

Course Reading

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ANATOLIA AND THE LEVANT

ISRAEL

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1. SOURCES OF LAW

Almost all our information about law in ancient Israel comes from the Bible itself; practical documents would have been written on perishable material and have long since disintegrated. Two documents survive, written on ostraca because of the difficult situation in which they were composed. Most of the overtly legal material is in the Pentateuch (Torah), with occasional mention in narratives, prophets, psalms, and proverbs. Much legal information can also be gleaned from narratives, both the Pentateuchal narratives in which the legal sections are embedded and the historical narratives.¹

1.1 *Pentateuch*1.1.1 *Essential Prescriptions*1.1.1.1 *The Ten Commandments*²

The most famous set of instructions in the Bible and perhaps all of Western literature is the Ten Commandments, recorded in Exodus 20:2–17 and Deuteronomy 5:6–21.³ These commandments are absolute imperatives whose regulations appear often in the Pentateuch, with the exception of the tenth commandment ("Thou shalt not covet"). The commandments are in the second person masculine singular, they contain no penalties, and are presented as the conditions for being part of the community established at Sinai. Scholars believe that the original form of the commandments was very terse and has been expanded with explanatory phrases: these are notably different

¹ See Weinfeld, "Ancient Israelite Religion," 487–490; Phillips, *Ancient Israel's Criminal Law*.

² Weinfeld, "The Decalogue . . ."

³ See Segal, ed., *The Ten Commandments* . . .

for the Sabbath in the Exodus version, which relates the Sabbath to creation, and the Deuteronomic, which stresses rest and relates it to redemption from Egypt. The original formulation may be very old, and commandments are alluded to by Hosea (Hos. 4:2) and Jeremiah (Jer. 7:9), and two Psalms (Ps. 50:7, 18–19; Ps. 81:9–10).

1.1.1.2 *Levitical Commands*

Leviticus 19:1–18 are the basic outlines of being “Holy” established by the Holiness code. They include provisions of the Ten Commandments (19:3–4, 11–12) together with ritual requirements, such as eating the communion sacrifice in two days and burning the rest (5–8), and social rules, such as gleaning (9–10), paying wages on the day earned (13), not exploiting the blind and deaf (14), not perverting justice (15), not standing by at injury (16), and not bearing vengeance (18). Most of the provisions are in the form of commands, but one participial case is included.⁴

1.1.1.3 *Deuteronomic Curses*

Deuteronomy also contains a list of communal curses (Deut. 27:15–26) upon those who perform a select group of misdeeds, which must have been considered fundamentally wrong. They contain rules of the Ten Commandments: cursing those who make images, dishonor parents, commit adultery or murder. They also include those who remove boundary stones; take advantage of the blind; pervert justice; sleep with a father’s wife, daughter-in-law, sister, or beast; or take a bribe to kill the innocent. They conclude with a blanket curse of those who do not uphold the law.

1.1.2 *Legal Collections*

The Pentateuch contains three distinct legal corpora: the Book of the Covenant (Exod. 20:22–23:19), the laws of Leviticus-Numbers 11, and the Deuteronomic laws (Deut. 12–26)⁵ These collections have a long antecedent tradition in the ancient Near East, a tradition that goes back to the southern Mesopotamian law “codes” from Sumer and Babylon. Like those collections, the biblical ones are not “codes” in the sense of legislation but rather represent the jurisprudence of

⁴ See Carmichael, “Laws of Leviticus 19.” Carmichael suggests that the laws are composed with the Joseph story in mind.

⁵ A detailed outline of each collection can be found in Patrick, *Old Testament Law*.

the day: the best possible legal scenarios presented as a combination of pronouncements and case law.⁶

1.1.2.1 *The Book of the Covenant*

This is generally considered the earliest of the biblical law collections. There is considerable agreement that it was originally an independent collection, which was later inserted into the book of Exodus as one of the sources with which the book was composed. There is, however, disagreement as to whether the text of the collection is itself the result of the modification of earlier collections.⁷ The collection itself contains a section of regulations with human sanctions (Exod. 21:1–22:16) and others under divine jurisdiction; significantly, the laws under human jurisdiction include those that we would consider “religious” law. The similarity of many of the cases to the Mesopotamian legal collections in both form and content indicate that the Book of the Covenant is part of the same legal tradition and that it built upon the same corpus of cases that were studied in Mesopotamian law.⁸ The Book of the Covenant, like other biblical law corpora, often provides legal remedies for the cases that are distinctively biblical.⁹

1.1.2.2 *The Priestly Codes*

These are actually two separate groups. The regulations found in Leviticus 1–15 and Numbers 1–9 (often called P) concern primarily ritual regulations and matters of purity and impurity. The Holiness code of Leviticus 17–27 (H) includes social legislation along with ritual prescriptions. The date and development of these collections are a matter of enormous dispute. Some of the laws in P and H may be very ancient; others are considered post-exilic. The relation between these two groups of priestly regulations is also a matter of discussion.¹⁰

⁶ See Westbrook, “Biblical and Cuneiform Law Codes.”

⁷ See Westbrook, “What is the Covenant Code?” and the various responses to him in Levinson, ed., *Theory and Method* . . .

⁸ The earliest such study was Paul, *Book of the Covenant* . . . See, most recently, Malul, *The Comparative Method* . . .; Lafont, “Ancient Near Eastern Laws . . .”; Greengus “Legal Tradition,” and “Biblical Law.”

⁹ This issue was first discussed by Greenberg, “Some Postulates . . .” It has occasioned numerous reactions, notably by Jackson, “Reflections . . .,” and was revisited by Greenberg in “More Reflections . . .”

¹⁰ The general consensus of scholarship has been that H is ancient and P either

1.1.2.3 *The Deuteronomic Code*¹¹

The laws in the Book of Deuteronomy are intimately bound up with the narrative, an indication that the book was produced as a unit, a product of a nativist revival movement which sought to purify Israel's cult, to rid it of all elements it considered idolatrous or polytheistic, to centralize all worship in one place and to minimize contact with other peoples. The laws themselves often have the character of legislation, binding the hearers to observe the law.¹² The laws include more family regulations than does the Covenant Code; they also show evidence of change from the common law reflected in the narratives and the few family laws of Exodus in the direction of less authority for the individual head of household.¹³ On the other hand, the laws have a minimalist view of monarchy and do not invest the king with major areas of authority. A more collective view of authority is established through the persons of elders and judges. Deuteronomy is structured as a treaty agreement between God the overlord and Israel, and the laws are presented as the stipulations of this treaty. In this way, breaking the law also involves breaking the oath of treaty and faithlessness to God, and the community must rectify the situation in order not to be itself considered faithless to God.

1.1.2.4 *Forms of the Laws*¹⁴

The laws are generally described as "casuistic" (case law), which provide legal remedies for the situations envisioned by the composers of the law, and "apodictic" statements: prescriptions and proscriptions directly addressed to the hearer/reader that do not detail the punishment for transgressions. A third type, "participial" ("the one who does . . ."), should be seen as a subset of case law, since it too provides for sanctions. Theories about different origins or times for the different forms of law have not been borne out.¹⁵

very early or late; most recently, Knohl has argued that H results from an eighth-century movement in which the priests became more socially conscious than they had been before (*The Sanctuary of Silence . . .*).

¹¹ The classic work on Deuteronomy is Weinfeld, *Deuteronomy and the Deuteronomic School*. Most recently, see the articles in Braulik, ed., *Bundesdokument und Gesetz*, and Levinson, *Legal Innovation*.

¹² This characteristic is stressed by Westbrook, "Cuneiform Law Codes . . .," who believes this not to be true of the cuneiform codes.

¹³ On this point, see Frymer-Kensky, "Deuteronomy." See also Rofé, "Family and Sex Laws . . ."

¹⁴ The classic study is Alt, "Ursprünge . . ."

¹⁵ See Sonsino, "Forms of Biblical Law."

1.1.2.5 *Motive Clauses*

Fifty percent of biblical laws have a clause attached that may underline the origin of the law, make a promise for keeping it, explain the reason for it, hold out threats, and give purpose for the laws. These clauses seek to persuade and thus indicate that the law collections are being read and proclaimed to the people, rather than confined to the reading of the literate. The need to persuade also hints that the laws do not carry the legislative weight of being backed by officially mandated violent acts. The law educates the public about what to do and encourages it to follow by both promises and threats and by explanations.¹⁶

1.1.3 *Legal Storyettes*

The Pentateuch contains a set of little stories that record the breaking of a norm, the detention of the miscreant while Moses went for a decision, and a decision. These might be considered case law fleshed out into stories that served as precedent or, indeed, stories that actually established the precedent. The stories declare the laws ancient and provide divine authority. Two stories, "the man who cursed with God's name during a fight" (Lev. 24:10-23), and "the man who gathered wood on the Sabbath" (Num. 15:32-36), describe a case of what we would call a "religious" infraction and impose the death penalty for it. Three stories, "the daughters of Zelophehad" (Num. 27:1-11) and "the clan response to the daughters" (Num. 36) and "those impure at Passover" (Num. 9:6-12), involve pleas from parties to remedy their situation and establish social institutions: the epiklarate and its contours and the second Passover. The "man who cursed God's name" ends with a whole set of provisions about penalties for homicide and injury—an indication that the recitation of these stories is part of the retelling and proclamation of law collections. The Book of Samuel includes one legal storyette, "the division of spoils," in which David's men who went with him in battle petition to keep all the spoils, and David declares that the spoils must be divided equally. As in the "man who cursed," the story ends with a declaration of law, but here the authority is David's and he does not consult God (1 Sam. 30:22-25).¹⁷

¹⁶ See Greenberg, "Biblical Law . . ."; Welch, "Reflections on Postulates . . ."; Sonsino, *Motive Clauses . . .*

¹⁷ The Pentateuch also contains such a regulation, in Num. 31:25-28, which is given by God to Moses without a storyette and without a general regulation attached.

1.1.4 *Narratives*

In addition to the legal storyette, the Pentateuchal narratives, particularly those of Genesis, often demonstrate the legal customs and family arrangements that existed throughout the ancient Near East. These do not always conform to Pentateuchal legislation, since Deuteronomy and the Priestly documents represent classical Israel's norms, which are often innovations or other changes.¹⁸

1.2 *"The Prophets"*

1.2.1 *The Historical Narratives*

The Books of Joshua, Judges, Samuel, and Kings, edited by the Deuteronomistic historian, often contain narratives with legal information. Like the Genesis narratives, Judges and Samuel reflect the old law of Israel—Near Eastern customary law that is sometimes at variance with the particular rules envisioned in Pentateuchal law. There are fewer narratives in the Book of Kings, but some illuminate classical Israelite law.

1.2.2 *The Classical Prophets*

In their indictments of Israel, the prophets reveal both what laws were not being followed and what the legal situation was.

1.3 *The Writings*

1.3.1 Proverbs gives advice on legal matters. Occasionally, petitions or thanksgiving in Psalms reveal legal information.

1.3.2 Chronicles presents another account of Israel's history, with a different editorial agenda. It thus represents a different reflection of such issues as marriage with gentiles. Moreover, Chronicles, Nehemiah, and Ezra were written in the light of the composed Torah, and use various exegetical techniques to harmonize variations in Pentateuchal Law.¹⁹

¹⁸ See Daube, *Biblical Law*, 1–73. The relationship of these narratives to the laws has often been explored by Carmichael, who holds that the laws result from consideration of historical events (*Origins of Biblical Law and Law and Narrative in the Bible*).

¹⁹ See Fishbane, *Biblical Interpretation in Ancient Israel*.

1.4 *Legal Ostraca*

Two such documents have survived dealing with legal matters. One, the Meşad Hashavyahu letter, is a plea from a worker to an official asking for his cloak back. The other is a plea from a childless widow for possession of her husband's field.²⁰

2. CONSTITUTIONAL AND ADMINISTRATIVE LAW²¹

2.1 *The King*

The law collections are not royal documents: The Book of the Covenant probably dates from the pre-monarchic period and has no mention of a king; Deuteronomy, from late in the monarchy, wants a very minimalist kingship. The Deuteronomistic history of Judges-Kings is not happy with Israel's monarchy. Judges, which shows the desperate need for a king, nevertheless records anti-monarchic statements as a foreshadowing of things to come. The Book of Samuel, which describes the establishment of monarchy, also includes Samuel's warning about kings; 2 Samuel, about David, demonstrates that monarchy will not solve the problems of exploitation that Judges revealed, and Kings is openly censorious of the kings of Israel. Nevertheless, the importance of the king in the judicial system comes through.

2.1.1 *The Deuteronomic Ideal (Deut. 17:14–20)*

The people are to choose a king from Israel, excluding foreigners (Deut. 17:14–15). He is not to keep many horses or trade with Egypt for horses (Deut. 17:16) and is admonished not to have many wives "so that his heart turn not astray" (Deut. 17:17). This is a critique of the Solomonic kingship, for Solomon is remembered as keeping fourteen hundred horses (1 Kings 10:26f.), and as having many wives, who (according to 1 Kings 11) turned his heart astray. The king is also to have a copy of "this teaching" (the Book of Deuteronomy)

²⁰ See Bordreuil et al., "King's Command and Widow's Plea." This article also has a translation of the much-discussed Mesad Hashavyahu letter, which is studied most recently by Pardee, "Meşad Hashavyahu Texts." For commentary, see Lemaire, "Veuve sans enfants . . ."; Wagenaar, "Give in the Hand . . ."

²¹ See Frymer-Kensky, "Israelite Law"; Boecker, *Law and the Administration . . .*; Rütterswörden, *Die Beamten . . .*; Westbrook, "Biblical Law"; Avishur and Heltzer, *Royal Administration . . .*; and Miller, "J as Constitutionalist . . ."

written on a scroll so that he can study it and act properly (Deut. 17:18–20).

2.1.2 *The Figure of Moses*

Moses is the paradigm of both leader and prophet. As leader, he is both the chief judge and the lawgiver. The Pentateuch does not prescribe these roles for kings, but kings may have played these roles in the First Temple period.

2.1.2.1 *Moses the Judge*

Exodus 18 is a foundational story of the justice system. When Jethro sees the people lining up and waiting all day for Moses to settle their disputes, he convinces Moses that he should reserve the most difficult disputes for himself but set up a pyramid of leaders, *šarim*, leaders of tens, of fifties, of hundreds, and of thousands, to judge lesser disputes.

2.1.2.2 *Moses the Lawgiver*

The Pentateuch and post-exilic biblical writings present Moses as the great foundational lawgiver, who published Israel's laws at Sinai and then in the plains of Moab (Deuteronomy). However, Amos speaks of God sending prophets to make known God's laws and does not mention either Moses or Sinai. It is only in the exilic period that the laws are consistently referred to as the torah or laws of Moses.

2.1.3 *Narratives of the Role of the King in Law*

The historical narratives about the founders of the monarchy (Saul, David, and Solomon) show the development of the king's role in law.

2.1.3.1 *Saul*

The Saul stories justify David's usurpation and lay down the requirements for kingship, demonstrating that the king must not be too responsive to the people's desires (1 Sam. 13:2–14; 14:24–46; 15:1–34). Despite this polemic, they record Saul's contributions to the legal system:

1. *Oaths*. Saul proclaimed a fast in anticipation of battle, swearing to kill whoever ate. Jonathan did not hear the oath, ate, and won a great victory. When divination revealed Jonathan's misdeed, the people demanded that Jonathan be spared. In listening to them, Saul established the principle that the king can override oaths, thus

freeing the monarchs from the tragic dilemmas that plagued Israel in Judges 11 and 21 (1 Sam. 14).

2. *Outlawing necromancy*. This act is recorded (1 Sam. 28:9–10) as an introduction to Saul's séance.

2.1.3.2 *David*

While he was an outlaw and would-be king, David decreed that the share of soldiers who stayed behind should be equal to those who stay and fight, and it "made a statute and custom to this day" (1 Sam. 30:23–5). He also established the principle that the monarch was sacrosanct. Saul twice fell asleep while David was near. The first time (1 Sam. 24), David cut a piece of Saul's robe as proof that he could have killed Saul, but did not because God's anointed must be sacrosanct (1 Sam. 24:11), a sentiment he repeated on the second occasion (1 Sam. 26:9–11). As king, David established basic contours of monarchy:

1. The people will accept what ever David chooses to do (2 Sam. 6:21–22).
2. The king must be subordinate to divine rules and to the prophets who declare them (2 Sam. 12). Thus the king is not above the law.
3. The king does not have an absolute right to kill. Abigail convinced the outlaw David not to slaughter her husband's household, as God would not allow a man guilty of bloodguilt to become king (1 Sam. 25). The prophet Nathan told King David that killing Uriah with the "sword of Ammon" was an offense, for which the child of Uriah's wife died and David's other children suffered turmoil and death in the following stories (2 Sam. 12). Thereafter, David made sure that he had justification for execution, first adjuring people not to do something on pain of death, and executing them when they did it.
4. The king is judge. David gave judgment to his people (2 Sam. 8:15). Nathan presented a legal case, which David judged before knowing it was a parable. The wise woman of Tekoa, disguised as a poor woman, said "Save O King!" and asked not to give over to the family's blood avenger her son, who had killed his only brother. Weighing execution of murderers against continuing a man's lineage, David spared the surviving son (2 Sam. 14). The king's ability to solve cases made him like an "angel of god" to know what is right, a term of flattery used by those petitioning the king (2 Sam. 14:17, 20; 19:27). The technical term "Crying out to the king," *lîz'oq 'el hammelek* first appeared when Mephibosheth told David that he had no reason to petition the king (2 Sam. 19:29).
5. Absalom built support for a coup d'état by telling people on their way for judgment that they would not get a hearing from David.

declaring, "Would that they made me the judge in the land and everyone who had a legal dispute would come before me and I would declare his judgment" (2 Sam. 15:4). In this way, "Absalom stole the hearts of the men of Israel" (2 Sam. 15:6).

2.1.3.4 *Solomon*

In Israel's memory, Solomon was the perfect judge. During a dream theophany, Solomon asked for a "hearing heart" to judge (1 Kings 3:2-15). The gift was tested when two harlots came before the king with their tale of one dead and one living baby. Solomon held a trial, hearing both sides, and then rendered his famous "solomonic judgment," ordering the living child cut in two to test the two alleged mothers. The decision made Solomon's reputation, "For they saw that the wisdom of God was in him to do justice" (1 Kings 3:16-28).

2.1.3.5 *The Later Kings of Israel*

Only the "reforms" of Hezekiah and Josiah, which changed the religious infrastructure and centralized religion, are recorded. Micah's reference to "rules of Omri" (Mic. 6:16) indicates that the kings did issue various decrees, as we would expect from rulers. The role of the king as judge appears in several episodes from the Northern Kingdom at the time of the Omrides. They are summarized below in 2.9.1.

2.1.3.6 The king's role in justice is remembered in Proverbs: "Magic is on the lips of the king, he cannot err in judgment" (Prov. 16:10). In the Northern Kingdom, Hosea is very angry at the kings and denounces the whole concept (Hos. 8:4; 13:10-11). In Judah, the prophets are not as antagonistic to monarchy, and both the pro-monarchic prophet Isaiah (Isa. 11:4; 32:1) and the less pro-monarchic prophet Jeremiah (Jer. 21:11-12; 22:2-3, 13-17) recall the role of the king in justice. Josiah in particular is noted for having judged the cases of the poor (Jer. 22:15-16). After the Exile, the monarchy was not restored.

2.1.3.7 The king did not necessarily try cases that concerned the king. The trumped-up trial of Naboth for blasphemy against both God and king is tried before the elders as an ordinary trial; the king was not present and did not even know about it (1 Kings 21:11-16). Jehoshaphat of Judah appointed Zebadiah chief of Judah to be in charge of all matters relating to the king (2 Chron. 19:11).

2.1.3.8 Kings are not above the law. Jonathan tries to convince Saul not to "commit innocent blood" by killing David without cause (1 Sam. 19:5); Abigail convinces David that spilling blood without reason (*hinnam*) would be a stumbling block to his kingship (1 Sam. 25:31). Nathan declared that the sword would never depart from David's house because he committed adultery with the wife of Uriah, one of his subjects, and arranged for Uriah to be killed in battle (2 Sam. 12:9-10).

2.2 *Prophets*

The close connection of prophets and leaders is already indicated by the Pentateuch, which unites both leaders in the figure of Moses. The two roles were united once again in Samuel, the grand transitional figure to monarchy who ordained Saul as the first king of Israel, and in Saul, who had episodes of prophecy (1 Sam. 10:9-11; 19:19-23). Samuel also anointed David during Saul's lifetime. Samuel established three prophetic roles. As adviser to the king, he is followed by Gad and Nathan, David's advisers, and by Isaiah, adviser to king Hezekiah. As opponent to the king he is followed by later prophets who committed treason by ordaining rebels to the king, culminating in Elisha, who sent his disciple to ordain Jehu to destroy the Omrides (2 Kings 9:1-10).

2.2.1 A true prophet must be obeyed (Deut. 18:15-19). The difficulties of determining who is a true prophet are vividly described in the story of Ahab, Micaiah, and the four hundred prophets (1 Kings 22). False prophets are an object of considerable invective (e.g., Jer. 14:14-16 and throughout Jeremiah; Ezek. 22:38), and Deuteronomy calls for their death (Deut. 18:20). Deuteronomy rejected "signs and portents" as proofs of true prophesy, calling for the death of a sign-maker who advocated other gods (Deut. 13:2-6).

2.2.2 Prophets might run into trouble when their negative prophecies were perceived as a sign that they wished the king or the people ill, or that they were actually cursing the city or temple. Micaiah, who prophesied that Ahab would die if he went to war, was put in prison to await the result (1 Kings 22). Jeremiah was put on trial for "cursing" the temple and court (Jer. 26:16-24). At his trial, the elders recalled two prophets—Micah, who was not punished, and who brought Hezekiah to repent so that Micah's words did not come

true (Jer. 26:18–20), and Uriah, who had prophesied against the city in the days of Jehoiachin, who pursued him and brought him out of Egypt in order to execute him (vv. 20–25). The *šarim* in charge of Jeremiah's trial decided that a prophet who was speaking in good faith that God had sent him should not be punished (Jer. 26:16).

2.2.3 The prophets also had a role as intercessors, as Israel's advocate before God when God was angry (Jer. 15:1; 18:20).²² The prophet was supposed to "stand in the breach" to protect God from destroying Israel (Ezek. 22:30). Eventually, they failed in the task. Prophecy continued after the Exile, but ended after the Persian period.

2.3 *šarim*

These officials (literally, "princes") are first heard of in the story of their appointment in Exodus 18, when Jethro convinced Moses to appoint "princes of thousands, princes of hundreds, princes of fifties, and princes of tens" (Exod. 18:21) to judge the ordinary cases and bring the difficult cases to Moses. Samuel's "rule of the king" warned that kings would appoint *šarim* of "thousands and of fifties" to oversee the people doing the king's harvesting and plowing (1 Sam. 8:12). 1 Kings 4 preserves a list of Solomon's *šarim*; these royal appointees are primarily administrators, but administrators (from the king on down) had judicial functions.

2.3.1 The term *šar* appears together with "judge" in the hendiadys "Prince and judge" (Exod. 2:14; Ps. 148:11) and in parallelism (Mic. 7:3). Micah indicts both the *ro'š* (Mic. 3:9) and the *šar* (Mic. 7:3) for taking fees for rendering judgment. The term *šar* may indicate a royal appointee, but one function is to judge cases. In this capacity, they preside at the trial of Jeremiah (Jer. 26). The *šar* also appears as part of the trio of the failed legal system: rapacious princes, reckless prophets, and priests who profane the holy (Zeph. 3:3–4).

2.3.2 *The "šar of the Town"*

This title appears for town leader in premonarchic times (Judg. 9:30) and continues for a city official in the monarchic capitals of both the North (1 Kings 22:26) and the South (2 Kings 23:8). The reform of Josiah mentions a "city *šar*" (2 Chron. 34:8), and two bullae have

²² See Muffs, "The Prophet as Intercessor."

been found for such officials, possibly impressed with the same seal.²³ In addition, there were local "town *šars*" during the monarchy (2 Kings 10:1; Isa. 1:23; Jer. 26:10–12, 16; 2 Chron. 29:20).²⁴ Four *šar* inscriptions on jars at Kuntillet Ajrud may belong to such local authorities.²⁵ The *šarim* of Judah were exiled with Jekoniah (Jer. 29:2; Ezek. 17:2), but new *šarim* may have been appointed, for *šarim* are again mentioned during the reign of Zedekiah (Jer. 34:10, 19). Probably both groups are included in the indictments of Ezekiel, who compares them to rapacious wolves (Ezek. 17:12; 22:27) and Zephaniah, who sees them as roaring lions (Zeph. 3:3).

2.3.3 The Mešad Hashavyahu letter is a petition from a poor worker to a *šar* (written *šar*) asking for him to make his overseer return his cloak to him. The second extant petition, from a widow asking for her husband's field, is probably also to *ha[ššar]*.

2.4 *šopetim* ("Judges")

The judge could be a *šar*, or an elder, or anyone else who sat to hear petitions and cases. In the premonarchic period, the leaders of Israel were "Judges" who began their careers as redeemers, rescued Israel, and judged it until death. A different model, the prophet-judge, served as a central judicial authority, like Moses or Deborah the prophet, who judged Israel, sitting under a palm tree, to which Israel came up for judgment (Judg. 4:4–5). Another such judge was Samuel, who was based at Ramah but visited four other towns to judge every year (1 Sam. 7:15–17).

2.4.1 Deuteronomy 17 calls for a similar system in which cases would be tried in local courts and the difficult cases would be brought to the place God chose, to the "the priests, the Levites and the judge who will be at that time" (Deut. 17:1–11).

2.4.2 The judge might also oversee the sentence. If the sentence was flogging, he would take him down and someone would strike the convicted man in front of him (Deut. 25:2).

²³ Avigad, "The 'Governor of the City' Bulla," and Barkay, "A Second 'Governor of the City' Bulla."

²⁴ On this, see also Cogan and Tadmor, *Kings*, on 2 Kings 23:8.

²⁵ See Avishur and Heltzer, *Royal Administration* . . .

2.4.3 Jehoshaphat established a system of judges throughout the land, perhaps to break the close connection between administrative and judicial authority and to undercut the power of the local *šarim*. He entrusted them with jurisdiction over all disputes, whether involving blood or various regulations. At the head, he appointed Amariah the priest as chief judge for religious affairs and Zebadiah for royal matters (2 Chron. 19:5–11).

2.5 *šoterim* ("officers")

The *šoterim* first appear as leaders of the people during slavery in Egypt (Exod. 5). After the Exodus, Moses appointed the *šoterim* (Deut. 1:15). Officers also appear in close connection with judges, perhaps in hendiadys. Deuteronomy calls for the establishing of officers and judges in every town (Deut. 16:18), and Chronicles recalls that at the time of Solomon's accession there were six thousand "officers and judges" (1 Chron. 23:4).

2.5.1 The *šoterim* addressed the troops at the beginning of a military campaign, to release those who had not yet completed acquisitions they had made (house, vineyard, wife) and those who were afraid to go (Deut. 20:5–8). They also went with the elders to measure the distance between a corpse and the nearest town (Deut. 21:2).

2.5.2 *šoterim* and elders were the seventy assembled to receive the gift of prophecy (Num. 11:16–19). They were also the people that Moses gathered to hear the book of the law (Deut. 31:28). The leadership of the people at the time of the covenant and the conquest is described as "heads, elders and officers" (Deut. 29:9; Josh. 8:33) and as "elders, judges and officers" (Deut. 31:28; Josh. 23:2; 24:1).

2.6 Elders

The elders, always a component of the leadership of the people came to particular legal prominence in Deuteronomy. Elders of nearby cities and *šoterim* measured which town was nearest a corpse. The elders of the nearest town then performed the ritual of the *'eglah 'arupah*, the decapitated heifer, breaking a heifer's neck over a permanently flowing creek, declaring (with priests and Levites in attendance) that they neither killed the man nor saw the deed, and praying to God not to let the land become polluted with bloodguilt (Deut. 21:1–9).

2.6.1 The elders of the cities of refuge meet the fleeing killer at the gates and, having heard his story, settle him in the city until he can have a trial by the assembly and send the avenger away. The elders of the city in which a homicide occurred also go to the city of refuge to get murderers and deliver them to the blood avengers (Deut. 19:12).

2.6.2 The family laws of the Book of Deuteronomy vest the authority to kill children in the elders. If the parents denounce a wayward son to the elders, the boy is stoned. No investigation is mentioned: the denunciation is enough, thus leaving real power with the parents and giving the elders the authority to hand the child over for stoning (Deut. 21:18–21). Similarly, the father of a daughter whose bridegroom claims she was not a virgin brings the sheet before the elders, who flog the accusing bridegroom if the sheet shows blood and hand the girl over to be stoned if it does not (Deut. 22:13–21).

2.6.3 As overseers of family affairs, local elders also witness the ceremony for dissolving the levirate responsibility (Deut. 25:9–10).

2.6.4 The "elders of the land" formed a tribunal of sorts which kings might consult before proclaiming war (1 Kings 20:7–8), or which might cooperate with a prophet against the king (2 Kings 6:32). Elders of the land also intervened in the trial of Jeremiah (Jer. 26:17).²⁶

2.7 *ro's* ("Head") and *qasim* ("Captain")

In the desert at Ba'al Pe'or, God suggests impaling the "heads" in punishment for apostasy, but instead Moses has the leaders find and execute the guilty parties (Num. 25:4–5). Micah refers to the *ro's*, who should know justice but instead abhors it and oppresses the poor (Mic. 3:1–9), and he indicts the heads who give judgments for a fee (3:11). Jehoshaphat appointed Priests, Levites, and heads of households to be the central judges in Jerusalem (2 Chron. 19:8). The *qasim* is an officer of unspecified functions, possibly military (e.g., Josh. 10:24).

2.8 The Priesthood

The priests were a hereditary group that claimed descent from Aaron (Num. 10:8).

²⁶ Weinfeld, "Elder."

2.8.1 The specific judicial role of Priests and Levites was to supervise legal disputes and sentencing (Deut. 21:5). They, together with the judges, tried cases in which one litigant accused a witness of false testimony (Deut. 19:16–20), and priests were part of the central set of judicial authorities that Jehoshaphat set up in Jerusalem (2 Chron. 19:8), with one chief supreme over religious affairs (2 Chron. 19:11). The priests attended at the decapitated heifer ritual when a corpse was discovered (Deut. 21:5), and a priest officiated at the trial of the suspected adulteress (Num. 5:11–31). Priests also collected fines: if a wronged party had no kin to receive a 120 percent restitution, it was given to the priest. (Num. 5:8).

2.8.2 The role of the priests in maintaining Israel's purity gave them considerable authority. They could destroy any houses they considered diseased (Lev. 14:43–45). Supreme within the Temple, they could expel kings who tried to usurp their functions or authority (2 Chron. 26:16–20). Needless to say, this right depended on the goodwill of the king; Manasseh overran priestly authority and built altars in the temple (2 Kings 21:4).

2.9 Levites

Together with the priests, Levites oversaw legal disputes and sentencing (Deut. 21:5). They were part of the central judicial array established by Jehoshaphat (2 Chron. 19:8) and were specified to be the *šōterim* there. They attended at the ritual of the decapitated heifer (Deut. 21:5) and were in charge of determining skin afflictions (Deut. 24:8).

2.10 Legislation

The Pentateuch is a collection of written laws that theoretically had been promulgated by God through Moses during Israel's wanderings in the desert prior to their entry into the Promised Land.

2.10.1 Reading the Written Law

Reading written books is first mentioned in Sinai, when Moses read the Book of the Covenant to the people at the first covenantal ceremony (Exod. 24:7). Later, in Deuteronomy, Moses reads to the elders from the book of regulations that he deposits in the ark (Deut. 31:24–28). In similar fashion, Joshua inscribed a copy of the "instructions of Moses" on the stone altar he built on Mount Ebal (Josh.

8:32), assembled the whole people and read the book with its blessings and curses (Josh. 8:33–35). Samuel wrote a "book of kingship" giving his regulations for kingship, read them aloud and then deposited them (1 Sam. 10:25). Such readings are not recorded for the days of the monarchy, but late in the monarchy a book of laws discovered in the temple and validated by the prophet Huldah; it was read and then served as authorization for new observances of Passover (2 Kings 22). The Book of law read by Ezra validated Sukkot observance (Neh. 8) and served as the basis of communal study.

2.10.2 Covenant Renewal

Since the laws were considered stipulations of the covenant between Israel and God (at least in Deuteronomy and the prophets), reading the law may have been part of covenant renewal ceremonies such as those attested in Joshua 24. Since such ceremonies are not attested for the monarchic period, it is not known how late they lasted.

2.10.3 The practice of kings of issuing decrees has already been mentioned, for example, Saul's decree banning necromancy (1 Sam. 28:9–10).

2.11 The Courts

2.11.1 Central Courts

2.11.1.1 The King

The king had jurisdiction over any matter that a citizen might bring. People (including women) came directly to the king with petitions on any matter, including overriding the abuse of local authorities (Jer. 21:11–12). David's petitions are summarized above in 2.1.3. Other stories present petitions to the Omride dynasty:

1. A disguised prophet "cried out to the king" as he passed by. He was to guard a man or forfeit his life, and the man disappeared. The king refused his (unrecorded) request for pardon, and the prophet then revealed that the king would lose his life because he let Ben Hadad go (1 Kings 20:39–43).
2. During a siege and famine, as the king walked on the wall, a woman "cried out, saying, 'Save me, my lord the king!'" She told a horrendous story about a pact with another woman to eat each other's babies. The king declined to intervene (2 Kings 6:25–31).
3. The king sat at court, listening to Gehazi relate how Elisha brought the Shunnamite's son back to life, when she appeared, "crying out

to the king" to reclaim the land she left because of famine. The king sent a man to help her get back what belonged to her. He went beyond the customary law known from the ancient world, giving her also all the usufruct of the land for the years she was gone. He may have considered her special or have been trying to stay in Elisha's graces, but it was his royal prerogative to grant her the usufruct as well as her field (2 Kings 8:1-6).

2.11.1.2 *Wise Woman*

In early Israel there were other centers to which people could apply for judgment. During the siege of her city, the Wise Woman appeared on the wall for a parley to ask that the city be spared because it was a "city and mother" in Israel, about which they say, "Let them inquire at Abel and thus it will be concluded" (2 Sam. 20:16-19).

2.11.1.3 *"The Judge at That Time"*

According to Deuteronomy, difficult cases should be brought to "the place God chose," to the "the priests, the Levites and the judge who will be at that time" (Deut. 17:8-11). Such Levites and Priests and heads of clans were appointed in Jerusalem by King Jehoshaphat, who named Amariah the chief priest on matters related to religious affairs, Zebadiah the *nagid* of Judah in charge of matters related to the king, and the Levites as *šoterim*. He charged them that when disputes came to them from other towns, they were to be careful to instruct them so that they would not incur sin (2 Chron. 19:10-11).

2.11.2 *Local Courts*

Most cases were settled locally. Some judges may have been appointed by the kings. Moses established a pyramid of judges (Exod. 18); Samuel appointed his two sons as judges in Beersheba (1 Sam. 8:1-3); and King Jehoshaphat appointed judges throughout the land (2 Chron. 19:5-11). The *šar* who sat in judgment may also have been a royal appointee; the position was administrative as well as judicial. But the *ro'š* is the local head of the clan or tribe, and the elders are local elders, and it seems they were appointed locally (Deut. 16:18).

2.11.3 More than one judge would hear a case; the number may have varied.

2.11.4 The Bible contains a consistent polemic against judges taking fees. *Šohad* is often translated "bribe," but it refers to any kind

of fee. The first problem with fees is that if there are court fees, then no one will judge the case of the orphan or give a hearing to the case of the needy (Jer. 5:28), and the case of the widow does not come before them (Isa. 1:23). Once the case is being heard, giving a fee can cause the judge to pervert justice (Prov. 17:23). Samuel appointed his two sons as judges in Beersheba, but they lost the right to succeed him as ruler when they took bribes to subvert justice (1 Sam. 8:1-3). Isaiah indicts "those who vindicate the wrong after a gift and strip off the vindication of those who are right" (Isa. 5:23). A wicked man might offer a bribe (Prov. 17:23), but the righteous judge is to wave away a bribe instead of grasping it (Isa. 33:15), and never accept a fee against the innocent (Ps. 15:5). The man who takes a bribe to punish and execute an innocent man incurs the communal curse of Deut. 27:25.

2.11.5 *Written Petitions*

Two of the very few extra-biblical documents that have survived are pleas from a worker and a widow. They follow the same format, indicating that there was a formal protocol for writing such a letter (see 1.4 above).

2.12 *Services*

2.12.1 *Military Service*

At the beginning of a campaign, *šoterim* officials offered exemptions to anyone who had built but not yet dedicated his house, planted a vineyard and not yet harvested (four years after planting), or become engaged but not yet married (Deut. 20:5-7). They offered release to anyone who was afraid to go on campaign (Deut. 20:8). A new bridegroom was also exempt for the first year of his marriage, so that he would "give happiness to his wife" (Deut. 24:5).

2.12.2 *Corvée*

The laws say nothing about enforced employment on public works projects, but in the "Rule of the King," Samuel warned that the king would appoint *šarim* to oversee the people doing the king's harvesting and plowing and would take slaves, young men and mules (2 Sam. 8:11-18). Solomon conscripted thirty thousand workers to build the temple in Jerusalem (1 Kings 5:13).

3. LITIGATION

3.1 *Parties*

The scant information we have suggests that any adult could be a party to a dispute. Women are represented as petitioners and do not have to be represented by men.

3.2 *Procedure*3.2.1 *Initiation of Procedure*

3.2.1.1 When a crime was discovered, legal process began with the pronouncement of an *'alah*, a general imprecation that demanded that anyone with knowledge step forward. Divine punishment would follow the person who knows something but keeps quiet, though confession and a ritual of expiation might avert the divine sanction (Lev. 5:1–10). Ignoring the curse is considered abetting criminals (Prov. 29:24). The Book of Judges records that the mother of Micah pronounced such a curse (with the rare verbal *'alit*) over her missing eleven hundred pieces of silver, whereupon her son confessed and gave her the money, and she blessed him (Judg. 17:1–3).

3.2.1.2 The Book of Joshua relates a divinatory procedure, lots, to discover the perpetrator of a crime—taking booty from the conquest of Jericho. Joshua used lots to identify a suspect, narrowing the choice to one tribe, then one family, then one household, then one man, Achan. Divination was not enough to convict him nor was Achan's confession, but they established reason to search Achan's quarters, and when the stolen items were discovered, he and his household were stoned and burned (Josh. 7:16–26).

3.2.1.3 A procedure could also be initiated by an accusation brought by a witness (1 Kings 21:11–13). The accusation can take the form of a *rib*, a formal legal indictment, a bill of particulars detailing the problem. On a metaphorical level, the prophets declare that God has a *rib* against Israel (Hos. 4:1; 12:3; Mic. 6:2; Jer. 25:31).

3.2.1.4 *Private Suits*

The ostraca show written petitions to the local authority. Otherwise, a claimant had to find local authorities to hear the case. The prophets

indict those who, demanding fees for judgment, were not willing to hear the cases of those who could not pay the fee (Amos 5:12; Isa. 1:23; Jer. 5:28). Isaiah urges Israel to judge the orphans and widows (Isa. 1:17–18).

3.2.2 *The Court in Session*²⁷

The judges sat for the judgment. The number of judges is not specified, and it may be that in simple cases one judge would have sufficed. Family law procedures may have anticipated all the men of the town sitting together.

The actual procedure in a lawsuit has to be gleaned from statements in the prophets and proverbs, some of which use lawsuits as a metaphor for God's relationship with Israel. The parties would stand and the accuser might approach the accused (Isa. 50:8), but in Naboth's trial, he was seated at the head of the people, and the witness sat facing him and testified against him (1 Kings 21:13). The accuser would declare the particulars of his case, and the other party would then examine his statement (Prov. 18:17). The accused might have a representative (vindicator) to assist him to help him examine the witness (Isa. 50:8 and Job, throughout). Judgment would be given in the morning (Jer. 21:11–12; Zeph. 3:5).

3.3 *Evidence*3.3.1 *Witnesses*

3.3.1.1 Conviction requires two or more witnesses (Deut. 17:6; 19:15).

3.3.1.2 *False Witness*

Prohibition of false witness is included in the Ten Commandments and the Book of the Covenant, which enjoins Israel not to enter conspiracies to be an *'ed hamas* (Exod. 23:1). According to Deuteronomy 19:16–20, a witness who proved false was to suffer the same penalty that the accused would have suffered if convicted.

3.3.1.3 Where the penalty is stoning, the witness must throw first (Deut. 17:7), accepting the responsibility for the sentence and its execution.

²⁷ See Mackenzie, "Judicial Procedure . . ."

3.3.1.4 Testimony against oneself is not presented in the law collections, but Achan confessed after divination identified him as the culprit. The confession provided grounds to search his tent, where the stolen items were found (Josh. 7:20–23).

3.3.2 Documents

Since we do not have actual legal trials, we do not know what weight legal documents carried, but both divorce and sale documents are mentioned. One hint may be in Jeremiah's purchase of his cousin's field, which he has written in two copies and sealed (Jer. 32:9–11). He himself does not expect to use the field until after the Exile; the sale documents might have established his ownership at that time.

3.3.3 Material Evidence

In the case of Achan, the stolen items were found in his tent. In the case of the bride accused of not being virginal, the father brings the wedding sheets before the tribunal to show that they are or are not bloody (Deut. 22:13–21). A shepherd may bring the remains of an animal in his care to show that it had been devoured by a wild beast (Exod. 22:12).

3.4 Supranatural Procedures

God, the cosmic judge, decides the fate of nations by their actions. On a human scale, God is a witness to oaths and to a Hebrew slave's decision not to go free, and God is judge in circumstances in which a human court could not expect to reach a conclusion.

3.4.1 The third commandment prohibits using God's name for wrongful purposes. Since false witness is a separate commandment, this refers to lightly taking and breaking promissory, asseverative, and exculpatory oaths.²⁸

3.4.2 "Approaching God"

A householder from whose house deposited goods have been taken must "approach God" to declare his lack of complicity (Exod. 22:6–7); two people who contest ownership of any animal, cloth or other lost property are to "approach God," and the one declared guilty pays double (Exod. 22:8).

²⁸ Huffmon, "The Third Commandment . . ."

3.4.3 "The oath of God" is prescribed "between" the owner and guardian of an animal that dies or is broken or wanders off in the guardian's custody (Exod. 22:9–10). The language indicates that both take an oath—the owner that the animals were his, and the guardian that he was not culpable in the disappearance.

3.4.4 Standing before God

Deuteronomy provides that when a witness is accused of being *'ed hamas*, the two parties to the dispute (the witness and the one against whom he is testifying and who accuses him of being a false witness) are to stand before YHWH, the priests or judges at that time. The judges are to investigate (*daraš*) carefully. *Daraš* is also the term for oracular inquiry, and "standing before YHWH" may involve submitting parts of the question to God in an ordeal-like or oracular procedure, in which one party is immediately designated the perjurer (Deut. 19:16–20).

3.4.5 Exculpatory Oath

The elders of the town nearest a corpse decapitate a heifer over a wadi and take an oath that they neither did nor saw the murder (Deut. 21:1–9).

3.4.6 The Wife's Potion Trial

A man who accused his wife of committing adultery would bring her to the temple for a special trial (Num. 5:11–21). The priest would prepare a potion by taking pure water from a laver, mixing it with dust from the floor of the sanctuary, and dissolving into it words from a scroll; these words may be this passage from Numbers or perhaps just the curse that the priest pronounced. As the wife stood, hair unbound, holding a grain offering in her hand, the priest would pronounce a conditional curse, declaring that if she was innocent of wrongdoing she would be unharmed and able to bear a child, but if she was guilty, the waters would cause her "thigh to drop and her belly to swell." The woman would say "Amen, amen" and drink, after which she would go home with her husband and resume normal marital life under the presumption that no guilty woman would risk her fertility and her life. Drinking ended the trial, with final sentencing left to God. There was no provision for pursuit of her paramour.²⁹

²⁹ See Frymer-Kensky, "Suspected Sotah . . .," who suggests that the curse referred to a prolapsed uterus.

3.5 *Judgment*

In the case of petitions to authority, the authority (king or *šar*) heard or read the petition and decided accordingly. In other procedures, the judges investigated the case, but how they did so is not known.

3.5.1 Judges are urged to judge truly (Exod. 23:7–8), but Psalm 82 envisions a court for social justice, in which special consideration is given to the poor, and all the law corpora demand “blind justice” (Exod. 23:3, 6; Lev. 19:15; Deut. 16:19). There is unanimity that one should not allow fees to subvert justice (see 2.11.4 above).

3.5.2 Since judges came from the ruling administrators or the relatively wealthier classes, perverting justice was a form of exploitation of the disadvantaged (*šg*). The remedy is an appeal to the superior: to the *šar*, as in the legal ostraca, or to his superior on up through the king. However, Hosea indicts the higher lords for such abuse (Hos. 5:11), and Ecclesiastes advises that one not be shocked if the abuse continues on up the line (Eccles. 4:1). The ultimate appeal is to God.³⁰

3.5.3 Samuel’s farewell speech highlights abuse by judges: “whose ox or ass have I taken, whom did I oppress and exploit, from whom did I take a price to turn away—tell me, and I will answer.” The people respond that he has not oppressed or exploited them, for he has never taken anything from them (1 Sam. 12:3–4).

3.6 *Execution*

At the end of a criminal trial, the judges delivered the convicted parties over to those responsible for the execution of the sentence. In the case of stoning, the whole community was to participate, with the witness casting the first stone (Deut. 17:7). Stoning took place outside the camp or the town (1 Kings 21:13). In Deuteronomy, the elders would also oversee the flogging of a man who falsely accused his bride of not being a virgin (Deut. 21:18). In other disputes, the judge would take the convicted man down and he would be flogged before him (Deut. 25:2).

³⁰ Westbrook, *Studies* . . . , 9–38.

3.6.1 *Blood Avenger*

The victim’s nearest kin was to kill a murderer. He operated as the community’s representative and incurred no bloodguilt even if he killed the murderer without trial while the latter was on his way to a city of refuge. After trial, the blood avenger would kill a convicted murderer or an accidental homicide who left the city of refuge. In the Deuteronomic system, in which the elders are prominent, the elders would bring the guilty party back from the city of refuge and give him to the blood avenger (Deut. 19:12).

Narratives illustrate some of the rules. Deaths in combat were not to be avenged. Joab’s killing of Absalom in combat invites no retribution, but when Joab killed Abner to avenge Joab’s brother’s death in battle (2 Sam. 3:27, 30) the king punished him for murder (1 Kings 2:5). The blood avenger does not kill the murderer’s family. The narrator cites this rule in the story of King Amaziah killing his father’s assassins but not their sons (2 Kings 14:5–6).

4. PERSONAL STATUS

All Israelites were citizens, and there were no official class distinctions between them. Nevertheless, there were distinctions. The priests and Levites represented hereditary castes, women were legally disadvantaged, and the poor and resident aliens were subjects of particular concern.

4.1 *Israelites*

The Torah considers Israelites members of the congregation, bound to each other and to God by a covenant that establishes their responsibilities to God and each other. The ideal is a social order in which each person lives on his own land. The narratives and the prophets reveal a considerable distinction between rich and poor, and women were addressed primarily as wives and mothers.

Israelites in hard straits could lose their land and become debt slaves. If their kin did not redeem them, they would be released after six years (see 4.5 below). Slaves, whether Israelite or foreign, were obligated to all the responsibilities of Israelites.

4.1.1 The same text in Deuteronomy that promises that God will bless an obedient Israel so that there will be no poor also declares

that there will never cease to be poor people in the land (Deut. 15:4, 11). Concerned about the condition of the poor (Deut. 14:17), Israel has special regulations to provide for their food and proper treatment (Deut. 15:7-10).

4.1.2 During the Sabbatical year, the poor were allowed to gather freely from fields, orchards, and vineyards (Exod. 23:11). Israelites were not to refrain from lending to the poor in anticipation of the Sabbatical year, when debts were remitted (Deut. 15:8-9). During harvest, the edges of the field were to be left for the poor to harvest, as were any dropped produce or fallen fruit (Lev. 19:9). Leviticus 23:22 gives them to the poor and the *ger*; Deuteronomy 24:19 to the *ger*, the fatherless, and the widow. Similarly, one should not beat olive trees a second time or pick over the grapevines a second time, in order to leave the food for the *ger*, the fatherless, and the widow (Deut. 24:20-21). Deuteronomy calls for a tithe each third year, eaten in one's own home town and shared freely with the *ger*, the orphan, the widow, and the Levite (Deut. 14:28-29).

4.1.3 The blind and deaf are also to be awarded consideration and their disadvantages not exploited (Lev. 19:14). The one who misdirects a blind person receives a communal curse in (Deut. 27:18).

4.1.4 One must show deference to the elders (Lev. 19:32) and respect the leaders of the people (Exod. 22:28).

4.2 *Castes: Priests and Levites*

4.2.1 *Priests*

Priests, a hereditary caste, could not drink intoxicants while on duty (Lev. 10:9) and were subject to special purity regulations. They could not marry a prostitute or divorcée (Lev. 21:7), and a priest's daughter who was not chaste was to be burned for degrading her father (Lev. 21:9).

4.2.1.1 Not all members of the priestly clan could be priests, as certain physical disabilities or abnormalities disqualified them. The afflicted could partake of the rations of priests but not offer sacrifices or enter restricted areas of the temple (Lev. 21:16-23).

4.2.1.2 Priests, who did not own territory, were paid with a portion of the sacrifice. Each priest kept gifts given to him (Num. 5:9-10). Yet another source of income was fines: if a wronged party had no kin to whom to pay 120 percent, it was given to the priest. (Num. 5:8).

4.2.1.3 Only male priests could eat gifts given to God (Num. 18:8-10). The narrative of Eli's sons illustrates the early period's protocol: putting a trident into stewing meat, priests ate what came up; the sons of Eli wrongfully asked for meat even before the fat was burned (1 Sam. 2:13-16)

4.2.2 *Levites*

Like priests, Levites had no territorial share and were involved in religious ritual. The Bible presents three different stages of Levites in Israel's social system.

4.2.2.1 The Book of Judges reflects a time when "Levite" was a professional title rather than a hereditary caste. It relates the adventure of a young man from Bethlehem in Judah, a Levite who hired on in Mount Ephraim as "father-priest" to Micah for ten silvers a year, clothing, and food, serving as priest in Micah's chapel (Judg. 17). In the classical system of Leviticus and Numbers, Levites performed the work of the sanctuary and were assigned to the Aaronid priests (Num. 18:21, 23).

4.2.2.2 Levites were supported by tithes (Num. 18:24), and tithed their tithes for the priests (Num. 18:25-28). They were given forty-eight cities with pastureland of two thousand cubits all around (Num. 35:1-5.). They could receive other donations (Num. 18:25-31; Deut. 18:1-4).

4.2.2.3 When Deuteronomy eliminated the local shrines, it called for Israel to take care of the Levites outside Jerusalem who had lost their jobs (Deut. 12:17-19). In order to do so, Deuteronomy assigned the tithe offering on the third year (consumed in the settlements) to Levites as well as *ger*, orphan, and widow (Deut. 14:27-29; 26:12). Deuteronomy also allows Levites to leave their local cities, come to the central sanctuary and share in the offerings there (Deut. 18:6-8). They and the *ger* were to join in the festive meal at the offering of the first fruits (Deut. 26:11).

4.3 *Foreigners*³¹

4.3.1 The resident alien of Israel, the *ger*, was subject to the laws of Israel and was not to be abused (Exod. 23:9; Lev. 19:33). The one who subverts the rights of the *ger*, the fatherless, and the widow receives the communal curse in Deut. 27:19. The *ger* was subject to the legal restrictions of Israelites. They were not to curse with God's name on penalty of death (Lev. 24:16); they were subject to the same penalties for homicide, battery, or damage to animals (Lev. 24:18–22).

4.3.2 The *ger* was considered disadvantaged, along with the orphan and widow (Exod. 22:21–22). Their judgment was not to be subverted (Deut. 24:17); they could glean in the fields and vineyards and join in eating first fruits (Deut. 26:11).

4.3.3 Leviticus 25 considers the situation in which the resident *ger* becomes rich enough to have Hebrew debt slaves and calls upon the relatives to redeem the slaves by considering the number of years left until the Jubilee and paying him the wages of a hired hand for that number of years (Lev. 25:47–54).

4.3.4 Unlike the *ger*, the *nokri* (“foreigner”) did not have to observe dietary rules, could buy the carcasses of animals found dead (Deut. 14:21), and pay back debts in the sabbatical year (Deut. 15:3).

4.4 *Gender and Age*

4.4.1 The legal system envisions Israelites as male heads of households, while women are defined in relationship to the household. According to the Pentateuch's grand narrative, this system was instituted by Moses, who addressed only the men of the congregation, saying “do not approach a woman,” when he told Israel to remain sexually chaste in anticipation of the encounter with God (Exod. 19:15). Women were normally attached to a household as wives, daughters and daughter-in-laws, and their status depended both on the household and their position in it. Unattached women such as divorcées and widows would normally be expected to marry again.

³¹ See Van Houten, *The Alien in Israelite Law*.

4.4.2 The narratives show that before the monarchy, women could rise to public authority within the household. On the other hand, there were no controls on heads of household, who could abuse women at will. With the consolidation of the monarchy, women were shut out of the hierarchies of political power, but their husbands and fathers could no longer kill them.³²

4.4.3 Full adulthood was reached at twenty, when one was counted in the census (Num. 1:2–3, 18; 1 Chron. 27:23; 2 Chron. 25:5), went into the army (Num. 1:22) and paid the head tax of one-half shekel (Exod. 30:13–14), and Levites began to work in the sanctuary (1 Chron. 23:24, 27; Num. 4:3 has 30, and Num. 8:24 has 25).³³

4.5 *Slavery*³⁴

4.5.1 *Terminology*

The ordinary term for a male slave, *'ebed*, is qualified as *'ebed 'ibri*, “Hebrew Slave,” with release in the seventh year. Female slaves have two terms, *'amah* and *šiphah*, which most texts use interchangeably. The term *mas*, “tribute,” describes war captives taken for state labor.

4.5.2 *Acquisition*

4.5.2.1 Hebrew slaves are usually acquired as a result of their poverty. Some are debt slaves,³⁵ like the sons of the widow of Zarephath, whose creditor is about to come and acquire them until Elisha creates an unending supply of oil and directs her to pay off the debt. (2 Kings 4:1). The community returned from Babylonian exile was in such dire economic straits that their sons and daughters became slaves (Neh. 5:5). A second mode of acquisition may be purchase, as by buying the thief who is sold into slavery because he cannot make appropriate restitution (Exod. 22:2). Yet a third mode is by birth: should a master give a Hebrew slave a wife, the children remain the master's after the slave goes free.

³² For an examination of this issue, see Frymer-Kensky, *Victors, Victims . . .*

³³ Fleishman (“Age of Legal Maturity . . .”) suggests that there is an intermediate stage, from the age of ten, in which young men had partial maturity, making them responsible for their actions and possibly enabling them to marry before twenty.

³⁴ In general, on slavery see Matthews, “Anthropology of Slavery . . .”

³⁵ Chirichigno, *Debt Slavery . . .*

4.5.2.2 Foreign slaves could be acquired by war, purchase, or birth. If a besieged city accepts the offer to allow their surrender, the people serve as tribute-labor (Deut. 20:11). Should the city not surrender, men should be killed at capture rather than turned into slaves; women and children can be taken as booty (Deut. 20:12–14).

4.5.2.3 A special case is a woman taken in war for the specific purpose of becoming a wife (see 5.1.1.6 below).

4.5.3 Treatment

4.5.3.1 The welfare laws of Leviticus call for treating an impoverished Israelite who becomes a slave like a hired laborer (Lev. 25:39–40) and not to be ruthless (Lev. 25:43); the Israelite who becomes slave to a *ger* should be given the same consideration (Lev. 25:53).

4.5.3.2 Slaves may not be told to work on the Sabbath (Exod. 20:10; 23:12; Deut. 5:14); they are to be circumcised and participate in the Passover and other festivals.

4.5.3.3 The slave is a man's property, and a man has a right to punish his slave, even severely enough to leave him or her bedridden for a day or two, but if the slave dies, the death will be avenged (Exod. 21:20–21).³⁶ If he destroys the eye or tooth of his slave, male or female, the slave goes free (Exod. 21:26–27).

4.5.3.4 Wife Slaves

The *'amah* in Exodus 21:7–9 and the captive bride in Deuteronomy 21:10–14 have a right to be wives. A man who acquires and then rejects them is considered to have abused or betrayed them, and they go free. The *'amah* goes free if her master, taking another wife, does not provide her with food, clothing, and *'onah* (Exod. 21:10–11). Interpreters beginning with the Septuagint and the Targums understood *'onah* to mean “conjugal rights,” taking *'onah* as the word for

³⁶ Westbrook, *Studies* . . . , 89–109. Westbrook argues that “avenged” implies vicarious punishment, that is, the death of the slave owner's child or its ransom, since the slave can be a minor taken for debt. My own sense is that even here, the owner himself bears the punishment. Either way, the law deals with all slaves, not just foreigners without blood avengers.

“season, time.” Comparison with Near Eastern laws suggests that *'onah* must have been a provision for oil.³⁷

4.5.3.5 If a female slave has not been redeemed or emancipated but has been “designated” (*nehrepet*) to a man, and a man has sexual relations with her, there is a claim (*biggoret*) and he must bring an expiatory ram. Since she was not free, he is not put to death (Lev. 19:20–22). The term “designated” is unclear; it may refer either to being a pledge for a debt or being assigned for marriage. The law also is ambiguous as to who slept with the slave, the owner or another, and may include all circumstances. The point of the law, in any case, is to protect and control the body of a female slave but not as much as betrothed or free women, sleeping with whom is adultery.³⁸

4.5.3.6 If an ox gores a male or female slave, the owner must give thirty shekels of silver, and the ox is stoned (Exod. 21:32).

4.5.4 Termination

4.5.4.1 A Hebrew slave can free himself with money or should be redeemed by his close family. The amount that is required to redeem him depends on the years between the time he was bought and the next Jubilee (and not on the debt for which he may have become a slave): the amount per year is computed on the basis of the hire of laborers. If he has not been redeemed, he goes out at the Jubilee (Lev. 25:47–55).

4.5.4.2 A Hebrew slave is supposed to work only six years and go free (*lahopsšī*) without payment of the amount for which he was enslaved (Exod. 21:2; Deut. 15:12). The six years of service are considered worth twice the amount that a hired man would have cost (Deut. 15:18). Deuteronomy calls upon the owner to give the freed slave animals, grain, oil, or other foods (Deut. 15:13–15).

³⁷ Originally suggested by Paul, *Book of the Covenant* . . . For a full discussion, see Levine, “On Exodus 21,10 . . .” Levine sides with the early interpreters.

³⁸ For different interpretations, see Loewenstamm, “*bqrt thyh* . . .”; Milgrom, “Betrothed Slave-Girl . . .”; Westbrook, *Studies* . . . , 101–9.

4.5.4.3 According to the Book of the Covenant, if a man sells his daughter as an *'amah*, she goes out if the master, acquiring another wife, does not provide her with her wifely allotment. But she does not go out as slaves do, after six years (Exod. 21:7). Deuteronomy calls for the parallel release of male or female Hebrew slaves (Deut. 15:12). The difference may be the disappearance of sale-marriage, in which the *'amah* would want a permanent arrangement.³⁹

4.5.4.4 A slave who entered into slavery single leaves single. If he entered as a married man, his wife goes out with him (Exod. 21:3). If the master gave him a wife and she gave birth to sons or daughters, the woman and the children belong to the master and the man goes out alone (Exod. 21:4). At the Jubilee, both a slave and his children go free (Lev. 25:40–42).

If the slave chooses not to go free because of love of his master or his children, he can become his permanent slave (*[wa]ʿabado leʿolam*) by undergoing a public ritual in which he stands before the door or doorposts “before God” (probably a divine symbol) and his master pierces his ears with an awl. (Exod. 21:5–6; Deut. 15:16). Deuteronomy, which restricts ritual to a central sanctuary, simply calls for piercing the ear into the door.

4.5.4.5 Leviticus calls for Hebrew slaves to go out at the Jubilee and return to their own families (Lev. 25:10). At that time, the slave and his children are also freed. The relationship of this release to the seventh year is not clear. It may be that slaves went out in the seventh year of their slavery, but if a Jubilee should arrive in the meantime, it would also release them.

4.5.4.6 Foreign slaves bought from the surrounding nations or from foreigners living in Israel do not go out: they are inherited as property (Lev. 25:44–46).

4.5.4.7 A slave goes free if the owner injures his eye or tooth and probably by extension, any loss of limb (Exod. 21:26–27).

³⁹ For female slaves, see most recently Turnham, “Male and Female Slaves . . .”; Carolyn Pressler, “Wives and Daughters . . .”; and Westbrook, “Female Slave.”

4.5.4.8 A slave could also be freed by running away. According to Deuteronomy, a runaway slave is not to be returned to its master. He should be sheltered if he wishes or allowed to go free, and he must not be taken advantage of (Deut. 23:16–17). This provision is strikingly different from the laws of slavery in the surrounding nations and is explained as due to Israel’s own history as slaves. It would have the effect of turning slavery into a voluntary institution.

5. FAMILY⁴⁰

5.1 *Marriage*

5.1.1 The man “takes” a wife. The father of the man may negotiate the marriage, as with Shechem (Gen. 34). Judah left home and arranged his own marriage; later, he arranged his sons’ marriages (Gen. 38). The girl’s father had the right to give his daughter to whomever he chose.

5.1.1.1 The father of the girl negotiated a bride-price with the groom or groom’s father, with an expected amount the baseline, the *mohar habbetulot*, set at fifty shekels, but with no upper limit. Normally, the bride-price consisted of silver or goods, but it could be services. Othniel acquired Achsah by conquering Kiryath-Sefer (Judg. 1:11–13); David refused Saul’s offer of Merob for his fighting the Philistines (1 Sam. 18:17–19), but accepted Saul’s offer of Michal for a bride-price of a hundred Philistine foreskins (1 Sam. 18:25), giving him one hundred (2 Sam. 3:14 and the Septuagint of 1 Sam. 18:27) or two hundred (1 Sam. 18:27). Jacob worked seven years for Rachel and Leah respectively (Gen. 29:16–28).

5.1.1.2 The payment of the bride-price might be marked by a banquet (Judg. 14); after the payment, the girl is “betrothed.” She owes fidelity and is subject to rules of adultery (Deut. 22:25–26).

5.1.1.3 The actual marriage began when the groom claimed his bride (Gen. 29:21), an occasion that may also have been marked by

⁴⁰ See Frymer-Kensky, “The Family in the Hebrew Bible”; Pressler, *Deuteronomic Family Laws . . .*; Rofé, “Family and Sex Laws . . .”; Westbrook, *Property and the Family . . .*

a banquet, given by the girl's father (Gen. 29:22). The groom took the bride home to his tent (Gen. 24:67), room (Judg. 15:1) or *huppah* (Josh. 2:16; Ps. 19:6). In the early days, in extraordinary circumstances, the bridegroom might live in his father-in-law's household, like Jacob with Laban. Much more commonly, the woman came to her husband's house within his father's household cluster.

5.1.1.4 The Near Eastern custom of giving the bride-price to the married daughter is the background of Rachel and Leah's complaint that their father ate up their bride-price (Gen. 31:14–16). Achsah complains that her father gave her away as dry land. He then gave her a field with springs as a marital gift (Judg. 1:14–15).

5.1.1.5 Much more rarely, texts mention a dowry, *šilluhim*. Pharaoh conquered Gezer and gave it to Solomon for his daughter (1 Kings 9:16); Micah tells Lachish to do the same for the king of Israel (Mic. 1:14). Laban gave his daughters maidservants as their dowry (Gen. 29:24, 29); Hagar, Sarai's maid, may have come to her in the same way. Comparison with Near Eastern texts indicates that dowries would often contain ordinary household goods with which to set up a household.⁴¹

5.1.1.6 Two laws discuss the treatment of unfree women acquired as wives in divergent ways.⁴²

- a) The *'amah* of the Book of the Covenant (Exod. 21:7–10) is an Israelite woman sold for this status by her father. If the buyer has designated her for his son, she is treated like any other daughter-in-law, becomes a wife, and is not freed in the seventh year. If the man for whom she was acquired as a wife did not want her, he could "redeem her" to another family but he could not sell her, for his not marrying her was considered a betrayal. If he married another woman, he had to keep providing for his *'amah*; if not, she would go free. The debt for which her father may have sold her is cancelled, but she would not get back any monetary payment to her father, for it was not considered a bride-price. Deuteronomy explicitly frees both male and female Hebrew slaves in the seventh

⁴¹ See Westbrook, *Property and the Family* . . . , 142–64. Westbrook points to second millennium parallels to the sovereign king or group being the party to whom the land is transferred and then given to the purchaser.

⁴² For female slaves and the captive bride, see most recently Pressler, "Wives and Daughters . . ."; Washington, "Lest he die in Battle . . ."; Westbrook, "Female Slave."

year, an indication that there were no more *'amah* arrangements for acquiring wives.

- b) Deuteronomy provides for capturing a wife in war (Deut. 21:10–14). Brought home, she was to perform transition rituals—shaving her head, cutting her fingernails, and changing her clothes. She was also to "mourn her father and her mother" for a month, after which her captor could consummate the marriage. As with the *'amah* of Exodus, the captive bride could not be treated as an ordinary slave and sold. Changing his mind was considered abuse, and if he did not want her, she would go free.

5.1.1.7 A man might try to bypass the father and acquire a wife by sleeping with her. When Shechem did this, he tried to make amends by offering a very high bride-price, but her brothers killed him and his town (Gen. 34). The Book of the Covenant demands that the seducer pay the regular virgin's bride-price. It allows the father to take it and not give him the girl (Exod. 22:16–17), whereas Deuteronomy makes the father give him the girl (Deut. 22:28–29). In effect, it allows couples to "elope." The man still has to pay the full bride-price, and he is never allowed to divorce.

5.1.2 Polygyny

Most men would have only one wife. However, Jacob married the sisters Leah and Rachel, and Elkanah was married to two women (1 Sam. 1:1–8). Classical biblical law does not permit marriage to sisters (Lev. 18:18) but allows polygyny. Deuteronomy considers the man who was married to one woman whom he favored and one whom he did not, but the law is only about the first-born, not about why he married more than one wife. There is no way of knowing how common polygyny might have been.

5.1.3 The wife owed her husband exclusive fidelity. She also owed him her presence. When the *pileges* (a secondary form of wife that we normally translate "concubine") left her husband to go back to her father's house, she was considered faithless (*wattizneh 'alaw*). When he went to get her back after four months, however, it is not in a punitive mode, and he "speaks to her heart" to have her come back (Judg. 19:2–4).

Israel remembers the earlier pre-state period as a time when husbands had enormous powers over wives and fathers over sons (see 5.2.2 below). The husband could "share his wife to spare his life":

Abraham and Isaac passed their wives off as their sisters (Gen. 12, 20, 26); Lot and the Ephraimite host offered daughters to the mob; and the Levite gave them his *pilegeš* (Judg. 19:25). Ordinary adultery rules were suspended when the husband "shared" his wife in an emergency: the Levite was ready to take his *pilegeš* and go the next morning. He did not consider the event the end of his marriage until he realized that she was dead (Judg. 19:28).

5.1.4 *Divorce*

Divorce is not mentioned in the Book of the Covenant, which has almost no marital law. Deuteronomy assumes divorce and a bill of divorce (*seper keritūt*). Jeremiah predicts that adulteress Israel will get a bill of divorce (Jer. 3:8) and Deutero-Isaiah points to its absence as a sign that Israel has not really been divorced (Isa. 50:1-2).

5.1.4.1 Deuteronomy mentions two reasons for divorce: the husband may find something wrong (*erwat dabar*) with his wife or he might "hate" her. The law, which is about remarriage, provides no details, but it would seem that in divorce for cause, the husband would keep her dowry and her bride-price; if he divorced her without cause, because he simply "hated" her, she would leave with her dowry and bride-price (Deut. 24:1-3).

5.1.4.2 Deuteronomy denies men the right to divorce their wives in certain circumstances:

- (a) A man who falsely accused his bride of not being a virgin (Deut. 22:19).
- (b) A man who seduces an unbetrothed virgin pays the bride-price and cannot divorce her (Deut. 22:29). He abused her (*innah*) by not marrying her properly.⁴³

5.1.5 *Remarriage*

A man may not remarry a wife whom he divorced after she was divorced or widowed by a second husband.⁴⁴ Deuteronomy does not allow a man to remarry his wife after he divorced her for cause

⁴³ The action of the man is often translated as "rape", but the law lacks the word "overpower" that the rape law just before it uses (Deut. 22:25).

⁴⁴ For different interpretations, see Otto, "Wiederherstellung . . ."; Pressler, *Deuteronomical Family Laws . . .*, 44-62; Westbrook, "Restoration of Marriage . . ."

(*erwat dabar*), she married another man, and she became free again when the second husband died or divorced her without cause ("he hated her"): she has been defiled (*huttamma'ah*) and it would be an abomination (*to'ebah*: Deut. 24:1-4). The reason for this particular prohibition may be economic—a husband, having kept her first dowry and bride-price when he divorced her for cause, should not be allowed to then acquire her second dowry and bride-price, which she kept when widowed or divorced without cause. The abomination and defilement language point to a prohibition of all such cases of remarriage, a view expressed by Jeremiah, who asks whether a first husband can remarry his ex-wife after an intervening marriage to another husband and answers that such action would pollute the land (Jer. 3:1).

5.1.6 *Levirate*⁴⁵

If brothers were still living together and one of them died without children, his brother would sleep with his brother's widow in order to engender a child who would carry on the dead man's name and claim his inheritance (Deut. 25:5-6). Even though sleeping with one's sister-in-law is a forbidden relationship, incest rules were suspended for the levirate.

5.1.6.1 The levirate is an important plot element in the story of Tamar and Judah (Gen. 38). When Tamar's husband Er died, her father-in-law commanded his second son, Onan, to perform the levirate. This involved considerable economic sacrifice by Onan. If only two sons remained at the time of Jacob's death, his estate would be divided into three portions, and as eldest, he would get a double share, or two thirds of his father's estate. However, if he engendered an heir for Er, that boy would inherit his father's double share, or one half of Jacob's estate, and Onan would receive only one quarter. Onan was not willing to damage his economic future and would withdraw his semen at ejaculation (*coitus interruptus*) to prevent conception. For this, God killed him. Judah should then have given his third son, Shelah, to Tamar, or, since his son was young, should have performed the levirate himself. He, however, was afraid that Tamar was a fatal bride, and so he lied when he told her to wait

⁴⁵ See Pressler, *Deuteronomical Family Laws . . .*, 63-74; Westbrook, *Property and the Family . . .*, 69-89.

in her father's house until Shelah would grow up. When Tamar realized what had happened, she disguised herself as a prostitute in order to trick Judah into performing the levirate. Judah was ready to execute the pregnant Tamar for faithlessness, but realizing that the child was his, he declared her more in the right than he and brought her into his house. He never slept with her again, as the levirate is copulation until conception, not marriage. As may have happened in other levirates, the children may have inherited their father's share, but they were (also) considered Judah's children.

5.1.6.2 Deuteronomy provides for a ritual of release in which a widow and her brother-in-law declared that he did not want to marry her in front of the elders at the gate. She would take his sandal off his foot, spit in his face, and declare, "Thus shall be done to the man who will not build up his brother's house." He then became known as the "house of the removed sandal" (Deut. 25:7-10). The humiliating nature of this ritual indicates that it was intended to shame men into performing the levirate rather than undergo the ritual.⁴⁶

5.2 Children⁴⁷

In the biblical family, generation prevails over gender. Both parents have authority over their children.

5.2.1 Honor father and mother is one of the Ten Commandments. Treating the father or mother without honor earns a communal curse (Deut. 27:16). A child who struck either father or mother incurred bloodguilt and was to be executed (Exod. 21:15), as was a child who cursed a parent (Exod. 21:17; Lev. 20:9).

5.2.1.1 A son was not to humiliate his father by sleeping with his wife (Deut. 23:1). Translators often state "former wife," but the law refers to any wife other than the mother. The man who lies with his father's wife, thus stripping him bare, earns the communal curse in Deuteronomy 27:20. Several stories indicate that sons could convey the message that their father's authority was superseded by asking for or taking his wives. Jacob's son Reuben slept with Jacob's

⁴⁶ In post-biblical times, however, the humiliating aspect was lost and men were encouraged by law to perform the ritual, known as *halisah*, in order to release the women to marry again.

⁴⁷ Fleishman, *Parent and Child* . . .

consort Bilhah (Gen. 35:22), and the story of Absalom's revolt includes an incident in which David left ten concubines to guard the harem when he fled the city (2 Sam. 15:16). Absalom's counselor Ahitophel suggested that he sleep with the concubines "so that Israel will hear that you have contempt for your father," and Absalom did so publicly (2 Sam. 16:21-22). When David reconquered Jerusalem, he supported the concubines in detention but did not sleep with them, making them virtual widows until their death (1 Sam. 20:3). The concubine ploy was tried again by David's son Adonijah, who asked Bathsheba to ask Solomon for Abishag for wife (1 Kings 2:17). When she did, Solomon took an oath to kill Adonijah and did (1 Kings 2:17-25).

5.2.1.2 A son could dishonor his father by being a *nabal*, one who willfully ignored Israel's rules of propriety (Prov. 15:20), and by being a glutton and drunkard (Deut. 21:18-23).⁴⁸ A daughter could dishonor her father by not being chaste.⁴⁹ A girl accused and convicted of not being a virgin at marriage is stoned at her father's door because "she committed an abomination by being faithless to her father's house" (Deut. 22:20-21).

5.2.2 Israel remembers a time in which parental rights over children were absolute, even including the right to kill one's child, as with the Binding of Isaac (Gen. 22) or the sacrifice of Jephthah's daughter (Judg. 11), or Judah's decree of execution of his daughter-in-law Tamar (Gen. 38:24). The father in the old days might also make his daughter a prostitute (Lev. 19:29).

5.2.2.1 *Father's Rights*

Israel's classical law regulates and limits the rights of the father. Leviticus decrees that a father cannot turn his daughter into a prostitute (Lev. 19:29), and Deuteronomy limits the father's ability to control his children, limiting choice by legal decree and transferring the authority to execute to a council of elders.

- (a) First-born son. Genesis reflects Near Eastern law in which fathers could designate a son as first-born. Isaac on his deathbed had a favored blessing to give a son (Gen. 27); Joseph dreamed that he would be the dominant son; his father's gift of a special robe indicated the same (Gen. 27). Deuteronomy prohibits a man from

⁴⁸ Bellefontaine, "Rebellious Son . . ."

⁴⁹ Frymer-Kensky, "Virginity in the Bible."

- making the first-born of his favored wife his first-born; instead, it demands that the first to be born be made the first-born (Deut. 21:15-17).
- (b) Giving the daughter in marriage. Deuteronomy requires a man to allow his daughter's seducer to pay the bride-price and marry her (Deut. 22:28-29). By contrast, Exodus allowed a father to accept the bride-price and refuse the girl (Exod. 22:16; see 8.3.2-8.3.3 below).
- (c) Life or death of son. Parents could no longer decree death for the child. Parents could denounce a totally recalcitrant, uncontrollable and disgraceful son before the elders and the elders would have the son stoned (Deut. 21:18-21).

5.2.3 Parents and children were not to be executed for each other's misdeeds (Deut. 24:16). The rule is cited by the Deuteronomic historian when King Amaziah slew the men who had killed his father but not their sons, "as it is written in the book of the law of Moses" (2 Kings 14:6).

5.2.3.1 The Book of Joshua records an early exception to this rule: Achan, convicted of violating the *herem* at Jericho, was stoned and then burnt together with his sons and daughters and his oxen and asses (Josh. 7:24-25). The reason is the nature of *herem*: the presence of a *herem* object turned the whole household into a *herem*. They were stoned for violation of the *herem* and were then burned to get rid of all traces of *herem* contamination.

5.2.3.2 The right to kill children for parental misdeeds is reserved to God, who is said to punish till the third or fourth generation (Exod. 20:5).

5.2.4 Birth

5.2.4.1 Surrogacy

As elsewhere in the ancient Near East, Israel knew of a custom in which a childless woman gave her husband a slave to conceive a child. One case, Hagar, did not work well, and the child was considered Hagar's rather than Sarai's (Gen. 16). In the other two cases, Bilhah the slave of Rachel and Zilpah the slave of Leah (Gen. 30:5, 8, 13) the child was both the slave's and the slave owner's.⁵⁰

⁵⁰ Frymer-Kensky, "Patriarchal Family Relationships . . ."

5.2.4.2 Having a child with a prostitute, a custom known from elsewhere in the ancient Near East, is recorded as the parentage of Jephthah (Judg. 11).

5.2.4.3 In both surrogacy and prostitute maternity, the child was considered legitimate if the father brought him home. Nevertheless, at Sarai's request (backed up by God), Abraham sent Hagar and Ishmael away, freeing them from slavery in the process, and Jephthah's brothers expelled him (Judg. 11:1-2).

5.2.4.4 Yet another rare way of acquiring children was adoption.⁵¹ No laws or narratives about adoption exist, but it served as the basis for the metaphorical relationship of God and Israel in Jeremiah (3:19) and of the relationship between God and David in Psalm 2. God's statement to David, "You are my son, today I give birth to you" (Ps. 2:7), and God's statement to founding Jerusalem (Ezek. 16:6), "In your blood, live! In your blood, live!" may be ritual adoption formulae.⁵²

6. PROPERTY AND INHERITANCE

6.1 Tenure

The land of Israel belonged to God (Lev. 25:23), who transferred it to Israel in the time of Moses and Joshua. Each family received its portion when the land was divided by lots (Num. 26:52-54; 33:54; Josh. 13-22). Legal restrictions were imposed on the alienation of ancestral land outside the family and on exploitation of the land by its owner. During the monarchy, kings could grant land to their retainers (1 Sam. 8:14) but could reassign it if the donee was guilty of disloyalty (2 Sam. 9:9-10; 16:1-4; 19:25-30).⁵³

6.1.1 Restrictions on Alienation: Redemption and Jubilee⁵⁴

Leviticus 25 deals with successive stages of impoverishment. If a person was forced to sell his plot, the buyer had to allow for "redemption"

⁵¹ Bord, "L'adoption dans la bible . . ."

⁵² According to Malul, "Adoption . . ."

⁵³ See Ben-Barak, "Meribaal . . ."

⁵⁴ For an earlier comprehensive study, see North, *Jubilee . . .*; more recently, Westbrook, *Property and the Family . . .*, 36-68.

or buy-back (Lev. 25:23-24); and the "redeemer," the nearest kin, was encouraged to buy the land back (Lev. 25:25). It would be best if the redeemer returned it to the original seller, but even if the redeemer kept the land, it would at least stay within the family.

6.1.1.1 Sales were not eternal, for the land would return to its original owners at the Jubilee, which was to be proclaimed every fifty years (Lev. 25). Sale prices were to reflect the number of years in which produce could be gathered before the Jubilee: the more remaining, the higher the price (Lev. 25:12-17).

6.1.1.2 The original seller had the right to buy the land back. Since the buy-back was closer to the Jubilee, and the buyer enjoyed harvests, the price would be less (Lev. 25:28).

6.1.1.3 Houses in walled cities could be sold forever and became the permanent possession of the buyer unless redeemed in the first year (Lev. 25:29-30). Houses in open villages and in Levitical cities were released at the Jubilee, but the unenclosed land around Levitical cities could not be sold (Lev. 25:31-34).

6.1.1.4 None of the narratives record a Jubilee. Redemption is known: Jeremiah's cousin Hanamel asks him to buy his field in Anatot, "because yours is the rule of redemption to buy" (Jer. 32:7), adding "for yours is the rule of inheritance and yours is the redemption" (32:8). The closest relative, the one who would inherit the land in the absence of sons, is the one with the first responsibility to redeem land and is also given the right of first purchase. Little evidence for the Jubilee exists, but Mesopotamian evidence suggests that perhaps some sort of land restitution may have happened sporadically, at a royal decree. The Jubilee laws, like other Pentateuchal legislation, regularize the practice and remove it from royal control.

6.1.2 *Restitution of Abandoned Land*

6.1.2.1 Israel's famines caused people to leave the land. Others worked their fields until they reclaimed them on return. Elisha warned the great woman of Shunem (2 Kings 8:1-6) to leave in anticipation of famine. When she returned seven years later, she came before the king "to cry for her house and for her land" (2 Kings 8:3). Her

case was not quite typical, for she came as the king was listening to Gehazi (Elisha's servant) tell the story of Elisha's bringing a dead boy back to life. Gehazi pointed her out as the mother of the boy, and the king sent an officer to restore to her both her land and the harvests harvested during her absence.

6.1.2.2 Returning after exile underlies the book of Ruth. Naomi came back when there was food, and during that harvest, she and Ruth survived by gleaning. After the harvest, Naomi wanted to sell her husband's fields. Ruth offers herself to Naomi's near kinsman, Boaz, who betroths her. He cannot purchase Naomi's land until it is relinquished by the closest kinsman, who had the triple right of inheritance, redemption, and first purchase. Boaz convinces the kinsman to relinquish his right by proclaiming his own intention to beget an heir to that land with Ruth (reading with the Kethib).⁵⁵

6.1.3 *Restrictions on Exploitation*

6.1.3.1 *The Sabbatical Rules*

The land was to be fallow every seventh year (Exod. 23:11), both fields and vineyards (Lev. 25:2-4). During that year, one could gather from uncultivated land but not the incidental growth of fallow fields (Lev. 25:5-6); there, one should let the animals graze (Lev. 25:6). The harvest of the sixth year had to last until the harvest of the eighth year (Lev. 25:19-22). The rules of the Sabbatical year also applied to the Jubilee year (Lev. 25:11).

6.1.3.2 *Gleaning*

The edges of fields were not to be harvested, nor vineyards fully picked. Dropped fruit and produce was left for the poor and the resident alien (Lev. 19:9-10).

6.1.3.3 *'orlah*

The first three years' crop of a tree were not to be eaten. The fourth year's fruit was for God, and only in the fifth year could the owner eat the yield (Lev. 19:23-24).

⁵⁵ There have been many different interpretations of the law in Ruth 4. See, e.g., Beattie, "Israelite Legal Practice"; Thompson, "Some Legal Problems..."; Westbrook, *Property and the Family*..., 69-89.

6.2 *Inheritance*

Sons inherit from their father. If there are no sons, then the man's brother inherits; if no brothers, an uncle, and if no uncles, another kinsman (Num. 27:11). In certain circumstances, daughters could inherit (see 6.3.3 below). The heirs divided the estate among themselves, until which point they held it in common ownership.⁵⁶

6.2.1 Several passages refer to a man's giving directions to his household in anticipation of his death (2 Sam. 17:23; 2 Kings 20:1; Isa. 38:1). This was an opportunity for a man to give gifts in anticipation of death (such as to his wife), to issue orders about the usufruct of his property, and, in the early days, to designate his *bekor*, his "first-born." Later, it was an opportunity to dictate inheritance (Ben Sira 3:24).

6.2.2 The *bekor*, the chief heir or "first-born," received a double share in the paternal inheritance (Deut. 21:17).⁵⁷ The first-born son was presumed to be the *bekor*, the chief heir, but the stories of Isaac's blessing (Gen. 27), and of Jacob blessing his grandchildren (Gen. 48:12-22) show that in the ancestral period, Israel shared the Near Eastern custom of giving a man discretion to choose who would be the "first-born."

Jacob's preferential treatment of Joseph and Joseph's dreams indicate that a man could prefer the first-born of his favorite wife over the first-born of any other wife. Deuteronomy takes away the discretion of the father to do so, demanding that the first to be born be appointed the first-born (Deut. 21:15-16).

6.2.3 *Epiklarate*

Daughters inherit from their sonless father. A legal storyette relates that the five daughters of Zelophehad appeared before the congregation to ask to inherit from their father, maintaining that their father's name should not be lost since he had not participated in the Korah rebellion. God then creates the law of inheritance: sons inherit; if there are no sons, daughters; if no daughters, a brother;

⁵⁶ See Kitz, "Undivided Inheritance . . ."

⁵⁷ This is by far the most likely meaning of *pi šenayim*. However, two-thirds has also been suggested. See Davies, "The Meaning of *pi š'nayim* . . ."

if no brothers, an uncle (Num. 27:1-11). A separate storyette relates that the clan heads of the tribe to which the daughters of Zelophehad belonged were concerned that the women might marry members of other tribes, with the result that the land that they inherited would pass to those tribes. At the Lord's bidding, Moses decreed that any daughter who inherits land must marry a man from her father's tribe (Num. 36:1-9).

6.3 *Widows*

The degree to which a widow had a claim to her dead husband's land is a matter of some dispute.⁵⁸ Sons, or daughters in the absence of sons, may have taken possession after their father's death and supported their mother with the proceeds, or they may not have taken possession until after their mother's death. No statements suggest that widows inherit. If there were no children, and she was still young enough to bear, she might be reattached by the levirate. In the absence of a levirate, a male relative was expected to inherit, but a widow may have retained rights to the harvests (usufruct) without the right to alienate the land. In the Book of Ruth, Naomi had the right to sell her husband's land (or the rights to its harvests), with the nearest kin having the right of first purchase. One way this could happen would be if the husband gave his wife the land before he died, but the Book of Ruth gives no hint that this was the case.

6.3.1 One of the two surviving legal ostraca from ancient Israel is a petition written by a childless widow to the local authority pleading for him to give her a field "about which he spoke to Amasyahu." The text mentions "my husband," Amasyahu, and "his brother," with no indication whether two or three men are involved or whether the field the official gave to "his brother" is the same as the patrimony (*nahalah*) that she is requesting. The original editors of the ostracon suggest that she is asking him to disregard the law, but commentators have argued that widows may have been given the use (if not the title) of some of their dead husbands' property.⁵⁹

⁵⁸ Osgood, "Women and the Inheritance of Land . . ."

⁵⁹ For this issue, see Bons, "Konnte eine Witwe . . .?"; Wagenaar, "Give in the Hand . . ." Wagenaar suggests that the ostracon refers to one field: the official had promised her husband land which he gave to her husband's brother. In this case, the land had not even been the husband's, and there is no real case of inheritance.

7. CONTRACT

No contractual documents survive from ancient Israel, but Jeremiah refers to sales documents: "fields will be bought with silver with writing in a scroll and sealing and witnessing" (Jer. 32:44). By its nature, the Bible does not contain contractual records, but several laws deal with contractual obligations, and there are references to contracts in the narratives.

7.1 Sale

Sale of land is recorded in several narratives: Abraham's purchase of the Cave of Machpelah as a burial ground (Gen. 23:3-10); Jacob's purchase of land at Shechem (Gen. 33:18-20); David's purchase of the threshing floor from Araunah (2 Sam. 24:24); Omri's purchase of the hill of Samaria (1 Kings 16:24); Jeremiah's purchase of his kinsman Hanamel's land (Jer. 32:6-15); and Boaz' purchase of Elimelech's field (Ruth 4:9). These enable us to construct the essential features of a land sale. It took place in public, before witnesses (Gen. 23:10; 13; Ruth 4:1; Jer. 32:12). The buyer weighed out the silver (Gen. 23:16; Jer. 32:9), wrote out a bill of sale, and had it sealed and witnessed, checking the weight of the silver on a scale (Jer. 32:10). Jeremiah wrote two documents, one sealed "by law and command" (32:11) and one open, gave them to his secretary Baruch in front of witnesses, and ordered them to be placed in a clay pot so that they would last a long time (Jer. 32:11-14). Ruth records an old custom in which the land was then transferred symbolically by the handing over of a sandal (Ruth 4:7).

7.1.1 Jeremiah indicates the essence of sale: "fields will be bought with silver with writing in a scroll and sealing and witnessing" (Jer. 32:44). Payment of the price is necessary to transfer permanent ownership. In acquiring the Cave of Machpelah, Abraham takes care to make the transfer a sale, which presumably would be forever, and not a gift, which might have to be returned on demand or after the death of the donor. Abraham therefore insists on paying at full price (Gen. 23:10). The form of this transaction is reminiscent of the "dialogue documents" prominent in the Mesopotamian periphery in the first millennium,⁶⁰ but features of the sale, particularly the promi-

⁶⁰ Petschow, "Zwiesgesprächsurkunde . . ."

nence of the Hittites as agents in the transaction, point to an ancient biblical tradition.

7.1.2 Sale of persons arose through debt (see 7.4 below).

7.2 Loan⁶¹

Loans in the Bible are poverty loans; commercial arrangements between merchants are not dealt with. Loans enable the poor to stave off disaster (Deut. 15:7-8; Prov. 3:27-28). One is to lend money freely even when the Sabbatical year is approaching and debts will be canceled (Deut. 15:7-11).

7.2.1 Terminology

The terminology of loans is complicated. The creditor himself is a *nošeh*. Two words describe the loans, *ħabol* and *‘abot*. The verb from *‘abot* means "to lend," the verb from *ħabol* "to seize," but the two words do not indicate different pledges.

7.2.2 Interest⁶²

Loans to Israelites were never to be made at interest (Exod. 22:24). This included loans of silver or food (Lev. 25:35-38), interest taken in silver or anything else, and interest deducted in advance (*nešek*) or collected at repayment (*tarbit*) (Deut. 23:20). Deuteronomy does allow *nešek* to be collected from a foreigner (*nokri*; Deut. 23:21).

7.2.3 Repayment

Loans are repaid at harvest. Amos is angry that loans are collected in grain (Amos 5:11): payment should only be collected if the borrower has enough surplus to be able to convert some into silver to repay the debt. Someone who has to pay in grain suffers hardship through repayment.

7.2.4 Loan of an animal for use is regulated by Exodus 22:13-14. If the animal is injured or died, the borrower must make full restitution to the owner, unless the owner was also with the animal.

⁶¹ Frymer-Kensky, "Israel."

⁶² Gamoran, "Loans on Interest"; Neufeld, "Prohibitions against Loans . . ."; Seeligman, "Lending, Pledge and Interest . . ."

7.3 Pledge

The two possible forms of security for loans are the possessory pledge, which the borrower gives the lender at the time of the loan, and the hypothecary pledge, which remains in the borrower's possession unless he defaults on the loan. The term *ḥabol*, "pledge," refers to the object seized at default; *ʾaboṭ* refers to the loan equivalent. Neither term designates a possessory pledge.

7.3.1 Judah offers the disguised Tamar an *ʾerabon* that he will pay her for her sexual services (Gen. 38:17–18). *ʾerabon* (which passes into Greek as *arrabōn*) is a technical term for security given by the purchaser on credit and forfeitable if payment is not made.

7.3.2 Almost anything could be used as a pledge. Very poor people might pledge the cloak on their backs. The laws try to protect debtors from extreme consequences. Creditors could not come into a man's house to collect a pledge (as in default of the loan); they had to stand outside and wait for the debtor to bring the pledge out (Deut. 14:10). Milling equipment, which provided life's basic necessities, could not be pledged (Deut. 24:6).

7.3.3 A widow's garment could not be taken in pledge (Deut. 24:17). A man's could, but his (the poor man's only garment) was to be returned at sunset (Exod. 22:25; Deut. 24:12). The creditor was not to lie down on the cloak at night (Deut. 24:12), even though the creditor himself might not be rich and might have use for a second cloak. The sanctions are divine (Exod. 22:27; Deut. 24:12–13). Amos complains that people "stretch themselves out at every altar on garments taken in pledge" (Amos 2:8). The writer in the letter from Mešad Hašavyahu pleads to a local authority to return his cloak, for his supervisor came at harvest and took his garment and has not returned it, even though the writer was entirely innocent and free of any claim (*niqqiti*). He asks the local authority to make him give it back.

7.3.4 Foreclosure

Ultimately, should the debt remain, the creditor could seize all the debtor's property (Ps. 109:11–12). The prophets decry the formation of large estates through foreclosure of debts or forcing of distress sales to pay the debts. This process may have begun early, for Judges

11:13 relates that Jephthah's army was composed of "empty ones," a term that probably means those emptied of their property. David's army was similarly composed of "everyone who has a creditor" (1 Sam. 22:2), that is, people who had already lost their lands and were fugitives.

It is not clear whether the person of debtors could be seized, but certainly their children could. Elisha encounters a desperate woman who cries out that "the creditor is coming to take my two children as slaves" (2 Kings 4:1–7). Much later, after the return from Babylon, the people cry out how bad matters have become: "some have eaten their produce; others have set their fields and houses as security in order to eat in the famine, some have borrowed money." As a result, "we now 'conquer' our sons and daughters to be slaves and some of our daughters have been captured" (Neh. 5:1–5).

7.3.5 Deutero-Isaiah uses this familiar situation as a metaphor for Israel's exile in Babylon, reminding Israel that they were not sold off for debt and will not need silver to be redeemed (Isa. 50:1–2).

7.3.6 Remediation

The old woman "cries out" to Elisha; the group in Nehemiah "cries out" to the people. The debtor who does not get his cloak back will "cry out" to God (Exod. 22:26). Deuteronomy 15:9 gives the same warning to one who refuses to lend money near the Sabbatical year. Crying out is a demand for remediation. Personal remediation takes the form of *ge'ulah*, "redemption," the right of a kinsman to buy back land when the original seller sells it. The law may not have required the redeemer to return the land to the original seller. Leviticus 25:50–52 prescribes that should one become the debt slave of a *ger*, the nearest kinsman is to reckon the amount of labor the slave has performed and pay back the amount left until the purchase price or amount of debt is reached.

7.4 Debt and Social Justice⁶³

Many of the rules of social justice concern debts and the resultant debt slavery. Israelites should lend money to the poor even when the Sabbatical year is approaching and they cannot collect (Deut. 15:7–11).

⁶³ Weinfeld, *Social Justice* . . .

Should the debt result in debt slavery, the debt slave must be treated like a hired laborer (Lev. 25:39–40). The Hebrew slave becomes free in the seventh year, even though the debt has not been repaid. In addition, Deuteronomy calls for the cancellation of debts every seventh year, though debts can be collected from foreigners (*nokri*).

7.4.1 *General Remission of Debts and Release of Slaves*

Edicts effecting release of debts and slaves are well known the ancient world,⁶⁴ and one such edict is recorded in the Bible. In Jeremiah 34:12–16, King Zedekiah made a pact with the people to release their Hebrew slaves. Jeremiah reports that this was in accord with the rule of the seventh year, which had been in effect since the Exodus from Egypt but had not been followed. The people released their slaves, but they promptly re-enslaved them. Their actions may have been venal, or they may have been recognition that destitute people have no choice other than slavery.

7.4.1.1 Another such release comes from the restoration period. After hearing the outcry of the impoverished and enslaved Israelites, Nehemiah censured the creditors and demanded that the slaves be released. In addition, Nehemiah demanded that the debtors' fields be returned and that the debts be canceled. The creditors agreed under oath and did so (Neh. 5:6–13).

7.4.1.2 *Jubilee Year*⁶⁵

Leviticus calls for a jubilee every fifty years, marked by the blowing of trumpets on the Day of Atonement. During this year, "liberty" is proclaimed for all the inhabitants. Slaves are released and return to their landholdings, which revert to their original owners. The Jubilee is also observed as a Sabbatical year, without agricultural activity (Lev. 25:8–13). The dating of this regulation has been the subject of considerable dispute. The Mesopotamian kings issued edicts of release, and it is unlikely that kings would give up their prerogative to do so. Like Deuteronomy's rules of minimal kingship, the Levitical concept of the fifty-year Jubilee restricts the role of the monarch,

⁶⁴ Chaney, "Debt Easement . . ."

⁶⁵ North, *Sociology . . .*; Westbrook, *Property and the Family . . .*, 36–57; Amit, "The Jubilee Law . . ."

limiting his economic power by making the release periodic, not dependent on the initiative of governing authorities. This rule may reflect a very early agrarian relief that was superseded by royal-initiated *deror* ("liberty"); it may be the idea of someone disillusioned with monarchy; or it may come from the post-monarchic periods.

7.5 *Suretyship*

Guarantors are not mentioned in the laws. Proverbs, on the other hand, advise people strongly not to "strike the palm" (*toqe'a kap*), that is, to stand surety (*'oreb*) for someone not in the family, and the many proverbs about this matter indicate that this was a fairly widespread practice. Only a fool "strikes the palm" (Prov. 17:18), because it is likely to go ill for the guarantor (Prov. 11:15). Should the guarantor not have the wherewithal to pay off the debt, his own goods will be taken, even "your bed from under you" (Prov. 22:26–7), even his garment (Prov. 20:16). Proverbs therefore advises that if one has given surety, one should not wait until the debt is due but go immediately to his fellow to beg to be released from the arrangement (Prov. 6:1–3).

7.5.1 The narrative in Genesis 44 refers to a similar practice within the family, though not in the context of loans. Judah is guarantor that he will bring his brother home. When Joseph wants to detain Benjamin, Judah offers to stay or be taken into slavery instead of Benjamin.

7.6 *Hire*

The technical term for hire is *sakar*, which is used to describe both the action of hiring and the hiring fee.

7.6.1 Hire of persons is for a period of time, during which they are under the command of the hirer. Thus kings hire mercenaries (2 Kings 7:6), Micah hires a Levite as his priest for an annual wage plus food and clothing (Judg. 17:7–12; 18:4), and Leah "hires" Jacob for a night from Rachel for the price of her son's mandrakes (Gen. 30:14–16). Workers were hired on a daily basis; the law stipulates that his wages are to be paid on the same day (Lev. 19:13; Deut. 24:15).

7.6.2 Injury to hired animals is mentioned by Exodus 22:14, but the provision is obscure.

7.6.3 Judah contracts for the services of what he thinks is a prostitute, promising as payment a kid goat from his flock (Gen. 38:15–17). The technical term for a prostitute's fee was *'etnan zonah* (Deut. 23:19).

7.7 *Deposit*

7.7.1 Exodus 22:6–8 discusses loss of an item deposited through theft. It lays down a procedure for determining whether the depositor's claim of theft by a third party was fraudulent; the exact nature of the procedure, whether by oath, oracle or other means, is unclear.⁶⁶

7.7.2 A specialized form of deposit is the herding contract, known also from Mesopotamia, whereby a shepherd is entrusted with the owner's animals in return for a share of the herd's increase. Exodus 22:9–12 holds the shepherd liable for theft of individual animals but not for losses through death or injury, provided that he swears an oath denying fraud, nor by wild beasts, provided that the shepherd brings the remains of the devoured animal as evidence. Jacob negotiates a herding contract with Laban based on the same principles, albeit on apparently disadvantageous terms (Gen. 30:27–43). Jacob later points out that he did not bring carcasses to Laban in order to take advantage of the exemption for wild beasts (Gen. 31:39).⁶⁷ Joseph's brothers, on the other hand, bring his bloody cloak to Jacob to "prove" that he was killed by a wild animal (Gen. 37:32–33).

7.7.3 An unusual contract of deposit occurs where a soldier agrees to guard a prisoner of war for another soldier. He also agrees to a special penalty if the prisoner escapes: death or the payment of a talent of silver (an impossibly high sum). When he in fact defaults, he unsuccessfully appeals to the king, who regards his contract as valid and binding (1 Kings 20:39–43).

7.8 Terms are recorded for two marriage contracts between groom and father-in-law: Laban agrees to give Jacob his daughters in return for service as a shepherd (Gen. 29:15–28); Saul agrees to give David his daughter in return for military exploits (1 Sam. 18:25–27; 2 Sam. 3:14).

⁶⁶ Cf. Otto, "Depositorenrecht . . .," and Westbrook, "Deposit Law . . ."

⁶⁷ Finkelstein, "Herding Contract . . ."

7.9 The most extraordinary contract recorded in the Bible is between two mothers, who agree to eat each other's babies during a siege (2 Kings 6:25–31). It was considered sufficiently valid for one of the parties to petition the king to enforce the contract, although the king refuses to do so.

7.10 Promissory oaths are an important source of unilateral obligation. Abraham adjures his servant to follow his instructions for finding a bride for his son (Gen. 24:2–9). Saul takes oaths (1 Sam. 19:6) and has David swear them (1 Sam. 24:21–22). David spared Mephibosheth because of his oath to Jonathan (2 Sam. 21:7–8).

7.10.1 Oaths give rise to strict liability. Once the Israelite spies took an oath to preserve Rahab and her family from the *herem*, all of Israel was obligated to spare them (Josh. 2:12–14). Likewise, once Israel had sworn a treaty with the Gibeonites, under the deception that they had come from far away, they could not break their oath (Josh. 9:1–21). Saul, however, established the principle that kings could override promissory oaths (1 Sam. 14).

7.10.2 Breach of oath can lead to human as well as divine sanctions. Solomon has Shimei swear an oath to stay in Jerusalem on pain of death; when he breaks it, Saul has him killed (1 Kings 2:36–46). Retribution can be both human and divine: famine came because Saul killed Gibeonites despite his oath to them; it ended when the Gibeonites executed people from Saul's house ("the house of bloodguilt") that David handed over (2 Sam. 21:1–10).

8. CRIME AND DELICT

8.1 *Overview of Penalties*

Penalties included both human sanctions, overseen by the community, and divine sanctions, which were left to the hand of God.⁶⁸

8.1.1 Human sanctions could be capital, corporal, talionic, or pecuniary. A distinctive feature of biblical law is that property offenses entail loss of property: the punishment is always pecuniary. Capital

⁶⁸ For an overview, see Greenberg, "Crimes and Punishments."

punishment is never imposed for property offenses, but is reserved for homicide, adultery, and (other) religious infractions. Pecuniary sanctions range from equal restitution to fivefold damages. Slavery is prescribed only for a thief who cannot pay the pecuniary penalty (Exod. 22:2). Corporal punishments are very limited. Where flogging was prescribed, the number of lashes could vary "according to his wickedness" but could not exceed forty lashes, for the sake of the culprit's dignity (Deut. 25:3).

8.1.2 Execution could be followed by further indignities to the corpse. A murderer can be impaled after execution, but only until nightfall (Deut. 21:22-23). Joshua impaled the king of Ai in this way, but also only until evening (Josh. 8:29). David treated the murderers of Ishbosheth even worse, first cutting off their hands and feet and then impaling them (2 Sam. 4:12). After Achan and his family were stoned, their bodies and their booty were burned (Josh. 7:24-25). But burning bodies was regarded as a horrific act (Amos 2:1-2; cf. 2 Kings 3:27).

8.1.3 The most serious divine sanction is *karet*, extirpation of lineage, reserved for direct offenses against God, such as apostasy, necromancy, and incest.⁶⁹ It may be cumulative with human sanctions.

8.1.4 "Bloodguilt" (*damim*) is incurred by certain offenses. The perpetrators have to die, but the text does not always indicate whether execution is by people or God.

8.1.5 *Pollution*

Certain crimes were seen as polluting the land, with important consequences for the nature and execution of penalties. The land had to be kept pure, for God dwelled in it in the midst of Israel (Num. 35:34). The polluted land "vomited out" the earlier inhabitants; if Israel pollutes the land, they will lose it (Lev. 18:24-30).

8.1.5.1 Sexual offenses were a major pollutant. A father should not make his daughter a harlot so that the land will not become full of depravity (Lev. 19:29). The sexual relationships forbidden in Leviticus 18, such as incest and bestiality, would pollute the land, which would

⁶⁹ Frymer-Kensky, "Pollution, Purification and Purgation . . ."; Wold, "The Kareth Penalty in P . . ."

also happen if a man divorced his wife and remarried her after she was divorced or widowed by a second husband (Jer. 3:1).

8.1.5.2 *Bloodguilt*

The greatest contaminant was the blood of murder victims. To prevent this contamination, Israel had to execute murderers (Num. 35:33). Cities of refuge isolated the contamination. A murderer was not allowed to stay there, but an accidental homicide had to stay to quarantine the miasma of blood pollution attached to the killer. Should a corpse be discovered and the killer not be detected, the elders of the nearest city were to decapitate a heifer over an eternally flowing stream, avow their innocence, and pray that God not let the bloodguilt settle on the land (Deut. 21:1-9).

8.1.5.3 A man's body, hung or impaled after execution, must be cut down at nightfall, "so that you will not pollute your land" (Deut. 21:22-23).

8.2 *Homicide*⁷⁰

The one who strikes another in secret incurs the communal curse in Deut. 27:24. A murderer must be put to death (Exod. 21:12; Lev. 24:18), a rule that extends also to animals (Gen. 9:5), so that an ox that gores someone to death is stoned and its flesh may not be eaten (Exod. 21:28). The explicit reason is that humans are the divine image (Gen. 9:6). The civil war that almost destroyed the tribe of Benjamin began when Benjamin refused to hand over the men of Gibeah for execution for their rape-murder of the concubine (Judg. 20:12-14). David killed and impaled the men who killed Ishbosheth in order (he said) to requite Ish-Bosheth's blood and eliminate it from the land (2 Sam. 4:5-12).

8.2.1 Anyone who kills with an iron, stone, or wooden implement is a murderer (Num. 35:16-19). Homicide without weapons (pushing, throwing something, or hitting with the fist) is also murder if it is intentional or arises out of enmity (Num. 35:20-21) or the murderer lay in ambush (Exod. 21:13; Num. 35:20, 22; Deut. 19:11). Homicide without malice is not murder. Deuteronomy gives examples

⁷⁰ Haas, "Die He Shall Surely Die . . ."

of totally accidental homicide, such as cutting down trees and having the ax fly off and hit someone (Deut. 19:5). In all such cases, the community has to decide whether the homicide is culpable and should be given to the blood avenger (Num. 35:22–24).

8.2.2 “Giving one’s child to Molech,” that is, child sacrifice, is a special form of homicide. It is stringently forbidden, punishable both by death by stoning and by the divine sanction of *karet* (extirpation of lineage) (Lev. 20:1–5).

8.2.3 Brawling is a special case. Cain, who planned a brawl with his brother Abel and killed him, is treated as a murderer in the days before the Flood, when homicide was not yet expiated by the killing of the murderer (Gen. 4). The wise woman of Tekoa comes before David as the mother of a man who killed his only brother in a brawl. She does not want to hand him to the family for blood avenging and leave herself and her dead husband without posterity, and David spares him. The fact that the killing was not planned and happened in a brawl gives David some room for maneuver, and he decides that extirpation of the lineage was not warranted (2 Sam. 14).

8.2.4 Homicide by an ox is another special case, one that demonstrates the responsibilities of holding an economically necessary but intrinsically dangerous animal, the sacrosanct nature of human life, and the issues of indirect homicide. The ox who kills must be stoned as a murderer (and its flesh cannot be eaten), but the owner of the ox is free of all other claims, since he could not have foreseen or prevented the death (Exod. 21:28). If, however, the ox had already gored and the owner had been warned but failed to guard it and it then killed a man or woman, the ox is to be stoned and the owner executed. This rule covers both a criminally negligent owner who did not try to guard the ox and the one who tried but failed. Nevertheless, the owner, who did not personally kill anyone, is allowed to ransom his life, paying whatever is set: Exodus does not indicate who sets the amount of the ransom (Exod. 21:29–30).

8.2.4.1 The goring ox passage states that the same rule applies if the ox killed a minor son or daughter (Exod. 21:31). Comparison with Mesopotamian law reveals the significance of this phrase, as LH 229–30 provides that if a builder did not build a house sufficiently

carefully and it collapsed, killing a minor child of the dweller, the child of the builder is to be put to death. Biblical law does not allow the law to execute children for their parents’ offenses, or parents for a child’s offenses (Deut. 24:16). That right is reserved to God, who punishes till the third or fourth generation (Exod. 20:5). Ultimately, by the time of Jeremiah and Ezekiel, even God was not given the right to intergenerational punishment.

8.2.5 A householder who kills a burglar in the act of tunneling does not incur bloodguilt. If the sun has risen (the next day, and possibly theft in daylight), it is murder (Exod. 22:2, see 8.5.6 below). Jeremiah refers to this rule: “on your garments is found the lifeblood of the innocent poor; you did not catch them breaking in” (Jer. 2:34).

8.2.6 When a murder occurs, it is the duty of the blood avenger to pursue the murderer. The blood avenger is a near kinsman (Num. 35:19; Deut. 19:12). If he does not act, it may be that others could do so to rid the land of murder (2 Sam. 4:11–12). The avenger can kill him on sight (Deut. 19:6).

8.2.7 If a man beat his slave so hard that he died, the slave’s death is avenged (*naqom yinnaqem*). The law does not specify who will be delegated to do it (Exod. 21:20). The law may refer to a non-Hebrew slave, who has no blood avenger. It may also refer to a Hebrew slave: since the blood avenger has not redeemed the slave (also a duty of the near kinsman), he might also not avenge him, and therefore the law specifies that someone will do it.

8.2.8 An intentional murderer can find no sanctuary: he must be taken from the altar to be executed (Exod. 21:14). Both Adonijah and Joab fled to hold the horns of the altar once they realized that Solomon was king. Adonijah was removed and promised safety for good behavior. Joab refused to come out, but Solomon had Benayahu take him from the sanctuary and kill him, declaring “let their (Abner and Amasa’s) blood come back to Joab” (1 Kings 2:28–35). Jeremiah nevertheless indicts the temple for providing sanctuary to the guilty: “Will you steal, murder, commit adultery, swear falsely, sacrifice to Baal and follow other gods and then come and stand before me in this house and say ‘we are saved?’” (Jer. 7:9–10).

8.2.8.1 An accidental homicide is provided with a place to flee (Exod. 21:13). Joshua set up six Cities of Refuge "as I instructed you by the hand of Moses." The fleeing killer was to stand at the opening of the gate of the city, and the elders of that city would bring him in. He would stay until he stood trial and thereafter until the death of the high priest (Josh. 20).

8.2.8.2 As a killer flees to a city of refuge,⁷¹ a blood avenger can catch him and kill him without incurring bloodguilt. For this reason, explains Deuteronomy, there should be three cities (Deut. 19:2-3), and if Israel becomes enlarged, three more should be added (Deut. 19:8-9). Numbers calls for six cities of refuge, all from Levitical towns, three in Transjordan and three in Canaan (Num. 35). Once the killer reaches the city, the case is tried by "the community," possibly the one in which the manslaughter occurred. If the judgment is unintentional homicide, the community protects the unintentional killer, putting him back in the city of refuge to which he fled (Num. 35:25-29). The homicide is either present at his trial and returned to the city of refuge if judged an accidental killer (Num.) or stays in the city while his trial is heard back home (Deut.).

8.2.8.3 The elders of the town take the convicted murderer back from the city of refuge and give him to the blood avenger. There is to be no pity, because the issue is to purge bloodguilt from Israel (Deut. 19:11-13). The accidental killer must stay in the city of refuge, and the city serves as a kind of quarantine, keeping the blood pollution that adheres to the homicide from settling in the land (Num. 35:25-27). The law warns Israel not to pollute the land (Num. 35:33), and a blood avenger can kill an accidental homicide who leaves the city. At the death of the high priest, the homicide can go home. The passage does not say if the high priest of the town is meant or only in the Temple (Num. 35:28).

8.2.8.4 No ransom can be accepted for the life of a murderer (Num. 35:31), nor can ransom be taken to allow a murderer to flee to the city of refuge (Num. 35:32). The reason given is that murder pollutes the land, and only the death of the killer can expiate the blood off the land (Num. 35:33).

8.2.9 Negligent homicide incurs bloodguilt: the man who builds his house without a parapet around the roof so that another falls to his death incurs bloodguilt (Deut. 22:8).

8.2.10 Murder must be proved by at least two witnesses (Num. 35:30).

8.3 Injury⁷²

The communal curse in Deuteronomy 27:24 of one who strikes his neighbor in secret may refer to all assault and battery as well as murder.

8.3.1 The penalty for injury is talionic retribution (Lev. 24:19-20). The exception is the woman who protects her brawling husband by grabbing the other man's testicles with force (*heheziqah*). Her hand is to be cut off (Deut. 25:11-12). Intention does not count, even though she tried to save her husband rather than injure the victim.

8.3.2 Unintentional injury, as in a brawl, does not incur talion. Even if the injured party is bed-ridden, if he recovers, then the man who inflicted the injury need only pay medical expenses and income lost (Exod. 21:18).

8.3.3 Exodus 21:22-25 deals with the case of brawling men who accidentally strike a pregnant woman who miscarries. If there is no *'ason*, the man who struck her will be punished according to the desires of the woman's husband and will render account. It is possible that *'ason* means injury to the fetus, but it is hard to tell why the early birth of a perfect baby would be considered a punishable injury. More likely, the baby is lost in any case, and no *'ason* would mean that the mother is unhurt. Yet another possibility is that *'ason* refers to the injurer rather than the injury, and no *'ason* would mean that the perpetrator cannot be found (and the community must take responsibility).⁷³ If, however, there is an *'ason*, then the man must pay according to the full recital of the rule of talion used for injuries: a life for a life, an eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot, a stripe for a stripe, a welt for a welt, a burn for a burn.⁷⁴

⁷¹ Greenberg, "Asylum"; Rofé, "History of the Cities . . ."

⁷² Otto, *Körperverletzungen . . .*

⁷³ Westbrook, "Lex Talionis . . ."

⁷⁴ Houtman, "Eine schwangere Frau . . ."

8.4 *Sexual Offenses*8.4.1 *Adultery*⁷⁵

In a culture that allows both prostitution and polygyny, the adulterer is a man who sleeps with a married woman. Both he and the woman are to be executed (Lev. 20:11; Deut. 22:22; see Ezek. 16:40). Proverbs, while warning against adultery, suggests that a cuckolded husband will be too furious "on the day of vengeance" to accept any bribes to let the adulterer go free. This does not mean that the husband had the legal right to spare an adulterer but rather that a husband who finds his wife with another man will not be dissuaded from testifying against them (Prov. 6:34–35).⁷⁶ Once he did, execution was assured. Adultery is prohibited in the Ten Commandments and is one of the sexual misdeeds that pollute the land (Lev. 18:20, 25).

8.4.1.1 Intercourse with an engaged woman is adultery, punishable by stoning (Deut. 22:23–24). A wife proven to be a non-virgin bride is also to be stoned (Deut. 22:20–21).

8.4.1.2 A woman awaiting the levirate may not have intercourse. In the story of Judah and Tamar (Gen. 38), Tamar's apparent intercourse with an unknown man is labeled a faithless act (*zinnunim*), and she is to be executed.

8.4.1.3 A man who has sex with a slave not yet redeemed or freed, but *nehēpet* to a man must pay a claim (*biqqoret*) and bring a ram for expiation; the man and woman are not executed for adultery (Lev. 19:20–22). The term *nehēpet* is commonly translated "designated," as a form of slave betrothal, but there is no evidence for this meaning; Exodus 21:8 uses *y'd*. An alternative suggestion is "pledged" (like *'rb*), so that the law protects girls distrained for their parents' debt. The law is also unclear as to who sleeps with the slave girl—her owner or some third party.

⁷⁵ Anderson, "Law in Old Israel . . ." (with review of earlier literature).

⁷⁶ Near Eastern texts that describe the husband tying up the adulterous couple to demonstrate their adultery suggests that in Israel too the husband played a role in their public condemnation.

8.4.2 *Rape*

Deuteronomy recognizes that rape is a crime of violence: "the matter is as when a man rises up and murders another" (Deut. 22:26). The difficulty is establishing whether the sex is rape or consensual.

8.4.2.1 Deuteronomy considers a case where a man overpowers and sleeps with an engaged woman in a field, where a girl's cries could not be heard: the man is executed but the girl is not punished (Deut. 22:25–27). The law assumes that sex in town was consensual, since she would have been heard if she had cried out (Deut. 22:23–24). The third law involves sex with an unengaged girl but does not state that she was overpowered (Deut. 22:28).

8.4.2.2 The issue of the girl "crying out" may refer to her cries for help during the rape or her complaining immediately after the rape (cf. 2 Sam. 13:19 and MAL A 23). On the second interpretation, the girl could vindicate herself and avoid punishment by crying rape immediately after the event.

8.4.3 *Seduction*

Exodus provides that a seducer must pay the bride-price, but the father can take it without giving her as his wife (Exod. 22:16). In Deuteronomy, a man who "catches" (*tapsah*) a virgin and sleeps with her pays the bride-price and marries her without right of divorce (Deut. 22:28–29). Since he did not approach her parents first, his seduction was abuse (*'innah*). However, the key word for rape, "overpower" (*heheziq*), is not present. As with so many family laws in Deuteronomy, the law limits the authority of parents: the father must give the girl to her seducer. In effect, the law allows a couple to marry even when they know the father will not approve: they can force his hand by eloping.

8.4.4 *Forbidden Sexual Partners*

In Leviticus 18 and 20, the practice of forbidden sexual relationships by the pre-Israelite inhabitants of the land polluted the land so that it "vomited them out" (Lev. 18:25). If Israel does the same, the land will also vomit them out (Lev. 18:28).

8.4.4.1 *Incest*

The rules regarding incest are formulated in terms of forbidden women (Lev. 18; 20:11–12). A man cannot sleep with his mother or his father's wife, his sister (uterine or not), granddaughter, step-mother's daughter born in the household, aunt, uncle's wife, daughter-in-law, or brother's wife. The daughter's absence is conspicuous but sleeping with her was forbidden by the prohibition of sleeping with one's own flesh. No equivalent list details whom a woman cannot sleep with; the law, addressed to males, does not consider women the initiators of sexual relations (Lev. 18:6–16).

8.4.4.2 Sleeping with certain pairs is prohibited: a woman and her daughter or granddaughter, or two sisters (Lev. 18:17–18). The one who lies with sister or mother-in-law incurs the communal curse in Deuteronomy 27:22–23. Amos' indictment of the father and son sleeping with the same girl indicates that this is a parallel forbidden pair (Amos 2:7).

8.4.4.3 Deuteronomy forbids a man to sleep with his father's wife, which strips his father naked (Deut. 23:1). The man who does so incurs the communal curse in Deuteronomy 27:20. The narratives indicate that this act is seen as dishonoring the father.

8.4.4.4 One cannot sleep with a menstruating woman (Lev. 18:19; cf. Ezek. 18:6).

8.4.4.5 Bestiality is forbidden (Lev. 18:23), punishable by death (Exod. 22:18). Whoever lies with a beast incurs the communal curse in Deuteronomy 27:21. This is the only act that names women as subjects: they cannot sleep with male animals (Lev. 18:23). Both man and beast and woman and beast have bloodguilt and are to be killed (Lev. 20:15–16).

8.4.4.6 One cannot sleep with a male as "the lying with a woman" (Lev. 18:22). In context, it almost certainly prohibits anal intercourse between men. They have incurred bloodguilt and should be put to death (Lev. 20:13).⁷⁷

⁷⁷ Olyan, "And with a Male You Shall Not Lie . . ."

8.4.4.7 Certain forbidden relationships call for the death penalty. The father's wife and the man who sleeps with her and the man and his daughter-in-law have incurred bloodguilt (Lev. 20:11–12). A man who sleeps with a woman and her daughter to be burned, as are the women, "for depravity" (Lev. 20:14). Others are subject only to divine sanctions: should a man sleep with his brother's wife or his uncle's wife, he and the woman will die childless (Lev. 20:20–21).

8.5 *Theft*⁷⁸

The Ten Commandments and Leviticus 19:11 both prohibit theft. A man who steals livestock pays double if the animals are still alive and with him (Exod. 22:3). If he has slaughtered or sold it, he must pay fivefold for large cattle and fourfold for small herds (Exod. 21:37). David, hearing Nathan's case of a rich man who stole a poor man's lamb to feed to his guest, condemns him as worthy of death and requires him to pay back four lambs to the poor man (2 Sam. 12:1–6).

8.5.1 Exodus 23:4 presents the special case of a man who finds his enemy's animal sleeping with a full pack. He is to leave it alone, avoiding any temptation to capture the animal and/or steal the contents of the pack.⁷⁹

8.5.2 One must return all lost property. If the owner is unknown or is far away, one is to keep it until the owner comes (Deut. 22:1–3). The owner might accuse the finder of theft; the finder might accuse the claimant of fraud: in such a dispute, one could "approach God"—the procedure when two parties lay claim to animals or lost articles. The one convicted pays double (Exod. 22:8).

8.5.3 Kidnapping for sale into slavery entails execution if the kidnapper is caught with his victim (Exod. 21:16; Deut. 24:7). Deuteronomy is sometimes translated "enslaving or selling," but the verb *hit'amer* refers to sale.

⁷⁸ Jackson, *Theft* . . .

⁷⁹ Cooper, "Plain Sense . . ." The law is often interpreted as a command to help a fallen pack animal and reload his pack, but *robes* does not mean "fallen," for which see Huffman, "Exodus 23:4–5 . . ."

8.5.4 Moving land boundary markers (thereby stealing land) is forbidden (Deut. 19:14). The one who moved a landmark incurs the communal curse of Deuteronomy 27:17.

8.5.5 Eating from another's field or orchard is not considered theft, but one must not bring a basket to carry away produce or a sickle to cut down grain (Deut. 23:25-26).

8.5.6 *Burglary*

A householder who kills a thief caught in the process of breaking in does not incur bloodguilt. If, however, "the sun has risen," the thief must pay the appropriate restitution, and if he does not have it, he can be sold as a slave (Exod. 22:1-2). This law has been understood to mean that theft at night entitles the owner to kill to protect his property, but in the daytime, when the danger is not so great, the householder may not kill.

8.5.7 *Fraud*

Weights and measures must be true (Lev. 19:35; Deut. 25:13-16). The laws provide no specific sanctions; Deuteronomy labels the one who uses false measures an abomination (*to'ebah*), and Leviticus requires the doers of all prohibited acts to present an appropriate expiatory sacrifice, a sort of fine to the temple (cf. Amos 8:5).

8.6 *Damage to Property*

8.6.1 One who digs or opens a pit without covering it must pay for the ox or ass that falls in, paying the owners for the animal and taking the carcass (Exod. 21:33-34).

8.6.2 A man who sets a fire on his own property which spreads to another field must pay restitution from the best of his field. He must pay even if the other field had thorns, stalks or standing sheaves which contributed to the spread of the fire (Exod. 22:4-5).

8.6.3 *Injury to slaves*

The owner of a slave was penalized for excessive punishment resulting in the slave's injury or death (see 4.5.3.3 above). The laws do not discuss injury to slaves by outsiders.

8.6.4 *Injury to Animals*

8.6.4.1 One who kills another's animal must replace it (Lev. 24:18), but whoever borrows an animal does not pay for its death or injury if its owner is with it (Exod. 22:13-14).

8.6.4.2 If someone's ox gores another ox to death, the owners divide the money from the sale of the living ox and divide the carcass of the dead ox. If the ox that gored was a known gorer, its owner replaces the dead ox and takes its carcass (Exod. 21:35-6).

8.6.4.3 One must help someone else's animal that is in distress and has fallen under its load (Deut. 22:4).

8.6.4.4 Special demands ensure the proper treatment of animals:

- (a) One must not muzzle an ox while he threshes (Deut. 25:4).
- (b) One must allow animals to rest on Sabbath (Exod. 20:10).
- (c) Animals may graze on fallow fields (Lev. 25:6-7).
- (d) An ox and ass may not be yoked together (Deut. 22:10). This is also a mixing.
- (e) Acts which violate the maternal rights or instincts of animals are prohibited: one cannot slaughter an animal and its young on the same day (Lev. 22:28), and one who takes young birds or eggs from a nest must let the mother go (Deut. 22:6-7).

8.7 Falsehood at law (and perjury) are serious offenses, part of the Ten Commandments.

8.7.1 False oath is an offense against the other and a trespass against God. One who takes a false oath concerning deposit, robbery, fraud, or ownership of a found article must return the object, plus a fifth of its value, and give an ox for expiation (Lev. 5:20-26).

8.7.2 False witness is a prohibition in the Ten Commandments, and false witnesses are punished with the same punishment that the person they are testifying against would have had to bear (Deut. 19:18-19).

8.7.3 A husband who accuses his wife of adultery is not subject to penalties for false accusation (Num. 5:31).

8.7.4 Perversion of justice is serious offense, and the one who takes money to punish or execute an innocent man incurs the communal curse of Deuteronomy 27:25.

8.8 *Slander*

8.8.1 Spreading malicious rumors is forbidden (Lev. 19:16).

8.8.2 One may accuse one's wife of adultery. However, a man who falsely accused his wife of not being a virgin bride is flogged, pays one hundred shekels to his wife's father, and can never divorce her (Deut. 22:19).

8.9 *Witchcraft*

8.9.1 A witch is to be put to death (Exod. 22:17).

8.9.2 Divination procedures are forbidden (Lev. 19:26). The verse, which also mentions not eating blood, refers to divination in which blood is libated, such as the summoning of ghosts.

8.9.3 Necromancy and mediums pollute Israel (Lev. 19:31). The sanction is extirpation of lineage (Lev. 20:6). They were outlawed by Saul (1 Sam. 28:9-10).

8.10 *Blasphemy and Other Misuse of the Divine Name*

8.10.1 In a legal "storyette," the son of an Israelite woman and an Egyptian man cursed someone during a fight and used the divine name. He was detained until God decreed that he should be taken out of the camp, where all who heard the curse laid their hands on his head and stoned him. The law declares that all, Israelite or *ger*, who curse God bear divine sanction, but one who adjures with the name of God is to be stoned. The passage then provides key Israelite legal provisions: talionic punishment for battery, execution for homicide, and restitution for damage to animals (Lev. 24:10-23).

8.10.2 The danger of cursing prompted Jeremiah's trial, which considered whether a prophet who believed he was speaking God's word was cursing when he pronounced destruction of the temple (Jer. 26).

8.10.3 Naboth was found guilty of cursing god and king. He was executed and his land forfeited to the king (1 Kings 21:10-16). Apparently, his sons were also executed (2 Kings 9:26).

8.11 Apostasy (worshipping other gods) is strictly forbidden, an essential element of Israel's covenant with God and forbidden by the First Commandment. Deuteronomy provides for human sanctions: anyone known to worship other gods or the heavenly host will stand trial and if convicted, is stoned to death (Deut. 17:1-5). Prophets or diviners who advocate it are to be put to death; one's own family member is to be stoned (Deut. 13:2-12).

8.11.1 A town that commits apostasy is to be put to the sword. The cattle are to be killed; all the town and spoil are to be burned with nothing spared and the town is not to be rebuilt (Deut. 13:13-19).

8.11.2 One cannot be a *qedēša* or a *qadeš* (Deut. 23:18). These are often translated as "cult prostitutes," but there is no evidence of cult prostitution in Israel. They are a kind of priest and priestess associated with Canaanite worship.⁸⁰

8.12 Idolatry was also strictly forbidden, both molten images (Lev. 19:4) and worked stone worship items (*'eben maskit*) (Lev. 26:1). The making of the Golden Calf was the great sin of Israel at Sinai, even though the calf and the festival were for YHWH (Exod. 32). An image is an abomination (*to'ebah*), and the maker is subject to the communal curse (Deut. 27:15). Deuteronomy also prohibits planting an asherah or any other tree next to the altar of God or setting up stone pillars (*maššebah*: Deut. 16:21).

8.13 *Rebellion against Authority*

8.13.1 Leaders of the people are to be respected and may not be cursed (Exod. 22:27); one must rise before elders (Lev. 19:32). Refusal to accept the decision of the priest or judge at the central shrine is *zadon*; the penalty is death (Deut. 17:9-13).

⁸⁰ Westenholtz, "Tamar, *qedēša*, *qadištu* . . ."

8.13.2 Parents may not be struck, cursed, or treated with contempt, on penalty of death (Exod. 21:15, 17). The son denounced by parents as totally recalcitrant is stoned (Deut. 21:18–21).

9. SPECIAL INSTITUTIONS

The Pentateuchal codes have special regulations governing how war is to be waged.

9.1 Deuteronomy provides that an attacked city must be offered the chance to surrender. If they surrender, they become tribute slaves (*mas*) working for the state. If the city refuses to surrender, the men are to be killed and the women, children, and cattle taken as booty (Deut. 20:10–15). If, however, the city is local, it must be *herem*, “anathema,” destroyed in dedication to God (Deut. 20:16–18). It should be noted that by the time Deuteronomy records this requirement, there are no local towns left to be conquered; this is a retrojection (cf. Josh. 2:12–14; 6:17–25).

9.2 During a siege, the fruit from fruit trees should be eaten and the trees are not to be destroyed. Non-food trees may be cut down to make siege works (Deut. 20:19–20).

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INTERNATIONAL LAW

INTERNATIONAL LAW IN THE FIRST MILLENNIUM

Simo Parpola

1. SOURCES OF INTERNATIONAL LAW

Even though the cuneiform writing system continued to be used in the Near East through the first millennium, cuneiform documentation becomes progressively scantier and more one-sided towards the end of the millennium as a result of the establishment of Aramaic as an imperial lingua franca under the Neo-Assyrian Empire (see 2.1.2 below).¹ Being written on perishable materials, the only relevant Aramaic sources extant are three eighth-century treaties. Thus most types of source relevant to the study of international law, while abundantly available earlier, are entirely missing from the latter half of the millennium.

1.1 *Treaties*

Original treaties in cuneiform have been preserved only from the Neo-Assyrian period, from which twenty-two texts are extant, dating between ca. 825 and 625.² The individual texts vary greatly in type, content, length, and quality.³

¹ See Tadmor, "Aramaization . . .," and the discussion of the letter CT 54 10 in Parpola, "Neo-Assyrian Letters . . .," 123, n. 9, and SAA 1, introduction.

² Edited by Parpola and Watanabe in SAA 2. The total of twenty-two includes ten exemplars of Esarhaddon's succession treaty (no. 6), treated in the edition as a single text but actually representing ten identically worded treaties imposed on at least ten different political parties (mostly vassal nations). On the number of the extant exemplars of SAA 2 6, see *ibid.*, xxix–xxx, and Farber, *Review . . .*, 163.

³ The corpus includes several short one-column tablets, two of which (nos. 8 and 10) are probably drafts and two (nos. 3 and 12), excerpt tablets. Contrast these with the elaborate 670-line succession treaty of Esarhaddon and the multi-column treaties with Arpad (no. 2), Tyre (no. 5), and an unidentified country (Arabs[?], no. 11).