknowledge the firstborn, the son of the hated*, etc. (Deut. XXI, 17), and Ishmael was the firstborn.' Said Gebiah, the son of Kosem: 'Your Majesty! Cannot a man do as he wishes to his sons?' 'Yes,' replied he. 'Then,' pursued he, 'surely it is written, *And Abraham gave all that he had unto Isaac*' (Gen. XXV, 5).' 'But where is the deed of gift [to his other sons]?' He replied: 'BUT UNTO THE SONS OF THE CONCUBINES, THAT ABRAHAM HAD, ABRAHAM GAVE GIFTS.' Thereupon they departed in shame."
- **Any echo of this issue in the New Testament (Luke 15)?**

(j) What was the purpose of the law of the levirate?

Deut 25

- 5 "If brothers dwell together, and one of them dies and has no son, the wife of the dead shall not be married outside the family to a stranger; her husband's brother shall go in to her, and take her as his wife, and perform the duty of a husband's brother to her.
- 6 And the first son whom she bears shall succeed to the name of his brother who is dead, that his name may not be blotted out of Israel.
- 7 And if the man does not wish to take his brother's wife, then his brother's wife shall go up to the gate to the elders, and say, 'My husband's brother refuses to perpetuate his brother's name in Israel; he will not perform the duty of a husband's brother to me.'
- 8 Then the elders of his city shall call him, and speak to him: and if he persists, saying, 'I do not wish to take her,'
- 9 then his brother's wife shall go up to him in the presence of the elders, and pull his sandal off his foot, and spit in his face; and she shall answer and say, 'So shall it be done to the man who does not build up his brother's house.'
- 10 And the name of his house shall be called in Israel, The house of him that had his sandal pulled off.

- **What is the purpose of the law?**
- **Is the concern with property as well as "name"?**
- **What is the significance of the opening clause: "If brothers dwell together"?**
- **How would you characterise the proceedings if the brother-in-law refuses?**
- **In what sense does the refusing brother-in-law suffer a "talionic" punishment?**

Gen. 38

- 1 It happened at that time that Judah went down from his brothers, and turned in to a certain Adullamite, whose name was Hirah.
- 2 There Judah saw the daughter of a certain Canaanite whose name was Shua; he married her and went in to her,
- 3 and she conceived and bore a son, and he called his name Er.
- 4 Again she conceived and bore a son, and she called his name Onan.
- 5 Yet again she bore a son, and she called his name Shelah. She was in Chezib when she bore him.
- 6 And Judah took a wife for Er his first-born, and her name was Tamar.
- 7 But Er, Judah's first-born, was wicked in the sight of the LORD; and the LORD slew him.
- 8 Then Judah said to Onan, "Go in to your brother's wife, and perform the duty of a brother-in-law to her, and raise up offspring for your brother."
- 9 But Onan knew that the offspring would not be his; so when he went in to his brother's wife he spilled the semen on the ground, lest he should give offspring to his brother.
- 10 And what he did was displeasing in the sight of the LORD, and he slew him also.
- 11 Then Judah said to Tamar his daughter-in-law, "Remain a widow in your father's house, till Shelah my son grows up" — for he feared that he would die, like his brothers. So Tamar went and dwelt in her father's house.
- 12 In course of time the wife of Judah, Shua's daughter, died; and when Judah was comforted, he went up to Timnah to his sheepshearers, he and his friend Hirah the Adullamite.
- 13 And when Tamar was told, "Your father-in-law is going up to Timnah to shear his sheep,"
- 14 she put off her widow's garments, and put on a veil, wrapping herself up, and sat at the entrance to Enaim, which is on the road to Timnah; for she saw that Shelah was grown up, and she had not been given to him in marriage.
- 15 When Judah saw her, he thought her to be a harlot, for she had covered her face.
- 16 He went over to her at the road side, and said, "Come, let me come in to you," for he did not know that she was his daughter-in-law. She said, "What will you give me, that you may come in to me?"
- 17 He answered, "I will send you a kid from the flock." And she said, "Will you give me a pledge, till you send it?"
- 18 He said, "What pledge shall I give you?" She replied, "Your signet and your cord, and your staff that is in your hand." So he gave them to her, and went in to her, and she conceived by him.
- 19 Then she arose and went away, and taking off her veil she put on the garments of her widowhood.
- 20 When Judah sent the kid by his friend the Adullamite, to receive the pledge from the woman's hand, he could not find her.
- 21 And he asked the men of the place, "Where is the harlot who was at Enaim by the wayside?" And they said, "No harlot has been here."
- 22 So he returned to Judah, and said, "I have not found her; and also the men of the place said, 'No harlot has been here.'"
- 23 And Judah replied, "Let her keep the things as her own, lest we be laughed at; you see, I sent this kid, and you could not find her."
- 24 About three months later Judah was told, "Tamar your daughter-in-law has played the harlot; and moreover she is with child by harlotry." And Judah said, "Bring her out, and let her be burned."
- 25 As she was being brought out, she sent word to her father-in-law, "By the man to whom these belong, I am with child." And she said, "Mark, I pray you, whose these are, the signet and the cord and the staff."
- 26 Then Judah acknowledged them and said, "She is more righteous than I, inasmuch as I did not give her to my son Shelah." And he did not lie with her again.
- 27 When the time of her delivery came, there were twins in her womb.
- 28 And when she was in labour, one put out a hand; and the midwife took and bound on his hand a scarlet thread, saying, "This came out first."
- 29 But as he drew back his hand, behold, his brother came out; and she said, "What a breach you have made for yourself!" Therefore his name was called Perez.
- 30 Afterward his brother came out with the scarlet thread upon his hand; and his name was called Zerah.
- **What differences do you observe between the operation of Levirate here and in Deut. 25 (above)? (Other comparisons may be made with the book of Ruth)**
 - **What was in it for Tamar?**
 - **What light does this story cast upon the extent of parental authority, over (i) sons and (ii) daughters-in-law?**

(k) Is there a relationship between the laws of levirate and redemption?

Lev. 25

25:25 "If your brother becomes poor, and sells part of his property, then his next of kin (*go'alo hakarov eilav*) shall come and redeem what his brother has sold. 25:26 If a man has no one to redeem it, and then himself becomes prosperous and finds sufficient means to redeem it, 25:27 let him reckon the years since he sold it and pay back the overpayment to the man to whom he sold it; and he shall return to his property. 25:28 But if he has not sufficient means to get it back for himself, then what he sold shall remain in the hand of him who bought it until the year of jubilee; in the jubilee it shall be released, and he shall return to his property.

- **Is redemption restricted to the nearest relative?**

...

25:47 "If a stranger or sojourner with you becomes rich, and your brother beside him becomes poor and sells himself to the stranger or sojourner with you, or to a member of the stranger's family, 25:48 then after he is sold he may be redeemed; one of his brothers may redeem him, 25:49 or his uncle, or his cousin may redeem him, or a near kinsman belonging to his family may redeem him; or if he grows rich he may redeem himself. 25:50 He shall reckon with him who bought him from the year when he sold himself to him until the year of jubilee, and the price of his release shall be according to the number of years; the time he was with his owner shall be rated as the time of a hired servant. 25:51 If there are still many years, according to them he shall refund out of the price paid for him the price for his redemption. 25:52 If there remain but a few years until the year of jubilee, he shall make a reckoning with him; according to the years of service due from him he shall refund the money for his redemption. 25:53 As a servant hired year by year shall he be with him; he shall not rule with harshness over him in your sight. 25:54 And if he is not redeemed by these means, then he shall be released in the year of jubilee, he and his children with him. 25:55 For to me the people of Israel are servants, they are my servants whom I brought forth out of the land of Egypt: I am the LORD your God.

- **Here we have redemption of persons (debt-slaves) closely linked to redemption of land**
- **Is there a hierarchy of relatives on whom the duty/privilege (?) devolves?**
- **Note similar issues in levirate, in the narratives of Tamar and Ruth**

(l) What light is cast on the status (and influence) of women by (i) the narratives and (ii) the laws?

See further on the Book of Ruth (next week)

Reading: B.S. Jackson, *Studies in the Semiotics of Biblical Law*, §8.3: Law and Narrative (footnotes omitted)

As for law and literature, there is increasing recognition of the importance of their interrelation for the understanding of each. We may distinguish a number of different dimensions of this relationship. Allusion to narratives in laws, whether as motive clauses or historical introductions, has already been noted. Another is the impact of the narrative frame on our conception of the nature or force of the laws, discussed at some length in the next chapter. But narrative framing may also influence our view of substantive legal developments. When we consider the (first) case of the daughters of Zelophehad, it would appear at first sight that the daughters are protesting against a purely *customary* set of rules (on intestate distribution). Certainly, the daughters refer to no legal source for the rule against which they are protesting, nor do we have records of any such. Moreover, the relative ease with which the daughters succeed in achieving change might be easier understood if it is assumed that they are not asking for a change in divine law, but merely in current custom. (For sure, the argument might be reversed: could not Moses authorise a mere change in, or departure from, customary law without having to consult God?) However, the narrative framework in which we find the dispute, and the resultant law, must be taken into account. In the previous chapter, Moses and Aaron are asked to take a census of the male adult Israelites ('from twenty years old and upward, by their fathers' houses, all in Israel who are able to go forth to war': *Num.* 26:2), and they do so. This is preparatory to the entry to the land: it is done 'in the plains of Moab by the Jordan at Jericho' (*Num.* 26:2). After the census is complete and recorded (for us, as for them), God commands: 'To these the land shall be divided for inheritance (*benahalah*) according to the number of names' (*Num.* 26:53). Throughout the lists of the descendants of Jacob's sons (including the two eldest sons of Joseph whom he had adopted for this purpose, Ephraim and Menasseh), we encounter only male names, with just three exceptions: Miriam and her mother Yocheved (*Num.* 26:59) — who do not count for this purpose anyway, being of the tribe of Levi (*Num.* 26:62) — Serah the daughter of Asher (*Num.* 26:46), and the daughters of Zelophehad, whose anomalous position (better, that of Zelophehad himself) is already noted: 'Now Zelophehad the son of Hepher had no sons, but daughters: and the names of the daughters of Zelophehad were Mahlah, Noah, Hoglah, Milcah, and Tirzah' (*Num.* 26:63). Thus it is clear from the narrative framework that the daughters of Zelophehad are protesting in ch.27 not against customary law, but against a specific divine command allocating the promised land to the sons of Jacob *in the male line*. The outcome of the divine consultation is that the *nahalah* (the same term as that used in *Num.* 26:53, commanding the allocation of the land) of

Zelophehad is indeed to be transferred to his daughters — at least in part (). Sadly, perhaps, the narrative context of this decision was later discarded for halakhic purposes, with the result that a set of rules designed explicitly to determine distribution of landholdings in the promised land has been taken as a general law of intestate distribution.

This very topic presents us also with a different type of relationship between law and narrative: one in which the law may be understood in terms not of its surrounding narrative framework but rather in the context of a quite distinct narrative preserved elsewhere. Consider the law of primogeniture in *Deut.* 21:15-17:

If a man has two wives, the one loved and the other disliked, and they have borne him children, both the loved and the disliked, and if the first-born son is hers that is disliked, then on the day when he assigns his possessions as an inheritance to his sons, he may not treat the son of the loved as the first-born in preference to the son of the disliked, who is the first-born, but he shall acknowledge the first-born, the son of the disliked, by giving him a double portion of all that he has, for he is the first issue of his strength; the right of the first-born is his.

The law of primogeniture is not phrased, as we might have expected, in general terms: the first born shall have a double portion. Rather, it is formulated in terms of a contest between the sons of different wives, where the oldest son happens to be the son of the wife in disfavour. On one reading, all the law is saying is: do not discriminate against that son for that reason. Moreover, nowhere else in the Hebrew Bible do we hear of a ‘double portion’ — except in the narrative of the succession to Jacob, where the two sons of Joseph take his place, thus effectively giving his line just such a double portion. That Joseph, the son of the favoured Rachel, is given the birthright in preference to Reuben, the (oldest) son, who happens to be the son of Leah (the unfavoured wife), is indeed stated explicitly in *1 Chron.* 5:1:

The sons of Reuben the first-born of Israel (for he was the first-born; but because he polluted his father’s couch, his birthright was given to the sons of Joseph the son of Israel, so that he is not enrolled in the genealogy according to the birthright ...)

Carmichael has very plausibly argued that the Deuteronomic law has the patriarchal narrative in mind; indeed, that it was probably composed as a criticism of Jacob’s behaviour. It is difficult to imagine what else might have prompted the formulation of the primogeniture law in this way. And even if it does have an independent, customary origin, the law, thus written, could hardly be read — or listened to — by anyone familiar with the patriarchal narratives without evoking such associations.

In what context might such a relationship between law and narrative have developed? Carmichael locates it in a literary setting, of courtly scribes pondering and reacting to the tradition. His argument is based in part on what he sees as the systematic character of this activity. Increasingly, he has extended his argument from an aid to the understanding of some Deuteronomic laws to a general theory of much of pentateuchal law. He places great reliance upon the arrangement of the laws as reiterating the narrative sequence of themes.

This is not the place to enter into the merits of particular examples. Suffice it here to contest the principle and context. Watts argues that ‘the narrative setting seems decisive for the interpretation of law only when the laws are relatively isolated from each other.’ He is referring to the relationship between laws embedded in a narrative framework. I would argue that the same applies to the form of relationship which Carmichael has identified. To me, it makes far more sense in a domestic setting of oral instruction, in which the connection can be pointed out as the story is told. Wisdom, in my view, begins at the popular, oral level: it is not to be regarded as a purely literary (foreign-inspired) importation, notwithstanding the influence which such models may have had when the transition was made from orality to literacy. But even then, it would be difficult to find the kind of law-narrative parallels, linked systematically in their arrangement (or otherwise), which Carmichael claims. The rewriting of Samuel-Kings by the Chronicler is one thing; this is quite another. For Carmichael, the arrangement of a whole list of laws takes on meaning by reference to a narrative sequence in a different document, leaving a minimum of clues by which it can be decoded. A truly sophisticated parlour game. I could just about imagine, in an age of genteel leisure, such a game in a particular kind of Senior Common Room. I cannot imagine it in Whitehall: our own civil servants might doubtless wish they had the time for such pursuits!

Laws do not have a single origin or relationship to narrative. In some cases, it may indeed have been a narrative that prompted the evaluation (positive or negative) expressed in a law. In others, the law may originate in domestic instruction informed by purely social (rather than cultural) knowledge.

3. Bibliography

Recommended Reading: Materials (above) +:

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Carmichael, *Law*, 142-145

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LIVERPOOL HOPE UNIVERSITY
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MA/PGCert in Jewish Studies

Law and Narrative in the Hebrew Bible

Week 4: The Book of Ruth

1. Issues

1. Law and Narrative

- (a) Torah law was not properly observed?
- (b) But are we applying an anachronistic conception of law? E.g. like modern statutory language (if/only if re “brothers living together”)?
- (c) Law and narrative can be taken as representing different stages of the development of biblical law?
- (d) The narratives show law in practice, which supplements our understanding of the law in the books?
- (e) Is torah law simply one (religious) view of what the law *ought* to be?
- (f) How much do we know about how law was actually practiced (do the narratives also reflect particular views of how the law *ought* to be practiced, by comparison with actual practice documents (e.g. the 8th cent Judaeon Ostrakon (above, p.48)?

2. The point of the story?

- (a) Extolling the genealogy of David, descended from an *eshet hayil* who displays great *hesed*?
- (b) Denigrating the genealogy of David, descended from a Moabitess?
- (c) Criticising the campaign by Ezra and Nehemiah against ethnically foreign wives?:
- (d) Glossing the campaign by Ezra and Nehemiah against ethnically foreign wives: ethnicity does not matter if in fact there is a genuine conversion, here indicated by *hesed* rather than either ritual or *kabbalat mitsvot*
- (e) Exemplifying the tensions between the indigenous Jews and the returning exiles under Ezra?
- (f) A universal folklore theme: “La biblica Cenerentola” (Jean Louis Ska)

2. Texts (RSV) and Materials

1:1-2 Elimelekh and his wife Naomi and their two sons (at this stage unmarried) leave Bethlehem and go to Moab, because of a famine in Judah

1:1 In the days when the judges ruled there was a famine in the land, and a certain man of Bethlehem in Judah went to sojourn in the country of Moab, he and his wife and his two sons. 1:2 The name of the man was Elim'elech and the name of his wife Na'omi, and the names of his two sons were Mahlon and Chil'ion; they were Eph'rathites from Bethlehem in Judah. They went into the country of Moab and remained there.

- We are told nothing about what Elimelekh did with his property before he left. Gordis 1974:255f. argues that under the pressure of the famine which finally drove him and his family out of his native land, Elimelech would surely have disposed of all his holdings before leaving for Moab. Do you agree?

1:3 Elimelekh dies

1:3 But Elim'elech, the husband of Na'omi, died, and she was left with her two sons.

- Leaving two sons. So presumably they are his heirs

1:4 The sons marry Moabite women

1:4 These took Moabite wives; the name of the one was Orpah and the name of the other Ruth. They lived there about ten years;

- **Deut. 23:4:** “An Ammonite or a Moabite shall not enter into the assembly of the LORD” (but masculine)

- What then is their religious status on entering the household? There is a (minority) rabbinic tradition that Ruth had already converted (according to the *halakhah*!) when she married.
- But in a society where status was still a matter of patrilineal descent (so that marriage of a foreign wife had no effect on the status of children), was it assumed that an incoming foreign woman simply adopted the domestic religion of the household, certainly where the marriage was patrilocal?

1:5 Within the 10 years they stay in Moab, both sons die (without children)

- One must have died before the other: no word of a levirate marriage with the survivor
- In some rabbinic sources, the deaths of the Mahlon and Khilyon are regarded as a divine punishment for intermarriage: *Bava Bathra* 91b. See also *Rashi* on *Ruth* ch.1 (not converted before marriage)

1:6-7 Naomi decides to return home, with her two daughters-in-law, having heard that the famine has eased

1:5 and both Mahlon and Chil'ion died, so that the woman was bereft of her two sons and her husband.

1:6 Then she started with her daughters-in-law to return from the country of Moab, for she had heard in the country of Moab that the LORD had visited his people and given them food. 1:7 So she set out from the place where she was, with her two daughters-in-law, and they went on the way to return to the land of Judah.

- Apparently Naomi is acting as the *paterfamilias*

1:8-9 Naomi has a change of heart (recognising the *hesed* of Orpah and Ruth) and bids them return to “their mother’s house” and find new husbands

1:8 But Na'omi said to her two daughters-in-law, "Go, return each of you to her mother's house. May the LORD deal kindly with you, as you have dealt with the dead and with me. 1:9 The LORD grant that you may find a home, each of you in the house of her husband!" Then she kissed them, and they lifted up their voices and wept.

- Note again the matriarchal element
- Rebekah also passes a test of *hesed* (*Gen.* 24:14) and also voluntarily agrees to join a household with a different domestic cult

1:10 At first they decline: we will return with you to “your” people

1:10 And they said to her, "No, we will return with you to your people."

- Even if they had in fact adopted the domestic cult of their husbands, they are still conscious of an *ethnic* distinction

1:11-13 Naomi implies that if they remain with her, they will be subject to the levirate, and she is too old to produce a new levir for them

1:11 But Na'omi said, "Turn back, my daughters, why will you go with me? Have I yet sons in my womb that they may become your husbands? 1:12 Turn back, my daughters, go your way, for I am too old to have a husband. If I should say I have hope, even if I should have a husband this night and should bear sons, 1:13 would you therefore wait till they were grown? Would you therefore refrain from marrying? No, my daughters, for it is exceedingly bitter to me for your sake that the hand of the LORD has gone forth against me."

- Note the waiting time argument in v.13, reminiscent of Tamar having to wait for Shelah in *Gen.* 38
- Note also that this implies that the Levirate can only be performed by brothers

1:14-15 Orpah goes back but Ruth stays

1:14 Then they lifted up their voices and wept again; and Orpah kissed her mother-in-law, but Ruth clung to her. 1:15 And she said, "See, your sister-in-law has gone back to her people and to her gods; return after your sister-in-law."

- Note N's statement (v.15) that Orpah has gone back “to her people and her god” (perhaps supporting the view that while married to Chilyon she had worshipped his God)
- But then, it is asked, how could Naomi have suggested to her daughters-in-law (it being assumed that Orpah also converted before marriage) to return to their original idol-worshipping communities?

1:16-17 Ruth’s famous declaration

1:16 But Ruth said, "Entreat me not to leave you or to return from following you; for where you go I will go, and where you lodge I will lodge; your people shall be my people, and your God my God; 1:17 where you die I will die, and there will I be buried. May the LORD do so to me and more also if even death parts me from you."

- Again, both ethnic and religious
- But there is no verb (in v.16). Ruth’s famous four-word reply to Naomi is well known: *amaykh ami ve'elohayikh elohai*, rendered in most modern translations as: “your people will be my people and your God my God”. But

the fact that this utterance includes no verb may prompt us to consider alternatives: why not “your people *are still* my people and your God my God”?

- And no bet din, etc

1:18-22 The two women return to Bethlehem

1:18 And when Na'omi saw that she was determined to go with her, she said no more.

1:19 So the two of them went on until they came to Bethlehem. And when they came to Bethlehem, the whole town was stirred because of them; and the women said, "Is this Na'omi?" 1:20 She said to them, "Do not call me Na'omi, call me Mara, for the Almighty has dealt very bitterly with me. 1:21 I went away full, and the LORD has brought me back empty. Why call me Na'omi, when the LORD has afflicted me and the Almighty has brought calamity upon me?"

1:22 So Na'omi returned, and Ruth the Moabitess her daughter-in-law with her, who returned from the country of Moab. And they came to Bethlehem at the beginning of barley harvest.

- Naomi claims that she comes back “empty”: *reykam* (of property as well as family): v.21
- Naomi is greeted warmly: no mention of the reception of “Ruth (still) the Moabitess”

2:1 Narrator’s Introduction of Boaz

2:1 Now Na'omi had a kinsman of her husband's, a man of wealth, of the family of Elim'elech, whose name was Bo'az.

- A man *gibor hayil* (cf. later Ruth described as *eshet hayil*) and *mimishpahat Elimelekh*, but we are not told the precise relationship

2:2 Ruth suggests gleaning (Lev. 19:9-10, 23:22)

2:2 And Ruth the Moabitess said to Na'omi, "Let me go to the field, and glean among the ears of grain after him in whose sight I shall find favour." And she said to her, "Go, my daughter."

- They are obviously (by now) poor
- Ruth knows the biblical (or customary, also Moabite?) law
- But she also has an ulterior motive “after him in whose sight I shall find favour” (Ska: Cenerentola)

2:3 Ruth “happens” to glean on Boaz’s portion of “the field”

2:3 So she set forth and went and gleaned in the field after the reapers; and she happened to come to the part of the field belonging to Bo'az, who was of the family of Elim'elech.

- “she happened to come” (*vayikreh nikreh*: great emphasis): Providential?

2:4-7 Boaz arrives and spots and enquires about Ruth

2:4 And behold, Bo'az came from Bethlehem; and he said to the reapers, "The LORD be with you!" And they answered, "The LORD bless you." 2:5 Then Bo'az said to his servant who was in charge of the reapers, "Whose maiden is this?" 2:6 And the servant who was in charge of the reapers answered, "It is the Moabite maiden, who came back with Na'omi from the country of Moab. 2:7 She said, 'Pray, let me glean and gather among the sheaves after the reapers.' So she came, and she has continued from early morning until now, without resting even for a moment."

- “whose” (*lemi*) is this *na'arah*? (v.5)
- The answer identifies her immediately as a Moabite companion of Naomi (not daughter-in-law)
- And she “tarried a little in the house” (her ulterior motive?)

2:8-9 Boaz’s generous response

2:8 Then Bo'az said to Ruth, "Now, listen, my daughter, do not go to glean in another field or leave this one, but keep close to my maidens. 2:9 Let your eyes be upon the field which they are reaping, and go after them. Have I not charged the young men not to molest you? And when you are thirsty, go to the vessels and drink what the young men have drawn."

- Stay with my *maidens*
- And I ‘have told’ (past tense: actually a performative, *halo tsivisi*, cf. later) the young men to keep away from you
- Both sides are recognising and keeping open, from the very start, the possibility of a “relationship”

2:10-13 A conversation of “recognition”

2:10 Then she fell on her face, bowing to the ground, and said to him, "Why have I found favour in your eyes, that you should take notice of me, when I am a foreigner?" 2:11 But Bo'az answered her, "All that you have done for your mother-in-law since the death of your husband has been fully told me, and how you left your father and mother and your native land and came to a people that you did not know before. 2:12 The LORD recompense you for what you have done, and a full reward be given you by the LORD, the God of Israel, under whose wings you have come to take refuge!" 2:13 Then she said, "You are most

gracious to me, my lord, for you have comforted me and spoken kindly to your maidservant, though I am not one of your maidservants."

- Ruth asks (v.10) why she is being treated so generously when she is *nokhriya* (not mentioning Moabitess)
- Boaz replies that in fact he knows her history (but without revealing the family relationship): again no mention of any religious issue, rather that she had left her own family and joined a different people out of loyalty to her mother-in-law

2:14-16 The meal and next gleaning

2:14 And at mealtime Bo'az said to her, "Come here, and eat some bread, and dip your morsel in the wine." So she sat beside the reapers, and he passed to her parched grain; and she ate until she was satisfied, and she had some left over. 2:15 When she rose to glean, Bo'az instructed his young men, saying, "Let her glean even among the sheaves, and do not reproach her. 2:16 And also pull out some from the bundles for her, and leave it for her to glean, and do not rebuke her."

- She does now come in contact with (Boaz's) male dependents, but they are commanded to give her privileged treatment (v.16)

2:17-23 At the end of the day Ruth reports back to Naomi

2:17 So she gleaned in the field until evening; then she beat out what she had gleaned, and it was about an ephah of barley.

2:18 And she took it up and went into the city; she showed her mother-in-law what she had gleaned, and she also brought out and gave her what food she had left over after being satisfied. 2:19 And her mother-in-law said to her, "Where did you glean today? And where have you worked? Blessed be the man who took notice of you." So she told her mother-in-law with whom she had worked, and said, "The man's name with whom I worked today is Bo'az." 2:20 And Na'omi said to her daughter-in-law, "Blessed be he by the LORD, whose kindness has not forsaken the living or the dead!" Na'omi also said to her, "The man is a relative of ours, one of our nearest kin." 2:21 And Ruth the Moabitess said, "Besides, he said to me, 'You shall keep close by my servants, till they have finished all my harvest.'" 2:22 And Na'omi said to Ruth, her daughter-in-law, "It is well, my daughter, that you go out with his maidens, lest in another field you be molested." 2:23 So she kept close to the maidens of Bo'az, gleaning until the end of the barley and wheat harvests; and she lived with her mother-in-law.

- Naomi thanks God (v.20), attributing to him *hesed* to the living and the dead (?) and identifying Boaz as a kinsman (*karov*) and *migo' alenu*: one of our potential redeemers (first mention of that term)
- Ruth tells Naomi that Boaz had told her to keep close to his *na'arim* (male) (v.21)
- Naomi replies that she should stick by his maidens (female) (v.22), not having been told of Boaz's instruction to the men "not to touch her" (v.9)
- Ruth accepts that advice and gleans until the end of the harvest; she continues to reside with Naomi (no overnights ...)

3:1-5 Naomi's plan to ensnare Boaz

3:1 Then Na'omi her mother-in-law said to her, "My daughter, should I not seek a home for you, that it may be well with you?"

3:2 Now is not Bo'az our kinsman, with whose maidens you were? See, he is winnowing barley tonight at the threshing floor.

3:3 Wash therefore and anoint yourself, and put on your best clothes and go down to the threshing floor; but do not make yourself known to the man until he has finished eating and drinking. 3:4 But when he lies down, observe the place where he lies; then, go and uncover his feet and lie down; and he will tell you what to do." 3:5 And she replied, "All that you say I will do."

- Naomi knows that Boaz will be winnowing barley on the threshing floor (where is that? Does he really have to do it himself?: v.2)
- Naomi tells Ruth to get dressed up and meet him there, but not to make herself known to him until he has finished eating and drinking: v.3
- She tells Ruth to watch where Boaz lies down and (when he is asleep) "uncover his feet" and lie down beside him, and do what he tells you: v.3
- Ruth agrees: v.4. Do either expect Boaz to act as a gentleman? Does the audience?? (Or, in asking this question, are we importing contemporary standards?)

3:6-8 Ruth follows Naomi's plan (cf. *Exod. 22:1-2*)

3:6 So she went down to the threshing floor and did just as her mother-in-law had told her. 3:7 And when Bo'az had eaten and drunk, and his heart was merry, he went to lie down at the end of the heap of grain. Then she came softly, and uncovered his feet, and lay down. 3:8 At midnight the man was startled, and turned over, and behold, a woman lay at his feet!

- It is implied in v.7 that when Ruth does "uncover his feet", he is already (drunkenly) asleep
- Are feet here a euphemism?

- Boaz is startled (actually, frightened, *vayeherad*) at what he finds. Cf. the law of the night-time intruder in *Exod.* 22:1-2

3:9-13 The conversation on the threshing floor (cf. *Exod.* 21:7-11, *Lev.* 25:47-54, *Ezek.* 16:7-8)

3:9 He said, "Who are you?" And she answered, "I am Ruth, your maidservant; spread your skirt over your maidservant, for you are next of kin." 3:10 And he said, "May you be blessed by the LORD, my daughter; you have made this last kindness greater than the first, in that you have not gone after young men, whether poor or rich. 3:11 And now, my daughter, do not fear, I will do for you all that you ask, for all my fellow townsmen know that you are a woman of worth. 3:12 And now it is true that I am a near kinsman, yet there is a kinsman nearer than I. 3:13 Remain this night, and in the morning, if he will do the part of the next of kin for you, well; let him do it; but if he is not willing to do the part of the next of kin for you, then, as the LORD lives, I will do the part of the next of kin for you. Lie down until the morning."

- He immediately asks (v.9): who are you, and she replies Ruth *amatekha* (*Exod.* 21:7-11)
- She invites him to "spread his skirt over her". Is this a euphemism for immediate sexual relations, or a proposal of marriage?
- Boaz in his reply (v.10) appears to view it as the latter and accepts Ruth's proposal (v.11), at the same time stressing that she is by now publicly known to be a virtuous woman: *eshet hayil*
- But there is a problem: there is a closer *go'el* (v.12) and if he is willing to "redeem you" (*vigalekh*) he must be given that opportunity. Note that "redemption" is used here unequivocally in relation to persons, not land. But it is used in relation to male debt slaves in *Lev.* 25:47-54, with a hierarchy according to closeness of relationship) and also in relation to an *amah* (but using the verb *padah* in *Exod.* 21:8).
- Here redemption is introduced in the context of a proposed levirate marriage

3:14-18 Ruth returns to Naomi with a gift (cf. Judah and Tamar: *Gen.* 38)

3:14 So she lay at his feet until the morning, but arose before one could recognize another; and he said, "Let it not be known that the woman came to the threshing floor." 3:15 And he said, "Bring the mantle you are wearing and hold it out." So she held it, and he measured out six measures of barley, and laid it upon her; then she went into the city. 3:16 And when she came to her mother-in-law, she said, "How did you fare, my daughter?" Then she told her all that the man had done for her, 3:17 saying, "These six measures of barley he gave to me, for he said, 'You must not go back empty-handed to your mother-in-law.'" 3:18 She replied, "Wait, my daughter, until you learn how the matter turns out, for the man will not rest, but will settle the matter today."

- At Boaz's bidding (end of v.13), Ruth stays there the rest of the night, but leaves before dawn, Boaz himself being concerned (v.14) that no one should know that she had been there
- Boaz gives her six measures of barley (v.15): is this an advance on a bride-price, or a token of sincerity, that he will carry out his promise (cf. Judah and Tamar)
- It is apparently still night when Ruth gets home: Naomi has to ask: who are you? (v.16)
- She has to explain to Naomi the six measures of barley (v.17)
- Naomi expresses her confidence that Boaz will in fact do what he had promised

4:1-2 Boaz goes to the city gate, finds the nearer relative (PA) and convenes an assembly of 10 elders

4:1 And Bo'az went up to the gate and sat down there; and behold, the next of kin, of whom Bo'az had spoken, came by. So Bo'az said, "Turn aside, friend; sit down here"; and he turned aside and sat down. 4:2 And he took ten men of the elders of the city, and said, "Sit down here"; so they sat down.

- The relative is described as "hago'el", and Boaz addresses him as Ploni Almoni: it occurs also as "the place of PA" in *1 Sam* 21:3, *2 Ki* 6:8 (Hubbard 233). Is it derogatory or deliberately anonymising, and if the latter, why?
- These are not formal proceedings. PA did not have to stay; there is no compulsion. The elders are ad hoc, hardly a court; rather they are communal witnesses to what was to transpire

4:3-4 Boaz's first proposal to PA (which PA accepts): *Lev.* 25:25, *Num.* 27:8-9, *2 Ki* 8:1-6

4:3 Then he said to the next of kin, "Na'omi, who has come back from the country of Moab, is selling the parcel of land which belonged to our kinsman Elimelech. 4:4 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, that I may know, for there is no one besides you to redeem it, and I come after you." And he said, "I will redeem it."

- Naomi literally "has sold a portion of the field that belonged to Elimelech" (despite modern translations which amend the vocalisation to read "is selling")
- In the legal sources widows have no any inheritance rights: in *Num.* 27:8-9 (daughters of Zelophehad) the estate goes to the deceased's brothers if he has neither sons nor daughters? However

- (Zevit 2006: 586-87), there is possible support for a widow's inheritance rights in the case of the Shunamite widow, 2 *Ki* 8:1-6 and the 8th cent Ostrakon: see p.48, above)
- Or maybe E had transferred part of the field to Naomi during his lifetime?: Cf. Job 42 (see p.47, above) and the Septuagint takes Elimelekh to have "given" a portion of the field to Naomi.
- A chronological account: Gordis 1974: 258f. argues that, in the late biblical period at least, when there were no male survivors a woman would inherit from her husband (i.e. later than *Num.* 27).
- Zevit suggests that after E's death N, while still in Moab, had taken a loan and ceded (indicated at the gate tribunal: 585, citing 4:3, 9 at 586) control over the land as collateral (thus *makhrah*, past tense, in 4:3). The lender had the use and ultimate ownership should the debt not be repaid by a certain date
- If so, what is it that Boaz proposes to PA?
- But what the *go'el* be acquiring "from Naomi"?
- What would be in it for the redeemer if he did so?

4:5 Boaz's second proposal to PA (which PA does not accept)

4:5 Then Bo'az said, "The day you buy the field from the hand of Na'omi, you are also buying Ruth the Moabitess, the widow of the dead, in order to restore the name of the dead to his inheritance."

- Boaz then adds a condition, but the text here is uncertain in two respects. The Hebrew text, as written (*ketiv*), is to be translated:
 - "On the day that you acquire the field from Naomi and from Ruth the Moabite, *I* (Boaz) am acquiring (*kaniti*) the wife of the deceased, in order to raise up the name of the dead on his inheritance".
- The way the verse is more commonly translated amends *ume'et rut* to *vegam et rut*, and *kaniti* (first person) to *kanita* (second person), so that PA is told that he has to acquire Ruth also in Levirate marriage:
 - "On the day that you acquire the field from Naomi, *you* must acquire also Ruth the Moabite, the wife of the deceased, in order to raise up the name of the dead on his inheritance".
- Zevit 2006:597-99 on reasons not to prefer *kanita*, the *kere*

4:6 PA's refuses and cedes the whole redemption to Boaz

4:6 Then the next of kin said, "I cannot redeem it for myself, lest I impair my own inheritance. Take my right of redemption yourself, for I cannot redeem it."

- PA refuses, "lest I mar my own inheritance". But what does he mean by this?
- (a) if in fact PA is refusing himself to perform a levirate marriage with Ruth, it is because any son born to them would not only inherit the property of Naomi, but also his share of the PA's own estate. The inheritance of PA's other children would thereby be divided and diminished (Thompsons 1968:98-99).
- (b) if in fact Boaz is performing a levirate marriage with Ruth, Zevit argues that this would supersede (trump) the claim of Naomi herself and thus any prospect of PA inheriting from Naomi.

4:7 The narrator's explanation of the sandal ceremony that is to follow (cf. *Deut.* 25:9)

4:7 Now this was the custom in former times in Israel concerning redeeming and exchanging: to confirm a transaction, the one drew off his sandal and gave it to the other, and this was the manner of attesting in Israel.

- a man draws off his (own) shoe and gives it to the other party, to confirm any redemption or exchange
- This is presented as an earlier practice, by implication no longer familiar to the narrator's audience
- Does that mean it is fictional, or unrelated to the sandal ceremony in Deut 25?
- In fact, it provides a good explanation of the sandal ceremony, the *halitsah*, of *Deut.* 25

4:8 The ceremony is performed, but by whom? B.M. 47a, Targum Ruth, Ibn Ezra

4:8 So when the next of kin said to Bo'az, "Buy it for yourself," he drew off his sandal.

- The subject of the verb (he drew off) is unclear in the biblical text. Is it Boaz or PA?
- Rashi on 4:7 notes differences of opinion
- In fact, the balance of rabbinic opinion appears, rightly, to favour of Boaz

4:9-12 Boaz calls the elders and people to witness the two transactions (*Num.* 27)

4:9 Then Bo'az said to the elders and all the people, "You are witnesses this day that I have bought from the hand of Na'omi all that belonged to Elimelech and all that belonged to Chilion and to Mahlon. 4:10 Also Ruth the Moabitess, the widow of Mahlon, I have bought to be my wife, to perpetuate the name of the dead in his inheritance, that the name of the dead may not be cut off from among his brethren and from the gate of his native place; you are witnesses this day." 4:11 Then all the people who were at the gate, and the elders, said, "We are witnesses. May the LORD make the woman, who is coming into your

house, like Rachel and Leah, who together built up the house of Israel. May you prosper in Eph'rathah and be renowned in Bethlehem; 4:12 and may your house be like the house of Perez, whom Tamar bore to Judah, because of the children that the LORD will give you by this young woman."

- In v.9, we have to take the first person past *kaniti* (not here disputed) again in a performative sense: I am hereby (undertaking to) acquire (he does not use the term redeem) the whole estate ("everything that belonged to E"); he does not even limit it to the land of Elimelekh and his two sons (impliedly, it had been divided into three, one part going to Naomi)
- V.10 refers to the acquisition by Boaz of Ruth as a wife. Again he uses *kaniti*, but this is not unusual: Mishnah Kiddushin starts: *ha'ishah niknit bishlosh derakhim*
- If *kaniti* is indeed to be taken as a past tense rather than a performative, then we have to revise our view of what actually took place on the threshing floor.
- Boaz states his purpose in v.10 as performance of the levirate "to raise up the name of the dead *al nahalato* and that the name not be cut off from brethren and his place." This is a more explicit relationship to land (the promised land) than *Deut.* 25, but it echoes the motivation of the daughters of Zelophehad in Num. 27
- Note that Boaz refers in v.10 to Ruth as Ruth the Moabitess (no inhibitions about such a marriage), but when the elders and people formally witness the transaction in v.11, they do not mention her by name at all: they refer to "the woman who is coming into your house".
- The elders and people bless Ruth by invoking Rachel and Leah: both of whom used surrogates (Bilhah and Zilpah) in part to build up Jacob's house; they bless Boaz and him by invoking Judah's (unusual, but also the result of a seduction) performance of the levirate with his daughter-in-law Tamar (*Gen.* 38)

4:13-17 The women's reaction to Naomi

4:13 So Bo'az took Ruth and she became his wife; and he went in to her, and the LORD gave her conception, and she bore a son. 4:14 Then the women said to Na'omi, "Blessed be the LORD, who has not left you this day without next of kin; and may his name be renowned in Israel! 4:15 He shall be to you a restorer of life and a nourisher of your old age; for your daughter-in-law who loves you, who is more to you than seven sons, has borne him." 4:16 Then Na'omi took the child and laid him in her bosom, and became his nurse. 4:17 And the women of the neighbourhood gave him a name, saying, "A son has been born to Na'omi." They named him Obed; he was the father of Jesse, the father of David.

- In v.13 Boaz marries Ruth (i.e. consummates the betrothal on the threshing floor?) and she bears a son
- The women in the town congratulate Naomi for having secured a *go'el* (v.14, here referring to the newborn baby, who will be a *meishiv ru'ah* (we might say: a *meḥayyeh*!) and a support in her old age (v.15).
- In v.16 Naomi in fact becomes nursemaid to (in effect) her grandchild (insofar as the child is regarded as that of Mahlon). Somewhat evocative of the double role of Yocheved, after the baby Moses was taken into the Egyptian court (also a "multi-ethnic" partnership): *Exod.* 2:7-9 (albeit using different terminology)
- Indeed, the women treat the child as a *son* of Naomi (v.17): Boaz may have been a surrogate for Mahlon, but Ruth is a surrogate for Naomi herself

4:18-22 The final genealogy

4:18 Now these are the descendants of Perez: Perez was the father of Hezron, 4:19 Hezron of Ram, Ram of Ammin'adab, 4:20 Ammin'adab of Nahshon, Nahshon of Salmon, 4:21 Salmon of Bo'az, Bo'az of Obed, 4:22 Obed of Jesse, and Jesse of David.

- It begins with Perez, the son of Judah by Tamar (itself an apparently deviant/devious form of levirate marriage)
- Six generations later we come to Boaz and three generations later to king David
- But there is a problem here: if the marriage was a levirate marriage, should not the line have gone through Elimelekh and Mahlon?

3. Bibliography

Recommended Reading

Davies, E.W., "Inheritance Rights and the Hebrew Levirate Marriage. Part 1", *Vetus Testamentum* 31 (1981), 133-144; Part 2 at 257-268

Jackson, B.S., "Ruth's Conversion: Then and Now", *The Jewish Law Annual* XIX (2011), 53-61, also available on Google Books

Further Reading

Beattie, D.R.G., "The Book of Ruth as Evidence for Israelite Legal Practice", *Vetus Testamentum* 24 (1974), 251-267

Beattie, D.G.R., "Ketibh and Qere in Ruth IV 5", *VT* 21 (1971) 490-94

- Gordis, Robert, "Love, Marriage, and Business in the Book of Ruth", in *A Light unto My Path. Festschrift J.M. Myers* (eds. H.N. Bream – R.D. Heim – C.A. Moore) (Gettysburg Theological Studies 4; Philadelphia, PA: Temple University Press, 1974), 241-264
- Hubbard, R.L., Jr., *The Book of Ruth* (Grand Rapids, MI: Eerdmans, 1988, NICC).
- Leggett, D.A., *The Levirate and Goel Institutions in the Old Testament with Special Attention to the Book of Ruth*, Mack Publishing Co., Cherry Hill, New Jersey, 1974, Pp. ix, 351, n.p.s.
- Thompson, T. and D. Thompson, "Some Legal problems in the Book of Ruth", *VT* 18 (1968), 79-99
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LIVERPOOL HOPE UNIVERSITY
FACULTY OF ARTS AND HUMANITIES
MA/PGCert in Jewish Studies

Law and Narrative in the Hebrew Bible

Week 5a: Narratives of Law Giving, Human and Divine

1. Issues

- (a) What was given at ‘Sinai?’
 - Is lawgiving in the desert confined to Sinai?
 - Which legal texts were incorporated into the Covenant at Sinai?
 - How is the relationship between Deuteronomy and the lawgiving at Sinai to be understood?
- (b) Lawmaking by the King: Codes, edicts and the temporal duration of law
 - What is the relationship between ‘permanent’ laws and *ad hoc* commands?
 - How might the concept of ‘permanent’ laws have originated?
- (c) The role of the inscriptions and written legal texts
 - What functions are fulfilled by stone inscriptions?
 - What functions are fulfilled by written collections of law?
 - Did written laws acquire a new function in the post-exilic period?
- (d) Law and Covenant: the meaning of “covenant renewal”
 - What is the nature of the covenant with Abraham?
 - What issues arise in relation to the identification of the subjects/beneficiaries of the covenant in later generations?
 - What does the phrase “covenant renewal” (a) connote when used in modern biblical theological literature, (b) mean (if used?) in the context of the Hebrew Bible?

2. Texts and Materials

- (a) What was given at ‘Sinai?’:

Exodus 15:

- 22 Then Moses led Israel onward from the Red Sea, and they went into the wilderness of Shur; they went three days in the wilderness and found no water.
- 23 When they came to Marah, they could not drink the water of Marah because it was bitter; therefore it was named Marah.
- 24 And the people murmured against Moses, saying, “What shall we drink?”
- 25 And he cried to the LORD; and the LORD showed him a tree, and he threw it into the water, and the water became sweet.
 - There the LORD made for them a statute and an ordinance and there he proved them,
- 26 saying, “If you will diligently hearken to the voice of the LORD your God, and do that which is right in his eyes, and give heed to his commandments and keep all his statutes, I will put none of the diseases upon you which I put upon the Egyptians; for I am the LORD, your healer.”
 - **We are not told the content of the “statute and an ordinance” in v.25. However, The *Mekhilta*, the earliest rabbinic commentary on Exodus, dating from the late 2nd or early third century C.E., comments on *Exodus* 21:1 (the “Covenant Code”, which commences with laws on slavery): “R. Judah says: *And these are the Ordinances (ve’eleh hamishpatim)*. These were commanded at Marah, as it is said: ‘There He made for them a statute and an ordinance’ (*Exod.* 15.25).”**
 - **Comment on the form of God’s promise in v.26**

Exodus 19:

- 1 On the third new moon after the people of Israel had gone forth out of the land of Egypt, on that day they came into the wilderness of Sinai.
- 2 And when they set out from Reph'idim and came into the wilderness of Sinai, they encamped in the wilderness; and there Israel encamped before the mountain.
- 3 And Moses went up to God, and the LORD called to him out of the mountain, saying, "Thus you shall say to the house of Jacob, and tell the people of Israel:
- 4 You have seen what I did to the Egyptians, and how I bore you on eagles' wings and brought you to myself.
- 5 Now therefore, if you will obey my voice and keep my covenant, you shall be my own possession among all peoples; for all the earth is mine,
- 6 and you shall be to me a kingdom of priests and a holy nation. These are the words which you shall speak to the children of Israel."
- 7 So Moses came and called the elders of the people, and set before them all these words which the LORD had commanded him.
- 8 And all the people answered together and said, "All that the LORD has spoken we will do." And Moses reported the words of the people to the LORD.
- 9 And the LORD said to Moses, "Lo, I am coming to you in a thick cloud, that the people may hear when I speak with you, and may also believe you for ever."

Exodus 20:

- 21 And the people stood afar off, while Moses drew near to the thick darkness where God was.
- 22 And the LORD said to Moses, "Thus you shall say to the people of Israel: 'You have seen for yourselves that I have talked with you from heaven.
- 23 You shall not make gods of silver to be with me, nor shall you make for yourselves gods of gold.
- 24 An altar of earth you shall make for me and sacrifice on it your burnt offerings and your peace offerings, your sheep and your oxen; in every place where I cause my name to be remembered I will come to you and bless you.
- 25 And if you make me an altar of stone, you shall not build it of hewn stones; for if you wield your tool upon it you profane it.
- 26 And you shall not go up by steps to my altar, that your nakedness be not exposed on it.'
- 21:1 "Now these are the ordinances which you shall set before them.
- 21:2 When you buy a ...

Exodus 24:

- 1 And he said to Moses, "Come up to the LORD, you and Aaron, Nadab, and Abi'hu, and seventy of the elders of Israel, and worship afar off.
- 2 Moses alone shall come near to the LORD; but the others shall not come near, and the people shall not come up with him."
- 3 Moses came and told the people all the words of the LORD and all the ordinances; and all the people answered with one voice, and said, "All the words which the LORD has spoken we will do."
- 4 And Moses wrote all the words of the LORD. And he rose early in the morning, and built an altar at the foot of the mountain, and twelve pillars, according to the twelve tribes of Israel.
- 5 And he sent young men of the people of Israel, who offered burnt offerings and sacrificed peace offerings of oxen to the LORD.
- 6 And Moses took half of the blood and put it in basins, and half of the blood he threw against the altar.
- 7 Then he took the book of the covenant, and read it in the hearing of the people; and they said, "All that the LORD has spoken we will do, and we will be obedient."
- 8 And Moses took the blood and threw it upon the people, and said, "Behold the blood of the covenant which the LORD has made with you in accordance with all these words."
- 9 Then Moses and Aaron, Nadab, and Abi'hu, and seventy of the elders of Israel went up,
- 10 and they saw the God of Israel; and there was under his feet as it were a pavement of sapphire stone, like the very heaven for clearness.
- 11 And he did not lay his hand on the chief men of the people of Israel; they beheld God, and ate and drank.
- 12 The LORD said to Moses, "Come up to me on the mountain, and wait there; and I will give you the tables of stone, with the law and the commandment, which I have written for their instruction."
- 13 So Moses rose with his servant Joshua, and Moses went up into the mountain of God.
- 14 And he said to the elders, "Tarry here for us, until we come to you again; and, behold, Aaron and Hur are with you; whoever has a cause, let him go to them."

- 15 Then Moses went up on the mountain, and the cloud covered the mountain.
 16 The glory of the LORD settled on Mount Sinai, and the cloud covered it six days; and on the seventh day he called to Moses out of the midst of the cloud.
 17 Now the appearance of the glory of the LORD was like a devouring fire on the top of the mountain in the sight of the people of Israel.
 18 And Moses entered the cloud, and went up on the mountain. And Moses was on the mountain forty days and forty nights.

- **Distinguish the various covenants mentioned in Exod 19-24 (see also texts (f) below)**
- **Distinguish the various sets of ‘laws’ mentioned in Exod 19-24**
- **What is the relationship between these various covenants and sets of laws?**
- **What claims are being made in the above passages as to**
 - (a) the manner of revelation and**
 - (b) its ideological legitimization?**

Deut 1:

- 1 These are the words that Moses spoke to all Israel beyond the Jordan in the wilderness, in the Arabah over against Suph, between Paran and Tophel, Laban, Haze’roth, and Di’-zahab.
 2 It is eleven days’ journey from Horeb by the way of Mount Se’ir to Ka’desh-bar’nea.
 3 And in the fortieth year, on the first day of the eleventh month, Moses spoke to the people of Israel according to all that the LORD had given him in commandment to them,
 4 after he had defeated Sihon the king of the Amorites, who lived in Heshbon, and Og the king of Bashan, who lived in Ash’taroth and in Ed’re-i.
 5 Beyond the Jordan, in the land of Moab, Moses undertook to explain this law, saying,
 6 “The LORD our God said to us in Horeb

- **What is the significance of**
 - (a) the date of the speech**
 - (b) the place of the speech**
 - (c) the mentioning of previous military victories**
 - (d) the statement that Moses sought to “explain this (which?) law”?**

Gen 41

1 After two whole years, Pharaoh dreamed that he was standing by the Nile, **2** and behold, there came up out of the Nile seven cows sleek and fat, and they fed in the reed grass. **3** And behold, seven other cows, gaunt and thin, came up out of the Nile after them, and stood by the other cows on the bank of the Nile. **4** And the gaunt and thin cows ate up the seven sleek and fat cows. And Pharaoh awoke. **5** And he fell asleep and dreamed a second time; and behold, seven ears of grain, plump and good, were growing on one stalk. **6** And behold, after them sprouted seven ears, thin and blighted by the east wind. **7** And the thin ears swallowed up the seven plump and full ears. And Pharaoh awoke, and behold, it was a dream. **25** Then Joseph said to Pharaoh, "The dream of Pharaoh is one; God has revealed to Pharaoh what he is about to do. **26** The seven good cows are seven years, and the seven good ears are seven years; the dream is one. **27** The seven lean and gaunt cows that came up after them are seven years, and the seven empty ears blighted by the east wind are also seven years of famine. **28** It is as I told Pharaoh, God has shown to Pharaoh what he is about to do. **29** There will come seven years of great plenty throughout all the land of Egypt, **30** but after them there will arise seven years of famine, and all the plenty will be forgotten in the land of Egypt; the famine will consume the land, **31** and the plenty will be unknown in the land by reason of that famine which will follow, for it will be very grievous. **32** And the doubling of Pharaoh's dream means that the thing is fixed by God, and God will shortly bring it to pass.

- **What is the character of the reiteration of Pharaoh’s dream?**
- **What meaning is here attached to it?**
- **Might this be a model for the reiteration of law, as presented in Deuteronomy?**

B.S. Jackson, “The Sinaitic Covenant” (Speaker’s Lectures, University of Oxford, 1984, unpublished)

As the text presently stands, the almost-unique appellation “Book of the Covenant” (*sefer haberit*, *Exod.* 24.7) appears to refer back to the “Covenant Code” of *Exod.* 21:1-23:19. On that reading, certainly the intention of the final editors, we are to understand that the whole Covenant Code, together with the *devarim* (the Decalogue), were revealed on Sinai, formed part of a covenant confirmed by sacrifice, were read by Moses to the people, were accepted by them, and were subsequently recorded. Such an understanding has profound implications. It means that even detailed regulations of civil law (such as those on oxen killing each other or falling into pits, *Exod.* 21:28-36) were accorded divine authority, as part of the Sinaitic covenant.

It has, however, been strongly argued that the whole pericope of *Exod.* 24:3-8 is secondary, and that *berit* (“covenant”)

is a relatively late notion (reflecting a Deuteronomic theology) which played no part in the original Sinai story. At the very least, it has to be conceded, as Professor Nicholson has pointed out, that the pericope interrupts another concerned with the theophany to Moses, Aaron, Nadav, Abihu and the 70 elders. But the literary history of *Exod.* 24:3-8 seems to me to be even more complicated than has generally been suggested. There is good evidence of two distinct editorial hands at work, thus necessarily pushing the origins of the passage rather earlier than is sometimes supposed.

Consider first the relationship of *devarim* and *mishpatim*. The latter are mentioned only once in the passage, the former several times. Moses relates to the people all God's *devarim* and all the *mishpatim* (v.3a), but the people proclaim their acceptance only of the *devarim*. Moses then writes down the *devarim*, — no mention of the *mishpatim*. We are then told of the erection of twelve monuments (*matzevot*), and a sacrifice. In the last verse of the pericope, where Moses sprinkles the blood on the people, he proclaims: "Behold this is the blood of the covenant, which God has made with you, concerning all these *devarim*." Again, no mention of *mishpatim*. It seems highly likely, as Kutsch has suggested, that the single mention of *mishpatim* in this pericope is secondary.

This means that there was a stage when the *mishpatim* were not regarded as part of the Sinaitic revelation. We can, I suggest, see the hand of the same editor in the introductory verse of the Covenant Code, "and these are the *mishpatim* which you shall put before them" (*ve'eleh hamishpatim asher tasim lifneyhem*, *Exod.* 21:1). Little attention has been paid to this terminology, but it is surely significant that the same verb and preposition are used in *Exod.* 19:7 of Moses in relaying God's offer to the people: *vayasem lifneyhem et kol hadevarim ha'eleh*. By using this same idiom, the author of *Exod.* 21:1 claims that the Covenant Code is also being offered for the people's acceptance. But does it necessarily follow that the *mishpatim* were being offered to the people *as part of a covenant*? There could be other explanations of the offer and acceptance. In fact, although the Sinai tradition may always have included formal acts of proposal and acceptance, there is every reason to doubt the interpretation of those formal acts as constituting a *berit*.

That brings me to the work of the other editor of our pericope. The word *berit* appears in the Sinai narrative only three times, twice in this passage. But consider the manner in which it is introduced. We hear of the offer, the acceptance, the writing, the erection of an altar and stones, the sacrifice, and the sprinkling of blood on the altar. Verse 6, in my view, completes the action — but no mention of *berit*. Then we get two explanatory glosses, both of them designed to link the action to the notion of *berit*. Verse 7 recapitulates the proposal and acceptance, but this time the form of proposal is put in terms of reading *sefer haberit* — a title found in the Bible only once elsewhere — of the book found in the Temple in the time of King Josiah. Then verse 8 gives a new interpretation of the blood ritual; now it is the people who are sprinkled, but accompanied by the declaration: *hinei dam haberit*. That leaves only one further passage where *berit* is mentioned of the events at Sinai (as opposed to Horeb). *Exod.* 19:5, before the Decalogue, has the proposal: "if you will listen to my voice and observe my *berit*, then you will be a special people to me." Apart from the fact that this usage of *berit* now stands alone in the Sinai narrative, I see no literary reason to doubt its authenticity. But it does not follow that this *berit* refers to the commandments that are to follow, as opposed to the patriarchal covenant which was regarded as enduring — and indeed vindicated by the Exodus, which forms the historical prologue to this particular proposal.

The two sets of editorial changes we have been considering — the one concerning *mishpatim* and the other *berit* — must surely come from different hands. Quite apart from the difference in technique — the *berit* editor using what Daube has called the *lex clausulae finalis*, the *mishpatim* editor using a very simple interpolation — the additions are mutually incompatible. Anthony Phillips has rightly stressed the concern shown by *Deut.* 5:22 to show that the Horeb covenant did not include the Covenant Code (1983:5). But this was not to be the last word. It may be that the present form of our pericope reflects one of the last stages in the process of canonisation of the Pentateuch, involving as it does the claim that both D, especially in the form of the Josianic *sefer haberit*, and the Covenant Code were equally part of the Sinaitic covenant.

(b) Lawmaking by the King: Codes, edicts and the temporal duration of law

I Sam 30:

- 21 Then David came to the two hundred men, who had been too exhausted to follow David, and who had been left at the brook Besor; and they went out to meet David and to meet the people who were with him; and when David drew near to the people he saluted them.
- 22 Then all the wicked and base fellows among the men who had gone with David said, "Because they did not go with us, we will not give them any of the spoil which we have recovered, except that each man may lead away his wife and children, and depart."
- 23 But David said, "You shall not do so, my brothers, with what the LORD has given us; he has preserved us and given into our hand the band that came against us.
- 24 Who would listen to you in this matter? For as his share is who goes down into the battle, so shall his share be who stays by the baggage; they shall share alike."
- 25 And from that day forward he made it a statute and an ordinance (*lehok ulemishpat*) for Israel to this day.

- **What does this suggest about the lawmaking powers of the king? Compare the context if the promulgation of law in *Gen. 47:18-26*: “And when that year [of famine] was ended, they [the Egyptians] came to him [Joseph] the following year, and said to him, “We will not hide from my lord that our money is all spent; and the herds of cattle are my lord’s; there is nothing left in the sight of my lord but our bodies and our lands. (19) Why should we die before your eyes, both we and our land? Buy us and our land for food, and we with our land will be slaves to Pharaoh; and give us seed, that we may live, and not die, and that the land may not be desolate.” (20) So Joseph bought all the land of Egypt for Pharaoh; for all the Egyptians sold their fields, because the famine was severe upon them. The land became Pharaoh’s; (21) and as for the people, he made slaves of them from one end of Egypt to the other. (22) Only the land of the priests he did not buy; for the priests had a fixed allowance from Pharaoh, and lived on the allowance which Pharaoh gave them; therefore they did not sell their land. (23) Then Joseph said to the people, “Behold, I have this day bought you and your land for Pharaoh. Now here is seed for you, and you shall sow the land. (24) And at the harvests you shall give a fifth to Pharaoh, and four fifths shall be your own, as seed for the field and as food for yourselves and your households, and as food for your little ones.” (25) And they said, “You have saved our lives; may it please my lord, we will be slaves to Pharaoh.” (26) So Joseph made it a statute concerning the land of Egypt, and it stands to this day, that Pharaoh should have the fifth; the land of the priests alone did not become Pharaoh’s.”**
- **A parallel issue is presented in the context of the Israelites’ wanderings in the desert: *Num. 31* (below). What does this suggest about the relationship between divine law and royal law? Note the usage of the expression “an everlasting statute” (*lehok olam*) frequently in the priestly writings in relation to the rights of the Aharonic priesthood (*Exod. 29:28, Lev. 7:34, Lev. 10:15, Num. 18:8, 11, 19*).**

Num 31:

- 25 The LORD said to Moses,
 26 “Take the count of the booty that was taken, both of man and of beast, you and Elea’zar the priest and the heads of the fathers’ houses of the congregation;
 27 and divide the booty into two parts, between the warriors who went out to battle and all the congregation.
 28 And levy for the LORD a tribute from the men of war who went out to battle, one out of five hundred, of the persons and of the oxen and of the asses and of the flocks;
 29 take it from their half, and give it to Elea’zar the priest as an offering to the LORD.
 30 And from the people of Israel’s half you shall take one drawn out of every fifty, of the persons, of the oxen, of the asses, and of the flocks, of all the cattle, and give them to the Levites who have charge of the tabernacle of the LORD.”
 31 And Moses and Elea’zar the priest did as the LORD commanded Moses.

(c) The role of the inscriptions and written legal texts

2 Chron. 17

- 7 In the third year of his reign he [King Jehoshaphat of Judah, 9th cent BCE] sent his princes, Ben-hail, Obadi’ah, Zechari’ah, Nathan’el, and Micai’ah, to teach in the cities of Judah;
 8 and with them the Levites, Shemai’ah, Nethani’ah, Zebadi’ah, As’ahel, Shemi’ramoth, Jehon’athan, Adoni’jah, Tobijah, and Tobadoni’jah; and with these Levites, the priests Eli’shama and Jeho’ram.
 9 And they taught in Judah, having the book of the law of the LORD with them; they went about through all the cities of Judah and taught among the people.
- **What does this tell us about the function of the “book of the law of the LORD” at this period?**
 - **Who taught and who was the audience?**

2 Kings 22:

- 8 And Hilki’ah the high priest said to Shaphan the secretary, “I have found the book of the law (*sefer hatorah*) in the house of the LORD.” And Hilki’ah gave the book to Shaphan, and he read it.
 ...
 10 Then Shaphan the secretary told the king, “Hilki’ah the priest has given me a book.” And Shaphan read it before the king.
 11 And when the king heard the words of the book of the law, he rent his clothes.

- 12 And the king commanded Hilki'ah the priest, and Ahi'kam the son of Shaphan, and Achbor the son of Micai'ah, and Shaphan the secretary, and Asai'ah the king's servant, saying,
- 13 "Go, inquire of the LORD for me, and for the people, and for all Judah, concerning the words of this book that has been found; for great is the wrath of the LORD that is kindled against us, because our fathers have not obeyed the words of this book, to do according to all that is written concerning us."
- 14 So Hilki'ah the priest, and Ahi'kam, and Achbor, and Shaphan, and Asai'ah went to Huldah the prophetess, the wife of Shallum the son of Tikvah, son of Harhas, keeper of the wardrobe (now she dwelt in Jerusalem in the Second Quarter); and they talked with her.
- 15 And she said to them, "Thus says the LORD, the God of Israel: 'Tell the man who sent you to me,
- 16 Thus says the LORD, Behold, I will bring evil upon this place and upon its inhabitants, all the words of the book which the king of Judah has read.
- 17 Because they have forsaken me and have burned incense to other gods, that they might provoke me to anger with all the work of their hands, therefore my wrath will be kindled against this place, and it will not be quenched.
- 18 But as to the king of Judah, who sent you to inquire of the LORD, thus shall you say to him, Thus says the LORD, the God of Israel: Regarding the words which you have heard,
- 19 because your heart was penitent, and you humbled yourself before the LORD, when you heard how I spoke against this place, and against its inhabitants, that they should become a desolation and a curse, and you have rent your clothes and wept before me, I also have heard you, says the LORD.
- 20 Therefore, behold, I will gather you to your fathers, and you shall be gathered to your grave in peace, and your eyes shall not see all the evil which I will bring upon this place.'" And they brought back word to the king.

2 Kings 23:

- 1 Then the king sent, and all the elders of Judah and Jerusalem were gathered to him.
- 2 And the king went up to the house of the LORD, and with him all the men of Judah and all the inhabitants of Jerusalem, and the priests and the prophets, all the people, both small and great; and he read in their hearing all the words of the book of the covenant (*sefer haberit*) which had been found in the house of the LORD.
- 3 And the king stood by the pillar and made a covenant before the LORD, to walk after the LORD and to keep his commandments and his testimonies and his statutes, with all his heart and all his soul, to perform the words of this covenant that were written in this book; and all the people joined in the covenant.
- **What does the story indicate about the previous status of the "book of the law"?**
 - **Why did Josiah need to order an inquiry of the Lord (v.13) in relation to the book?**
 - **The name of the book is given as *sefer haberit*, the same as the name given to the book read out by Moses at Sinai (*Exod. 24.7*, above). Is it likely that the two documents were the same? If not, what is the significance of the fact that the same name is used?**
 - **Are there any other parallels with *Exod. 24*?**
 - **Does the terminology of 2 Kings 23:3 remind you of anything (e.g. *Deut. 6:5*)?**

Jer 36:

- 1 In the fourth year of Jehoi'akim the son of Josi'ah, king of Judah, this word came to Jeremiah from the LORD:
- 2 "Take a scroll and write on it all the words that I have spoken to you against Israel and Judah and all the nations, from the day I spoke to you, from the days of Josi'ah until today.
- 3 It may be that the house of Judah will hear all the evil which I intend to do to them, so that every one may turn from his evil way, and that I may forgive their iniquity and their sin."
- 4 Then Jeremiah called Baruch the son of Neri'ah, and Baruch wrote upon a scroll at the dictation of Jeremiah all the words of the LORD which he had spoken to him.
- 5 And Jeremiah ordered Baruch, saying, "I am debarred from going to the house of the LORD;
- 6 so you are to go, and on a fast day in the hearing of all the people in the LORD's house you shall read the words of the LORD from the scroll which you have written at my dictation. You shall read them also in the hearing of all the men of Judah who come out of their cities.
- 7 It may be that their supplication will come before the LORD, and that every one will turn from his evil way, for great is the anger and wrath that the LORD has pronounced against this people."
- 8 And Baruch the son of Neri'ah did all that Jeremiah the prophet ordered him about reading from the scroll the words of the LORD in the LORD's house.
- 9 In the fifth year of Jehoi'akim the son of Josi'ah, king of Judah, in the ninth month, all the people in Jerusalem and all the people who came from the cities of Judah to Jerusalem proclaimed a fast before the LORD.
- 10 Then, in the hearing of all the people, Baruch read the words of Jeremiah from the scroll, in the house of the LORD, in the chamber of Gemari'ah the son of Shaphan the secretary, which was in the upper court, at the entry of

the New Gate of the LORD's house.

- 11 When Micaiah the son of Gemariah, son of Shaphan, heard all the words of the LORD from the scroll,
12 he went down to the king's house, into the secretary's chamber; and all the princes were sitting there: Eli'shama the secretary, Delai'ah the son of Shemai'ah, Elnathan the son of Achbor, Gemariah the son of Shaphan, Zedeki'ah the son of Hanani'ah, and all the princes.
13 And Micaiah told them all the words that he had heard, when Baruch read the scroll in the hearing of the people.
14 Then all the princes sent Jehu'di the son of Nethani'ah, son of Shelemi'ah, son of Cush, to say to Baruch, "Take in your hand the scroll that you read in the hearing of the people, and come." So Baruch the son of Neri'ah took the scroll in his hand and came to them.
15 And they said to him, "Sit down and read it." So Baruch read it to them.
16 When they heard all the words, they turned one to another in fear; and they said to Baruch, "We must report all these words to the king."
17 Then they asked Baruch, "Tell us, how did you write all these words? Was it at his dictation?"
18 Baruch answered them, "He dictated all these words to me, while I wrote them with ink on the scroll."
19 Then the princes said to Baruch, "Go and hide, you and Jeremiah, and let no one know where you are."
20 So they went into the court to the king, having put the scroll in the chamber of Eli'shama the secretary; and they reported all the words to the king.
21 Then the king sent Jehu'di to get the scroll, and he took it from the chamber of Eli'shama the secretary; and Jehu'di read it to the king and all the princes who stood beside the king.
22 It was the ninth month, and the king was sitting in the winter house and there was a fire burning in the brazier before him.
23 As Jehu'di read three or four columns, the king would cut them off with a penknife and throw them into the fire in the brazier, until the entire scroll was consumed in the fire that was in the brazier.
24 Yet neither the king, nor any of his servants who heard all these words, was afraid, nor did they rend their garments.
25 Even when Elnathan and Delai'ah and Gemariah urged the king not to burn the scroll, he would not listen to them.
26 And the king commanded Jerahmeel the king's son and Seraiah the son of Azuriel and Shelemi'ah the son of Abdeel to seize Baruch the secretary and Jeremiah the prophet, but the LORD hid them.
27 Now, after the king had burned the scroll with the words which Baruch wrote at Jeremiah's dictation, the word of the LORD came to Jeremiah:
28 "Take another scroll and write on it all the former words that were in the first scroll, which Jehoiakim the king of Judah has burned.
29 And concerning Jehoiakim king of Judah you shall say, 'Thus says the LORD, You have burned this scroll, saying, "Why have you written in it that the king of Babylon will certainly come and destroy this land, and will cut off from it man and beast?"'
30 Therefore thus says the LORD concerning Jehoiakim king of Judah, He shall have none to sit upon the throne of David, and his dead body shall be cast out to the heat by day and the frost by night.
31 And I will punish him and his offspring and his servants for their iniquity; I will bring upon them, and upon the inhabitants of Jerusalem, and upon the men of Judah, all the evil that I have pronounced against them, but they would not hear.'"
32 Then Jeremiah took another scroll and gave it to Baruch the scribe, the son of Neri'ah, who wrote on it at the dictation of Jeremiah all the words of the scroll which Jehoiakim king of Judah had burned in the fire; and many similar words were added to them.

- **Might this story tell us something about the manner in which the scroll discovered in the Temple in the reign of Josiah (2 Kings 22-23, above) found its way there?**
- **What, more generally, does it tell us about the relations between royal authority and religious leadership?**

Neh 8:

- 1 And all the people gathered as one man into the square before the Water Gate; and they told Ezra the scribe to bring the book of the law of Moses which the LORD had given to Israel.
2 And Ezra the priest brought the law before the assembly, both men and women and all who could hear with understanding, on the first day of the seventh month.
3 And he read from it facing the square before the Water Gate from early morning until midday, in the presence of the men and the women and those who could understand; and the ears of all the people were attentive to the book of the law.

- 4 And Ezra the scribe stood on a wooden pulpit which they had made for the purpose; and beside him stood Mattithi'ah, Shema, Anai'ah, Uri'ah, Hilki'ah, and Ma-asei'ah on his right hand; and Pedai'ah, Mish'a-el, Malchi'jah, Hashum, Hash-bad'danah, Zechari'ah, and Meshul'lam on his left hand.
- 5 And Ezra opened the book in the sight of all the people, for he was above all the people; and when he opened it all the people stood.
- 6 And Ezra blessed the LORD, the great God; and all the people answered, "Amen, Amen," lifting up their hands; and they bowed their heads and worshiped the LORD with their faces to the ground.
- 7 Also Jesh'ua, Bani, Sherebi'ah, Jamin, Akkub, Shab'bethai, Hodi'ah, Ma-asei'ah, Keli'ta, Azari'ah, Jo'zabad, Hanan, Pelai'ah, the Levites, helped the people to understand the law, while the people remained in their places.
- 8 And they read from the book, from the law of God, clearly; and they gave the sense, so that the people understood the reading.

- **What does this account have in common with the "reading of the law" in the modern synagogue?**
- **Is this "book of the law of Moses" (*sefer torat moshe*) likely to have been the whole Pentateuch?**
- **Who was the audience for the reading?**
- **Could the audience understand it or not? If not, why not?**
- **What kind of "sense" did the Levites give it?**

Ezra 7:

- 1 Now after this, in the reign of Artaxerxes king of Persia, Ezra the son of Serai'ah, son of Aaron the chief priest —
- 6 this Ezra went up from Babylonia. He was a scribe skilled in the law of Moses which the LORD the God of Israel had given; and the king granted him all that he asked, for the hand of the LORD his God was upon him.
- 7 And there went up also to Jerusalem, in the seventh year of Artaxerxes the king, some of the people of Israel, and some of the priests and Levites, the singers and gatekeepers, and the temple servants.
- 8 And he came to Jerusalem in the fifth month, which was in the seventh year of the king;
- 9 for on the first day of the first month he began to go up from Babylonia, and on the first day of the fifth month he came to Jerusalem, for the good hand of his God was upon him.
- 10 For Ezra had set his heart to study the law of the LORD, and to do it, and to teach his statutes and ordinances in Israel [*vela'asot ulelamed beyisrael hok umishpat*]
- 11 This is a copy of the letter which King Artaxerxes gave to Ezra the priest, the scribe, learned in matters of the commandments of the LORD and his statutes for Israel:
- 12 "Artaxerxes, king of kings, to Ezra the priest, the scribe of the law of the God of heaven. And now
- 13 I make a decree that any one of the people of Israel or their priests or Levites in my kingdom, who freely offers to go to Jerusalem, may go with you.
- 14 For you are sent by the king and his seven counsellors to make inquiries about Judah and Jerusalem according to the law of your God, which is in your hand,
- 15 and also to convey the silver and gold which the king and his counsellors have freely offered to the God of Israel, whose dwelling is in Jerusalem,
- 16 with all the silver and gold which you shall find in the whole province of Babylonia, and with the freewill offerings of the people and the priests, vowed willingly for the house of their God which is in Jerusalem.
- 17 With this money, then, you shall with all diligence buy bulls, rams, and lambs, with their cereal offerings and their drink offerings, and you shall offer them upon the altar of the house of your God which is in Jerusalem.
- 18 Whatever seems good to you and your brethren to do with the rest of the silver and gold, you may do, according to the will of your God.
- 19 The vessels that have been given you for the service of the house of your God, you shall deliver before the God of Jerusalem.
- 20 And whatever else is required for the house of your God, which you have occasion to provide, you may provide it out of the king's treasury.
- 21 "And I, the king, make a decree to all the treasurers in the province Beyond the River: Whatever Ezra the priest, the scribe of the law of the God of heaven, requires of you, be it done with all diligence,
- 22 up to a hundred talents of silver, a hundred cors of wheat, a hundred baths of wine, a hundred baths of oil, and salt without prescribing how much.
- 23 Whatever is commanded by the God of heaven, let it be done in full for the house of the God of heaven, lest his wrath be against the realm of the king and his sons.
- 24 We also notify you that it shall not be lawful to impose tribute, custom, or toll upon any one of the priests, the

Levites, the singers, the doorkeepers, the temple servants, or other servants of this house of God.

25 “And you, Ezra, according to the wisdom of your God which is in your hand, appoint magistrates and judges who may judge all the people in the province Beyond the River, all such as know the laws of your God; and those who do not know them, you shall teach.

26 Whoever will not obey the law of your God and the law of the king, let judgment be strictly executed upon him, whether for death or for banishment or for confiscation of his goods or for imprisonment.”

- **Were Ezra’s objectives only didactic or also practical?**
- **What is Ezra authorised to do, according to the (Aramaic) letter of Artaxerxes?**
- **Would a modern Chancellor of the Exchequer be equally generous?**
- **What powers are given to Ezra in relation to the legal system, and what is to be the role of the “laws of your God” in it?**
- **How, theologically, are we to understand the fact that divine law is to be enforced through the authority of a gentile king?**

B.S. Jackson, *Studies in the Semiotics of Biblical Law*, §5.2: The Use of Inscriptions (footnotes omitted)

Sometimes, stone monuments were erected in an *uninscribed* form, relying upon folk memory to identify the event whose place they marked or the significance of their erection. For example, in *Gen.* 31:43-54 a pillar is erected to witness the covenant (*berit*, v.44) between Jacob and Laban, and its significance is marked by giving the site a name which recalls that function; the monument also serves a function, according to the text as transmitted, analogous to that of a boundary stone:

And Jacob said to his kinsmen, ‘Gather stones’ (*avanim*), and they took stones, and made a heap (*gal*) ... Laban said, ‘This heap is a witness (*ed*) between you and me today.’ Therefore he named it Galeed ... Then Laban said to Jacob, ‘See this heap and the pillar (*matsevah*) which I have set between you and me. This heap is a witness, and the pillar is a witness, that I will not pass over this heap to you, and you will not pass over this heap and this pillar to me, for harm. The God of Abraham and the God of Nahor, the God of their father, judge between us.’

There is no suggestion in the narrative that the stone was inscribed. The covenant solemnities accompanying its erection — the mutual declarations, the sacrifice and the joint feast — were sufficient to fix its significance.

This feature of the covenantal model, the use of uninscribed stones to mark the place and serve as a monument to the event, occurs also in the Sinaitic narrative, in close proximity to — but distinct from — the writing down of the *sefer haberit* (*Exod.* 24:4):

And Moses wrote all the words of the LORD. And he rose early in the morning, and built an altar at the foot of the mountain, and twelve pillars (*matsevah*), according to the twelve tribes of Israel.

Any possibility of interpreting this passage as indicating that the divine message was written *on* the pillars is excluded by *Exod.* 24:7, which tells us that Moses ‘took’ (*vayikach*) the *sefer haberit*, which he then read to the people, thus implying that the message was written on something moveable — here, indeed, described as a *sefer*. Moreover, *matsevah* is one of the terms used for the stone monument in the account of the Covenant between Jacob and Laban, where there is no suggestion that the terms were reduced to writing. We find a similar combination in Joshua’s covenant ceremony at Shechem (*Josh.* 24:25-27):

So Joshua made a covenant with the people that day, and made statutes and ordinances for them at Shechem. And Joshua wrote these words in the book of the law of God; and he took a great stone, and set it up there under the oak in the sanctuary of the LORD. And Joshua said to all the people, ‘Behold, this stone shall be a witness against us; for it has heard all the words of the LORD which he spoke to us; therefore it shall be a witness against you, lest you deal falsely with your God.’

It is not unreasonable to suggest that, historically, the use of the uninscribed stone as a monument preceded the use of the inscribed form. As for the latter, the most obvious function of inscribed stone is to mark the boundary of a territory (private or public), and to seek to deter potential violators of that boundary through the use of curses, as in the *kudurru* inscriptions of the ancient Near East. It was but one step beyond this to add the record of an historical event which provided the source of title to that property. The victory stela has this dual function. On the one hand, it celebrates the prowess of the victor, or of the god who sponsored him. On the other hand, it marks the place of victory, thus of conquest and acquisition. But both the boundary function and the memorial function could be served by *uninscribed* stones. We have seen an example of the former in the story of Jacob and Laban. Joshua’s monument at Gilgal exhibits the latter function too (*Josh.* 4:1-7):

When all the nation had finished passing over the Jordan, the LORD said to Joshua, ‘Take twelve men from the people, from each tribe a man, and command them, “Take twelve stones from here out of the midst of the Jordan, from the very place where the priests’ feet stood, and carry them over with you, and lay them down in the place where you lodge tonight.”’ Then Joshua called the twelve men from the people of Israel, whom he had appointed, a man from each tribe; and Joshua said to them, ‘Pass on before the ark of the LORD your God into the midst of the Jordan, and take up each of you a stone upon his shoulder, according to the number of the tribes of the people of Israel, that this may be a sign among you, when your children ask in time to come, “What do those stones mean to you?”’ Then you shall tell them that the waters of the Jordan were cut off before the ark of the covenant of the LORD; when it passed over the Jordan, the waters of the Jordan were cut off. So these stones shall be to the people of Israel a memorial for ever.’

But folk memory was not always relied upon in order to fix the meaning of a monument. Both the boundary stone and the

victory stela (genres which overlap on some occasions) came to be inscribed. The famous Moabite stone, erected by Mesha around 840 B.C. to record his victory over King Omri of Israel (*ANET*, 3rd ed., 320f) provides archaeological confirmation of a genre which we find mentioned also in the Bible. Immediately after the victory over the Amalekites, God instructs Moses to record in writing (but here in a *sefer*, for the benefit of Joshua) that 'I will blot out the memory of Amalek' (*Exod.* 17:14). This was designed to signify the permanence of the victory, just as Mesha proclaimed that 'Israel hath perished for ever.'

These functions of the inscription seem to precede the recording of *law* on stone. However, it is easy to understand the development. There is a tradition of the victorious lawgiver, extending from Hammurabi through Justinian to Napoleon, which appears quite explicitly in the official documentation. Culturally and psychologically, the connection is easy to understand: the military victor, who has shed blood (albeit in what he may claim to be a good cause) nevertheless has a need to redress the balance by promoting peace, and the ideological form of the promotion of peace is the establishment of law and order. I suggest that this, as much as any purely literary connection, explains the form of the Decalogue, which commences with an allusion to a victory: 'I am the Lord your God, who brought you out of the land of Egypt' (*Exod.* 20:2) and then continues with prescriptions.

I do not use the term 'ideological' loosely. The inscription of laws on stone cannot serve a primarily pragmatic function. This is not a form for easy reference, certainly when we conceive of substantial monuments in large and busy places. Imagine being a Babylonian judge and having to rely upon the Code of Hammurabi as recorded on the monument now preserved in the Louvre and erected in a public square.

The inscription of laws on stone serves a primarily monumental purpose, as has been recognised in the case of the Laws of Hammurabi. Within the Bible, there are indications that the length of legal texts so inscribed came to increase. The original 'tablets of stone' inscribed by God to Moses (carrying a text, incidentally, which is quite incapable of being applied as law by judges) was of relatively short compass, and Deuteronomy seems to go out of its way to stress that it was only this text that was so inscribed (*Deut.* 5:22). But by the time we reach Moses' last instructions, and their fulfilment after the crossing of the Jordan, we find that the length and scope of the text inscribed on stone monuments appears to have increased very considerably. Moses commands that when the people have crossed the Jordan, they shall set up 'great stones' (*avanim gedolot*) and 'inscribe on them all the words of this law' (*et kol divre hatorah hazot*), placing them as a monument on Mount Ebal (*Deut.* 27:2-4). The performance of this obligation is recorded in *Josh.* 8:32: 'There in the presence of the Israelites he (Joshua) engraved on blocks of stone (*al ha'avanim*) a copy of the law of Moses (*mishneh torat mosheh*).' By this stage, the Israelite tradition appears to have been influenced by the model of the Mesopotamian legal codes, as exemplified by the Code of Hammurabi (which itself was widely copied).

It is noticeable, however, that in the linked narratives of Moses' last days and of Joshua's fulfilment of Moses' instructions, we hear not only of inscribed stones but also of the writing of the law in a *sefer*: Moses wrote down 'these laws in a book' (*Deut.* 31:24) for deposit in the Ark of the Covenant (cf. *Deut.* 31:9), and commanded that there be a septennial reading at the Feast of Tabernacles 'of this law publicly in the hearing of all Israel' (*Deut.* 31:11). The clear implication here is that it is the text written by Moses in the *sefer* that is to be read out, not the text to be inscribed on the stones. When we reach Joshua's ceremonial at Ebal, the inscribing of the law on stone is followed by a public reading (*Josh.* 8:30-35):

Then Joshua built an altar in Mount Ebal to the LORD, the God of Israel, as Moses the servant of the LORD had commanded the people of Israel, as it is written in the book of the law of Moses, 'an altar of unhewn stones, upon which no man has lifted an iron tool'; and they offered on it burnt offerings to the LORD, and sacrificed peace offerings. And there, in the presence of the people of Israel, he wrote upon the stones a copy of the law of Moses, which he had written. And all Israel, sojourner as well as homeborn, with their elders and officers and their judges, stood on opposite sides of the ark before the Levitical priests who carried the ark of the covenant of the LORD, half of them in front of Mount Gerizim and half of them in front of Mount Ebal, as Moses the servant of the LORD had commanded at the first, that they should bless the people of Israel. And afterward he read all the words of the law, the blessing and the curse, according to all that is written in the book of the law. There was not a word of all that Moses commanded which Joshua did not read before all the assembly of Israel, and the women, and the little ones, and the sojourners who lived among them.

The phrase *kekhol hakatuv besefer hatorah* in v.34 does not, however, mean necessarily that the text read out was that in the *sefer* (rather than that inscribed on the stones); what may be indicated was that the whole ceremony was carried out in accordance with the instructions given by Moses and recorded in Deuteronomy (cf. v.31). Certainly, we may assume that a *sefer* with that text was understood to have been available to Joshua (*Deut.* 31, above), and to have provided the text copied on the *avanim*. This, indeed, may be indicated directly, if we understand v.32 to mean: 'he wrote upon the stones a copy of the law of Moses (*mishneh torat mosheh*), which he (Moses) had written before the children of Israel'. The narrative thus somewhat uneasily combines the monumental function of law inscribed on stone with the ritual function of reading from a holy book — holy in that it had been written by Moses, at the command (perhaps, dictation) of God. This might be viewed as reiterating the combination of immovable monument and portable text at Sinai itself (*Exod.* 24:4-8), though with the difference that the pillars in *Exod.* 24:4 were uninscribed.

B.S. Jackson, *Studies in the Semiotics of Biblical Law*, §5.4: The Ezra Tradition and the Endurance of Law (footnotes omitted)

It is in the story of Ezra that we find the coalescence of these different communicational functions. Ezra comes not only as a religious reformer, but also as a royal administrator, familiar with the practice of Persian decrees. He wants the words of the law to be put permanently into the public domain, but not merely to fulfil a monumental function (as on the stones inscribed at Mount Ebal by Joshua); rather he wishes to combine the traditional ritual reading of the religious reform with a didactic function: the words should not only be read out, they should also be explained. Thus, the famous passage (*Neh.* 8:7-8) in which Ezra and his assistants (the Levites):

helped the people to understand (*mevinim*) the law, while the people remained in their places. And they read from the book, from the law of God, clearly (*meforash*); and they gave the sense (*vesom sekhel*), so that the people understood (*vayaviynu*) the reading.

This in itself combines the functions of Jehoshaphat's officers in 2 *Chron.* 17 with the ritual of Josiah's reform. But Ezra was not finished. The next day, he summoned a smaller group to return, comprising the heads of the families, the priests and the Levites, to study the text further (v.13). The process of specialisation had begun. Within the one text, there was room for both popular and more specialised audiences.

It is in this context that we should locate the transformation of the biblical legal collections into 'statutory' texts, binding upon the courts and subject to verbal interpretation. Indeed, Crüsemann has argued that it was the new legal framework of the Persian empire which prompted this, since the Persians had a policy not merely of recognizing the traditional laws of their subjects, but also of treating them as legally binding as the law of the king. Moreover, he suggests that the author of *Esther* 8:8 (concerning the 'revocation' of the decree against the Jews) thought there was a 'Persian legal principle' that '[n]ew law can be placed alongside older law without formally cancelling the first, even when the second contradicts the first,' — a principle which Crüsemann uses in explaining the fact that the redactors of the Pentateuch appear to have been unconcerned by the contradictions between the various documents which they compiled into their work. In fact, there is a hint of a similar idea in the etymology of the Roman verb for 'repeal' of laws: *abrogare* means literally to 'propose something different from ...' Some years ago I suggested (of the Roman situation) that '[i]n theory, it seems, even a superseded law remained a law just as *dharma*, *kittum* and *torah* retained their validity despite the absence of enforcement' and pointed to a similar idea in Demosthenes.

The unalterable character of the laws of the Persians and Medes is also reflected in another aspect of the Esther story. When Queen Vashti refuses to obey the command of King Ahasuerus to display herself before his guests, the king takes legal advice (*Esther* 1:13-15). In the interests of men's liberation, he is urged to take a strong line: 'Let a royal order go forth ... and let it be written among the laws of the Persians and the Medes so that it may not be altered (*velo ya'avor*), that Vashti is to come no more before King Ahasuerus; and let the king give her royal position to another who is better than she' (1:19). This, then, is the context in which we hear of the legendary character of the laws of the Persians and the Medes, which changeth not: Vashti is deposed — for ever. An ad hoc, ad personam royal decree is given the status of unalterable law. (For the text and further comment, see Week 9 materials).

(d) Law and Covenant: the meaning of "covenant renewal":

Gen. 15:

- 1 After these things the word of the LORD came to Abram in a vision, "Fear not, Abram, I am your shield; your reward shall be very great."
- 2 But Abram said, "O Lord GOD, what wilt thou give me, for I continue childless, and the heir of my house is Elie'zer of Damascus?"
- 3 And Abram said, "Behold, thou hast given me no offspring; and a slave born in my house will be my heir."
- 4 And behold, the word of the LORD came to him, "This man shall not be your heir; your own son shall be your heir."
- 5 And he brought him outside and said, "Look toward heaven, and number the stars, if you are able to number them." Then he said to him, "So shall your descendants be."
- 6 And he believed the LORD; and he reckoned it to him as righteousness.
- 7 And he said to him, "I am the LORD who brought you from Ur of the Chalde'ans, to give you this land to possess."
- 8 But he said, "O Lord GOD, how am I to know that I shall possess it?"
- 9 He said to him, "Bring me a heifer three years old, a she-goat three years old, a ram three years old, a turtledove, and a young pigeon."
- 10 And he brought him all these, cut them in two, and laid each half over against the other; but he did not cut the birds

in two.

- 11 And when birds of prey came down upon the carcasses, Abram drove them away.
12 As the sun was going down, a deep sleep fell on Abram; and lo, a dread and great darkness fell upon him.
13 Then the LORD said to Abram, "Know of a surety that your descendants will be sojourners in a land that is not theirs, and will be slaves there, and they will be oppressed for four hundred years;
14 but I will bring judgment on the nation which they serve, and afterward they shall come out with great possessions.
15 As for yourself, you shall go to your fathers in peace; you shall be buried in a good old age.
16 And they shall come back here in the fourth generation; for the iniquity of the Amorites is not yet complete."
17 When the sun had gone down and it was dark, behold, a smoking fire pot and a flaming torch passed between these pieces.
18 On that day the LORD made a covenant with Abram, saying, "To your descendants I give this land, from the river of Egypt to the great river, the river Euphra'tes,
19 the land of the Ken'ites, the Ken'izzites, the Kad'monites,
20 the Hittites, the Per'izzites, the Reph'aim,
21 the Amorites, the Canaanites, the Gir'gashites and the Jeb'usites."
- **What was Abram complaining about?**
 - **What did God promise him?**
 - **Is v.7 a separate promise? What does its form remind you of?**
 - **What does God promise Abram in the covenant?**
 - **What does Abram promise in exchange for the covenant?**

Exodus 19:

- 1 On the third new moon after the people of Israel had gone forth out of the land of Egypt, on that day they came into the wilderness of Sinai.
2 And when they set out from Reph'idim and came into the wilderness of Sinai, they encamped in the wilderness; and there Israel encamped before the mountain.
3 And Moses went up to God, and the LORD called to him out of the mountain, saying, "Thus you shall say to the house of Jacob, and tell the people of Israel:
4 You have seen what I did to the Egyptians, and how I bore you on eagles' wings and brought you to myself.
5 Now therefore, if you will obey my voice and keep my covenant, you shall be my own possession among all peoples; for all the earth is mine,
6 and you shall be to me a kingdom of priests and a holy nation. These are the words which you shall speak to the children of Israel."
7 So Moses came and called the elders of the people, and set before them all these words which the LORD had commanded him.
8 And all the people answered together and said, "All that the LORD has spoken we will do." And Moses reported the words of the people to the LORD.
9 And the LORD said to Moses, "Lo, I am coming to you in a thick cloud, that the people may hear when I speak with you, and may also believe you for ever."
- **Is this a covenant?**
 - **What does God promise Moses?**
 - **What are the people required to promise God?**
 - **In what ways does this differ from the covenant with Abram, and why?**
 - **Any traces here of the treaty forms?**

Exodus 24:

- 3 Moses came and told the people all the words of the LORD and all the ordinances; and all the people answered with one voice, and said, "All the words which the LORD has spoken we will do."
4 And Moses wrote all the words of the LORD. And he rose early in the morning, and built an altar at the foot of the mountain, and twelve pillars, according to the twelve tribes of Israel.
5 And he sent young men of the people of Israel, who offered burnt offerings and sacrificed peace offerings of oxen to the LORD.
6 And Moses took half of the blood and put it in basins, and half of the blood he threw against the altar.
7 Then he took the book of the covenant, and read it in the hearing of the people; and they said, "All that the LORD has spoken we will do, and we will be obedient."

- 8 And Moses took the blood and threw it upon the people, and said, "Behold the blood of the covenant which the LORD has made with you in accordance with all these words."

• **What distinguishes this covenant from those in the passages above?**

Joshua 24

- 1 Then Joshua gathered all the tribes of Israel to Shechem, and summoned the elders, the heads, the judges, and the officers of Israel; and they presented themselves before God.
- 2 And Joshua said to all the people, "Thus says the LORD, the God of Israel, 'Your fathers lived of old beyond the Euphrates, Terah, the father of Abraham and of Nahor; and they served other gods.
- 3 Then I took your father Abraham from beyond the River and led him through all the land of Canaan, and made his offspring many. I gave him Isaac;
- 4 and to Isaac I gave Jacob and Esau. And I gave Esau the hill country of Se'ir to possess, but Jacob and his children went down to Egypt.
- 5 And I sent Moses and Aaron, and I plagued Egypt with what I did in the midst of it; and afterwards I brought you out.
- 6 Then I brought your fathers out of Egypt, and you came to the sea; and the Egyptians pursued your fathers with chariots and horsemen to the Red Sea.
- 7 And when they cried to the LORD, he put darkness between you and the Egyptians, and made the sea come upon them and cover them; and your eyes saw what I did to Egypt; and you lived in the wilderness a long time.
- 8 Then I brought you to the land of the Amorites, who lived on the other side of the Jordan; they fought with you, and I gave them into your hand, and you took possession of their land, and I destroyed them before you.
- 9 Then Balak the son of Zippor, king of Moab, arose and fought against Israel; and he sent and invited Balaam the son of Be'or to curse you,
- 10 but I would not listen to Balaam; therefore he blessed you; so I delivered you out of his hand.
- 11 And you went over the Jordan and came to Jericho, and the men of Jericho fought against you, and also the Amorites, the Per'izzites, the Canaanites, the Hittites, the Gir'gashites, the Hivites, and the Jeb'usites; and I gave them into your hand.
- 12 And I sent the hornet before you, which drove them out before you, the two kings of the Amorites; it was not by your sword or by your bow.
- 13 I gave you a land on which you had not laboured, and cities which you had not built, and you dwell therein; you eat the fruit of vineyards and oliveyards which you did not plant.'
- 14 "Now therefore fear the LORD, and serve him in sincerity and in faithfulness; put away the gods which your fathers served beyond the River, and in Egypt, and serve the LORD.
- 15 And if you be unwilling to serve the LORD, choose this day whom you will serve, whether the gods your fathers served in the region beyond the River, or the gods of the Amorites in whose land you dwell; but as for me and my house, we will serve the LORD."
- 16 Then the people answered, "Far be it from us that we should forsake the LORD, to serve other gods;
- 17 for it is the LORD our God who brought us and our fathers up from the land of Egypt, out of the house of bondage, and who did those great signs in our sight, and preserved us in all the way that we went, and among all the peoples through whom we passed;
- 18 and the LORD drove out before us all the peoples, the Amorites who lived in the land; therefore we also will serve the LORD, for he is our God."
- 19 But Joshua said to the people, "You cannot serve the LORD; for he is a holy God; he is a jealous God; he will not forgive your transgressions or your sins.
- 20 If you forsake the LORD and serve foreign gods, then he will turn and do you harm, and consume you, after having done you good."
- 21 And the people said to Joshua, "Nay; but we will serve the LORD."
- 22 Then Joshua said to the people, "You are witnesses against yourselves that you have chosen the LORD, to serve him." And they said, "We are witnesses."
- 23 He said, "Then put away the foreign gods which are among you, and incline your heart to the LORD, the God of Israel."
- 24 And the people said to Joshua, "The LORD our God we will serve, and his voice we will obey."
- 25 So Joshua made a covenant with the people that day, and made statutes and ordinances for them at Shechem.
- 26 And Joshua wrote these words in the book of the law of God; and he took a great stone, and set it up there under the oak in the sanctuary of the LORD.
- 27 And Joshua said to all the people, "Behold, this stone shall be a witness against us; for it has heard all the words of

the LORD which he spoke to us; therefore it shall be a witness against you, lest you deal falsely with your God.”

- **What is the function of vv.2-13? Should it be seen as a reiteration and expansion of something earlier?**
- **What is the function of vv.14-24? Should it be seen as a reiteration and expansion of something earlier?**
- **What do the people promise?**
- **What is the role of law in this covenant?**
- **What is distinctive about the form the covenant takes?**

B.S. Jackson, *Studies in the Semiotics of Biblical Law*, §9.4: Covenant Renewal in Deuteronomy and Joshua

The reports of the impending death of Moses in the Book of Numbers proved greatly exaggerated. Deuteronomy is cast mainly in the form of Moses’ speech — in fact, speeches — at the end of the forty years in the desert, before the entry to the promised land. Taken as a whole, it serves as a recognition — through reiteration in the speeches of Moses — of the significance of the acts which are recounted, the performances of God and of Moses himself.

Compared with the bulk of the laws in Exodus-Numbers, introduced through the anonymous narrator telling us that God had instructed Moses to transmit the laws that follow to the people (e.g. the opening verse of the *Mishpatim*, *Exod.* 21:1), we have in Deuteronomy a reversal of relationships. Deuteronomy is truly *torat mosheh*, in that the narrator tells the story of the speeches which Moses delivers, in the course of which it is Moses who himself narrates both the story of God’s relationship to Israel and the laws which have been given. However, we should also pay attention to the divisions the background narrator makes between the various speeches attributed to Moses.

In the first speech, largely devoted to historical narrative, Moses expresses clearly what he conceived the *berit* to be (*Deut.* 4:13-14):

And he declared to you his covenant, which he commanded you to perform, that is, the ten commandments; and he wrote them upon two tables of stone. And the LORD commanded me at that time to teach you statutes and ordinances, that you might do them in the land which you are going over to possess.

The ‘that is’ of the RSV is not found in the Hebrew, but it is an accurate representation of the force of the apposition. Moses contrasts the status of the *aseret hadevarim* which were inscribed on the tables from the *hukim* and *mishpatim* which he was commanded to teach (no claim here that the latter were written down, or even that God dictated them rather than authorised Moses to formulate them: there is no definite article attached to ‘statutes and ordinances’). The distinction, however, turns out to be of largely theoretical character. Breach even of this non-covenantal, but still divinely authorised law entails the risk of significant sanctions, extending even to loss of the land.

In the second speech, Moses’ quotation of the Decalogue is introduced thus (*Deut.* 5:1-5):

Hear, O Israel, the statutes and the ordinances (*hahukim ve’et hamishpatim*) which I speak in your hearing this day, and you shall learn them and be careful to do them. The LORD our God made a covenant with us in Horeb. Not with our fathers did the LORD make this covenant, but with us, who are all of us here alive this day. The LORD spoke with you face to face at the mountain, out of the midst of the fire, while I stood between the LORD and you at that time, to declare to you the word of the LORD; for you were afraid because of the fire, and you did not go up into the mountain. He said ...

If there is any suggestion from 5:1 that the *berit* includes *hukim* and *mishpatim*, it is dispelled by Moses’ remark immediately following his recitation of the Decalogue: ‘These words the LORD spoke to all your assembly at the mountain out of the midst of the fire, the cloud, and the thick darkness, with a loud voice; and he added no more’ (5:22).

The Decalogue is here unambiguously related to the *berit* at Horev, but Moses is concerned to stress its continuing validity for the present generation. This is achieved in two ways: on the one hand by a fiction (much emphasised in later Jewish writings) that this first (and all future) generations were in fact (in some sense) present at the original revelation; secondly (which we might consider otiose if the fiction were really taken seriously) by Moses’ repeating the *devarim* to the present generation. The question whether incorporation into the covenant requires direct divine address to the new adherents — an issue encountered in the covenant stories of both Isaac and Jacob (§9.2) — still appears not to have been resolved. However, the theme of continuity in respect of the patriarchal promise is now transferred to that of a covenant incorporating ‘legal’ obligations.

The status of the promises to the patriarchs, as conceived in Deuteronomy, is itself of some interest. The promise of the land is *never* explicitly ascribed in Deuteronomy to a covenant; normally it is referred to as a divine gift — frequently as one with continuing validity: an ‘inheritance’. Where the origins of that gift are mentioned, they are normally identified as an ‘oath’ sworn by God to the patriarchs. This may well be a shorthand: in *Deut.* 4:31 the patriarchal covenant is itself said to have been ‘sworn’ to them. Even so, there must have been a reason for the shorthand. Though a patriarchal covenant to give the land may be presupposed (indeed, may be thought in large measure to have been discharged by performance), Deuteronomy reserves the terminology of *berit* for the Decalogue on the one hand and, as we shall see, some subsequent

commands of Moses on the other.

The theological significance of the land for Deuteronomy is not that it is the benefit to Israel of a unilateral covenant given to the patriarchs. Rather, it is one side of a bilateral relationship, of which the other is Israel's observance of both covenant (the Decalogue) and divinely authorised law. Thus, the land is conceived as the place where the commandments are to be performed (*Deut.* 5:31; 6:1; 12:1). Continuing possession of the land (or at least the prosperity and long life derived from it: *Deut.* 11:17; 15:4; 23:20; 25:15; 28:11; 30:16, 32:47) is now taken to be conditional upon observance of particular laws (*Deut.* 4:26; 16:20), law in general (*Deut.* 4:40; 11:8; 28:63; 30:18) and (less commonly) covenant (*Deut.* 29:24-25). More controversially, it is viewed as a reward for their observance.

Deut. 7:7-11, later in this speech, may be taken as encapsulating a number of claims regarding the interrelationship of previous elements in the story:

(7) It was not because you were more in number than any other people that the LORD set his love upon you and chose you, for you were the fewest of all peoples; (8) but it is because the LORD loves you, and is keeping the oath which he swore to your fathers, that the LORD has brought you out with a mighty hand, and redeemed you from the house of bondage, from the hand of Pharaoh king of Egypt. (9) Know therefore that the LORD your God is God, the faithful God who keeps covenant and steadfast love with those who love him and keep his commandments, to a thousand generations, (10) and requites to their face those who hate him, by destroying them; he will not be slack with him who hates him, he will requite him to his face. (11) You shall therefore be careful to do the commandment, and the statutes, and the ordinances, which I command you this day.

The reference to paucity of numbers in v.7 naturally refers to the clan of Abraham at the time of making the patriarchal covenant. In context, that to the exodus therefore impliedly claims fulfilment of the promise to make the descendants of the patriarchs as numerous as the stars, as well as the promise (soon to be fulfilled) of the land. The covenant in v.9 is the Decalogue, as shown by the formulation in terms of those who love and hate God (cf. *Deut.* 5:9-10). Given Deuteronomy's insistence that God did not add to the words of the Decalogue (*Deut.* 5:22), v.11 might appear surprising, in requiring adherence to *hamitsvah ve'et haḥukim ve'et hamishpatim*. But note the change of subject of the verb 'command': 'You shall therefore be careful to do the commandment, and the statutes, and the ordinances, which I command you this day.' The RSV's 'therefore' is more explicit than the Hebrew, which has merely *veshamarta*. However, it is justified. Moses is presented at the outset as having set out to 'explain' this *torah*. Here, he claims that he will do so by personally issuing *hamitsvah ve'et haḥukim ve'et hamishpatim*. This corresponds to Moses' introduction to the main body of laws in Deuteronomy: 'These are the statutes and ordinances (*haḥukim vehamishpatim*) which you shall be careful to do in the land which the LORD, the God of your fathers, has given you to possess, all the days that you live upon the earth' (*Deut.* 12:1). Moses will issue non-covenantal law in order to ensure adherence to the covenant — especially the septennial *Sukkot* reading in *Deut.* 31. A biblical anticipation of *seyag latorah*?

Deuteronomy provides a version of the story of the golden calf (*Deut.* 9:8-21, 10:1-5, 10-11), presented as one (if the major) instance of the continuing stubbornness and rebelliousness of the people. The sin is not described as a breach of covenant and there is no mention of any covenant entered into in settlement of that dispute.

After the speech which contains the main body of Deuteronomic laws (in chs.12-26), there follows a sequence of smaller speeches containing instructions related directly to the entry into the land. It is these speeches which form the crucial link between the books (and stories) of Moses and Joshua, and introduce a new cycle of narrative reiteration.

First, large plastered stones are to be set up on the day of the crossing the Jordan, on which should be written 'all the words of this law'; the stones are to be erected on Mount Ebal, where a stone altar is to be built, on which sacrifice should be made, as an act of rejoicing (*Deut.* 27:2-8). We may note that this is an instruction which Moses does *not* claim that God has given him; the narrator simply tells us that Moses and the elders of Israel commanded the people to do it. Between this and the instruction regarding the blessings and curses on Gerizim and Ebal, there is an interruption (*Deut.* 27:9-10):

And Moses and the Levitical priests said to all Israel, 'Keep silence and hear, O Israel: this day you have become the people of the LORD your God. You shall therefore obey the voice of the LORD your God, keeping his commandments and his statutes, which I command you this day.'

This can hardly be in its proper place. 'This day you have become the people of the LORD your God' implies an act of incorporation of the current generation into the covenant, but that does not come until *Deut.* 29:10-15 (below): Moses has been recounting previous history, sermonising on it and providing further *ḥukim* and *mishpatim* (whatever their status). Moses next commands the people to perform the ceremony of blessings and curses, on Gerizim and Ebal, when they have crossed the Jordan. The text of the curses is relayed in the form of the *oratio directa* to be pronounced by the Levites, while the blessings (and further threats) follow not as the *ipsissima verba* of blessings and curses which are to be formally pronounced, but as a continuation of Moses' speech in which he relays God's promises and threats. There is no explicit mention of *berit* in chapters 27 or 28, but the long ('*toḥakha*') speech containing the blessings and curses (*Deut.* 27:11-28:68) threatens reversal of those covenantal promises which had already been fulfilled: 'Whereas you were as the stars of heaven for multitude, you shall be left few in number; because you did not obey the voice of the LORD your God' (*Deut.* 28:62); 'And the LORD will bring you back in ships to Egypt, a journey which I promised that you should never make again' (*Deut.* 28:62). The narrator's context has, by this stage, intervened in the presentation. This is part of a concluding passage dealing with punishment for an *existing*

breach of obligation: ‘All these curses shall come upon you and pursue you and overtake you, till you are destroyed, because you did not obey the voice of the LORD your God, to keep his commandments and his statutes which he commanded you’ (Deut. 28:45).

Chapter 29:1 opens in the voice of the narrator (Deut. 29:1-2):

These are the words of the covenant (*eyleh divre habrit*) which the LORD commanded Moses to make with the people of Israel in the land of Moab, besides the covenant which he had made with them at Horeb. And Moses summoned all Israel and said to them ... (*oratio directa*)

There is not the slightest suggestion that this covenant ‘in the land of Moab’ either replaces or renews an earlier *berit*. It is clearly stated to be additional to that at Horeb.

What is the point of this additional covenant? Despite the Massoretic chapter division, Deut. 29:1 must surely refer to what follows in chapter 29, rather than what precedes. Chapter 29 begins with a normal historical prologue (‘You have seen all that the LORD did before your eyes in the land of Egypt ...’), commencing with *atem re’item* as in Exod. 19:4. Then the people is formally commissioned as parties to this additional covenant (Deut. 29:10-15):

(10) You stand this day all of you before the LORD your God; the heads of your tribes, your elders, and your officers, all the men of Israel, (11) your little ones, your wives, and the sojourner who is in your camp, both he who hews your wood and he who draws your water, (12) that you may enter into the sworn covenant of the LORD your God, which the LORD your God makes with you this day; (13) that he may establish you this day as his people, and that he may be your God, as he promised you, and as he swore to your fathers, to Abraham, to Isaac, and to Jacob. (14) Nor is it with you only that I make this sworn covenant, (15) but with him who is not here with us this day as well as with him who stands here with us this day before the LORD our God.

The whole emphasis is upon the identification of those who are parties to the covenant (whatever their rank, gender and age, vv.10-11; even, in v.15, those not present — probably an attempt to make the covenant prospective for future generations *without* the need for further ceremony) and their status as the successors to the patriarchal covenant is stressed (v.13). Later in the speech Moses calls heaven and earth to witness that he has set before the people a choice between life and death, good and evil. He urges them to choose life, so that they should be the people who will inherit the benefit of the patriarchal promise: ‘That you may dwell in the land which the Lord swore to your fathers, to Abraham, to Isaac, and to Jacob to give *them*’ (Deut. 30:20) — *latet lahem*. He does not say, ‘to give to you’. The implication is that the patriarchal covenant was indeed irrevocable, in the sense that some descendants of Abraham, Isaac and Jacob would inherit the promised land. It did not follow that all, or any particular group, of the patriarchs’ descendants would qualify — an issue which, as argued above (§9.2), informs the covenant narratives in Genesis. This particular group, the generation of the children of the survivors of the golden calf incident (who themselves had been reconfirmed as beneficiaries of the covenant in Exod. 34), is given that privilege in exchange for entering into a further *berit*.

The fact that this covenant is said to be ‘additional to’ (*milvad*) that at Horeb suggests an important distinction, in the thought of the Deuteronomist, between the ‘Sinaitic’ and patriarchal covenants: the former is regarded as continuing: we have observed already Deuteronomy’s fiction that the unborn generation were already present there. Hitherto, the patriarchal sworn promise did not automatically descend to future generations, even if now, on the point of entry to the land, when the first real beneficiaries are known, it does become hereditary (vv.14-15). But there is also a further change. For Deuteronomy, the covenant at Horeb had included only the Decalogue; now, in this additional covenant, the choice of life and death depends upon observance also of ‘the commandments of the LORD your God which I command you this day ... and by keeping his commandments and his statutes and his ordinances’ (Deut. 30:16). A detailed body of ‘legal’ instruction is thus added to the covenant. Whereas the redactors of the Sinaitic pericope did this by incorporation of the *Mishpatim* into the account of the covenant in Exod. 24:3, Deuteronomy uses the story of an additional *berit* to do so.

Chapter 31 commences an independent speech, separated from what precedes by the narrator’s short continuation passage (Deut. 31:1-2). But the sequence which begins in chapter 31 has a different narrative function from what precedes. Here we get Moses’ valedictory. He tells the Israelites that he is now 120 years old and that God has told him that he will not cross the Jordan. The Israelites are not to fear; God will lead them into battle against their enemies. Then he summons Joshua, and charges him in similar fashion (Deut. 31:7-8). Next he writes down *hatorah hazot* (Deut. 31:9) and gives it to the priests to carry in the ark of the covenant. It is at this stage that he gives them (his last) general command, again, *without* claiming to do so at God’s command, that every seven years, on the occasion of the *shemittah*, at the festival of *Sukkot*, they are to read publicly *hatorah hazot* (Deut. 31:10-13):

At the end of every seven years, at the set time of the year of release, at the feast of booths, when all Israel comes to appear before the LORD your God at the place which he will choose, you shall read this law before all Israel in their hearing. Assemble the people, men, women, and little ones, and the sojourner within your towns, that they may hear and learn to fear the LORD your God, and be careful to do all the words of this law, and that their children, who have not known it, may hear and learn to fear the LORD your God, as long as you live in the land which you are going over the Jordan to possess.

It is clear why, for narrative purposes, such a law of septennial reading has to come in its present place; only then, when Moses has written down the whole of the law, can the instruction to read it every seven years refer unambiguously to the whole written *torah* (or even to the whole of the Mosaic instructions in Deuteronomy). Though there is no explicit suggestion that

such septennial readings are for anything other than instructional purposes, the institution fits with the theme of what immediately precedes: those who are (now) bound for the future to this covenant should have regular exposure to its content. It is thus, at the same time, a 'ritual' reading (§5.3.3, *supra*). Incorporation in the covenant entails knowledge (or at least being put on notice of) of the content of its obligations.

To summarise: from chapter 27, we have a number of quite separate instructions offered by Moses himself, of which two — the erection of monumental law, and the ceremony of blessings and curses — are designed for one particular historical occasion, while the third — the septennial reading of the law — is presented as having continuing validity. Additionally, and quite separately, we have a *berit* which Moses says God commands him to make, there and then, in the plains of Moab. This *berit* confirms the present Israelites as the successors to the patriarchal covenant, before the entry to the promised land. The fact that God commands Moses to make this covenant may be viewed, additionally, as functioning to recognise both the performance by Moses of his task, and to adumbrate the performance by God of his: he has brought the people to the promised land, even if it has not yet been conquered.

Immediately thereafter, the narrator tells us that God announces to Moses his imminent death, and we have the traditions regarding the Song of Moses, his viewing of the promised land from Mount Nebo, and Moses' blessing of the Israelites. Moses dies. The first chapter of Joshua takes up the theme of a written law, now in connection with Joshua, even before the crossing of the Jordan. God's charge to Joshua puts him on the same footing as Moses, explicitly as far as military conquest is concerned (*Josh.* 1:5). In return, Joshua is required to perform 'all the law which Moses my servant commanded you' (*Josh.* 1:7), — that is, what we may call the 'direct commands of Moses'. Then follows a reference to written law: 'This book of the law shall not depart out of your mouth, but you shall meditate on it day and night ...' (*Josh.* 1:8). This does not reiterate either the instruction regarding monumental law, or that of a septennial reading; it does, however, echo the 'law of the king' in *Deut.* 17:18. In short, Joshua is being charged not only to follow the instructions of Moses, but also to act like him. The two themes converge in the association of Joshua with the monarchical tradition. Throughout the book of Joshua, both themes are frequently reflected, in the narrative parallels between Joshua and Moses, and in the qualification of various actions as having been performed *kakaturv*.

The ceremony at Gilgal, immediately after the crossing of the Jordan, does not correspond to anything Moses commanded; rather, it is a direct command from God. However, immediately after the conquest of Jericho and Ai, Joshua fulfills Moses' instructions regarding Mount Ebal. *Josh.* 8:30-35 echoes *Deut.* 27:2-8 in considerable detail, but with a couple of significant variants. In case the significance of Joshua's actions might be lost on the audience, the narrator explicitly refers, three times in the course of six verses, to the authorities for Joshua's actions — these being a written book of *torah* twice, and a command of Moses, here unattributed to a written source (v.33), on the third occasion. The elements which the passage shares with Deuteronomy 27 are clear enough: Mount Ebal, an altar of unhewn stones (*avanim shelemot*), burnt offerings and peace offerings, the act of inscribing the stones. But there is more. What Joshua does in this passage also evokes other Deuteronomic instructions. The positioning of the people half on Mount Ebal and the other half on Mount Gerizim (v.33) refers back to the next, but separate instruction given by Moses in *Deut.* 27, that related to the blessings and the curses, and these latter are proclaimed in verse 34. *Josh.* 8:30-35 thus seeks to show fulfilment of the two separate but consecutive instructions given in Deuteronomy 27. The reading of the law (not, apparently, just the blessings and curses) and the stress on the inclusion within the ceremony of 'the women, and the little ones, and the sojourners' apparently also conflates elements of the *Sukkot* reading (*Deut.* 31:11-12).

What, then, is the evidence that *Josh.* 8:30-35 is either intended to signify, or reflects, the institution of a covenant renewal ceremony? I see none whatsoever. The passage is fully explicable in terms of a narrative pattern (quite explicit in the texts) of Mosaic instruction and Joshuan fulfilment. It makes narrative sense in Greimassian terms as the story of Joshua, receiving a 'Contract' from Moses and performing it.

That leaves us with Joshua's own valedictories, in chapters 23 and 24, which turn out to be the only remaining evidence for the covenant renewal ceremony. Let us admit right away that there is here something worth discussing. *Josh.* 24:25 tells us that Joshua made a *berit* with the people and gave them *hok umishpat* at Shechem. Before we interpret this in terms of cultic history, we are entitled to ask what narrative sense it makes. Chapter 24 is, as Gordon Wenham has described it, 'a fitting climax to the whole book'. Just as Moses has more than a single valedictory at the end of Deuteronomy, so too with Joshua in chapters 23 and 24. But Joshua 24 forms a climax in a double sense. On the one hand, it is the end of Joshua's personal story, and manifests 'Recognition' — what Greimas calls the 'glorifying test'. But at the same time, it represents a narrative form of recognition of the fact that the patriarchal covenant had itself now been fulfilled: God had promised to give the land to Abraham's descendants; the land had now been duly conquered; and the people assemble to recognise that fact. Dare I say that it is pure Hollywood? Those who proposed the Hexateuchal thesis had more narrative sense than most of the directors of Old Testament epics, in taking the story this far, and making this the final scene. Can't you see the final credits go up as the people shout their acclamation, and Joshua reiterates Moses' final covenantal act, that act which he could only make at the plains of Moab but which his successor makes there in the promised land, now joyously celebrating the fulfilment of the patriarchal promise?

Well, now that you have seen the film, it's time to read the critics. Let us look at some of the details which contribute

to this recognition scene. Already in chapter 23, the first of the two valedictory speeches, Joshua uses the terminology of the charge to him in chapter 1, of not deviating to the right or the left from the book of the law of Moses (*Josh.* 23:6). The end of that speech is as explicit a recognition of the performance of God's promise as one could imagine: 'You know in your hearts and souls, all of you, that not one thing has failed of all the good things which the Lord your God promised concerning you; all have come to pass for you, not one of them has failed' (*Josh.* 23:14). But the next cycle of covenantal history is anticipated. Israel is warned not to transgress its own obligations under the existing covenant, by committing idolatry, for fear of God's removal of them from the land. In chapter 23, there is no covenant confirmation, recommitment or revision, simply a recognition that God has done his part, and that Israel's continued success depends upon its fulfilment of the existing covenantal relationship. And that, in this chapter, is understood as no more and no less than the ban on idolatry.

The second valedictory ceremony, this time located specifically at Shechem, is more complex. In chapter 24, Joshua's speech commences with his quoting God in *oratio directa*; the account of Israelite history from Terah down to the conquest, in *Josh.* 24:2-13, is formulated as God's first person account of what he had done. After reporting God's speech, Joshua personally provides the lesson: 'Now therefore fear the Lord ... put away the gods which your fathers served beyond the River, and in Egypt ...' (*Josh.* 24:14). He challenges them, however, to 'choose this day whom you will serve' (*Josh.* 15-16), thus echoing the theme of choice in one of the valedictory addresses of Moses (*Deut.* 30:19). The people respond that they would not dream of forsaking the Lord for other gods, and in their response they explicitly recognise what God has done for them: 'It is the Lord our God who brought us and our fathers up from the land of Egypt', etc. (*Josh.* 24:16-18). But Joshua is not satisfied with any pat response. He warns the people that they may not be up to the standards demanded by the Lord; he is a jealous God who will not forgive their transgressions if they do dissent (*Josh.* 24:19-20). The people respond a second time: 'Nevertheless, we will still serve the Lord' (v.21). Joshua then calls the people to witness against themselves, and there follows a solemn declaration by the people: 'The Lord our God we will serve, and his voice we will obey' (v.24). Only then, and most summarily, do we hear of a covenant, and of the giving of law at Shechem (v.25); and equally of the writing by Joshua of *hadevarim ha'eleh in sefer torat elohim*.

There are those who talk of a reading of the law in the context of this covenant at Shechem; even a purported identification of the Covenant Code of *Exod.* 21-23 with 'the law book read by Joshua during (this) covenant ceremony at Shechem'. But there is no hint whatsoever in this chapter of a reading. It is only by conflating chapter 24 with the proceedings of Mount Ebal in chapter 8, and then further conflating the two with the command of a septennial reading in Deuteronomy 31, that the mythical institution of the covenant renewal ceremony at Shechem is produced. But neither of these traditions regarding a reading make any mention of covenant, nor does the covenant story at Shechem make any reference to a reading. I would suggest that our own reading, taking the story in its temporal sequence, makes quite adequate narrative sense. The *entry* into the promised land is a significant event, but not in itself the fulfilment of the patriarchal covenant. Its significance lies in part in the recognition of Joshua as the successor of Moses, by his fulfilment of Moses' last testament, his ad hoc and immediate commands. At the *end* of Joshua's life, there is a need for a different kind of recognition, but this proceeds at two levels. There is the explicit recognition of the fulfilment of the covenant — both the patriarchal promise of the land (*Josh.* 24:8) and an allusion to the battle-angel promise at Sinai; there is the implicit mutual recognition of the significance of the two leaders, Moses and Joshua, through reiteration of the details of their valedictory scenes: the charge to the people, challenging them to choose; the covenant, the writing, the issuing of non-divinely dictated commands. In fact the *hok umishpat* of Joshua — a phrase associated elsewhere with law-giving not in the context of covenant (*Exod.* 15:25) — seems to demand such an explanation. Why, otherwise, does Joshua, when about to die, start legislating?

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Week 5b: Adjudication: Human Law and Divine Justice

1. Issues

- (a) Was courtroom adjudication the regular way of resolving disputes?
- (b) Who appointed the judges and what sources were the courts supposed to use?
- (c) What procedures did they use?
- (d) What was the role of the king in the judicial system?
 - Does royal justice originate in those matters of particular interest to the king?
 - What supplementary role does the king assume in relation to the administration of justice?
- (e) The relationship between human law and divine justice:
 - (i) Is human law to be modelled on divine justice or is divine justice modelled on notions taken from human law? Compare Esther 10-22 with the cases of desert adjudication (the “cases of legal difficulty”, below)
 - (ii) Divine justice used to resolve cases of legal difficulty: the cases of desert adjudication
 - (iii) Divine justice used to resolve cases of factual difficulty
 - (iv) What is the relationship between the ethical standards of human and divine justice?

2. Texts and Materials

(a) Was courtroom adjudication the regular way of resolving disputes?

Prov.25:7-9

What your eyes have seen
do not hastily bring into court
For what will you do in the end
when your neighbour puts you to shame?
Argue your case with your neighbour himself
and do not disclose another's secret.

- What kind of anti-institutional polemic does the above text from Proverbs reflect?
- What alternatives to institutional adjudication may have existed?

(b) Who appointed the judges and what sources were the courts supposed to use?

2 Chron. 19

4 Jehosh'aphat dwelt at Jerusalem; and he went out again among the people, from Beer-sheba to the hill country of Ephraim, and brought them back to the LORD, the God of their fathers. 5 He appointed judges in the land in all the fortified cities of Judah, city by city, 6 and said to the judges, "Consider what you do, for you judge not for man but for the LORD; he is with you in giving judgment. 7 Now then, let the fear of the LORD be upon you; take heed what you do, for there is no perversion of justice with the LORD our God, or partiality, or taking bribes." 8 Moreover in Jerusalem Jehosh'aphat appointed certain Levites and priests and heads of families of Israel, to give judgment for the LORD and to decide disputed cases. They had their seat at Jerusalem. 9 And he charged them: "Thus you shall do in the fear of the LORD, in faithfulness, and with your whole heart: 10 whenever a case comes to you from your brethren who live in their cities, concerning bloodshed, law or commandment, statutes or ordinances, then you shall instruct them, that they may not incur guilt before the LORD and wrath may not come upon you and your brethren. Thus you shall do, and you will not incur guilt. 11 And behold, Amari'ah the chief priest is over you in all matters of the LORD; and Zebadi'ah the son of Ish'mael, the governor of the house of Judah, in all the king's matters; and the Levites will serve you as officers. Deal courageously, and may the LORD be with the upright!"

- Who appointed the judges?
- On what basis were the local courts to judge?
- On what basis was the central court in Jerusalem to judge?
- In what circumstances are cases likely to have been referred to the central court by (the court in?) the local cities?
- What is the significance of the “divided presidency” of the central court indicated in v.11?

Deut 16

- 18 “You shall appoint judges and officers in all your towns which the LORD your God gives you, according to your tribes; and they shall judge the people with righteous judgment.
- 19 You shall not pervert justice; you shall not show partiality; and you shall not take a bribe, for a bribe blinds the eyes of the wise and subverts the cause of the righteous.
- 20 Justice, and only justice, you shall follow, that you may live and inherit the land which the LORD your God gives you.
- **What does this passage have in common with the practice under Jehoshaphat, and in what respect does it add to it? In the next chapter of Deuteronomy, we find:**

Exodus 18:

- 10 And Jethro said, “Blessed be the LORD, who has delivered you out of the hand of the Egyptians and out of the hand of Pharaoh.
- 11 Now I know that the LORD is greater than all gods, because he delivered the people from under the hand of the Egyptians, when they dealt arrogantly with them.”
- 12 And Jethro, Moses’ father-in-law, offered a burnt offering and sacrifices to God; and Aaron came with all the elders of Israel to eat bread with Moses’ father-in-law before God.
- 13 On the morrow Moses sat to judge the people, and the people stood about Moses from morning till evening.
- 14 When Moses’ father-in-law saw all that he was doing for the people, he said, “What is this that you are doing for the people? Why do you sit alone, and all the people stand about you from morning till evening?”
- 15 And Moses said to his father-in-law, “Because the people come to me to inquire of God; when they have a dispute, they come to me and I decide between a man and his neighbour, and I make them know the statutes of God and his decisions.”
- 17 Moses’ father-in-law said to him, “What you are doing is not good.
- 18 You and the people with you will wear yourselves out, for the thing is too heavy for you; you are not able to perform it alone.
- 19 Listen now to my voice; I will give you counsel, and God be with you! You shall represent the people before God, and bring their cases to God;
- 20 and you shall teach them the statutes and the decisions, and make them know the way in which they must walk and what they must do.
- 21 Moreover choose able men from all the people, such as fear God, men who are trustworthy and who hate a bribe; and place such men over the people as rulers of thousands, of hundreds, of fifties, and of tens.
- 22 And let them judge the people at all times; every great matter they shall bring to you, but any small matter they shall decide themselves; so it will be easier for you, and they will bear the burden with you.
- 23 If you do this, and God so commands you, then you will be able to endure, and all this people also will go to their place in peace.”
- 24 So Moses gave heed to the voice of his father-in-law and did all that he had said.
- 25 Moses chose able men out of all Israel, and made them heads over the people, rulers of thousands, of hundreds, of fifties, and of tens.
- 26 And they judged the people at all times; hard cases they brought to Moses, but any small matter they decided themselves.
- 27 Then Moses let his father-in-law depart, and he went his way to his own country.
- **How was Moses adjudicating the disputes of the people?**
 - **What problem was identified by Jethro, and how did he propose to resolve it?**
 - **Who does he propose be appointed as judges?**
 - **On what basis are (i) the judges and (ii) Moses to decide cases in future?**

Deut 1:

- 9 “At that time I said to you, ‘I am not able alone to bear you;
- 10 the LORD your God has multiplied you, and behold, you are this day as the stars of heaven for multitude.
- 11 May the LORD, the God of your fathers, make you a thousand times as many as you are, and bless you, as he has promised you!
- 12 How can I bear alone the weight and burden of you and your strife?
- 13 Choose wise, understanding, and experienced men, according to your tribes, and I will appoint them as your heads.’
- 14 And you answered me, ‘The thing that you have spoken is good for us to do.’
- 15 So I took the heads of your tribes, wise and experienced men, and set them as heads over you, commanders of

thousands, commanders of hundreds, commanders of fifties, commanders of tens, and officers, throughout your tribes.

16 And I charged your judges at that time, ‘Hear the cases between your brethren, and judge righteously between a man and his brother or the alien that is with him.

17 You shall not be partial in judgment; you shall hear the small and the great alike; you shall not be afraid of the face of man, for the judgment is God’s; and the case that is too hard for you, you shall bring to me, and I will hear it.’

18 And I commanded you at that time all the things that you should do.

- **Who is to choose the judges here?**
- **Who are appointed as judges?**
- **What does the charge to the local judges here add, by comparison with 2 Chron. 19 and Deut. 16?**
- **When are the local courts to refer the case to Moses? How is Moses to decide it?**

Ezra 7

25 “And you, Ezra, according to the wisdom of your God which is in your hand, appoint magistrates and judges who may judge all the people in the province beyond the River, all such as know the laws of your God; and those who do not know them, you shall teach.

26 Whoever will not obey the law of your God and the law of the king, let judgment be strictly executed upon him, whether for death or for banishment or for confiscation of his goods or for imprisonment.”

- **What relationship between God, (Persian) king (Cyrus) and Israel is here envisaged?**
- **Might this model have any contemporary relevance?**

B.S. Jackson, *Studies in the Semiotics of Biblical Law*, §3.4: Early adjudication (footnotes omitted)

... *Prov. 25:7-9* provides evidence of a strong cultural prejudice against the use of judicial adjudication:

What your eyes have seen
do not hastily bring into court
For what will you do in the end
when your neighbour puts you to shame?
Argue your case with your neighbour himself
and do not disclose another’s secret.

Conversely, the several descriptions we find in the Bible of the judicial role all omit, until the time of Ezra in the post-exilic period, any mention of their use of written rule-books. What, then, was the function of such judges? Clearly, it was not the ‘application’ of written rules to facts. Taking these sources together with the internal evidence of the Covenant Code and the cultural antipathy towards formal adjudication, we may suggest that the original function of courts was restricted to cases perceived as too far distant from the typical narrative images evoked by (what I have called) the ‘wisdom-laws’, and that in resolving them the judges were expected to deploy their intuitions of justice — intuitions claimed to be divinely inspired.

Two well-known narratives in the Bible appear bear out the claims that (i) adjudication initially concerned cases where a narrative understanding of the rules failed to produce a clear result, and (ii) the Biblical judges are presented as enjoying a form of authority more ‘charismatic’ than ‘legal-rational’ (Weber). As part of a plot to secure the return to court of the exiled Absalom, during the reign of King David, a ‘wise woman’ is recruited to present a fictitious case to David, to serve as a parable to influence him to pardon and recall Absalom (2 *Sam.* 14). The claim she presents to the king is as follows (vv.5-7):

Alas, I am a widow; my husband is dead. And your handmaid had two sons, and they quarrelled with one another in the field; there was no one to part them, and one struck the other and killed him. And now the whole family has risen against your handmaid, and they say, ‘Give up the man who struck his brother, that we may kill him for the life of his brother whom he slew’; and so they would destroy the heir also. Thus they would quench my coal which is left, and leave to my husband neither name nor remnant upon the face of the earth.

The king is thus asked to intervene to prevent the normal operation of blood vengeance for homicide. On what grounds? Partly, because the suppliant is a widow (or perhaps that is the basis of jurisdiction, rather than the cause of action). More substantially, because this is hardly a typical narrative of homicide such as might be evoked by the biblical rules: the narrative of homicide does not typically result in the total extinction of the deceased’s immediate family! David, nevertheless, proves reluctant to intervene. He agrees only when the woman urges the king to apply a measure of *divine* justice (v.11): ‘Pray let the king invoke the LORD your God, that the avenger of blood slay no more, and my son be not destroyed.’

David is here presented as responding to the ‘wisdom’ of the woman of Tekoah. That wisdom was itself viewed as a form of divine inspiration. David’s son, Solomon, is also depicted as deploying divinely-inspired wisdom in the case of the two prostitutes. He resolves the matter by what many have regarded as a psychological ordeal. The conclusion to the narrative shows that the narrator’s main purpose was to stress the fact that Solomon was endowed with divine wisdom and that he deployed such wisdom in the course of adjudication (*1 Kgs* 3:28):

And all Israel heard of the judgment which the king had rendered; and they stood in awe of the king, because they perceived that the wisdom of God was in him, to render justice.

The claim is made general in *Prov.* 16:10:

Inspired decisions are on the lips of a king;
his mouth does not sin in judgment

The claim here is not merely that the adjudication is *on behalf of* God, but that — failing perversity or corruption — adjudication mediates divine decisions. Oracles, wisdom and prophecy are all possible media for the transmission of the divine will. The king has special claims to be the mediator, but where delegation is required, as here in the exercise of the judicial function, divine inspiration is also claimed to be delegated.

There are indications in the Bible that this kind of charismatic judicial authority was originally intended to be hereditary. That was soon found to invite abuse. Neither the hereditary principle of succession nor bureaucratic practices of delegation could be guaranteed to produce judges and officers who would live up to the standards expected of those in receipt of a divine mandate. According to *1 Sam.* 7:15-8:3, this problem became manifest already in the period of the judges:

Samuel judged Israel all the days of his life. And he went on a circuit year by year to Bethel, Gilgal, and Mizpah; and he judged Israel in all these places. Then he would come back to Ramah, for his home was there, and there also he administered justice to Israel. And he built there an altar to the LORD. When Samuel became old, he made his sons judges over Israel. The name of his first-born son was Jo'el, and the name of his second, Abijah; they were judges in Beer-sheba. Yet his sons did not walk in his ways, but turned aside after gain; they took bribes and perverted justice.

It is likely that the earliest use of written law in the Bible was designed precisely to limit the (hereditary) powers of the monarchy. We may see in this just one manifestation of a more general pattern. Contrary to the theory of Sir Henry Maine, who saw 'equity' as a stage later than the 'early codes', the biblical evidence suggests that laws (in the modern sense) were a reaction against discretionary justice. Comparison may be made with Greek and Roman views of the origins of their own earliest codes, as representing democratic opposition to the exercise of royal and aristocratic discretion.

B.S. Jackson, *Studies in the Semiotics of Biblical Law*, §5.1 (footnotes omitted)

... Once the character of modern legislation is made explicit in this way, we can ask whether it is applicable to the Bible. I maintain that it is not so applicable, at least until we reach the period of Ezra. The modern legislative model breaks down for the following reasons. When communication takes place between the legislator (whether the king or the divinity) and the judges, there is no suggestion that the medium of a written text is used; conversely, when we do have the communication of a written text of laws, the judges are not the receivers. Moreover, there is no evidence that the texts of biblical law enjoy that form of force here described in relation to modern statutes, certainly before the time of Ezra.

The evidence for these claims can be summarised quite briefly. The norms of Deuteronomy and the account of Jehoshaphat's reform in 2 Chronicles present a very significant parallel on one central point, despite other differences in detail. Both of them record that the instructions given to the judges are of an entirely general character — to do justice and avoid partiality/corruption (Cf. *Deut.* 1:17, 16:19-2).

The charge given to the judges in the fortified cities of Judah by king Jehoshaphat is simply this (*2 Chron.* 19:4-7):

Jehoshaphat dwelt at Jerusalem; and he went out again among the people, from Beer-sheba to the hill country of Ephraim, and brought them back to the LORD, the God of their fathers. He appointed judges in the land in all the fortified cities of Judah, city by city, and said to the judges, 'Consider what you do, for you judge not for man but for the LORD; he is with you in giving judgment. Now then, let the fear of the LORD be upon you; take heed what you do, for there is no perversion of justice with the LORD our God, or partiality, or taking bribes.'

The claim here is not merely that the adjudication is *on behalf of* God, but that — failing perversity or corruption — adjudication mediates divine decisions: *ve'imakhem bidvar mishpat*. We may compare the terms in which God promises that he will put words into Moses' mouth: *Exod.* 4:12: 'and I will be with your mouth (*im piykha*) and teach you what you shall speak'.

Very similar is the Deuteronomic conception of the judicial role. According to *Deut.* 16:18-20:

You shall appoint judges and officers in all your towns which the LORD your God gives you, according to your tribes; and they shall judge the people with righteous judgment. You shall not pervert justice; you shall not show partiality; and you shall not take a bribe, for a bribe blinds the eyes of the wise and subverts the cause of the righteous. Justice, and only justice, you shall follow, that you may live and inherit the land which the LORD your God gives you.

The Deuteronomic version of 'Jethro's' reform again stresses the application of a general conception of justice and the avoidance of corruption. Again, there is no mention of recourse to a written text, but Jehoshaphat's invocation of divine guidance (*ve'imakhem bidvar mishpat*) may also be implied in *Deut.* 1:16-17:

And I charged your judges at that time, 'Hear the cases between your brethren, and judge righteously between a man and his brother or the alien that is with him. You shall not be partial in judgment; you shall hear the small and the great alike; you shall not be afraid of the face of man, for the judgment is God's (*ki hamishpat lelohim hu*); and the case that is too hard for you, you shall bring to me, and I

will hear it.’

The narrative of Jehoshaphat does indicate a two-tier judicial system. Members of the educated elite are appointed to be judges in Jerusalem, ‘to give judgment for the LORD and to decide disputed cases’ (2 Chron. 19:8). But even here, no mention of a written source of law is found, and the charge to the judges, once again, is predominantly general (2 Chron. 19:9-11):

Thus you shall do in the fear of the LORD, in faithfulness, and with your whole heart: whenever a case comes to you from your brethren who live in their cities, concerning bloodshed, law or commandment, statutes or ordinances, then you shall instruct them, that they may not incur guilt before the LORD and wrath may not come upon you and your brethren. Thus you shall do, and you will not incur guilt. And behold, Amariah the chief priest is over you in all matters of the LORD; and Zebadiah the son of Ishmael, the governor of the house of Judah, in all the king’s matters; and the Levites will serve you as officers. Deal courageously, and may the LORD be with the upright!

There is, indeed, a tension in this passage, which appears to speak of sources of law (‘statutes or regulations’), while at the same time insisting upon the authority of specified officials. In fact, the phrase *leḥukim ulemishpatim* can hardly refer to ‘sources of law’ in the modern sense; the whole context, commencing with *dam ledam*, indicates that the meaning to be assigned to these words is in terms in the type of subject matter, rather than the source of rules for adjudication. It is in just this sense that *mishpat* is used in the introduction to the ‘Covenant Code’ (Exod. 21:1). It is very likely, moreover, that the reference to ‘bloodshed, law or commandment, statutes or ordinances’ reflects an attempt by the Chronicler to harmonise this model with later conceptions.

On the other hand, both Deuteronomy and 2 Chronicles also provide explicit information about the use of a written text of law. In Deuteronomy, this is a book (*sefer*) which is to be prepared for the use of the king himself, and through the study of which the king shall learn to be god-fearing and not rise above his station — a combination of positive and negative generalities comparable, in this respect, to the charge to the judges (Deut. 17:19-20). In 2 Chronicles the king orders his officers to take copies of the book around the country, and to teach it to the people. In both sources, written law has a didactic function; it is not the basis of adjudication.

(c) What procedures did they use?

1 Kings 21:

- 1 Now Naboth the Jezreelite had a vineyard in Jezreel, beside the palace of Ahab king of Samaria.
- 2 And after this Ahab said to Naboth, “Give me your vineyard, that I may have it for a vegetable garden, because it is near my house; and I will give you a better vineyard for it; or, if it seems good to you, I will give you its value in money.”
- 3 But Naboth said to Ahab, “The LORD forbid that I should give you the inheritance of my fathers.”
- 4 And Ahab went into his house vexed and sullen because of what Naboth the Jezreelite had said to him; for he had said, “I will not give you the inheritance of my fathers.” And he lay down on his bed, and turned away his face, and would eat no food.
- 5 But Jez’ebel his wife came to him, and said to him, “Why is your spirit so vexed that you eat no food?”
- 6 And he said to her, “Because I spoke to Naboth the Jezreelite, and said to him, ‘Give me your vineyard for money; or else, if it please you, I will give you another vineyard for it’; and he answered, ‘I will not give you my vineyard.’”
- 7 And Jez’ebel his wife said to him, “Do you now govern Israel? Arise, and eat bread, and let your heart be cheerful; I will give you the vineyard of Naboth the Jezreelite.”
- 8 So she wrote letters in Ahab’s name and sealed them with his seal, and she sent the letters to the elders and the nobles who dwelt with Naboth in his city.
- 9 And she wrote in the letters, “Proclaim a fast, and set Naboth on high among the people;
- 10 and set two base fellows opposite him, and let them bring a charge against him, saying, ‘You have cursed God and the king.’ Then take him out, and stone him to death.”
- 11 And the men of his city, the elders and the nobles who dwelt in his city, did as Jez’ebel had sent word to them. As it was written in the letters which she had sent to them,
- 12 they proclaimed a fast, and set Naboth on high among the people.
- 13 And the two base fellows came in and sat opposite him; and the base fellows brought a charge against Naboth, in the presence of the people, saying, “Naboth cursed God and the king.” So they took him outside the city, and stoned him to death with stones.
- 14 Then they sent to Jez’ebel, saying, “Naboth has been stoned; he is dead.”
- 15 As soon as Jez’ebel heard that Naboth had been stoned and was dead, Jez’ebel said to Ahab, “Arise, take possession of the vineyard of Naboth the Jezreelite, which he refused to give you for money; for Naboth is not

alive, but dead.”

- 16 And as soon as Ahab heard that Naboth was dead, Ahab arose to go down to the vineyard of Naboth the Jezreelite, to take possession of it.
- 17 Then the word of the LORD came to Eli’jah the Tishbite, saying,
- 18 “Arise, go down to meet Ahab king of Israel, who is in Sama’ria; behold, he is in the vineyard of Naboth, where he has gone to take possession.
- 19 And you shall say to him, ‘Thus says the LORD, “Have you killed, and also taken possession?”’ And you shall say to him, ‘Thus says the LORD: “In the place where dogs licked up the blood of Naboth shall dogs lick your own blood.”’”

- **On what grounds does Naboth resist Ahab’s offer?**
- **Who does Jezebel get to carry out the conspiracy against Naboth?**
- **Who comprised the court and what does this suggest about the “independence of the judiciary”?**
- **Comment on the procedure of the court**
- **Why, impliedly, was Ahab entitled to take the vineyard once Naboth was executed? Are there any parallels to this?**
- **Who exercises judgment over the king? Was this entirely fair to Ahab?**

B.S. Jackson, “The judicial role of the king” (Speaker’s Lectures, University of Oxford, 1984, unpublished)

Much attention has been devoted to the incident of Naboth in *I Ki.* 21. At first, Ahab is depicted as frustrated in his endeavour. Naboth’s vineyard, which he covets, is next door to his palace at Jezreel. Ahab offers either to buy it or to barter for it. Naboth refuses, swearing by God that he will not do so, although not suggesting that he is forbidden by divine law from so doing. Ahab at first accepts the situation, and sulks. Then comes Jezebel. She reminds him that he is king. The formulation of her argument is perhaps significant: (v.7) *atah’ atah ta’aseh melukhah al yisrael*; she refers not merely to the person, but to the office, *melukhah*, the same nominal form used in *I Samuel* 10, at the institution of the monarchy, when Samuel, having tried to dissuade the people from instituting a monarch by recounting his rights, concludes by writing down *mishpat hamelukhah* in a *sefer* and depositing it in the sanctuary (*I Samuel* 10:25). *Melukhah* reflects a further stage of institutionalisation, and thereby legitimisation, of the position of the king, compared with the more simple *mishpat hamelekh* in *I Samuel* 8. So Jezebel is urging Ahab not merely that he has the power to take Naboth’s vineyard, but that he has the right to do so as well. But Ahab is unwilling to exercise this right. So Jezebel arranges matters. She prepares written instructions (*sefarim*) in Ahab’s name, and seals them with his seal. She sends these *sefarim* to the elders and nobles of Naboth’s city, instructing them to proclaim a fast, assemble the people and arrange for two conspirators falsely to accuse Naboth of blaspheming God and the king. This is duly done. Naboth is accused and, impliedly, convicted, and is stoned to death. The story may make narrative sense, in terms of the characters it depicts. We may also be able to reconstruct the circles which had political motives to depict matter in this way. But we also have to seek some underlying historical reality, such as would — even when used by way of analogy — make the narrative credible to its audience. There are two aspects to the historical reality which we must seek. As regards the “trial” itself, it has been suggested that we have here an unwarranted royal interference in the jurisdiction of the local elders. But that is not what we find. Jezebel, in effect, sends down an indictment, to be dealt with at the local level. The indictment is on a matter which particularly concerns the king. Naboth is accused of having cursed the king, as well as God. The local court is asked to deal with the matter. It is noticeable that the indictment does not recite any particular “source of law”. We would have to say something like: “Naboth is hereby indicted of cursing the king, contrary to the Monarchical Privileges Act, of the second year of the reign of Ahab.” No such indication is given, either of the legal source of the indictment, or indeed that of the sentence. If I am accused of an *argumentum e silentio*, my retort will be: who can provide evidence from the period of the monarchy that there existed any such notion of “sources of law” such as is required in order to assume that indictment and sentence must here have been based on it? Certainly, those sources to which I drew attention in a previous lecture, regarding the basis of jurisdiction of the courts, as reflected in both Deuteronomy and the account of Jehoshaphat’s reform, give no such indication. We may, of course, refer generally to “custom”. But custom — or its constitutional form, the convention — is all too often invoked as legitimisation of the absence of other sources. The historical reality which makes most sense — dare I say it, historical sense — in the biblical context is simply this, that there was a practice that if the king sent down an indictment, the courts dealt with it on its apparent merits. The second historical reality which we have to try to reconstruct is that regarding Ahab’s role. Once he hears that Naboth is dead, he goes in and takes possession. There are plenty of parallels from legal history, regarding the right of the king to take a vacant inheritance. This has implications also for the narrative meaning of the first part of the story, Ahab’s reluctant acceptance of Naboth’s refusal to sell or barter. Ahab is presented, both before and after the trial, as seeking to keep within the bounds of both legality and morality; it is Jezebel, who by her perversion of the judicial process, is presented as endorsing their opposites. You have to be sorry for Ahab. He is caught between Jezebel’s machinations and Elijah’s subsequent

condemnation. As for the property offence, it has been suggested that Ahab was entitled to make such a confiscation, by virtue of *mishpat hamelukhah* as we find it in *I Samuel*. It is possible that this is precisely what happened — a straightforward case of confiscation, by virtue of royal privilege. But certainly, the narrator does not wish us to understand it that way; he wishes us to see the story in terms of opposition between the tragic Ahab doing his best and the scheming Jezebel. Not the least aspect of Ahab's tragedy in the fact that he is held accountable by Elijah for Jezebel's judicial murder. We may ask why he is also condemned for taking the vineyard, when the narrative itself seems to imply that he was prepared to do this only when it was lawful? I am tempted to reply in terms of *Riggs v. Palmer*, the New York case regarding the grandson who murdered his grandfather to secure the inheritance. It is Elijah who here takes the role of Hercules. He does not do the full theoretical job: his, I might suggest, is a semiotic rather than a rational approach to legal values. But he does very clearly connect the murder and the confiscation: "Thus says the Lord, 'have you killed, and also taken possession?' " "Not even Ahab may profit from Jezebel's wrong. Jezebel's illegality taints also Ahab's desire to keep within the law.

Susanna and the Elders (Apocrypha), also as Daniel ch.13 in the LXX

1 In Babylon there lived a man named Joakim, (2) who married a very beautiful and God-fearing woman, Susanna, the daughter of Hilkiah; (3) her pious parents had trained their daughter according to the law of Moses. (4) Joakim was very rich; he had a garden near his house, and the Jews had recourse to him often because he was the most respected of them all. (5) That year, two elders of the people were appointed judges, of whom the Lord said, "Wickedness has come out of Babylon: from the elders who were to govern the people as judges." (6) These men, to whom all brought their cases, frequented the house of Joakim. (7) When the people left at noon, Susanna used to enter her husband's garden for a walk. (8) When the old men saw her enter every day for her walk, they began to lust for her. (9) They suppressed their consciences; they would not allow their eyes to look to heaven, and did not keep in mind just judgments. (10) Though both were enamoured of her, they did not tell each other their trouble, (11) for they were ashamed to reveal their lustful desire to have her.)

(12) Day by day they watched eagerly for her. (13) One day they said to each other, "Let us be off for home, it is time for lunch." So they went out and parted; (14) but both turned back, and when they met again, they asked each other the reason. They admitted their lust, and then they agreed to look for an occasion when they could meet her alone. (15) One day, while they were waiting for the right moment, she entered the garden as usual, with two maids only. She decided to bathe, for the weather was warm.

(16) Nobody else was there except the two elders, who had hidden themselves and were watching her. (17) "Bring me oil and soap," she said to the maids, "and shut the garden doors while I bathe." (18) They did as she said; they shut the garden doors and left by the side gate to fetch what she had ordered, unaware that the elders were hidden inside.

(19) As soon as the maids had left, the two old men got up and hurried to her. (20) "Look," they said, "the garden doors are shut, and no one can see us; give in to our desire, and lie with us. (21) If you refuse, we will testify against you that you dismissed your maids because a young man was here with you."

(22) "I am completely trapped," Susanna groaned. "If I yield, it will be my death; if I refuse, I cannot escape your power. (23) Yet it is better for me to fall into your power without guilt than to sin before the Lord." (24) Then Susanna shrieked, and the old men also shouted at her, (25) as one of them ran to open the garden doors.

(26) When the people in the house heard the cries from the garden, they rushed in by the side gate to see what had happened to her. (27) At the accusations by the old men, the servants felt very much ashamed, for never had any such thing been said about Susanna.

(28) When the people came to her husband Joakim the next day, the two wicked elders also came, fully determined to put Susanna to death. Before all the people they ordered: (29) "Send for Susanna, the daughter of Hilkiah, the wife of Joakim." When she was sent for, (30) she came with her parents, children and all her relatives. (31) Susanna, very delicate and beautiful, (32) was veiled; but those wicked men ordered her to uncover her face so as to sate themselves with her beauty. (33) All her relatives and the onlookers were weeping.

(34) In the midst of the people the two elders rose up and laid their hands on her head. (35) Through her tears she looked up to heaven, for she trusted in the Lord wholeheartedly. (36) The elders made this accusation: "As we were walking in the garden alone, this woman entered with two girls and shut the doors of the garden, dismissing the girls. (37) A young man, who was hidden there, came and lay with her. (38) When we, in a corner of the garden, saw this crime, we ran toward them. (39) We saw them lying together, but the man we could not hold, because he was stronger than we; he opened the doors and ran off. (40) Then we seized this one and asked who the young man was, (41) but she refused to tell us. We testify to this."

The assembly believed them, since they were elders and judges of the people, and they condemned her to death. (42) But Susanna cried aloud: "O eternal God, you know what is hidden and are aware of all things before they come to be: (43) you know that they have testified falsely against me. Here I am about to die, though I have done none of the things with which these wicked men have charged me." (44) The Lord heard her prayer.

(45) As she was being led to execution, God stirred up the holy spirit of a young boy named Daniel, (46) and he cried aloud: "I will have no part in the death of this woman." (47) All the people turned and asked him, "What is this you are saying?" (48) He stood in their midst and continued, "Are you such fools, O Israelites! To condemn a woman of Israel without examination and without clear evidence? (49) Return to court, for they have testified falsely against her." (50) Then all the people returned in haste. To Daniel the elders said, "Come, sit with us and inform us, since God has given you the prestige of

old age." (51) But he replied, "Separate these two far from one another that I may examine them." (52) After they were separated one from the other, he called one of them and said: "How you have grown evil with age! Now have your past sins come to term: (53) passing unjust sentences, condemning the innocent, and freeing the guilty, although the Lord says, "The innocent and the just you shall not put to death." (54) Now, then, if you were a witness, tell me under what tree you saw them together." (55) "Under a mastic tree," he answered. "Your fine lie has cost you your head," said Daniel; "for the angel of God shall receive the sentence from him and split you in two." (56) Putting him to one side, he ordered the other one to be brought. "Offspring of Canaan, not of Judah," Daniel said to him, "beauty has seduced you, lust has subverted your conscience. (57) This is how you acted with the daughters of Israel, and in their fear they yielded to you; but a daughter of Judah did not tolerate your wickedness. (58) Now, then, tell me under what tree you surprised them together." (59) "Under an oak," he said. "Your fine lie has cost you also your head," said Daniel; "for the angel of God waits with a sword to cut you in two so as to make an end of you both." (60) The whole assembly cried aloud, blessing God who saves those that hope in him. (61) They rose up against the two elders, for by their own words Daniel had convicted them of perjury. According to the law of Moses, they inflicted on them the penalty they had plotted to impose on their neighbour: (62) they put them to death. Thus was innocent blood spared that day.

(63) Hilkiah and his wife praised God for their daughter Susanna, as did Joakim her husband and all her relatives, because she was found innocent of any shameful deed. (64) And from that day onward Daniel was greatly esteemed by the people.)

- **On what evidentiary basis was Susanna convicted?**
- **How come Daniel succeeded in getting the court reconvened?**
- **On what evidentiary basis was Susanna then acquitted?**
- **Was due process used in convicting and sentencing the elders?**
- **If you were defence counsel for the elders, what line(s) of defence might you pursue?**
- **This 'case' in fact proved of great importance in the history of the European laws of evidence: see further Jackson, *Essays on Halakhah in the New Testament* (Leiden: E.J. Brill, 2008), ch.5.**

(d) What was the role of the king in the judicial system?

II Sam 14 (the Woman of Tekoah): above, p.20

I Kings 3 (Solomon's judgment): above, p.22

Esther:

- 10 On the seventh day, when the heart of the king was merry with wine, he commanded Mehu'man, Biztha, Harbo'na, Bigtha and Abag'tha, Zethar and Carkas, the seven eunuchs who served King Ahasu-e'rus as chamberlains,
- 11 to bring Queen Vashti before the king with her royal crown, in order to show the peoples and the princes her beauty; for she was fair to behold.
- 12 But Queen Vashti refused to come at the king's command conveyed by the eunuchs. At this the king was enraged, and his anger burned within him.
- 13 Then the king said to the wise men who knew the times — for this was the king's procedure toward all who were versed in law and judgment,
- 14 the men next to him being Carshe'na, Shethar, Adma'tha, Tarshish, Meres, Marse'na, and Memu'can, the seven princes of Persia and Media, who saw the king's face, and sat first in the kingdom — :
- 15 "According to the law, what is to be done to Queen Vashti, because she has not performed the command of King Ahasu-e'rus conveyed by the eunuchs?"
- 16 Then Memu'can said in presence of the king and the princes, "Not only to the king has Queen Vashti done wrong, but also to all the princes and all the peoples who are in all the provinces of King Ahasu-e'rus.
- 17 For this deed of the queen will be made known to all women, causing them to look with contempt upon their husbands, since they will say, 'King Ahasu-e'rus commanded Queen Vashti to be brought before him, and she did not come.'
- 18 This very day the ladies of Persia and Media who have heard of the queen's behaviour will be telling it to all the king's princes, and there will be contempt and wrath in plenty.
- 19 If it please the king, let a royal order go forth from him, and let it be written among the laws of the Persians and the Medes so that it may not be altered, that Vashti is to come no more before King Ahasu-e'rus; and let the king give her royal position to another who is better than she.
- 20 So when the decree made by the king is proclaimed throughout all his kingdom, vast as it is, all women will give honour to their husbands, high and low."
- 21 This advice pleased the king and the princes, and the king did as Memu'can proposed;

22 he sent letters to all the royal provinces, to every province in its own script and to every people in its own language, that every man be lord in his own house and speak according to the language of his people.

- **Compare the structure of this story with that of the narratives of desert adjudication (in B, below)**
- **What was to be the status of the decree against Vashti?**
- **What was the content of the decree pronounced throughout the kingdom?**
- **Does the story help us to understand the relationship between adjudication and legislation?**

B.S. Jackson, “The judicial role of the king” (Speaker’s Lectures, University of Oxford, 1984, unpublished)

The book of Esther also provides a story involving the relationship of law to the members of the royal family. Helen Silving has drawn attention to the judgment of Ahasuerus on Vashti, in Chapter 1 (1953:1137f.). Queen Vashti refuses to obey the command of King Ahasuerus to display herself before his guests. So the king consults his wise men, described as *yod’ey ha’itim*, perhaps referring to their knowledge of past practice, and asks them: “According to the law, *kedat*, what should be done with Queen Vashti?” (v.15). Silving maintains that the advice which is given “was based on policy considerations — the effect of the decision upon future conduct”, rather than by reference to authoritative sources or precedent. I don’t think we should take this too seriously. It is too good a communicative device, for the narrator to attribute to the royal court the kind of home-spun motives which they might well mouth themselves, in their own lives — if the king lets his wife get away with it on this occasion, we will never know the last of women’s rights. Vashti’s case involves women’s rights (or the lack of them), Jezebel’s — women’s image. At any rate, the advisers urged the king to depose Vashti, and to proclaim her deposition throughout the kingdom, so that “all women will give honour to their husbands, high and low”. What is particularly interesting here are the terms in which the advisers urged the proclamation he made: “Let a royal order go forth ... and let it be written among the laws of the Persians and the Medes so that it may not be altered, that Vashti is to come no more before King Ahasuerus” (v.19). So this is the content of the famous Laws of the Persians and the Medes, which changeth not. We have a very partial parallel, once again, to the incident of the daughters of Zelophehad. There is a dispute, an adjudication, and the proclamation of a continuing law, to be written *bedatey peras umaday*. But even this immutable law, so pronounced by the king, concerns a matter of immediate concern to him, a matter concerning royal authority; moreover the decision is one which, once implemented, hardly needs a continuing law to reaffirm. Vashti, once deposed, can hardly approach Ahasuerus again as queen. Nevertheless, she is pronounced as deposed “for ever”. We need hardly ascribe historicity to the incident itself. But it does provide a clear indication that even once the notion of continuity of law was accepted, it was first applied to matters particularly pertaining to the king, even if those matters did not require such everlasting continuity. The continuity of law is a part of its rhetorical legitimization, which fulfils that function even before we reach a “legal system”, based upon sources of positive law, whose rules extend to the everyday life of all citizens, and which are regarded as persisting.

(e) The relationship between human law and divine justice:

(i) Is human law to be modelled on divine justice or is divine justice modelled on notions taken from human law? Compare Esther 10-22 with the cases of desert adjudication (the “cases of legal difficulty”, below)

(ii) Divine justice used to resolve cases of legal difficulty: the cases of desert adjudication

Leviticus 24:

- 10 Now an Israelite woman’s son, whose father was an Egyptian, went out among the people of Israel; and the Israelite woman’s son and a man of Israel quarrelled in the camp,
- 11 and the Israelite woman’s son blasphemed the Name, and cursed. And they brought him to Moses. His mother’s name was Shelo’mith, the daughter of Dibri, of the tribe of Dan.
- 12 And they put him in custody, till the will of the LORD should be declared to them.
- 13 And the LORD said to Moses,
- 14 “Bring out of the camp him who cursed; and let all who heard him lay their hands upon his head, and let all the congregation stone him.
- 15 And say to the people of Israel, Whoever curses his God shall bear his sin.
- 16 He who blasphemes the name of the LORD shall be put to death; all the congregation shall stone him; the sojourner as well as the native, when he blasphemes the Name, shall be put to death.
- 17 He who kills a man shall be put to death.
- 18 He who kills a beast shall make it good, life for life.
- 19 When a man causes a disfigurement in his neighbour, as he has done it shall be done to him,
- 20 fracture for fracture, eye for eye, tooth for tooth; as he has disfigured a man, he shall be disfigured.

- 21 He who kills a beast shall make it good; and he who kills a man shall be put to death.
- 22 You shall have one law for the sojourner and for the native; for I am the LORD your God.”
- 23 So Moses spoke to the people of Israel; and they brought him who had cursed out of the camp, and stoned him with stones. Thus the people of Israel did as the LORD commanded Moses.
- **Compare the structure of this passage with that concerning the daughters of Zelophehad (p.46, above)**
 - **What is the significance, for the passage as a whole, of the fact that the “blasphemer” was the son of an Egyptian?**
 - **What is the meaning of “life for life” in verse 18? What does this suggest for Exodus 21:23?**
 - **Where do you find the talionic formula in this passage?**
 - **What is the structure, and the significance of the structure, of vv.13-23 (which can be presented thus):**
 - G And the LORD said to Moses,
 - F “Bring out of the camp him who cursed; and let all who heard him lay their hands upon his head, and let all the congregation stone him.
 - E And say to the people of Israel, Whoever curses his God shall bear his sin.
He who blasphemes the name of the LORD shall be put to death; all the congregation shall stone him;
 - D the sojourner as well as the native, when he blasphemes the Name, shall be put to death.
 - C He who kills a man shall be put to death.
 - B He who kills a beast shall make it good, life for life.
 - A When a man causes a disfigurement in his neighbour, as he has done it shall be done to him, fracture for fracture, eye for eye, tooth for tooth; as he has disfigured a man, he shall be disfigured.
 - B He who kills a beast shall make it good;
 - C and he who kills a man shall be put to death.
 - D You shall have one law for the sojourner and for the native; for I am the LORD your God.”
 - E So Moses spoke to the people of Israel;
 - F and they brought him who had cursed out of the camp, and stoned him with stones.
 - G Thus the people of Israel did as the LORD commanded Moses.
 - **What is the significance of the position within this passage of the talionic formula?**

Num. 15

- 32 While the people of Israel were in the wilderness, they found a man gathering sticks on the sabbath day.
- 33 And those who found him gathering sticks brought him to Moses and Aaron, and to all the congregation.
- 34 They put him in custody, because it had not been made plain what should be done to him.
- 35 And the LORD said to Moses, “The man shall be put to death; all the congregation shall stone him with stones outside the camp.”
- 36 And all the congregation brought him outside the camp, and stoned him to death with stones, as the LORD commanded Moses.
- **Why was a special procedure needed here?**
 - **What special procedure is used?**
 - **Is the absence of a command to proclaim the law for the future significant?**

Num. 9:

- 6 And there were certain men who were unclean through touching the dead body of a man, so that they could not keep the Passover on that day; and they came before Moses and Aaron on that day;
- 7 and those men said to him, “We are unclean through touching the dead body of a man; why are we kept from offering the LORD’s offering at its appointed time among the people of Israel?”
- 8 And Moses said to them, “Wait, that I may hear what the LORD will command concerning you.”
- 9 The LORD said to Moses,
- 10 “Say to the people of Israel, If any man of you or of your descendants is unclean through touching a dead body, or is afar off on a journey, he shall still keep the Passover to the LORD.
- 11 In the second month on the fourteenth day in the evening they shall keep it; they shall eat it with unleavened bread and bitter herbs.
- 12 They shall leave none of it until the morning, nor break a bone of it; according to all the statute for the Passover they shall keep it.

- 13 But the man who is clean and is not on a journey, yet refrains from keeping the Passover, that person shall be cut off from his people, because he did not offer the LORD's offering at its appointed time; that man shall bear his sin.
- 14 And if a stranger sojourns among you, and will keep the Passover to the LORD, according to the statute of the Passover and according to its ordinance, so shall he do; you shall have one statute, both for the sojourner and for the native."
- **Is there any distinction between secular and ritual matters, as regards the procedure used to resolve legal difficulties?**
 - **What further issues, going beyond the question posed by the unclean men, are addressed in the reply given by God?**

(iii) Divine justice used to resolve cases of factual difficulty

Exodus 22:

- 6 If a man delivers to his neighbour money or goods to keep, and it is stolen out of the man's house, then, if the thief is found, he shall pay double.
- 7 If the thief is not found, the owner of the house shall come near to God, to show whether or not he has put his hand to his neighbour's goods.
- 8 For every breach of trust, whether it is for ox, for ass, for sheep, for clothing, or for any kind of lost thing, of which one says, 'This is it,' the case of both parties shall come before God; he whom God shall condemn shall pay double to his neighbour.
- **Why the special procedure in verse 7?**
 - **What is the likely sanction if the depositee in v.7 cannot show that he has not "put his hand to his neighbour's goods"?**

Laws of Eshnunna §§36-37:

- 36 If a man has gave his goods to?/for? a *naptarum* for a deposit, and — the house not having been broken into, the threshold not having been scraped off, the window not having been torn out — he caused the goods of the deposit, which he had given to him, to be lost, his goods he shall replace.
- 37 If the house of the man was plundered, (and) with the goods of the deposit(or?), which he had given to him, loss of the owner of the house was incurred — the owner of the house shall in the house of Tispak swear to him by god: "Together with thy goods my goods were lost, I have not done evil and/ fraud." He shall swear to him, and nothing upon him he shall have.
- **What do you suppose would happen if the depositee's house was "plundered" but only property of the depositor was taken?**
 - **What do you suppose would happen if the depositee's house was not "plundered" but property of both the depositor and the depositor disappeared, and was claimed by the depositee to have been stolen?**
 - **Compare LE 36 with *Exod.* 22:6-7 in the light of the above questions. Should we conclude that the liability of the depositee in Eshnunna was more severe than in the Covenant Code?**

Exodus 22:

- 9 If a man delivers to his neighbour an ass or an ox or a sheep or any beast to keep, and it dies or is hurt or is driven away, without any one seeing it,
- 10 an oath by the Lord shall be between them both to see whether he has not put his hand to his neighbour's property; and the owner (*ba'al*) shall accept (the oath), and he shall not make restitution.
- 11 But if it is stolen from him, he shall make restitution to its owner.
- 12 If it is torn by beasts, let him bring it as evidence; he shall not make restitution for what has been torn.
- **What is the extent of the shepherd's liability**
 - **What is the role of the "oath by the Lord"?**
 - **Compare the standards claimed by the divine shepherd in Ezek 34 (below) and by Jacob in *Gen.* 31:36-41 (Week 5, above).**

(iv) What is the relationship between the ethical standards of human and divine justice?

Ezekiel 34:

- 1 The word of the LORD came to me:
- 2 "Son of man, prophesy against the shepherds of Israel, prophesy, and say to them, even to the shepherds, Thus says

- the Lord GOD: Ho, shepherds of Israel who have been feeding yourselves! Should not shepherds feed the sheep?
- 3 You eat the fat, you clothe yourselves with the wool, you slaughter the fatlings; but you do not feed the sheep.
- 4 The weak you have not strengthened, the sick you have not healed, the crippled you have not bound up, the strayed you have not brought back, the lost you have not sought, and with force and harshness you have ruled them.
- 5 So they were scattered, because there was no shepherd; and they became food for all the wild beasts.
- 6 My sheep were scattered, they wandered over all the mountains and on every high hill; my sheep were scattered over all the face of the earth, with none to search or seek for them.
- 7 Therefore, you shepherds, hear the word of the LORD:
- 8 As I live, says the Lord GOD, because my sheep have become a prey, and my sheep have become food for all the wild beasts, since there was no shepherd; and because my shepherds have not searched for my sheep, but the shepherds have fed themselves, and have not fed my sheep;
- 9 therefore, you shepherds, hear the word of the LORD:
- 10 Thus says the Lord GOD, Behold, I am against the shepherds; and I will require my sheep at their hand, and put a stop to their feeding the sheep; no longer shall the shepherds feed themselves. I will rescue my sheep from their mouths, that they may not be food for them.
- 11 For thus says the Lord GOD: Behold, I, I myself will search for my sheep, and will seek them out.
- 12 As a shepherd seeks out his flock when some of his sheep have been scattered abroad, so will I seek out my sheep; and I will rescue them from all places where they have been scattered on a day of clouds and thick darkness.
- 13 And I will bring them out from the peoples, and gather them from the countries, and will bring them into their own land; and I will feed them on the mountains of Israel, by the fountains, and in all the inhabited places of the country.
- 14 I will feed them with good pasture, and upon the mountain heights of Israel shall be their pasture; there they shall lie down in good grazing land, and on fat pasture they shall feed on the mountains of Israel.
- 15 I myself will be the shepherd of my sheep, and I will make them lie down, says the Lord GOD.
- 16 I will seek the lost, and I will bring back the strayed, and I will bind up the crippled, and I will strengthen the weak, and the fat and the strong I will watch over; I will feed them in justice.
- 17 As for you, my flock, thus says the Lord GOD: Behold, I judge between sheep and sheep, rams and he-goats.
- 18 Is it not enough for you to feed on the good pasture, that you must tread down with your feet the rest of your pasture; and to drink of clear water, that you must foul the rest with your feet?
- 19 And must my sheep eat what you have trodden with your feet, and drink what you have fouled with your feet?
- 20 Therefore, thus says the Lord GOD to them: Behold, I, I myself will judge between the fat sheep and the lean sheep.
- 21 Because you push with side and shoulder, and thrust at all the weak with your horns, till you have scattered them abroad,
- 22 I will save my flock, they shall no longer be a prey; and I will judge between sheep and sheep.
- 23 And I will set up over them one shepherd, my servant David, and he shall feed them: he shall feed them and be their shepherd.
- 24 And I, the LORD, will be their God, and my servant David shall be prince among them; I, the LORD, have spoken.
- 25 I will make with them a covenant of peace and banish wild beasts from the land, so that they may dwell securely in the wilderness and sleep in the woods.
- 26 And I will make them and the places round about my hill a blessing; and I will send down the showers in their season; they shall be showers of blessing.
- 27 And the trees of the field shall yield their fruit, and the earth shall yield its increase, and they shall be secure in their land; and they shall know that I am the LORD, when I break the bars of their yoke, and deliver them from the hand of those who enslaved them.
- 28 They shall no more be a prey to the nations, nor shall the beasts of the land devour them; they shall dwell securely, and none shall make them afraid.
- 29 And I will provide for them prosperous plantations so that they shall no more be consumed with hunger in the land, and no longer suffer the reproach of the nations.
- **What is the nature of the accusation of the shepherds in verses 2-3?**
 - **What is the nature of the accusation of the shepherds in verse 4-6?**
 - **Who are the shepherds, who are the sheep and who is the owner?**
 - **What is the remedy against bad shepherds?**
 - **Does God promise to go beyond the standards expected of human shepherds?**

Judges 1

- 5 They came upon Ado'ni-be'zek at Bezek, and fought against him, and defeated the Canaanites and the Per'izzites.

- 6 Ado'ni-be'zek fled; but they pursued him, and caught him, and cut off his thumbs and his great toes.
- 7 And Ado'ni-be'zek said, "Seventy kings with their thumbs and their great toes cut off used to pick up scraps under my table; as I have done, so God has requited me." And they brought him to Jerusalem, and he died there.
- **Compare this application of talionic punishment to the circumstances envisaged in the Covenant Code (*Exod. 21:22-25*, p.6, above)**

Deut 24

- 16 The fathers shall not be put to death for the children, nor shall the children be put to death for the fathers; every man shall be put to death for his own sin.
- **What is the relationship between this and the following extract from the Decalogue? (see also Reading B, in Materials below).**

Deut 5

- 8 "You shall not make for yourself a graven image, or any likeness of anything that is in heaven above, or that is on the earth beneath, or that is in the water under the earth;
- 9 you shall not bow down to them or serve them; for I the LORD your God am a jealous God, visiting the iniquity of the fathers upon the children to the third and fourth generation of those who hate me,
- 10 but showing steadfast love to thousands of those who love me and keep my commandments.

B.S. Jackson, B.S., "Modelling Biblical Law: The Covenant Code", *Chicago-Kent Law Review* 70:4 (1995), 1807-1816:

"Special" Divine Procedures in the Covenant Code and the Laws of Hammurabi

We may usefully commence with the historical development of what may loosely be called "divine procedures" (that is, special processes of adjudication directly invoking divine assistance), and the choice of cases subjected to such procedures according to biblical law. The most explicit references to particular cases of adjudication in the Covenant Code are of this nature: the case of the suspected depositee (*Exod. 22:7*) and the shepherd's oath (*Exod. 22:10*). An unhealthy consensus has grown up regarding the incidence of such procedures. That consensus may be summarised in what I shall call the "functional" view. This claims that "divine procedures" are invoked when and only when there is a functional need for them, thus in cases which by their very nature are likely to present difficulties — not only of fact determination, but sometimes also of legal uncertainty — to purely human, rational adjudicatory agencies. Implicit in this consensus is the view that divine procedures were reserved for this type of case from the period represented by our earliest sources. The cases of the depositee and the shepherd are seen as falling into this pattern.

There are, however, other ways of viewing the material. One such I shall call the "special interest" view. This is to the effect that "divine procedures" are used where there exists some particular "divine interest" in the subject matter. The case of Akhan is a good example. Contrary to divine instructions (*Josh. 6:18*), Akhan stole some of the loot from the victory at Jericho, which had been accorded the status of *herem* — "devoted" to God. His sin caused divine displeasure, resulting in the subsequent defeat of the Israelites at Ai. God then commanded Joshua to use a divine procedure for identification of the culprit (*Josh. 7:14*), which Joshua then performed. Each tribe was "brought near" (v.16), and the tribe of Judah was "taken"; the families of the tribe of Judah submitted to the same procedure, and that of the Zerahites was "taken"; the head of each household within this (extended) family was brought near, and Zabdi was taken; finally, each man within that household was brought near, resulting in the identification of Akhan. The precise nature of the procedure denoted in the narrative by the verbs *karav* and *lakhad* need not here detain us; I have argued elsewhere that it was a sacred oracle, rather than the use of sacred lots or some form of ordeal. What is important for present purposes is the fact that some form of special divine procedure was used. But why? The case was not one which precluded the use of ordinary evidentiary tests. We do not even have to rely upon the vagaries of eye-witness testimony, identification and subsequent recall of the act of taking. There existed the possibility of finding "real" evidence, in the form of the guilty party's "hot possession" of the property. Indeed, after Akhan was identified by the special procedure, he confessed that the property was hidden under the earth inside his tent (v.21), and Joshua then arranged for a formal "finding" of the property (vv. 22-23):

So Joshua sent messengers, and they ran to the tent; and behold (*vehinei*), it was hidden in his tent with the silver underneath. And they took them out of the tent and brought them to Joshua and all the people of Israel; and they laid them down before the Lord.

Thus, a purely human search procedure could have been used. Such is not unknown in the case of sacred property — although the cases we have all differ from the case of Akhan in that the search was directed towards someone already identified as a suspect. But this difference is not as substantial as might appear at first sight. It would not have been difficult, in the

circumstances of Akhan's case, to narrow the field considerably through the use of hearsay evidence in order to determine who — in the first instance at least — should have his tent searched. The conclusion remains that the use of a divine procedure in the case of Akhan is not fully explicable by the “functional” model. At the very least, we have to add the fact that the property was *herem*, “devoted” to God. God thus had a special interest in this particular case; hence the divine involvement in the adjudicatory procedure. Similarly, Saul's use of the oracle after Michmash (*I Sam.* 14:36ff.) relates not only to a decision whether or not to pursue war, but also to adjudication upon the effect of a curse (involving use of the divine name). Again, the use of the oracle in the choice of Israel's first king (*I Sam.* 10:20-23) involves divine legitimization of a partial transfer of divine authority.

Let us consider next the law of the Covenant Code on deposit (*Exod.* 22:6-7):

If a man delivers to his neighbour money or goods to keep, and it is stolen out of the man's house, then, if the thief is found, he shall pay double. If the thief is not found, the owner of the house shall come near to God, to show whether or not he has put his hand to his neighbour's goods. (RSV)

The nature of the divine procedure is not here explicit. Much scholarly ink has been spilled in debating whether the procedure is an oracle, an oath or a type of ordeal. The matter can hardly be determined with any certainty. I incline to the view that the verb *karav* indicates an oracular procedure, as is clear for its use describing the procedure adopted to resolve the case of the daughters of Zelophehad (*Num.* 27:1,5,7). But that does not dispose of all the problems of this particular verse.

First, the legal consequence of whatever determination of the facts is made by the divine procedure is not explicitly stated. This stands in stark contrast to the formulation of the oath procedure in the case of the shepherd (*Exod.* 22:10), as the text presently stands. It also contrasts with the Old Babylonian texts where an exculpatory oath at a sanctuary is to be taken — texts which we shall presently have occasion to review. The elliptical character of the present text speaks against the view of those who regard the procedure in this case as an oath. Even Cassuto, who does take the procedure to be an oath, concedes that the clause *im lo shalah yado bimlekhet re'ehu* cannot be regarded as the text of the oath. He therefore has to understand the verse as meaning that the depositor takes an oath and is therefore exempt from payment “if it is true that he did not put his hand to his neighbour's goods”. Indeed, Cassuto has to apply the same very artificial interpretation to the same phrase where it occurs in verse 10, in the context of the (here explicit) exculpatory oath of the suspected shepherd.

The second problem is the expression *melekhet*. It occurs elsewhere three times. In *Gen.* 33:14 and *I Sam.* 15:9 it refers to possessions of herds and flocks (BDB), not “property” in general; it is only in the late *2 Chron.* 17:13 that it receives this more general meaning. Given the very different descriptions of the procedures in the Covenant Code's laws on the deposit and the shepherd, it is hardly likely that the same procedure was contemplated in each. That being so, the common formula *im lo shalah ...* is likely to have been copied from one to the other by a later hand. The semantic field within which *melekhet* occurs suggests that it is more likely to have been original to verse 10, the law of the shepherd, than the law of the deposit.

There is one further difficulty with the law of the deposit. It represents the only example in the Covenant Code of a drafting technique which I have termed — slightly expanding a conception of Yaron — the “split protasis”. That form of drafting is far more common in later biblical collections.

Why should some form of divine procedure have been thought appropriate in this case — whether by the original author or, as seems more likely, by a later editor? Usually, the answer is taken to be obvious. It is a clear example of the operation of the “functional” model. In the past, I have myself subscribed to this view. The owner asks a depositor to look after some silver. When its return is requested, the depositor claims that it has been stolen. If the thief can be found, well and good; the thief is liable, and the depositor cleared of suspicion. But what if no thief can be found? There are two possibilities. Either the silver was in fact stolen, and the depositor is innocent. Or the silver had never in fact been stolen: the depositor had himself misappropriated it, and falsely claimed it to have been stolen in order to conceal his crime. How does the law decide between these two possibilities? The situation is one where the normal criteria of guilt are inconclusive. Since the owner had himself delivered the silver to the depositor, there can be no evidence of an illegal taking. The property, quite simply, has disappeared. The depositor says it has been stolen, but the normal evidence of theft (sale or “hot possession”) is missing. Once, and only once, this point is reached, the bible regards the situation as one inherently beyond the ability of human judges to decide.

Such a functional explanation of the procedure appears to be confirmed by the circumstances which give rise to the shepherd's exculpatory oath in the next paragraph. Here too, a form of divine justice is invoked, but only where the loss of the animal is alleged to have occurred “without anyone seeing it” (*Exod.* 22:9). But further reflection on the case of the suspected depositor leads one to question the adequacy of the functional interpretation. Surely the first step, in such a case, would be to search the depositor's premises. If the deposit is found there, when the depositor has already claimed it has been stolen, then clearly the depositor has sought to misappropriate it. Only if the deposit is not found in the depositor's premises would we have a case of real evidentiary difficulty, such as might justify the use of a divine procedure: the depositor claims that the property has been stolen, but in fact he has disposed of it (under whatever title) to a third party, and that third party has not been identified. Yet even if proof of the depositor's disposal of the property to a third party presents inherent evidentiary difficulties, the depositor has on his own admission failed to prevent a theft — a circumstance which clearly does ground

liability in the case of the shepherd (*Exod.* 22:11).

In the Laws of Eshnunna (§§36-37) and Hammurabi (§125), the mere disappearance of the deposit is not in itself sufficient to bring a divine procedure into play: if the deposit was to claim that it was the deposit alone (without property belonging to the depositor) which had been stolen, this in itself was seemingly taken to indicate misappropriation on his own part. It is only in such circumstances of “joint loss” that the depositor is (in Eshnunna) allowed to take an exculpatory oath. It seems particularly significant that the criterion of joint loss is used not only in the Laws of Hammurabi, but also in the (generally less advanced) Laws of Eshnunna. The fact that the biblical text ignores this criterion altogether is one reason to doubt the “functional” explanation of the divine procedure in this case.

There are also more general considerations. Even if we accord the functional model some explanatory power, it cannot do the whole job. For we have to explain why choices appear to have been made to use a divine procedure in some cases of apparent evidentiary difficulty, but not in others. Why not use it, for example, to determine which of two animals (neither of which had previously been “warned”) was to blame for an incident in which one of them was killed (*Exod.* 21:35)? Why not use it to determine difficult questions of causation, as where the victim of an assault dies a few weeks later, after some signs of recovery (*Exod.* 21:18-19)? Why not use it in all cases of “hot possession”, since there is always the possibility that the real thief, fearing detection, might seek to “plant” the stolen property on an innocent person? We have seen that in all these cases, the Covenant Code uses what I call “arbitrary” tests — ones capable of being used by the parties in a self-executing manner, and which will do (rough) justice in the majority of cases, the remaining cases of injustice being the price that is paid for the advantage of efficient processing of the more typical cases. If so, why not adopt a similar approach to the case of the depositor? Why not hold him liable where he alleges an (unproven) theft of the deposited property alone, and exempt him where his own property is also taken (the situation, as Koschaker argues, in the original text of the Laws of Hammurabi)? Similarly, as argued above, the shepherd was liable even for the death or mutilation of the animal by wild beasts, if he did not have someone on hand to look after the animals at the time; if he did, he was exempt.

In arguing in this manner, we see that the explanation of these cases of divine procedures becomes a central issue for the understanding of the nature of the collection as a whole, and — as I shall suggest presently — for the identification of the circles responsible for its literary history. For “divine procedures” would appear on this understanding not to be a functional supplement to a regular system of adjudication but rather an example of the use of adjudication in preference to the model of practical wisdom, based upon self-execution.

But we still have to try to explain why divine procedures were regarded as appropriate in these particular cases — even if by subsequent editors of our text. If the functional model does not provide a sufficient explanation, what other factors might be involved? Let me suggest now that we may detect traces, even here, of what I called earlier the “special interest” model. Whereas in the Laws of Hammurabi deposit is clearly a purely secular institution, a form of contract constituted by witnesses and a written contract, strong moral and theological overtones are attributed to it early in the Jewish tradition. Both Philo and Josephus see the relationship between depositor and depositor as no mere, ordinary commercial relationship, but rather as involving an element of sanctity. Philo describes the receiver as accepting “something sacred” (*labon hos hieron chrema*). He commences his treatment of deposit with the following observations:

The most sacred (*hierotaton*) of all the dealings between man and man is the deposit on trust, as it is founded on the good faith of the person who accepts it. Formal loans are guaranteed by contracts and written documents, and articles lent openly without such formality have the testimony of the eye-witnesses. But that is not the method of deposits. There a man gives something with his own hands secretly to another when both are alone. He looks carefully all round him and does not even bring a slave, however loyal, with him to act as carrier, for the object which both of them evidently pursue is that it should be impossible to show what has happened. The one wishes that nobody should observe his gift, the other that no one should know of his acceptance. And this unseen transaction has assuredly the unseen God as its intermediary, to whom both naturally appeal as their witness, one that he will restore the property when demanded, the other that he will recover it at the proper time ... (DSL iv.30-33).

Josephus is to similar effect:

Let the receiver of a deposit esteem it worthy of custody as of some sacred and divine object (*hosper hieron ti kai theion chrema*), and let none venture to defraud him that entrusted it to him, neither man nor woman, no not though he might gain of untold gold, in the assurance of having none to convict him. For by all means, from the mere knowledge that he has of his own conscience, ought everyone to act aright — let him be content with that for witness and do all that will bring him praise from others — but chiefly from his knowledge of God, whose eye no criminal escapes. (Ant. iv. 285-286)

This idea turns out not to be confined to the Jewish tradition. Driver has noted that deposit of money or goods is regarded by the Bedouin Arabs as a sacred trust. But it would be rash to take such Bedouin evidence as justifying the reading back of the Hellenistic conception right into the early biblical period — however much the Hellenistic Jewish writers here differ, in their conception of the *parakatatheke*, from the purely secular conception of the institution which we find in the papyri, where documents evidencing the deposit in a manner comparable to the requirements of the Old Babylonian sources are to be encountered. The real significance of the Hellenistic Jewish sources, for present purposes, lies in the prominence they give to

the sacred character of deposit, which may very well represent their own response to the very question we are posing: why in these particular cases (but not others) should divine procedure be used? This is not to suggest that they invented the idea of sanctity of deposit; it is sufficient that they used it. Whether the idea does go back to the early biblical period may be doubted. Indeed, the deposit paragraph may well have formed no part of the original collection. It interrupts a sequence of paragraphs all dealing with normal agricultural activities: cattle-farming (including the theft of cattle), agriculture, shepherding. Moreover, we have noted one drafting peculiarity of the paragraph, namely the existence there — but not elsewhere in the Covenant Code — of a “split protasis”. We shall have occasion presently to speculate as to the source of the addition.

In the paragraph on shepherding, too, there is a hint of the “special interest” model. The situation regulated by the law is one where the animal has died or been “broken” (*nishbar*) or (as the text now stands) “driven away” (*nishbah*). The (natural) death of the animal appears to have been conceived as a “special interest” of God: we find a similar association of divine providence with bodily integrity in *Psalms* 34:19-20, where the same verb, *shavar*, is used:

Many are the afflictions of the righteous; but the Lord delivers him out of them all. He keeps all his bones; not one of them is broken (*nishbarah*). (RSV translation).

The “special interest” in this case thus resides in the role of providence in the fate of the animal. Some support for this perhaps unlikely-sounding suggestion comes from the Laws of Hammurabi. We find there three paragraphs dealing with the liability of a herdsman. The first, LH 265, deals with cases of *dolus*: the herdsman “feloniously alters the brand (on the cattle or sheep) and sells (them)”. The third, LH 267, deals with a case of carelessness (Bab. *egum*), but it is resolved by an application of the principle of *res ipsa loquitur*, rather than resort to a divine procedure:

If the herdsman has been careless and lets an infection (?) break out in the field, the herdsman shall make good the loss caused by the infection (?), which he has let break out in the fold (with) cattle or sheep and give (them) to their owner.

It is in the second paragraph of this group, LH 266, that we find recourse to a divine procedure, even though this appears to be a straightforward case of accident, without any suggestion of evidentiary difficulty:

If the finger of a god touches or a lion kills (a beast) in the fold, the herdsman may purge (himself) before a god and the mischief in the fold shall fall on the owner of the fold.

Taking these three provisions together, the “special interest” model appears to fit better than the functional; it is a case of “special interest” because accident is conceived, indeed described, as an “act of God”. The same pattern is found in the liability of the hirer of a domestic animal, where (unlike the paragraphs we have just considered) a distinction is drawn between accident resulting from the act of a wild beast, and “act of God”:

- 244 If a man has hired an ox (or) an ass and a lion kills it in the open country, it is the owner’s (risk).
- 245 If a man has hired an ox and causes its death by neglect or by striking (it), he shall replace ox by ox to the owner of the ox.
- 249 If a man has hired an ox and a god has struck it and it dies, the man who has hired the ox may take an oath by the life of a god and he then goes free.

This is not to suggest that “special interest” in this sense explains *all* uses of divine procedures (here, mainly oaths) in the Laws of Hammurabi. Taken as a whole, the special procedure cases in the Laws of Hammurabi seem to show the same kind of mixture of “special interest” and “functional” considerations which we have identified in the Bible. Neither model, it should be stressed, is to be regarded as a principle which operates consistently and mechanically throughout all the relevant cases. Inconsistencies do occur, as where the death of a domestic animal at the hands of a lion is equated with “act of God” in the provisions on the herdsman, but not in those dealing with hired oxen.

I turn now to the third occurrence of a “divine procedure” in the Covenant Code, which we find in Exodus 22:8:

For every breach of trust (*pesha*), whether it is for ox, for ass, for sheep, for clothing, or for any kind of lost thing, of which one says, ‘This is it,’ the case of both parties shall come before God; he whom God shall condemn shall pay double to his neighbour. (RSV)

This is commonly regarded as an addition to the original Covenant Code, principally because of its generalising tendency, combined with its departure from the normal casuistic form. We shall consider presently its place in the history of jurisdictional development. For the moment, we must ask what significance it would have had for the compiler of the Covenant Code.

The language of the verse has some peculiarities which distinguish it from the more specific cases of both the depositor and the shepherd. First, the result of the divine procedure is expressed in such a way as to suggest that its object is to identify a culprit from more than one possible suspect: “He whom God shall condemn”, *asher yarshi’un elohim*. The phrase *ki hu zeh*, given the grammatical context, should be rendered not “This is it”, but rather “This is he”. Secondly, the situation is introduced as one of *pesha*. This may or may not be an indicant of a later, priestly hand. But we would be wrong to dismiss the term as mere theological rhetoric, as in the traditional translation “For every matter of trespass” (RV). The RSV “breach of trust” is quite apposite. The term *pesha* is used in three other passages in connection with property offences. In all three,

the context is a family dispute: Laban's accusation that Jacob or a member of his family had stolen his household gods (*Gen.* 31:36), the kidnapping of Benjamin (*Gen.* 50:17), and the image presented in *Proverbs* 28:24 of one who "robs his father or his mother and says, 'that is no transgression' (*eyn peshah*). The term thus appears to connote a special relationship between the parties to the dispute. If we apply this to *Exod.* 22:8, we might find an anticipation of the Hellenistic understanding of the deposit law, as itself involving a special relationship, a sacred trust.

3 Bibliography

Recommended Readings: Materials (above) +

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Further Reading

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Extended Essay Topics

[Choose ONE only!]

1. Discuss the relationship between the laws and the narratives regarding homicide.
2. What light do biblical laws and narratives cast upon the structures of families in the Bible?
3. “Crime was largely a matter for self-help in the Hebrew Bible.” Discuss this proposition and indicate to what extent such self-help was regulated.
4. “There is no category of “sexual offences” in the Hebrew Bible. What we regard as sexual offences are really offences against property.” — Discuss.
5. What different theological claims may underlie the different narratives of law giving in the Hebrew Bible?
6. Compare the laws and narratives regarding adjudication. Who exercised jurisdiction and what sources did they use?
7. Does it help to view the problem of covenant in its narrative context?
8. Your proposal, subject to my agreement.

B.S.J.