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## Hebrew Law in Biblical Times: An Introduction

Ze'ev W. Falk

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# Preface to the First Edition

Ze'ev W. Falk

Twenty years ago the author became convinced that the State of Israel would soon be reborn and that there would be need for new legislation. He began to study Hebrew tradition in search of its legal significance. Starting with medieval and later sources, which seemed nearest to the problems of our generation, he came to understand that a legal system could be approached only from its foundations.

This book is based on the first part of a course of lectures delivered at the Hebrew University, Jerusalem, during the years 1959–62. It is offered to biblical scholars as well as to legal historians interested in the elements of Hebrew law. By giving an account of the earliest stages of Israel's legal practice, a contribution is made to the study of ancient law in general.

Biblical references are made to the Masoretic text, while quotations follow the Revised Version, unless the Hebrew original called for a new translation.

Since this work is a mere introduction, many particulars may have to be treated in greater detail or to be improved upon. Instead of rendering a complete account, the book is intended to stimulate further research in Hebrew law. Such research should keep to the historical order of the sources, examine the social causes, and refrain from apologetics. It is to be hoped that another work, on the Hebrew law in Talmudic times, may follow shortly.

How much the author owes to previous literature is obvious from the footnotes, but mention must here be made of the works of D. Daube, M. David, R. de Vaux, J. Pirenne, besides many others who have made this book possible. For bibliography the reader is referred to S. Eisenstadt, *'En mishpat* (in Hebrew), Jerusalem (1931), D. H. Duesberg, *Archives d'Histoire du Droit Oriental* (1938) 2:143ff., J. Sedlakova, *Journal of Juristic Papyrology*, 11–12 (1957–58), the *Hebrew Encyclopaedia Miqra'it*, Jerusalem (1950–88), R. de Vaux, *Ancient Israel* (London and New York: McGraw Hill, 1961), and the juristic sections in the bibliographies of the periodicals *Biblica* and *Internationale Zeitschriftensschau für Bibelwissenschaft und Grenzgebiete*.

Warm thanks are hereby expressed to Professor R. Yaron and Dr. S. E. Loewenstamm for their valuable suggestions, to M. D. Gouldman, LL.B., for many stylistic corrections, to Mr. S. Guberman, M. Jur., for the reading of proofs, and to the staff of the Ahva Press for their helpfulness. Finally, by dedicating this book to his wife, the author acknowledges the truth of Ravina's saying cited in *Babylonian Talmud Soṭah* 21a.

Jerusalem 1964

Z.W.F.

# Preface to the Second Edition

John W. Welch

In March 1985, I proposed to Ze'ev Falk the idea of bringing back into print his *Hebrew Law in Biblical Times* (Jerusalem: Wahrmann, 1964). On that occasion, Professor Falk was participating in a blue-ribbon conference at the University of Utah and Brigham Young University on the intersections between religion and law, the papers from which were subsequently published by Eisenbrauns in 1990. I had been using photocopies of Falk's handy book in teaching Biblical Law at the J. Reuben Clark Law School at Brigham Young University, and my law students had always found its organization and explanations of ancient legal concepts the most illuminating and accessible of any available introduction to biblical law. In response to my suggestion, Ze'ev was modest, as always, and generously gave his full consent.

Unfortunately, schedules and circumstance would not eventually allow for this new edition to appear during his lifetime. His unexpected death on 19 September 1998 left me lamenting the loss of an esteemed colleague and also regretting the fact that this new edition had not been prepared sooner. With the kind permission of his faithful wife, Mirjam, we have proceeded with this publication. I hope that it does honor to the memory of the author. Undoubtedly, many changes and additions might yet have been made by him in the following pages, but the coherence and quality of the original work, together with the Addenda published by Falk in *Diné Israel* in 1977 and appended here as a valuable supplement, stand solidly on their own footings.

This book takes a conceptual approach to Hebrew law, organizing this broad subject in terms of ancient legal sources, social institutions, judicial procedure, crime and punishment, property and contracts, personal rights and status, and family relationships from betrothal to inheritance. Because of its thematic arrangement, this presentation speaks both to the selective reader who turns to a page or two in search of specific information and also to the comprehensive student who seeks a wide understanding of the ancient Hebrew legal system.

Drawing primarily on biblical texts, Falk presented the scholar, historian, lawyer, and general student of the Bible with "a readable and useful handbook," as James Purvis wrote in the *Journal of Near Eastern Studies* (1967). Recognizing that Falk's terse and succinct exposition is sometimes "exasperating," Purvis nevertheless found that this book's "usefulness may well derive from the author's ability to compress a vast amount of data (and their interpretation) within a limited scope," predicting that readers "will be amazed by the wealth of material treated and will undoubtedly profit by the author's trenchant insights" (67). Many other reviewers concurred with this assessment. Writing in the *Journal of Semitic Studies* (1966), Preben Wernberg-Møller found that Falk had

succeeded in presenting an informative handbook which, quite apart from its practical purpose, will prove useful to students of the Old Testament who take an interest in the early elements of Hebrew law as they appear against the wider background of the legal heritage of the surrounding peoples (Assyrians, Babylonians, Hittites, and Egyptians) with whom Israel shared a number of laws—not according to the author because she depended on those cultures for such laws, but because she developed sociologically along lines similar to those other societies. (261)

Although this introductory treatment of biblical law was not "critical" enough to please Godfrey R. Driver (*Journal of Theological Studies*, 1965, p. 479), Otto Eissfeldt was of the opinion that Falk "overall gives an accurate picture based on factual evidence, inasmuch as it avoids giving unequivocal answers to the many debated issues, being

satisfied by clearly setting forth the relevant problem” (*Zeitschrift der deutschen morgenländischen Gesellschaft*, 1966, p. 376).

But above all, and not to diminish in any way his insightful command of historical, sociological, and comparative legal data, Falk’s interests were ultimately religious and spiritual. As readers today look back over the past four decades of biblical scholarship, this spiritual contribution may well stand out as the most distinctive legacy of this volume and, indeed, of Ze’ev Falk’s entire life’s endeavor. Thus, chapter 1, on the sources of biblical law, includes a section on law and religion; his treatment of the administration of justice in chapter 3 sees an important place for divine judgment; his discussions of crime and punishment in chapter 4 make clear sense of laws regarding religious offenses; and his exposition on marriage and family law presupposes religious factors as essential elements in the legal relationship. Not lost on Eva Osswald, this important moral dimension of Falk’s “learned overview” was prominently noted in her review: “It is to be especially emphasized that the author is particularly clear that Hebrew civilization cannot be analyzed with the help of law alone, but also religious, moral, and social norms must play a role” (*Orientalistische Literaturzeitung*, 1967, p. 262).

In preparing this second edition of this volume, our aim was to retain all of the original character of Falk’s style and insights while helping new readers explore the many paths he had opened. Accordingly we concentrated mainly on his sources, supplying article titles, giving full references in footnotes (wherever feasible), and inserting brief explanatory information to clarify several of the scripture references. Since many place-names are mentioned in the text, we have provided a map to help in locating them. In addition to Falk’s 1977 Addenda, we have also included a complete bibliography of Falk’s academic publications, provided by Mirjam Falk.

Obviously, many publications from the last quarter century could have been added to update this volume, but not knowing which changes Falk would have made in generating this edition, we opted to allow his work to stand as he had left it. For more recent bibliographical data, readers will want to consult the bibliography of Falk’s works at the end of this volume, as well as other sources, such as those mentioned in the Addenda, pages 179–80 below, or in John W. Welch, *Biblical Law Bibliography* (Lewiston: Mellen, 1990) and its accompanying “Biblical Law Bibliography Supplement through 1996” in *Zeitschrift für altorientalische und biblische Rechtsgeschichte* 3 (1997): 207–46. In addition, abstracts appear in the *Jewish Law Annual* directing readers to a vast collection of materials on biblical law, much of which has been spawned by the foundational works of scholars such as David Daube and Falk himself in the mid-twentieth century, and developed subsequently by numerous insightful scholars.

The body of this volume remains largely the same, although this new edition has been edited for grammar, punctuation, spelling, typographical errors, and English stylistics. British spellings have been Americanized throughout. The footnotes were reformatted as notes at the end of each chapter, then edited and standardized basically according to Chicago style. *Encyclopaedia Miqra’it* article titles and author names were obtained and then translated or transliterated from Hebrew into English. General page ranges given for cited sources were replaced with actual page references whenever possible. Scripture references were checked and corrected where necessary. In the bibliography of Falk’s works, the Hebrew titles have been translated into English for easier location. We hope to have added value to this already useful work, and we take responsibility for any errors that we have introduced or overlooked.

Many people helped in producing the second edition of this very important publication. I especially thank Claire Foley and Mathew Bean who contributed significantly to the source checking and editing of this volume. Also of inestimable assistance was the publications department of the Foundation for Ancient Research and Mormon Studies, including Alison Coutts, Paula W. Hicken, Carmen Cole, Shirley S. Ricks, Jacob Rawlins, Wendy Christian,

Julie Dozier, and Naomi Gunnels. Andy Livingston prepared the map, and Irena Abramian, Kevin Tolley, and Kristian Heal worked on translating the Hebrew. Without their unflagging efforts, this volume would not have been possible.

Provo, Utah January 2001

John W. Welch Editor

# The Sources

Ze'ev W. Falk

## 1. The Source Material

The most important source of information on Hebrew legal history is the Pentateuch. Various codes and single laws are included in the continuous narrative, which begins with the creation of the world and ends with Moses' death. Jewish tradition, as well as the Bible itself, attributes them all to the same period, viz., the lifetime of Moses, which corresponds approximately to the end of the thirteenth century B.C.E.

The history as reconstructed by Wellhausen, on the other hand, distinguishes between the final redaction of the Pentateuch, which is fixed as late as the fourth century B.C.E., and the various sources used by the redactor. According to this view, the earliest is the little Code Exodus 34:17–28, which uses the divine name *J(ahveh)*, and which can be attributed to the time of Moses. Another collection is Exodus 20–23, belonging to a source that employs the divine name *E(lohim)*; it should be dated during the period of Joshua or of the judges, i.e., about the twelfth century. The book of *D(euteronomy)*, according to this school, is the Law book found in the Temple in 621 B.C.E. and is connected with the cultic reform of King Josiah. Another collection, the so-called *H(oliness Code)*: Leviticus 17–26, is considered to be earlier than 600, while the *P(riestly Code)* belongs to the postexilic period and has been identified by this school with the law promulgated by Ezra in the second half of the fifth century. This source consists mainly of the legal portions of the first part of Leviticus and of Numbers as well as a revision of Exodus and many passages of Genesis.<sup>1</sup>

Another view on the structure of the biblical codes has been proposed by A. Jirku.<sup>2</sup> According to his “iron law,” the author of a code adheres always to the same style, so that differences in style point to the existence of different sources. One ought, therefore, to distinguish in the Pentateuch between ten forms of speech, such as casuistic or apodictic, singular or plural.

The first classification was accepted and developed by A. Alt.<sup>3</sup> The casuistic formulation, in his view, results from Canaanite judge-made law and corresponds to the other law collections of the ancient East. This style is peculiar to the *Book of the Covenant* (Exodus 21–23), which, according to Alt, was adopted from the Canaanites during the period of the judges. The apodictic formulations of the *Ten Commandments* or of the curses of Deuteronomy 27 are, on the other hand, native creations of Israel. From the earliest times they were included in the priestly preaching and formed the main element in the periodic renewal of the covenant (see Joshua 8:34).

The system suggested by this author, though still *communis opinio*, has undergone much criticism. We know too little of Canaanite law to be able to identify it with the casuistic passages of the Pentateuch. Most of the law books of the ancient East, it is true, are formulated in a casuistic pattern, but there exist examples of the apodictic style outside of Israel. Even the rule that a legislator does not change his style unless quoting from different sources is open to dispute. If certain elements are important to him, he may switch from casuistic to apodictic speech, especially where moral and religious matters are concerned.<sup>4</sup>

Reference should also be made to the view of Yehezkel Kaufmann who on the whole classifies the laws according to the principles of the Wellhausen school, but stresses the independence of the sources.<sup>5</sup> All of them, in his

opinion, consist of very ancient traditions: the earliest material was that preserved in Genesis; the *Priestly Code* preceded Deuteronomy, so that the final edition of the whole Pentateuch could be dated about the time of King Josiah.

For the purposes of Hebrew legal history we should not put too much stress on the literary aspects of biblical research. Ideas found in the *Priestly Code*, for instance, may be most ancient and their reduction to writing may have been the final step in a long oral tradition. Later schools such as those of *Form Criticism*<sup>6</sup> and *Uppsala*,<sup>7</sup> correctly take a more synthetic stand toward the variety of sources. The Swedish scholars assign much more importance to the oral tradition underlying the biblical literature than to its written form. When dealing with the social structure and institutions of Israel we do not, therefore, rely upon the literary and chronological data, but rather concentrate on trends of development as emerging from the Bible as a whole.

Unfortunately, there are few sources besides the text to illustrate Hebrew law in action. A potsherd from the seventh century B.C.E. seems to be a judicial petition of a workman against the illegal detention of his clothes.<sup>8</sup> The Aramaic papyri of Elephantine, at the southern border of Egypt, belong to the Jewish garrison there<sup>9</sup> and date from the fifth century. At the same time the archive of the Murashu family of Nippur mentions a number of Babylonian Jews as being in trade relations with the family.<sup>10</sup> Another series of Aramaic documents written between 375 and 335 B.C.E. at Samaria<sup>11</sup> was discovered in a cave north of Jericho and shows the practice in Palestine itself. From the Ptolemaic period we have quite a number of Jewish deeds in Greek,<sup>12</sup> while the Roman period is represented by the documents from the Judaeian desert in Hebrew, Aramaic, and Greek.<sup>13</sup>

For the long development preceding the legal collections of the Pentateuch we have to rely on indirect evidence. Sometimes, early institutions and rules of law can be reconstructed from their later counterparts, especially if comparison is made with parallel developments in other societies. Information can also be obtained by a legal analysis of biblical narratives, ceremonies, names, phrases, and terms.<sup>14</sup> Quite often, it is true, this yields little more than a hypothesis, but taken together with the results of interpretation of legal passages and checked by comparative research, this branch of Hebrew legal study may prove fruitful.

## 2. Law and Religion

Hebrew tradition did not distinguish between norms of religion, morality, and law. As befitting their common divine origin, man was bound to obey all of them with equal conscientiousness. The apodictic style, especially, signifies the fact that the command originated from God and that its promulgation was part of a religious ceremony. Cultic rules quite often appear in a sequence of civil laws (for example, Exodus 22–23) and the pleas of the prophets for justice are part of their teaching of loyalty to God.<sup>15</sup>

The distinction between religion and law was, however, known already in Babylonian and Hittite laws as well as in the Greek Code of Gortyn and the Roman Twelve Tables.<sup>16</sup> That does not mean that the state was disinterested in the discharge of religious duties by priests or citizens. But religious matters, though of public concern, belonged to a separate category from the law of the state; in Israel, on the other hand, no difference was felt between the two and neither of them were creations of the state.

There are various rules of law that result from these concepts, both in Israel and in other legal systems.<sup>17</sup> Justice is administered in the name of God and quite often the court or official body convenes in the sanctuary or on the

occasion of a religious ceremony (compare Genesis 14:17–24; Exodus 15:25; Joshua 24:25; Psalm 122:5). God himself was said to supervise the judges (2 Chronicles 19:6–7; Psalm 82), and his decision might be obtained by ordeal or oath.<sup>18</sup> In the same way divine supervision was invoked to safeguard relations within the family and treaties between individuals or groups. Charismatic personalities, like Deborah and Samuel, represented the divine character of the judicial office.

During the Israelite monarchy, it is true, the king assumed the place of the supreme judge, to whom petition could be made against any unjust decision (2 Samuel 12; 14; 15; 2 Kings 8:3). However, this right was assumed because of the king's responsibility toward God for his subjects and not because he was considered to be the "fountain of justice." The law was not the creation of kingship but its basis and prerequisite.<sup>19</sup>

It was also through religious ideas that certain crimes, such as murder and adultery, were publicly prosecuted, in order to preserve the purity of the community and of the land (Genesis 9:6; Leviticus 20; Deuteronomy 19:13). Similar concepts stand behind the rules of expiation in the event of an unwitnessed homicide, with oaths of innocence replacing the original collective responsibility (Deuteronomy 21:1–9), and also stand behind the distinction between wilful and accidental manslaughter (Exodus 21:13).

Having considered the religious character of Hebrew law, we come now to another result of the interdependence of ideas, namely, the legal character of biblical theology and religion. In biblical narrative God appears as an anthropomorphic being who lives under the rule of law. Hebrew thought, thereby, reacted upon the Mesopotamian concept of cosmic order. The various forces of nature were understood by the Babylonians as gods living in a kind of superstate under an overall legal system.<sup>20</sup> The monotheism of Israel did not change this idea for a belief in the continuous action of God's discretionary power. The concept of the state was retained, but it was changed into the idea, if one may say so, of a constitutional monarchy rather than of a tyranny.<sup>21</sup> It is on the basis of this belief that questions of theodicy play such an important part in biblical thought. Questions like that of Abraham (Genesis 18:25) and Job touch the fundamentals of the Hebrew religion.

The Rabbis already interpreted the story of the creation as a legitimation of divine rule over the world and of the resulting right of Israel to the land of Canaan.<sup>22</sup> Some of the stories, it is true, are at variance with codified law, but they may be presumed to suit the prehistory of this law, i.e., the tribal customs in use during the patriarchal period. Ordinary law, for instance, had left behind the system of collective responsibility but divine retribution was still imposed upon the community as a whole (Exodus 20:5; Joshua 7; Isaiah 53).<sup>23</sup> Divine punishment is usually measured according to the ancient *ius talionis* of reciprocal justice: as a person does, so shall it be done to him (compare Exodus 22:21–24). God is, however, ready to forgive when the culprit offers a ransom (Exodus 30:11–16; compare 2 Samuel 24).<sup>24</sup>

Biblical sin, consequently, is a wrong committed against God, violation of a law, or even insurrection against the legal authority. God is said to avenge any wrongful act against him, i.e., he takes the law into his own hands as was usual in the tribal period. Sometimes the text speaks of the rewards made by God both for man's good and bad deeds (*shilem*) or of the wages paid by him for human behavior.<sup>25</sup>

The death penalty for the shedding of blood was motivated by the statement that "God made man in his own image" (Genesis 9:6). This is a reference to the father-son relationship (compare Genesis 5:3), giving rise to the avenging of the blood of any human being.



Israel has been chosen among the nations in accordance with the parental rights of tribal society, which allowed the father to elect the worthiest of his sons as his successor. God is seen in the position of a chief who judges his subordinates without being bound by the jurisdiction of a court or by rules of succession.<sup>26</sup> At the same time his relationship toward Israel is also described as that of an owner toward his slaves. As shown by Akkadian deeds of liberation, the freedman was often adopted by his former owner and an obligation was put upon him to support the latter for life.<sup>27</sup> Israel was liberated from the slavery of Egypt and was thus acquired and adopted by God: "For to me the people of Israel are servants, they are my servants whom I brought forth of the land of Egypt" (Leviticus 25:55).

A similar reason was given for the sanctity of the firstborn. Being spared during the plague of Egypt, they were treated as captives of God, and became temple slaves (Numbers 3:12–13; compare 31:25–27).<sup>28</sup> This seems to be based on the rules of warfare recognized by Israel as well as by other nations.

The revelation of the Law takes the form of a covenant between overlord and vassal (Exodus 6:7; 19:5; 24). In accordance with the formulae of the extant treaties, the mutual obligations are followed by benedictions and curses.<sup>29</sup> The original covenant was reconfirmed from time to time, by Moses in the wilderness of Moab, by Joshua at Shechem, and by King Josiah in Jerusalem. According to Deuteronomy 31:10–13, the ceremony included the public reading of the Law and was to be held every seven years.

Israel's vassalage made any individual trespass against the Law an act of rebellion, for the person concerned might in this way cause the annulment of the divine promises and the basis of Israel's existence. It was therefore the responsibility of the whole community to prevent such an act or to exclude the offenders from its midst.<sup>30</sup>

Though owner of the universe, God is said to have special rights over the people and the land of Israel. The people are his special property (*segulah*)<sup>31</sup> or heritage (Deuteronomy 9:26, 29; 32:9). The same relation exists between God and the Holy Land (Exodus 15:17; Leviticus 25:23), which is then allotted to the people of Israel. The title of the individual to his property is not therefore one of full ownership but rather one of tenancy. God lets the land to the people on condition that the tithes are paid and that the land is not polluted or transferred into foreign hands.<sup>32</sup>

Legal influence upon religion is exemplified by the fact that the person living according to divine law was called righteous (*ṣādiq*), the term describing the successful party in a legal case. According to biblical thought, everybody was subject to divine judgment; therefore, the pious were those who could be acquitted and held to be just.

### 3. Terms of Law

Semantics is often a good source of information on ancient legal concepts. The meaning of a term, it is true, may have changed during the history of the language and before making use of this source, we ought, therefore, to define the exact date and place of the text containing the term under consideration. Even if used in a given period, the word need not necessarily have retained its original meaning. Language, as is well known, is more conservative than its cultural contents. While institutions and ideas may have developed in the course of time, their names often remain unchanged.<sup>33</sup>

As mentioned already, we are not, unfortunately, in a position to determine the dates of biblical texts in order to find the *terminus ad quem* of a given expression. The fact that the oral tradition may have existed for centuries prior

to the edition of scripture allows for an earlier use of the term than the time of the text, so that we cannot fix the *terminus a quo*. With these limitations in mind, we may nevertheless come to certain conclusions regarding the origin of law in Hebrew tradition.<sup>34</sup>

Most of the terms of justice are used as synonyms, but they cannot have had the same meaning from the beginning. We will try to dig up the earlier sense of these terms by considering the different uses of each of them.

The noun *mishpat* is derived from the verb *shafat*, which in the book of Judges signifies the acts of saving, governing, and judging. These different functions have a common element, viz., the action taken in favor of a weak petitioner against his strong adversary. The *shofet*, in the first instance, defends the right of his people against their enemies, he rules over his brethren and administers justice.<sup>35</sup>

Originally *mishpat* seems to have been an individual decision or a right of either party. Both plaintiff and defendant claimed the *mishpat* to be theirs, until it was rendered to the party found to be just. Besides the settlement of the dispute, the decision had another function. According to the usage known also in other systems of law, decisions were cited as precedents for similar cases. Thus, *mishpat* came to mean a collection of casuistic laws such as Exodus 21, which was originally judge-made law, though codified at an early date. Finally, the term also denoted a person's mode of behavior, the underlying idea being that everybody behaved according to the law applicable to him.<sup>36</sup>

*Hoq* means the portion due to a person, a boundary, or law in general (also *huqah*). This term was probably taken from the procedure in land cases, when the judge was asked to fix the boundary between neighbors. He used to do so by engraving a landmark or by digging a line in the ground. The function of the *hoq* could thus be said to be *ius suum cuique tribuendi*.<sup>37</sup>

The connection between law in the objective and subjective senses can be recognized also in the term *din*. Early sources use the term in the meaning of plea and right, while it became later a synonym for law and the administration of justice.<sup>38</sup>

The derivation of general from special norms formed perhaps the well-known noun *torah*, describing religious instruction and law. Originally, this instruction seems to have been limited to actual cases and to have consisted of the casting of lots (*jarah*). Again, in the course of time the word came to mean a collection of such decisions and finally the divine code of religious conduct.<sup>39</sup>

Various meanings also appertain to the word *'eduth*, and the question has been asked as to the connection between them all. Originally, it seems, *'eduth* was the evidence accompanying a covenant, which could be real, written, or oral. In the latter case each party used to recite the partner's obligations in the presence of witnesses. The admonition of the other party to keep his promise could thus be called a testimony; hence, the law came to be known by this name. Since the laws were considered part of the covenant between God and Israel, it is not surprising that they were called *'eduth*.<sup>40</sup>

The terms *ṣedeq*, *ṣedaqah*, and *meisharim*,<sup>41</sup> on the other hand, denote the more abstract meaning of justice and righteousness. But again, a party may speak of "his" *ṣedaqah*, which is much nearer to an individual decision than to a general system.<sup>42</sup>

The norms of Hebrew law, then, emerged from the activities of Hebrew judges and from the divine covenant of Mount Sinai. Though even the pentateuchal sources do not preserve the original meanings, legal terms seem to correspond to the classification of the rules, mentioned above, viz., to the apodictic and casuistic formulations.

#### 4. Law Making

(a) The laws, as already mentioned, were attributed to divine revelation besides which there was no other legislation on record. This was true mainly with regard to those rules formulated in the apodictic style, but the same idea applied also to the other laws included in the covenant. The right of lawmaking was not mentioned among the royal privileges; on the contrary, the king was “to keep all the words of this law and these statutes” (Deuteronomy 17:19).

Neither should the *hoqeqim* (engravers) be considered as legislators. According to Judges 5:9, 14, 15 they were war leaders, while Isaiah 10:1 used the term for judges. Both functions were indeed reserved to the rulers of the pre-monarchical period. The early sources, moreover, understood the word *mehoqeq* in the sense of a scepter, symbolizing the public office of the person so described.<sup>43</sup>

From time to time there was probably need for new political and administrative rules. The commander of the army, for instance, was entitled to regulate the division of the booty (1 Samuel 30:23–25). During peacetime as well as in war the people were expected to obey the leader’s commands and disobedience was punished severely (Joshua 1:18; compare 1 Samuel 14:24).<sup>44</sup> The royal rights of taxation and the imposition of forced labor also required a minimum of legislative work. However, none of these laws were enacted in order to reform the ordinary rules of substantive law or of procedure.

(b) We have found that most legal terms originated from judge-made law, though they could be used to signify law in general. While the Pentateuch emphasizes the divine authorship of all laws, part of them may be ascribed to judicial precedents which were codified and made part of the covenant. This part included the casuistic-styled laws, collected together without the systematic reasoning of the legislator.

The rules of succession, for example, though given by divine decree, were formulated for an actual case. A certain householder had died without leaving a son and the question of his inheritance going to his daughters had been referred to God. In the course of the decision on these particular facts, the general rules of succession were laid down for the future (Numbers 27:1–11).

In the same way the division of spoil was regulated by an ad hoc decision made either by God (Numbers 31:27) or by King David (1 Samuel 30:22–25). This decision was based upon the custom of dividing the object of litigation between the parties; an easy way out for the judge. 2 Samuel 19:29, for instance, shows the application of this rule and the same idea seems to constitute the formal element of Solomon’s decision (1 Kings 3:25), though its real function was psychological. All these precedents were cited in similar cases as a recognized source of law.

Even criminal justice was based on actual decisions, as is shown by the case of the son who uttered blasphemy while in a brawl (Leviticus 24:10–16) and by the case of the man who gathered sticks on the Sabbath (Numbers 15:32). Both passages preserve their judicial origin, while a parallel formula in Exodus 31:14 regarding the punishment of Sabbath breakers takes the form of legislation proper. A good example of the citation of precedents in criminal pleadings is the trial of Jeremiah. On the issue whether his prophecies of disaster were punishable, one of the elders cited in favor of the accused the trial of Micah (Jeremiah 26:17–19; compare 20:2; 38:4;

2 Chronicles 24:21). A similar procedure may have been in use whenever a problem arose concerning which no express law existed.

(c) An important source of law was custom. Everybody was expected to refrain from doing things “that ought not to be done” or “which are not done” (Genesis 20:9; 29:26; 34:7; 2 Samuel 13:12). In other words, he must not violate the rules of custom. However, not every usage was considered binding; obedience was demanded only to “the way of good men” and to “the paths of the righteous” (Proverbs 2:20).

The greater part of the codified law merely restates immemorial custom or changes some particular of the accepted practice. This may be another explanation for the double meaning of *mishpat*, mentioned above, viz., of law and custom. The law was perhaps thought to have been the source of custom, so that a given custom could be used to indicate the law in a corresponding situation.

The fact that the biblical codes had emerged out of customary law was another reason for the unsystematic arrangement of the subject matter. Originally legislation was used only where a reform was needed and where custom proved unsatisfactory. A more systematic treatment was necessary where the law codified the existing custom or was stated for didactic purposes.<sup>45</sup>

(d) Certain norms were probably derived from popular convention. Hebrew law originated from a covenant between God and Israel and it was thus implied that legal rules could be created by contract. It is true that there was no equality, the people taking the place of a vassal and God that of the overlord, but from the formal point of view, the promulgation of the law was based on consent. According to Exodus 19:8; 24:7, the people had received an offer and accepted it by saying: “All that God has spoken we will do.” The same idea appears in Deuteronomy 27, when after the recital of the laws, benedictions, and curses, all the people answered “Amen.”

The legislative function of the assembly must have originated in tribal society and developed before the monarchy. At that time all matters of national concern were brought up in the householders’ assembly whose decisions had the force of law. Thus during the war between Benjamin and the rest of Israel, the assembly of the tribes passed a resolution forbidding intermarriage between the two factions. The decree was confirmed by a solemn oath pronounced in the sanctuary. When the rule was later felt to be out-of-date, it could not be repealed and a way had to be found to circumvent it (Judges 20–21).<sup>46</sup>

The legislative function of the assembly was probably limited by the kings, prophets, and priests, but it was still used on special occasions. The king was accepted by the people through a covenant specifying his rights and duties.<sup>47</sup> The arrangement was probably made known to the assembly and fulfilled the function of a law.

After the exile, the ancient assembly was perhaps the only institution to replace the former political structure. Ezra 10:7–8, Nehemiah 8–10, and Esther 9:27 describe various resolutions of legislative effect that were passed by an assembly of all householders. The law, again, took the form of a covenant made binding upon all participants and their offspring. During the fourth and third centuries B.C.E., the growing size of the community rendered the assembly of all its members more and more difficult. Instead of the whole congregation, there arose the *kneseth gedolah* (Great Synagogue), a college of learned scribes, which took over the legislative power of the community.<sup>48</sup>

(e) From the beginning, biblical law was subject to learned interpretation by means of which it was applied to new circumstances. Take for instance the argument between Moses and Aaron about the sin offering on the day of mourning (Leviticus 10:16–20). It is a piece of interpretation that leads the way to subsequent Talmudic exegesis.

Another form of comment on the text is the “motive clause” inserted in various laws. Some explanation was needed during the public reading of the Law, which was addressed to laymen as well as to professional jurists. This pattern has been recognized by Gemser<sup>49</sup> in many passages, such as Exodus 20:5, 7, 11; 21:8; Deuteronomy 21:14; 23:5.

In addition to an explanation of the Law’s purpose, it was felt necessary to add other comments in order to help the listener understand the Law. This was especially so after the exile when the knowledge of Hebrew was somewhat limited, owing to the use of the imperial language, Aramaic. The reading of the Law was then accompanied by an Aramaic translation including various comments on the text: “And they read from the book, from the law of God, with interpretation and they gave the sense, so that the people understood the reading” (Nehemiah 8:8). This was the beginning of Talmudic jurisprudence: “For Ezra had set his heart to study the law of God and to do and to teach statutes and ordinances in Israel” (Ezra 7:10).<sup>50</sup>

## 5. Identity and Change

Biblical law must be considered within the framework of the history of Israel. Many of the rules actually date from the earliest period, although they were only laid down in later sources. On the basis of sociological criteria, we must ascribe them to the tribal society, which preceded the monarchy by several hundred years. On the other hand, we find legal norms that developed out of the urban society of the later kings and its new economic situations.

The question, therefore, arises whether biblical laws show an identity throughout the various stages and changes and, if so, what constituted this identity. One must also ask whether the changes in Hebrew law and society were the result of inherent factors, i.e., the powers active among the people of Israel themselves, or of external influence, by the absorption of ideas from another system and the response to its challenge.<sup>51</sup>

There are indeed various points where biblical law reaches the same solution as that found in earlier legal systems and where it even uses the same term.<sup>52</sup> While such parallels used to be cited as proof of a common origin or of a cultural influence, some authors have been skeptical. “Comparative law,” says P. Koschaker, “has taught us to expect an independent parallel development and to take it as the most reasonable explanation for the existence of similarities in various legal systems. We may assume a process of reception or influence only where it can be proved or at least be shown to be probable.”<sup>53</sup>

Similarities in substantive law can be the outcome of equal conditions in social structure or dynamics. A comparison of Hebrew law with cuneiform laws shows, however, large differences, the former being much more primitive than the latter.<sup>54</sup> If there was any reception of legal elements from the earlier and more developed systems, it probably concerned matters of form, terminology, and technique rather than ideas and substantive norms.

The individual character of Hebrew law throughout its development is shown in its relationship toward religion. Israel’s social, economic, and cultural structures were deeply impressed by monotheism, which, consequently, also shaped law and custom. It is possible to show that many changes in particular rules were derived from the evolution of society. We know also that the weakening of the clan system and the urbanization under the monarchy resulted in a far-reaching assimilation of surrounding culture.<sup>55</sup> This may have been the occasion for the reception of foreign ideas by Hebrew law. Together with the reaction of the prophets there probably existed a

trend toward the restoration of Hebrew legal tradition. The emphasis placed upon the covenant with God and upon the ideas of tribal solidarity and redemption can be understood against this background.<sup>56</sup>

**Ancient Collections of Laws outside Israel**

**Approximate Dates B.C.E.**

Laws of Urnammu	Laws of Lipit-Ishtar	Sumerian Laws	Laws of Eshnunna	Laws of Hammurabi	Hittite Laws	Hittite Laws (revised)	2100	1930	1800	1770
Middle Assyrian Laws	Neo-Babylonian Laws	Laws of Gortyn (Crete)					1300	1076	700	680–460

**Notes**

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2. Anton Jirku, *Das weltliche Recht im Alten Testament* (Gütersloh: Bertelsmann, 1927).
3. Albrecht Alt, *Die Ursprünge des israelitischen Rechts* (Leipzig: Hirzel, 1934) (= *Kleine Schriften zur Geschichte des Volkes Israel* [Munich: Beck, 1953], 278–332).
4. J. P. M. van der Ploeg, “Studies in Hebrew Law: The Style of the Laws,” *Catholic Biblical Quarterly* 12/4 (1950): 416–27; Roland de Vaux, *Les institutions de l’ancien testament* (Paris: Editions du Cerf, 1958–60), 225, (English edition, trans. John McHugh, *Ancient Israel: Its Life and Institutions* [London: Darton, 1961]); Stanley Gevirtz, “West-Semitic Curses and the Problem of the Origins of the Hebrew Law,” *Vetus Testamentum* 11 (1961): 137–58; R. Yaron, “Forms in the Laws of Eshnunna,” *Revue Internationale des Droits de l’Antiquité* 9 (1962): 137–53; Rudolf Kilian, “Apodiktisches und kasuistisches Recht im Licht ägyptischer Parallelen,” *Biblische Zeitschrift* 7 (1963): 185–202.
5. Yehezkel Kaufmann, *The Religion of Israel from Its Beginnings to the Babylonian Exile*, trans. and abridg. Moshe Greenberg (Chicago: University of Chicago Press, 1960).
6. Compare Hermann Gunkel, *Einleitung in die Psalmen* (Göttingen: Vandenhoeck and Ruprecht, 1933); Otto Eissfeldt, *Einleitung in das Alte Testament unter Einschluss der Apokryphen und Pseudepigraphen*, 2nd ed. (Tübingen: Mohr, 1956), 9–149.
7. Compare Johannes Pedersen, *Israel: Its Life and Culture* (London: Oxford University Press, 1926–40), 3–4:585–86; Johannes Pedersen, “Die Auffassung vom Alten Testament,” *Zeitschrift für die alttestamentliche Wissenschaft* 49 (1931): 161–81; Aage Bentzen, *Introduction to the Old Testament* (Copenhagen: Gad, 1952), 102ff. Summaries of research may be found in *Bibelwissenschaft und Grenzgebiete* (Düsseldorf: Patmos, 1968). On the problems of oral tradition compare also R. C. Culley, “An Approach to the Problem of Oral Tradition,” *Vetus Testamentum* 13 (1963): 113ff.

8. Naveh, *Bulletin of the Israel Exploration Society* 25 (1961): 119–28; Samuel Yeivin, “The Judicial Petition from Mezzad Hashavyahu,” *Bibliotheca Orientalis* 19 (1962): 3–10; Frank Moore Cross Jr., “Epigraphic Notes on Hebrew Documents . . . The Murabba’at Papyrus,” *Bulletin of the American Schools of Oriental Research* 165 (1962): 34–46.
9. Arthur E. Cowley, *Aramaic Papyri of the Fifth Century B.C.* (Oxford: Clarendon, 1923); Emil G. Kraeling, *The Brooklyn Museum Aramaic Papyri* (New Haven: Yale University Press, 1953) (unless otherwise indicated references are made to numbers of documents). Compare Reuven Yaron, *Introduction to the Law of the Aramaic Papyri* (Oxford: Clarendon, 1961), and Ze’ev W. Falk, “Testate Succession in Jewish Law,” *Journal of Jewish Studies* 12 (1961): 165.
10. Compare Guillaume Cardascia, *Les Archives des Murashû* (Paris: Imprimerie Nationale, 1951).
11. Frank Moore Cross Jr., “The Discovery of Samaritan Papyri,” *Biblical Archaeologist* 26 (1963): 110ff.
12. Victor A. Tcherikover-Fuks, *Corpus Papyrorum Judaicarum* (Cambridge, Mass.: Harvard University Press, 1957).
13. Pierre Benoit, J. T. Milik, and Roland de Vaux, *Les Grottes de Murabba’ât* (Oxford: Clarendon, 1961), and the report by Yigael Yadin.
14. Compare David Daube, *Studies in Biblical Law* (Cambridge: Cambridge University Press, 1947), 1–73.
15. Compare Friedrich Horst, *Gottes Recht: Gesammelte Studien zum Recht im Alten Testament* (Munich: Kaiser, 1961), 260ff.; J. P. M. van der Ploeg, “Studies in Hebrew Law: The Religious Character of the Legislation,” *Catholic Biblical Quarterly* 13/3 (1951): 164–71. Otherwise, see Arthur S. Diamond, *Primitive Law: Past and Present* (London: Methuen, 1950), maintaining the secular character of most ancient Hebrew law as well as of other legal systems.
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17. Compare Werner Schilling, *Religion und Recht* (Zurich: Europa, 1957).
18. Compare pp. 51–52, below.
19. Compare Ze’ev W. Falk, “Two Symbols of Justice,” *Vetus Testamentum* 10 (1960): 72.
20. Compare Henri Frankfort and others, *Before Philosophy* (London: Pelican, 1949), 137.
21. Compare various examples of that idea in Daube, *Studies in Biblical Law*, and David Daube, “Rechtsgedanken in den Erzählungen des Pentateuchs,” *Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft* 77 (1958): 36.
22. *Genesis Rabba* 1:1.
23. Compare Daube, *Studies in Biblical Law*, 154ff.; Ze’ev W. Falk, “Collective Responsibility in the Bible and the Aggadah” (in Hebrew), *Tarbiz* 30 (1961): 16; see also pp. 67–70, below.
24. Compare Samuel E. Loewenstamm, “Measure for Measure” (in Hebrew), *Encyclopaedia Miqra’it* (Jerusalem: Bialik, 1950), 4:231, 844; see pp. 75–77.

25. Horst, *Gottes Recht*, 246, 285–90; compare Daube, *Studies in Biblical Law*, 134ff.
26. Horst, *Gottes Recht*, 283; Falk, “Testate Succession,” 67, and pp. 25–26.
27. Isaac Mendelsohn, *Slavery in the Ancient Near East: A Comparative Study of Slavery in Babylonia, Assyria, Syria, and Palestine from the Middle of the Third Millennium to the End of the First Millennium* (New York: Oxford University Press, 1949), 78.
28. Compare Pedersen, *Israel*, 3–4:312ff.; Elijah S. Hartum, “Firstborn” (in Hebrew), in *Encyclopaedia Miqra’it* 2:123; Mendelsohn, *Slavery*, 1ff., 99ff.
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30. Horst, *Gottes Recht*, 285–86; Charles F. Fensham, “Maledictions and Benedictions in Ancient Near Eastern Vassal-Treaties and the Old Testament,” *Zeitschrift für die alttestamentliche Wissenschaft* 74 (1962): 1–8; see p. 24.
31. Exodus 19:5; compare Ecclesiastes 2:8; 1 Chronicles 29:3, and the *shi-ki-il-tu* in Nuzi texts.
32. Compare Nuzian parallels and p. 84. Otherwise, see Horst, *Gottes Recht*, 279–80.
33. Compare Stephen Ullmann, *Semantics: An Introduction to the Science of Meaning* (New York: Barnes and Noble, 1962), 193–235.
34. On the terms of law, compare J. P. M. van der Ploeg, “Studies in Hebrew Law,” *Catholic Biblical Quarterly* 12/3 (1950): 248–49.
35. Compare Ludwig Köhler, *Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft* 37 (1923): 110; Adrianus van Selms, cited in *Zeitschrift für die alttestamentliche Wissenschaft* 72 (1960): 284; Harry M. Orlinski, *Oriens Antiquus* 1 (1962): 13. Examples of the meanings mentioned may be found in a lexicon.
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37. Ze’ev W. Falk, “Hebrew Legal Terms,” *Journal of Semitic Studies* 5 (1960): 350–54; Richard Hentschke, *Satzung und Setzender: Ein Beitrag zur israelitischen Rechtsterminologie* (Stuttgart: Kohlhammer, 1963); van der Ploeg, “Studies in Hebrew Law,” 248–49. Compare also Ephraim A. Speiser, “The Root *pll* in Hebrew,” *Journal of Biblical Literature* 82 (1963): 310ff., showing that the term *pelilah* (judgment) is derived from *palal* (to estimate, assess). Compare “measure,” which in English is a synonym for “law” or “statute.”
38. Compare Codex Hammurabi using the root *din*; Driver and Miles, *Babylonian Laws*, 1:72–74; Berend Gemser, “The ‘rib-’ or Controversy-Pattern in Hebrew Mentality,” *Vetus Testamentum*, Supplement 3 (1955): 125–26.



39. Compare Joachim Begrich, *Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft* 66 (1936): 63ff.; de Vaux, *Ancient Israel*, 221.
40. Ze'ev W. Falk, "Form of Testimony," *Vetus Testamentum* 11 (1961): 88; compare van der Ploeg, "Studies in Hebrew Law," 248–49.
41. This appears also in the Codex Hammurabi; Driver and Miles, *Babylonian Laws*, 1:21–22.
42. Compare Psalm 69:28.
43. Falk, "Hebrew Legal Terms," 350; Hentschke, *Satzung und Setzender*, 11ff.; Samuel E. Loewenstamm, "Carved" (in Hebrew), in *Encyclopaedia Miqra'it*, 4:811; see also C. Sanchez del Rio, "La teoria general del derecho en el antiguo Israel," *Temis* 7 (1960): 100ff.
44. Compare *Tosefta Terumot* 7:20.
45. Compare Hartmut Schmökel, *Das angewandte Recht im Alten Testament* (Leipzig: Universitätsverlag von Robert Noske, 1930); Köhler, *Hebrew Man*, 151.
46. Compare on the original democracy: C. Umhau Wolf, "Traces of Primitive Democracy in Ancient Israel," *Journal of Near Eastern Studies* 6 (1947): 98–108; Robert Gordis, *Alexander Marx Jubilee Volume* (New York: Jewish Theological Seminary of America, 1950), 369–88; Yehoshua M. Grintz, *Zion* 17 (1961): 75, pointing out the similarity between the Hebrew *'edah* and the Roman *comitia centuriata*; Jan Dus, *Archiv Orientaln'* 31 (1963): 444–69.
47. See pp. 31–32, below.
48. G. Allon, *Toledoth Hayehudim* (Tel Aviv, 1956), 2:223ff.; George F. Moore, *Judaism in the First Centuries of the Christian Era* (Cambridge: Harvard University Press, 1966), 33ff.; Sidney B. Hoenig, *The Great Sanhedrin* (Philadelphia: Dropsie College, 1953), 23ff.
49. Berend Gemser, "The Importance of the Motive Clause in Old Testament Law," *Vetus Testamentum Supplement* 1 (1953): 50–66.
50. Saul Lieberman, *Hellenism in Jewish Palestine* (New York: Jewish Theological Seminary of America, 1950), 47ff.
51. Compare Arnold J. Toynbee, *A Study of History* (London: Oxford University Press, 1934).
52. See, for example, Exodus 21:23ff. = Codex Hammurabi 196, 197, 200; Exodus 21:28ff. = Codex Hammurabi 250–51; compare Martin David, "The Codex Hammurabi and Its Relations to the Provisions of Law in Exodus," *Oudtestamentische Studien* 7 (1950): 149–78.
53. Paul Koschaker, "Keilschriftrecht," *Zeitschrift der deutschen morgenländischen Gesellschaft* 89 (1935): 31.
54. David, *Oudtestamentische Studien*, 149–78.

55. Compare Ephraim Neufeld, "The Emergence of a Royal-Urban Society in Ancient Israel," *Hebrew Union College Annual* 31 (1960): 38ff.

56. De Vaux, *Ancient Israel*, 26–27, 30–31.

# Tribe, Nation, and State

Ze'ev W. Falk

## 1. Patriarchal Society

The book of Genesis describes the structure of Hebrew society in the age of the patriarchs. The period corresponds to the Middle Bronze Age, i.e., from the nineteenth to the fifteenth centuries; the scene where the action took place is the ancient caravan route leading along the Fertile Crescent.<sup>1</sup> Abraham and his clan have left their Aramaean tribe in Ur of the Chaldees in southern Babylonia and turned via Haran in the northeast to the land of Canaan. The Bible links this migration with the rise of monotheism (Genesis 11:26–32). The later generations ultimately move on to Egypt.

The Hebrews appear in Palestine as a pastoral society living by cattle breeding and by trading various commodities.<sup>2</sup> They are seminomads, moving by donkey caravans from one pasture ground to the next but at the same time in the process of agricultural settlement.

Discoveries have furnished many parallels to the law and custom of the patriarchs in Akkadian, Hurrian, and Hittite texts and many a biblical passage has become clear by comparison with archaeological finds from Mari, Nuzu, or Ugarit.<sup>3</sup> Occasionally reference can also be made to present-day Bedouin customs, though the social setting of the latter differs from that of the patriarchs.<sup>4</sup>

Abraham, Isaac, and Jacob are chiefs of a clan composed of different families. In theory all members of the clan are descendants of the chief and “brothers” of each other. In practice, however, there were various other persons attached to the group (e.g., Abraham’s nephew, Lot, Genesis 13:5), as well as covenanters or vassals (e.g., Genesis 14:14) and slaves. Abraham’s clan numbered 318 warriors, corresponding to a total of about two thousand souls. The clan of Jacob, on the other hand, comprised merely seventy males, a much smaller nucleus of direct descendants. On two occasions the group splits after having grown too large (Genesis 13:5–12; 36:6–7). This proves a tendency to limit the clan to a certain size.

Under conditions of seminomadism all the power with regard to both internal and external affairs is vested in the chief. He is responsible for any crime committed by a member of his clan against a stranger, unless he agrees to extradite the culprit or to punish him to the satisfaction of the plaintiff clan. Failure by the chief to do one of these gave rise to war against the whole clan; thus collective responsibility for the deed of the individual was put on the group as a whole. Genesis 31:25–35 is a case of theft, giving the aggrieved party the right to search the tents of the accused. Jacob agreed from the beginning to the extreme punishment, and thereby absolved the rest of the group from liability. Judges 20, on the other hand, represents the opposite behavior and illustrates the consequences of failing to satisfy the sense of justice.<sup>5</sup>

The wrong was committed against the clan rather than against the individual. As in present-day Bedouin society, the blood of a slain person had to be avenged by his kindred, so as to reestablish the balance of power.<sup>6</sup> There existed also other forms of redemption designed to safeguard the demographic size of the group. Enslaved members must be freed (Leviticus 25:48) and childless widows were kept within the family through the rule of

levirate. A similar idea underlies, perhaps, the ancient tendency of endogamy (Genesis 20:12; 24:1–8; 26:35; 28:1, 8).<sup>7</sup>

Property seems to have been vested in the chief, especially where realty was limited to rights of pasture, water, and burial, which are usually in common ownership. Movables, on the other hand, must have become private property even at this early stage of society. After the settlement and the division of realty among the different households, various remnants of the ancient community of land still remained in force. The redemption prescribed in Leviticus 25:25 and Numbers 36:7 is an example of such a revival of family rights whenever there arose a danger that property would be alienated. The same idea expressed itself in Naboth's refusal to part with his heritage, which King Ahab wanted to purchase (1 Kings 21).<sup>8</sup>

The chief of the clan fulfilled all public functions. He acted as priest of the God of the fathers, as leader in time of war and migration, as judge of his flock, and as their representative before other groups. He had absolute power over his followers and could even put them to death (Genesis 19:8; 31:31; 38:24; 42:37) or sell them into slavery (Exodus 21:7). It is only after the centralization of justice that the rebellious son could not be punished by his father and was committed for trial before the elders (Deuteronomy 21:19).<sup>9</sup>

The appointment of his successor was likewise in the absolute discretion of the chief. His decision was given in the form of a blessing upon the elected son. The office usually devolved upon the firstborn. If, however, he was not considered worthy, he could be replaced by his brother, who was "acknowledged" for this purpose by the father (Genesis 25:5; 27; 48:5, 19; 49:4).<sup>10</sup> The right of succession included the power over all members of the clan, even over the dead chief's wives and concubines (compare Genesis 35:22; 49:4).<sup>11</sup>

A wife who failed to bear children could provide her husband with a servant as substitute (Genesis 16:2; 21:9–13; 30:3, 9). This custom was in accordance with Babylonian practice. Several cases of adoption, illustrated in the story of Genesis, can also be traced to Nuzian models.<sup>12</sup>

Another form of artificial relationship was covenanting. Since patriarchal society was based mainly on blood and kinship ties, there sometimes arose the need for the creation of a legal, as distinct from natural, brotherhood. The ceremony consisted of various elements, symbolizing the divine sanction for the promises, the blessing to be bestowed on the faithful, and the curses to be inflicted on the transgressor. Similar to the custom of Mari, an animal was cut into pieces to signify the punishment in case of breach of the agreement.<sup>13</sup>

As already mentioned, the patriarch represented the clan toward foreigners, and sometimes sat together with other chiefs in intertribal justice (Genesis 31:37). This forum was called "the elders" of the tribe, even though some of its members may have succeeded to office long before old age. Their exact powers within the general assembly of the tribe were not yet defined.<sup>14</sup>

## **2. The Settlement**

The transformation of the Hebrew tribes into the nation of Israel is the subject matter of the four later books of the Pentateuch. By a series of miracles, God liberated the people from the slavery of Egypt. The Exodus must have taken place in the thirteenth century and its experience, together with the leadership of Moses, left a decisive impression on Hebrew society. The promulgation of the law by the covenant, uniting the people with God and with each other, established the new community on a religious as well as a national basis. The tradition of kinship and of

common descent was still preserved, even though foreign elements joined the new nation (Exodus 12:38; Numbers 11:4).<sup>15</sup>

The tabernacle of the congregation formed the center of the various tribes, clans, and households, who were all bound by a common allegiance to the overlord God. The centralized cult and law and their belief that they were a chosen nation were strong factors in the unification of the people and their preparation for the holy war of conquest. There exist, indeed, various similarities both in the religious community of the tribes of Israel and in the *amphictyony* of the Greek cities. Both were political unions founded on a common cultic tradition and based on a central sanctuary.<sup>16</sup>

One of the most important factors of unity was the “Common Law” of the community as laid down in the decalogue and the other codes. The tribal system having been integrated into the national framework, there was no longer room for family justice or *vitae necisque postestas* by the chief. The rebellious son or the adulterous daughter was henceforth committed for trial before the local court (Deuteronomy 21:19; 22:21) and the firstborn could not be disinherited without regard to the rules of succession (Deuteronomy 21:16).<sup>17</sup> A murderer, on the other hand, was still extradited to the kinsman of the victim, who was to avenge the blood after the official judgment had been passed (Exodus 21:12; Numbers 35:9–33; Deuteronomy 19:1–13).

A charismatic leader, such as Moses, Joshua, or one of the judges, took the place of the tribal chieftains in all respects—religious, legal, and military. Instead of the ancient family priesthood there appeared the national clergy of the Levites, controlled by a high priest of Aaronitic descent.<sup>18</sup> The community was represented by the “elders of Israel,” who were organized as a national institution besides the leader (Exodus 3:18; 4:29; 12:21; 24:1).<sup>19</sup> Moreover, the confederacy of the tribes of Israel acquired the character of a military organization. Each tribe was to contribute troops for the holy war under the leadership of its chiefs.<sup>20</sup>

As usual, Israelite society did not develop in one direction only, but the process of development took place in various cycles. Many generations were to pass before the national organization replaced the tribal structure. The period of the judges, following the earlier tendency toward centralization, appears as a reaction in the direction of particularism.<sup>21</sup> Meanwhile the conquest had brought the different tribes of Israel into contact with the native population of Palestine, part of which joined the religious community of the invaders. The change from a seminomadic, pastoral society to a territorial, sedentary one may have been another factor contributing to separatism. Moreover, the settlement among the Canaanites often prevented relations between various parts of Israel and operated in favor of a process of assimilation and cantonization.

On the other hand, the idea of the confederation of Israel, the common tradition and law, as well as the constant aggression from outside, encouraged national unity. Some of the tribal judges managed to lead the whole people, or at least its majority, so that they could be compared with the head of a state.<sup>22</sup> Being in the first instance military commanders who fought for the justice of their people, they then became administrative chieftains and judges in the proper sense. Their leadership was based on the assumption of divine inspiration, this being of special importance for the administration of the ordeal and the making of law.<sup>23</sup>

The need for a unified military command of the whole nation arose particularly after the attacks by the neighboring states. From the west came the Philistines, while the eastern border was invaded by Aram, Ammon, Moab, Midian, and Edom. Even in Palestine itself, a strong counterattack by the Canaanites took place in the Plain

of Jezreel about the middle of the twelfth century. During these wars the enemy was organized under a king, while Israel still kept to the tribal confederation. There was little hope for success unless a commander in chief directed the defense against the attackers. Israel's administration, developing from strategic needs, preserved for a long time the character of a military organization.<sup>24</sup>

### 3. Kingship

During the end of the period of the judges a tendency was felt toward extending the office for lifetime and connecting with it functions of judicial and political administration. While the first kings were still elected by a divine calling to save Israel from her enemy, their office became more and more of an institution. Thus the king built up an army and a service of officials, he organized the religious worship and administered justice.<sup>25</sup>

The first attempt at establishing the monarchy in Israel was made during the leadership of Gideon in the defensive war against the Midianites (twelfth–eleventh century). He had united the tribal forces of a considerable part of Israel and liberated his people from the nomadic bands. Being offered a hereditary kingship, Gideon motivated his refusal by reference to the divine kingship over Israel (Judges 8:22–23).<sup>26</sup> Neither he nor his son Jotham were willing to abolish the tribal concept of equality, but another son of his, Abimelech, tried to establish a city-state in Shechem according to the Canaanite system (Judges 9).

Since the conflicts with the Canaanite neighbors and with the eastern invaders were always of a temporary nature, they did not form a real challenge to Israelite particularism during the period of the judges. However, between 1180 and 1080 B.C.E. the Philistines had established themselves along the western coast and finally captured the greater part of the Hebrew territory including the central sanctuary of Shiloh. The confederacy of the tribes was thus robbed of its shrine and the only factor contributing to unity was the judicial office of Samuel (1 Samuel 4–7).

The resistance to the Philistine rule called for a national leadership, which was to abolish the vassalage of the various clans and tribes. A worthy candidate for the chief command was Saul, who had formerly led his tribe against the Ammonite attackers. Elected by divine inspiration to save his people, he was formally declared king of all Israel, thereby proclaiming the revolt against the Philistine yoke.

The introduction of the monarchy met, however, with the opposition of theocratic circles carrying on the tradition of the judges. Kingship was felt to be modeled on Canaanite forms and its prerogatives may, indeed, have been taken over from the surrounding city-states (compare Deuteronomy 17:14; 1 Samuel 8:5, 20).<sup>27</sup>

The passage of Deuteronomy 17 does not consider the innovation to be an offense against divine kingship, as expressed, for instance, in the warnings of Samuel in 1 Samuel 8. However, both passages stress the desire of the people and a somewhat unwilling confirmation on the part of God. The divine choice of Deuteronomy corresponds to the role of the prophets in the election of the kings. Deuteronomy, moreover, emphasizes the limitations placed upon the king rather than his powers: He could not be of foreign descent nor could he develop close relations with the royal court of Egypt and other states. He was to submit to the rule of the law and to remain close to his brethren. 1 Samuel 8, on the other hand, is part of an antimonarchical speech and gives a list of the royal privileges: The king might conscript the young men for war service, public works, and attendance at the royal court, while women could be called for service in his kitchen. He could also impose various taxes, requisition slaves and animals for the royal household, and give fiefs to his favorites.

In spite of the charismatic origin of Israelite kingship, it did not, originally, confer divine status upon the leader. The king was thought to be appointed and even adopted by God; he mediated between God and the people and represented them before each other. But there did not exist in Israel the idea of the “divine king” whose main function was to be head of the ritual. The Hebrew king, as well as the judge, was called upon to fulfil a political task, in the course of which he also took upon himself the religious functions.<sup>28</sup>

Though commissioned by God to administer justice (2 Samuel 14:17; 1 Kings 3:9), Israelite kings were not, at least in theory, to act as legislators. Deuteronomy 17:18–19, as mentioned above, emphasized their submission to priestly law. The stories of Naboth’s vineyard (1 Kings 21) and of David and Bathsheba (2 Samuel 11–12) were vivid illustrations of the rule of law, to be taken into consideration even by royalty.

On the other hand, in the fictitious case of the woman of Tekoa (2 Samuel 14:4–11), King David assumed the right of pardoning an offender against the decision of the local judges. This seems to be a remnant of the tribal *vitae necisque potestas*. Such a privilege made the king to a certain extent *fons iustitiae*, but the absence of any further mention pointed to its exceptional character.<sup>29</sup>

Hebrew kingship was based on two covenants that defined the duties of the crown toward God and toward the people. The king’s relationship to the divinity was conceived as that of a vassal toward his overlord. He was installed in the office by divine election, on condition that he remain loyal to God and keep his laws (2 Samuel 23:5; Psalm 132:12). Whenever the king transgressed the terms of this covenant, he could be criticized by priests and prophets. Should he pay no heed to the warning, the prophet might even choose another king, whom he thought more suitable. God would then be assumed to have rejected the unworthy ruler and to have elected a better one in his place.

The other covenant defined the king’s obligations toward the nation and fulfilled the function of a modern constitution (2 Samuel 3:21; 5:3; 2 Chronicles 23:3). The various conditions were probably recited at the accession to the throne (Judges 9:15; 1 Samuel 10:25 referring to 8:11). Psalms 72 and 101, which list the royal responsibilities, could be examples of such proclamations.<sup>30</sup> The final popular blessing of “long live the king” (1 Samuel 10:24; 2 Samuel 16:16; 1 Kings 1:25, 34; 2 Kings 11:12) expressed his recognition by the people. By acclaiming the king, they furnished the democratic legitimation of his rule, even though he might be chosen beforehand by divine inspiration or decision.<sup>31</sup>

The introduction of the monarchy did not bring about the abolition of the former democratic institution. The temple of Jerusalem carried on the amphictyonic tradition of the tribes of Israel. So did the prophets, who emphasized the kingdom of God and the obligations of the temporal king toward the people. The assembly did not, probably, give only formal assent to the elected king but took an active part in the decision.

The elders of Judah or of Israel functioned on various occasions beside the king and they represented the people at his nomination (compare 1 Kings 12:12; 2 Kings 11:17).<sup>32</sup> Even as late as the reign of the last kings of Judah, the people were said to have made the appointment (2 Kings 14:21; 21:24; 23:30), though their decisions could be made only among the descendants of the Davidic house.<sup>33</sup>

As customary in the surrounding states, Hebrew kingship was linked to the dynastic system. While every judge had been called by God, there was no need for a corresponding election of every single king, provided that he belonged to the elected dynasty. Deuteronomy 17:20 speaks of the reign of the king and his sons; so does Judges

8:22, mentioning the offer of the crown to Gideon. Saul would have been succeeded by his son Jonathan but for the breakdown of sovereignty after the defeat by the Philistines.<sup>34</sup> Nevertheless, Saul's younger son, Ishba'al, inherited the greater part of the kingdom (2 Samuel 2:8–9), and David took his place only after a long civil war. The house of David reigned over the state of Judah for more than four hundred years.

Even in the state of Israel, the royal office, in theory, devolved from father to son, though this rule was often broken by revolutions. The title to the crown was acquired according to the law of inheritance, and a younger son became a candidate where the firstborn did not survive; in the absence of sons, a brother or uncle succeeded to the office. Freedom of testation, originating from tribal society, remained in force in the royal family. A king, accordingly, could appoint the worthiest of his sons to follow him to the throne.<sup>35</sup>

#### 4. Royal Administration

Hebrew kingship, as already mentioned, was subject to the rule of law and bound to respect the ancient equality of the people. In contrast to the Egyptian system of royal ownership,<sup>36</sup> the law of Israel attributed ownership of the land to God alone. The king could not, therefore, claim any private property except by law or custom.

Among the constitutional rights of the crown, it is true, the possibility of confiscating private lands and of giving them to the king's servants was mentioned (1 Samuel 8:14). This privilege must, however, have been qualified, as shown by the story of Naboth's vineyard. Ahab, on this occasion could not take the property until the owner was found guilty of blasphemy and *lèse majesté* (1 Kings 21:6, 15; compare Exodus 22:27; 2 Samuel 19:21).<sup>37</sup> In practice the kings of Israel and Judah did not always respect the rights of private property. Ezekiel 45:7–8; 46:18, therefore, dedicated part of his program to the solution of this problem.

Moreover, there was no clear distinction between royal and public property; the king was contractor for public works and all surpluses belonged to him. Besides the estate of the corn, there existed the treasure of the temple and the property acquired therewith. However, the king, being trustee of this treasure (compare 2 Kings 12), could dispose of it at his discretion (1 Kings 15:18; 2 Kings 16:8; 18:15). The royal estate usually provided also the daily sacrifices and the king appointed or dismissed the high priest (2 Samuel 8:17; 20:25; 1 Kings 2:27; 2 Chronicles 31:3; Ezekiel 45:16–17). The temple, originally, had the character of a royal chapel, the land having been acquired by the king and the building having been erected by his command.<sup>38</sup>

On his accession to the throne, the king took all his predecessor's property, though sometimes he returned it *ex gratia* to the latter's heirs (2 Samuel 9:7; 16:4; 19:30). According to most ancient tribal concepts, the wives and concubines of the predecessor were part of the estate and devolved upon the monarch in power. Taking the former king's wives, thus, became a sign of assuming command (2 Samuel 3:7; 12:8; 16:21; 1 Kings 2:22).<sup>39</sup>

Public works were carried out and the royal household was maintained by slaves or by freemen coerced into forced labor (1 Samuel 8:11–12). The king could exempt a favorite family from service by making its members "freemen" (1 Samuel 17:25). The system was used for the maintenance of the king's highways (compare Numbers 20:17) and for various building projects (1 Kings 9:15–25; 11:28; 15:22). The demand grew with the ambition of the crown and was the cause of rebellion (1 Kings 12).<sup>40</sup>

For the upkeep of the royal household and of the standing army, the king levied taxes in kind on agricultural production (1 Samuel 8:15–17).<sup>41</sup> Various jar stamps illustrating these payments have been discovered.<sup>42</sup> With



the growth of commerce, taxes were imposed in gold and silver to meet the ordinary and extraordinary needs of the crown (Deuteronomy 17:17; 2 Kings 15:19–20). King Jehoiakim even instituted a capital levy graduated “according to the assessment of everyone,” which points to quite an advanced technique (2 Kings 23:35).

The royal revenue was probably one of the main aims of the civil service created by the kings, as shown by the lists of officials during the reigns of David (2 Samuel 8:15–18; 20:23–26) and Solomon (1 Kings 4). According to 1 Chronicles 26:29–32, the Levites were appointed to civil as well as religious offices, “for all the work of God and for the service of the king.” The classification pointed to the existence of a distinction between religious and secular affairs at the lower levels of the administration. The same distinction appeared in the dual chairmanship of the central court instituted by Jehoshaphat and given to the chief priest or to the ruler of the house of Judah respectively (2 Chronicles 19:11).<sup>43</sup>

The royal administration included the organization of the clergy as well as the civil service. Occupying the role of the ancient tribal chief, the king was *ex officio* master of the cult (1 Samuel 13:9; 2 Samuel 6:13–21; 24:25; 1 Kings 3:4, 15; 8:5, 62–64; 9:25).<sup>44</sup> Hence the clergy were considered to be part of the civil service, appointed and dismissed by the king (1 Kings 2:27, 35).<sup>45</sup>

On important occasions, the king was supposed to consult the elders of the people whose opinion had also been given at his nomination. Both David and Solomon had elders in their palaces who apparently advised them on state affairs (2 Samuel 12:17; 1 Kings 12:6). Consultation with this body of elders took place also under Absalom (2 Samuel 17:4), Rehoboam (1 Kings 12:6), and Ahab (1 Kings 20:7), while Solomon and Josiah convened the elders at extraordinary religious occasions (1 Kings 8:1; 2 Kings 23:1). Finally, mention should be made of Zedekiah’s complaint, though made toward the princes and not the elders, about the punishment of Jeremiah: “Behold he is in your hands, for the king can do nothing against you” (Jeremiah 38:5).<sup>46</sup>

Political power, it is true, was vested in the king only, but wisdom required him to seek the counsel of the representatives of the people.

## 5. Local Government

During the settlement in the land of Canaan, the tribes and clans of Israel gradually lost their kinship ties and developed a new local structure. The ancient tribal assembly assumed a territorial character and became the assembly of all householders, though often both organizations remained identical (compare Jeremiah 3:14). The free burghers of a town formed the local *’edah*, discussed all public affairs, and functioned as a court of justice. This form of “primitive democracy” has been found to be similar to the Babylonian *pubrum*, the Athenian *ekklesia*, and the Roman *comitia*, and may indeed be assumed to have existed in many other societies.<sup>47</sup>

The local assembly functioned as a court of criminal justice (Numbers 35:12), out of which developed in the course of time the court of the local elders. In the Aramaic papyri, the local community hears declarations of divorce and may be assumed also to have had judicial functions in such cases (compare Proverbs 5:14; Ezekiel 16:40).<sup>48</sup>

Another term used with this connotation is *the people of the gate*, who were present whenever important business was transacted (Genesis 23:10; Ruth 4:2, 11). Similar to the Akkadian usage, this term became a synonym of the court in general; the place before the gate formed the natural locality for the administration of justice

(Deuteronomy 17:8; Amos 5:16; Zechariah 8:16).<sup>49</sup> A practical example for a trial by the people is that of Jeremiah (Jeremiah 26).

By the time of Deuteronomy, it seems, judicial functions had already been transferred from the local assembly to the “elders of the town.” Administering justice in cases of murder, insubordination of a son, and domestic strife (Deuteronomy 19:12; 21:3, 20; 22:15; 25:7; compare Joshua 20:4; Ruth 4:2), they were also responsible for the religious and political allegiance of the town.

Especially during the period of the judges, the local elders played an important role in the political life of the tribes (1 Samuel 11:3; Joshua 9:11; Judges 8:6, 14; 9:46; 11:5). But even under the monarchy they could be asked to fulfil such a function (1 Kings 21:8; 2 Kings 10:1).<sup>50</sup> Again, the position of the local elders in Israel is similar to that of their counterparts in other societies. Besides the usual title of *zeqenim*, they were also called ‘*anashim, be’alim* (masters), or *shelitim* (rulers) of the city.

The two capitals, Jerusalem and Samaria, were governed also by royal officials who functioned above or beside the local representatives.<sup>51</sup> The royal council may be assumed to have been identical with the elders of the capital.

There is no indication of the powers given to the local authorities, such as the right of taxation and legislation. Local defense, including the maintenance of the walls and the organization of guard duty, must, however, have been among their responsibilities (Psalm 127:1; Song of Solomon 3:3; 5:7).

In the absence of a centralized state system, postexilic Jewry, again, stressed the local government to meet the needs of the community. Besides the local judges appointed by the chief (compare Ezra 7:25), each town had its own elders. They were charged by Ezra with police duties in matters of mixed marriages (Ezra 10:14), as probably in other religious affairs.

The local population used to meet on market days and on Sabbath in the synagogue to discuss common affairs as well as to pray. Again, the “primitive democracy” turned in the course of time into a system of local government by *archontes*, as mentioned, for instance, in the books of Sirach and Judith.

## 6. The Synagogue

The new settlement around Jerusalem, following the declaration of Cyrus in 538 B.C.E., was organized on the basis of self-government under Persian rule. While political power was vested in the governor of Judaea, who was sometimes Jewish, the community of returned exiles was led by the high priest. The latter was probably chosen by the priests and his election confirmed by the governor.<sup>52</sup>

Owing to the intervention of Jewish notables in the Persian capital, the spiritual head of the community was invested with certain powers specified in a royal edict. An example for the type of privileges granted by the king is given in Ezra 7:12–26, which includes the following provision: “And you Ezra, according to the wisdom of your God which is in your hand, appoint magistrates and judges who may judge all the people in the province beyond the river, all such as know the laws of your God; and those who do not know them, you shall teach. Whoever will not obey the law of your God and the law of the king, let judgment be strictly executed upon him, whether for death or for banishment (beating?) or for confiscation of goods or for imprisonment.”

This declaration was in line with the policy of the Persian emperors, according to which conquered peoples retained their own legal systems in addition to that of their ruler. Some of the laws promulgated by Darius were based on the Code of Hammurabi, and his legislation for Egypt was a restatement of the old native rules.<sup>53</sup> For the same reason, the Jews of Egypt were instructed by Darius II to keep the Passover.<sup>54</sup>

Besides the principle that the native law should apply to the settlers, provision was also made for judicial autonomy, including the right to impose the common forms of punishment. The second alternative penalty *sheroshi* represented either banishment or beating;<sup>55</sup> the other three penalties mentioned in the edict given to Ezra were not known in earlier Jewish law.

After the head of the community (in Ezra 6:7, called *pehah* like the governor of the province) came “the elders” (compare 5:5, 9; 6:7–8, 14), or “the officials and the elders” (10:8). Accordingly, the Jews of Yeb, in their petition concerning the destruction of the local temple, wrote “to Johanan the high priest and his colleagues, the priests who are in Jerusalem, and to Ostanes, the brother of Anani, and the nobles of the Jews.”<sup>56</sup>

The law concerning foreign women was proclaimed in a public assembly of “all the men of Judah and Benjamin” (Ezra 10:8). The covenant was signed on behalf of the people by eighty-three officers, Levites, and priests, followed by the chiefs of the people (heads of the laity households), as preserved in the list of Nehemiah 10.<sup>57</sup>

Similar assemblies were convened whenever the need arose, especially to promulgate religious regulations. It is perhaps from these assemblies that the Great Synagogue, mentioned at the beginning of *Mishnah 'Avoth*, developed. When the number of participants became too large, the assembly of representatives, the *gerusie* or the *synedrion*, took its place.<sup>58</sup>

## Notes

1. For the history of the patriarchal period see, among other things, Max Weber, *Ancient Judaism*, ed. and trans. Hans H. Gerth and D. Martindale (Glencoe: Free Press, 1952); Johannes Pedersen, *Israel: Its Life and Culture* (London: Oxford University Press, 1926–40); Roland de Vaux, *Revue Biblique* 53 (1946): 321ff.; Roland de Vaux, *Revue Biblique* 55 (1948): 321ff.; Roland de Vaux, *Revue Biblique* 56 (1949): 5ff.; Jacqueline Pirenne, *Archives d'Histoire du Droit Oriental* 4 (1949): 51–62; Roland de Vaux, *Ancient Israel: Its Life and Institutions*, trans. John McHugh (London: Darton, 1961); G. Earnest Wright, ed., *The Bible and the Ancient Near East* (Garden City, N.Y.: Doubleday, 1961). Compare C. Sanchez del Rio, *Temis* (Zaragoza: Revista de la Universidad, 1958): 75.
2. Cyrus H. Gordon, “Abraham and the Merchants of Ur,” *Journal of Near Eastern Studies* 17 (1958): 28–31; W. F. Albright, “Abraham the Hebrew,” *Bulletin of the American Schools of Oriental Research* 163 (1961): 36–54; but see Ephraim A. Speiser, “The Verb *SHR* in Genesis and Early Hebrew Movements,” *Bulletin of the American Schools of Oriental Research* 164 (1961): 23–28.
3. Georges Boyer, *Archives Royales de Mari* 8 (Paris: Imprimerie Nationale, 1958); Ephraim A. Speiser, “New Kirkuk Documents Relating to Family Laws,” *Annual of the American Schools of Oriental Research* 10 (1930): 1–74; Robert H. Pfeiffer and Ephraim A. Speiser, “One Hundred New Selected Nuzi Texts,” *Annual of the American Schools of Oriental Research* 16 (1936): 57–130; Jean Nougayrol, *Palais Royal d'Ugarit* 3 (Paris: Imprimerie Nationale, 1955). Compare the papers of Cyrus H. Gordon, George E. Mendenhall, Ephraim A. Speiser, Albrecht Goetze, William F. Albright, Manfred R. Lehman, Abraham Malamat and others, in *Biblical Archaeologist; Bulletin of the American*

*Schools of Oriental Research; Journal of Near Eastern Studies; Journal of the American Oriental Society*; Ephraim A. Speiser, "Garments Made White" (in Hebrew), in *Encyclopaedia Miqra'it* (Jerusalem: Bialik, 1950), 3:60; Abraham Malamat, "Management" (in Hebrew), in *Encyclopaedia Miqra'it* 4:559; and J. C. L. Gibson, "Light from Mari on the Patriarchs," *Journal of Semitic Studies* 7 (1962): 44ff.

4. Compare de Vaux, *Ancient Israel*, 15; Raphael Patai, *Family, Love and the Bible* (London: Macgibbon and Kee, 1960).

5. David Daube, *Studies in Biblical Law* (Cambridge: Cambridge University Press, 1947), 202ff.; Ze'ev W. Falk, "Collective Responsibility, in the Bible and the Aggada" (in Hebrew), *Tarbiz* 30 (1961): 16ff.; compare Pedersen, *Israel*, 1–2:29ff. and p. 67.

6. Compare Pedersen, *Israel*, 1–2:378ff.; de Vaux, *Ancient Israel*, 26ff.; see also Godfrey R. Driver and John C. Miles, *The Babylonian Laws* (Oxford: Clarendon, 1952–55), 1:317, 501; Ephraim Neufeld, *The Hittite Laws* (London: Luzac, 1951), 129; Daube, *Studies in Biblical Law*, 39ff.; Chaim Z. Hirschberg, "Blood Vengeance" (in Hebrew), in *Encyclopaedia Miqra'it*, 2:392; Klaus Koch, "Der Spruch, 'Sein Blut bleibe auf seinem Haupt' und die israelitische Auffassung vom vergossenen Blut," *Vetus Testamentum* 12 (1962): 396–416. For parallels in Greek law, see John W. Jones, *The Law and Legal Theory of the Greeks* (Oxford: Clarendon, 1956), 251–52.

7. Compare David R. Mace, *Hebrew Marriage* (London: Epworth, 1953), 20ff.; de Vaux, *Ancient Israel*, 26; Patai, *Family*, 23ff.; Ze'ev W. Falk, "Endogamy in Israel" (in Hebrew), *Tarbiz* 32 (1963): 19–34. See also Pirenne, *Archives d'Histoire du Droit Oriental* 4 (1949): 51; and pp. 129–31.

8. De Vaux, *Ancient Israel*, 40–41; C. Sanchez del Rio, *Guia y esquemas para una Introducci—n al estudio del Derecho hebreo* (Zaragoza: Revista de la Universidad, 1957–58), 52ff.; Abraham Malamat, "Mari and the Bible," *Journal of the American Oriental Society* 82 (1962): 149. Compare pp. 84–85. For comparison with other legal systems see Paul Vinogradoff, *Outlines of Historical Jurisprudence* (Oxford: Oxford University Press, 1920), 321ff.

9. Compare *ana ittishu* A1–12; Codex Hammurabi 168–69; Driver and Miles, *Babylonian Laws*, 1:348–49; J. Klima, *Journal of Juristic Papyrology* 4 (1950): 275–88; Pirenne, *Archives d'histoire du Droit Oriental* 4 (1949): 51; Reuven Yaron, "Review of Ze'ev W. Falk's, 'Marriage and Divorce, Reforms in the Family Law of German-French Jewry,'" *Tijdschrift voor Rechtsgeschiedenis* 30 (1962): 243–51 (*vitae necisque potestas*); and p. 165, below.

10. Compare Codex Hammurabi 170; Ze'ev W. Falk, "Testate Succession in Jewish Law," *Journal of Jewish Studies* 12 (1961): 67–77; p. 171, below.

11. See pp. 153–54, below.

12. Compare pp. 166–67.

13. Compare p. 89.

14. See C. Umhau Wolf, "Traces of Primitive Democracy in Ancient Israel," *Journal of Near Eastern Studies* 6 (1947): 98–108; Robert Gordis, in *Alexander Marx Jubilee Volume* (New York: Jewish Theological Seminary of America, 1950), 369ff.; McKenzie, *Analecta Biblica* 10 (1959): 388ff.; J. P. M. van der Ploeg, "Les anciens dans l'Ancien Testament," in *Lex Tua Veritas: Festschrift für Hubert Junker* ed. Heinrich Gross and Franz Mussner (Trier: Paulinus 1961), 175–91; see p. 37.

15. On this period in general, see Pirenne, *Archives d'Histoire du Droit Oriental* 4 (1949): 62–75; Albrecht Alt, *Kleine Schriften zur Geschichte des Volkes Israel* (Munich: Beck, 1953), 1:89ff.; George E. Mendenhall, "The Hebrew Conquest of Palestine," *Biblical Archaeologist* 25 (1962): 11–20; compare Siegfried Herrmann, *Theologische Literaturzeitung* 87 (1962): 561–62; Samuel E. Loewenstamm, "The Exodus" (in Hebrew), in *Encyclopaedia Miqra'it*, 3:754.
16. Compare Martin Noth, *The History of Israel* (New York: Harper, 1958), 85ff.; de Vaux, *Ancient Israel*, 143–44; but see Harry M. Orlinsky, *Oriens Antiquus* 1 (1962), 11–20; compare Herrmann, *Theologische Literaturzeitung* 87 (1962): 561–62.
17. Compare Codex Hammurabi 168–69.
18. Compare de Vaux, *Ancient Israel*, 2:195ff.; Menachem Haran, "Priests" (in Hebrew), in *Encyclopaedia Miqra'it* 4:14–39.
19. Compare p. 26, and Yehoshua M. Grintz, *Zion* 26 (1961): 74ff.
20. Compare George E. Mendenhall, "The Census Lists of Numbers 1 and 26," *Journal of Biblical Literature* 77 (1958): 52–66.
21. On this period see Noth, *History of Israel*, 85ff.; Orlinsky, *Oriens Antiquus* 1 (1962): 11ff. On the judge, see de Vaux, *Ancient Israel*, 223ff.
22. See, for instance, Jan Dus, *Archiv Orientální* 31 (1963): 444–69.
23. Compare Weber, *Ancient Judaism*. On the term *charisma* in this context compare Orlinsky, *Oriens Antiquus* 1 (1962): 13.
24. Compare Pedersen, *Israel*, 3–4:33ff.; de Vaux, *Ancient Israel*, 141ff.; Neufeld, "Emergence of a Royal-Urban Society," 31–53, and compare Jacqueline Pirenne, *Archives d'Histoire du Droit Oriental* 5 (1950–51): 99–131. On the war of conquest see Samuel Yeivin, "Conquest of the Land" (in Hebrew), in *Encyclopaedia Miqra'it*, 4:79–102.
25. On the transition from judges to kings, see Walter Beyerlin, "Das Königscharisma bei Saul," *Zeitschrift für die alttestamentliche Wissenschaft* 72 (1961): 186ff.; J. Alberto Soggin, "Charisma und Institution im Königtum," *Zeitschrift für die alttestamentliche Wissenschaft* 75 (1963): 54–65; on kingship in general, compare de Vaux, *Ancient Israel*, 145, 155, 174–76; Jacob Liver, "King" (in Hebrew), in *Encyclopaedia Miqra'it*, 1:1092; Pedersen, *Israel*, 3–4:33ff.; Jacqueline Pirenne, "Archives d'Histoire du Droit Oriental," *Revue Internationale des Droits de l'Antiquité* 1 (1952): 33–86; 2 (1953): 109–49.
26. Compare Martin Buber, *Königtum Gottes* (Berlin: Schocken, 1936); Schmidt, "Das Königtum Baals," *Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft* 80 (1961): 29ff.; Karl H. Bernhardt, *Vetus Testamentum Supplement* 8 (1961): 114ff.
27. Isaac Mendelsohn, "Samuel's Denunciation of Kingship in the Light of the Akkadian Documents from Ugarit," *Bulletin of the American Schools of Oriental Research* 143 (1956): 17–22; Isaac Mendelsohn, "Authority and Law in Canaan-Israel," *Journal of the American Oriental Society Supplement* 17 (1954): 25–33; compare André Caquot,

“Remarques sur la ‘loi royale’ du Deuteronome (17:14–20),” *Semitica* 9 (1959): 21–33; Giorgio Buccellati, *Bibbia et Oriente* 1 (1959): 99ff.

28. Compare Bernhardt, *Vetus Testamentum* Supplement 8 (1961): 67–113.

29. Compare Yaron, “Review of Ze’ev W. Falk’s, ‘Marriage and Divorce,’” 243ff. See, however, Schapera, “The Sin of Cain,” *Journal of the Royal Anthropological Institute* 85 (1955): 33ff., who refers to the custom freeing fratricide from the death punishment.

30. De Vaux, *Ancient Israel*, 145, 155; Georg Fohrer, “Der Vertrag zwischen König und Volk in Israel,” *Zeitschrift für die alttestamentliche Wissenschaft* 71 (1959): 1–22.

31. Martinus C. de Boer, “Vive Le Roi,” *Vetus Testamentum* 5 (1955): 225–31; de Vaux, *Ancient Israel*, 3; J. Alberto Soggin, “Der Judäische ‘AM-HA’ Areš und das Königtum in Juda,” *Vetus Testamentum* 13 (1963): 187–95; Abraham Malamat, “Kingship and Council in Israel and Sumer: A Parallel,” *Journal of Near Eastern Studies* 22 (1963): 247–53.

32. Malamat, “Kingship and Council,” 247–53; see pp. 36–37.

33. Compare Soggin, “Der Judäische ‘AM-HA’ Areš,” 187–95.

34. Otherwise see Julian Morgenstern, “David and Jonathan,” *Journal of Biblical Literature* 78 (1959): 322–25; de Vaux, *Ancient Israel*, 146.

35. Compare de Vaux, *Ancient Israel*, 149, 156–57.

36. Genesis 47:20; Erwin Seidl, *Einführung in die ägyptische Rechtsgeschichte* (Glückstadt: Augustin, 1939), 46.

37. Compare Samuel E. Loewenstamm, “Israel Exploration,” *Qiryat Sefer* 34 (1959): 49; de Vaux, *Ancient Israel*, 191.

38. De Vaux, *Ancient Israel*, 215; Jacob Liver, “King” (in Hebrew), in *Encyclopaedia Miqra’it*, 4:1093.

39. Matitahu Tsevath, “Marriage and Monarchical Legitimacy in Ugarit and Israel,” *Journal of Semitic Studies* 3 (1958): 237–43.

40. Isaac Mendelsohn, “On Corvée Labor in Ancient Canaan and Israel,” *Bulletin of the American Schools of Oriental Research* 167 (1962): 31–35.

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42. Compare Maisler, *Journal of the Palestine Oriental Society* 13 (1947): 105–14; Reuben Aharoni, *Eretz Israel* 6 (1960): 56–60.

43. De Vaux, *Ancient Israel*, 195ff., 205.

44. De Vaux, *Ancient Israel*, 174–75.

45. De Vaux, *Ancient Israel*, 2:239–40.

46. McKenzie, *Studia Biblica et Orientalia* (Rome: Pontificio Instituto Biblico, 1959), 1:388–406; van der Ploeg, “Les anciens dans l’Ancien Testament,” 175–91; Malamat, “Kingship and Council in Israel and Sumer: A Parallel,” 247–53.
47. Ludwig Köhler, *Hebrew Man* (London: SCM, 1956), 143ff.; Wolf, “Traces of Primitive Democracy in Ancient Israel,” *Journal of Near Eastern Studies* 6 (1947): 98–108; Gordis, *Alexander Marx Jubilee Volume*, 1: 369–88; McKenzie, *Analecta Biblica* 10 (1959): 388–406; Grintz, *Zion* 26 (1961): 74.
48. Falk, “Testate Succession,” 166; Reuven Yaron, *Introduction to the Law of the Aramaic Papyri* (Oxford: Clarendon, 1961), 54.
49. Ephraim A. Speiser, “Coming and Going at the City Gate,” *Bulletin of the American Schools of Oriental Research* 144 (1956): 20–23; Geoffrey D. Evans, “‘Coming’ and ‘Going’ at the City Gate: A Discussion of Professor Speiser’s Paper,” *Bulletin of the American Schools of Oriental Research* 150 (1958): 28–33; de Vaux, *Ancient Israel*, 235ff.
50. See Köhler, *Hebrew Man*, 143ff.; Wolf, “Traces of Primitive Democracy in Ancient Israel,” 98–108; Gordis, in *Alexander Marx Jubilee Volume*, 1:369–88; McKenzie, *Analecta Biblica* 10 (1959): 388–406; Grintz, *Zion* 26 (1961): 74.
51. For Near-Eastern parallels, see de Vaux, *Ancient Israel*, 108, 212; Driver and Miles, *Babylonian Laws*, 1:493; Seidl, *Einführung*, 32.
52. On the relations between the governor and the high priest, see Josephus, *Antiquities* 11.7.1, 297–301, and on the institutions in general, see Jacqueline Pirenne, *Revue Internationale des Droits de l’Antiquité* 1 (1954): 195ff. On the supervision of priestly appointments in Egypt see Spiegelberg, *Sitzungsberichte der preussischen Akademie der Wissenschaften* 64 (1928): 604ff.
53. Compare Nathaniel J. Reich, “The Codification of the Egyptian Laws by Darius,” *Mizraim* 1 (1933): 180; Kraeling, *The Brooklyn Museum Aramaic Papyri* (New Haven: Yale University Press, 1953), 30.
54. Arthur E. Cowley, ed. and trans., *Aramaic Papyri of the Fifth Century B.C.* (Oxford: Clarendon, 1923), 60–65.
55. Ze’ev W. Falk, “Exodus 21:6,” *Vetus Testamentum* 9 (1959): 88.
56. Cowley, *Aramaic Papyri of the Fifth Century B.C.*, 114.
57. On the terms *elders*, *officers*, *nobles*: Hans Zucker, *Studien zur jüdischen Selbstverwaltung im Altertum* (Berlin: Schocken, 1936), 22ff.
58. Compare George F. Moore, *Judaism in the First Centuries of the Christian Era* (Cambridge: Harvard University Press, 1966), 33ff., Sidney B. Hoenig, *The Great Sanhedrin* (Philadelphia: Dropsie College, 1953).

# Administration of Justice

Ze'ev W. Falk

## 1. The Courts

Besides the local assembly or council of elders, there arose several other types of law-court. Similar to the practice in other ancient societies, the Hebrew clergy exercised various judicial functions.<sup>1</sup> However, they do not appear to have been part of the local bench but to have formed special tribunals in the sanctuary (Deuteronomy 17:9; 19:17; 21:5; 33:10; Ezekiel 44:24). Originally the priests were perhaps satisfied with the jurisdiction in religious matters, but in the course of time they came also to hear civil cases, especially where the matter had to be submitted for divine decision.

The administration of the oracle was ascribed to prophets and to priests (Exodus 18:15, 19; 28:15, 30). Thus the cases of the blasphemer and of the offender against the Sabbath rules were submitted to divine decision (Leviticus 24:12; Numbers 15:34). The Hebrew *parash* is here the synonym of the Akkadian *parashu*, meaning, to cut, to decide.<sup>2</sup> In a similar way, a civil case of inheritance by females was brought before God for individual ruling (Numbers 27:5).

Moses and the high priest were said to have acted alone; priests in general, however, were mentioned in the plural. This was in accordance with Egyptian as well as Babylonian practice<sup>3</sup> and was also followed by later Jewish tradition.<sup>4</sup> 1 Chronicles 23:4 and 2 Chronicles 19:11; 34:13 described the judicial functions of the Levites, who probably served as scribes and officers of the courts, composed of priests.<sup>5</sup>

The major part of judicial work, however, was probably done by special judges. In the patriarchal age, this function was part of the prerogatives of the chief. Their successors were the tribal judges of the pre-monarchical period. The office of judge, it is well known, was not acquired by appointment but was rather the result of a charismatic personality. Even military commanders of the lower ranks acted *ex officio* in a judicial capacity (Exodus 18:21). Under the monarchy both military and judicial appointments were made by the Crown. This leads us to assume that the judges mentioned in Deuteronomy 16:18; 25:2 were royal officials. The establishment of royal courts was indeed ascribed to King Jehoshaphat:

He appointed judges in the land throughout all the fortified cities of Judah, city by city, and said to the judges: Consider what you do, for you judge not for man, but for God, He is with you in giving judgment. Now then, let the fear of God be upon you, take heed what you do, for there is no perversion of justice with God, our God, or partiality, or taking bribes. Moreover in Jerusalem Jehoshaphat appointed certain Levites, priests and heads of families of Israel, to give judgment for God and to decide disputed cases. They returned to (had their seat at) Jerusalem. And he charged them: Thus you shall do in the fear of God, in faithfulness, and with your whole heart. Whenever a case comes to you from your brethren who live in their cities, concerning bloodshed, law or commandment, statutes or ordinances, then you shall instruct them, that they may not incur guilt before God and wrath may not come upon you and your brethren. Thus you shall do, and you will not incur guilt. And behold, Amariah the chief-priest is over you in all matters of God; and Zebadiah the son of Ishmael, the governor of the house of Judah, in all the king's



matters; and the Levites will serve you as officers. Deal courageously, and may God be with the upright!

(2 Chronicles 19:5–11)<sup>6</sup>

The judicial system described above is similar to that recorded in Deuteronomy 26:18 and 17:8–13 and ascribed to the Mosaic age. Besides the local elders, special judges appear to have been commissioned by the central authorities to sit as courts of first instance. In Jerusalem, a court consisting of priests, Levites, and Israelites was established to hear cases referred to it by the lower courts.

The local courts seem to have consisted of a single judge, sitting perhaps together with the elders.<sup>7</sup> In the penal actions described in Numbers 25:5 and Deuteronomy 25:1–3, the judge acted alone, while the punishment of false witnesses was referred to a number of judges, to God, and to the priests (Deuteronomy 19:17), i.e., to the court at the central sanctuary. In the same way, the expiation of an unsolved murder was carried out by a commission of elders and judges appointed by the central court (Deuteronomy 21:2).

Deuteronomy 17:9, 12 mentions a single judge as sitting together with the priests and Levites in the supreme court. This is probably a reference to the president of the tribunal (e.g., Zebadiah the governor of the house of Judah) rather than to the number of the judges. It was he who presided when Crown cases, i.e., taxation and other worldly matters, were under consideration. Matters of God, which seem to have concerned the sanctuary and all its connected problems, were decided by a court sitting under the chairmanship of a priest.

A plurality of judges in the local courts is mentioned in Ezra 10:14, signifying the change that took place after the Babylonian exile. Henceforth a local judge did not act alone but as a member of a group; the reason was probably that judges were no longer appointed but elected by the community. Under the Persian rule, indeed, the local congregation often assumed judicial functions (compare Ben Sira 1:30; 7:7; 23:24; 42:11). Nevertheless, the priests still acted as teachers of the law and perhaps also as chairmen of lay tribunals (Ben Sira 45:17–18).

Above the various courts, the king constituted the highest judicial authority in the land. He replaced the ancient tribal chief and the judge of the pre-monarchical period. Application could be made to him whenever justice had been denied by a lower court. He could punish, on his own initiative, any criminal or political offender (1 Samuel 8:5; 2 Samuel 8:15; 12:1; 14:4; 1 Kings 3:9, 16; Psalm 72:1–4; Jeremiah 22:15–16).

Consequently, some of the royal symbols came to be symbols of justice. The throne was identified with the administration of justice and the hall in which it was placed served also as a court of law (1 Kings 7:7).<sup>8</sup> The local court, on the other hand, seems to have met in the open at the gates of the city, sometimes sitting together with the elders, sometimes without them. Perhaps the “place of justice” (Ecclesiastes 3:16) was a special court of law, though the Akkadian *bit dinim* (house of judgment) had no counterpart in biblical Hebrew.

## 2. Divine Judgment

Where witnesses could not be produced by either party, the matter was referred, by Hebrew as well as by other laws, to divine decision. Mention has been made above of the decisions delivered by God to Moses and the priests. Such rulings were obtained after trial by ordeal, by taking the risk that a curse would fall upon the guilty party, by taking an oath or by lot.<sup>9</sup>

*a. Curse and Oath.* For judicial purposes, a curse used to be imposed to examine the guilt or innocence of a known accused or to punish an unknown wrongdoer. In Numbers 5:11–31, if a husband suspected his wife of adultery,

she was tried by ordeal and by a curse.<sup>10</sup> A plaintiff could likewise impose a curse on a recalcitrant witness who was withholding evidence on some point in issue (Leviticus 5:1).<sup>11</sup> Divine punishment was called upon an unknown thief by formulae described in Judges 17:2, 1 Kings 8:31, Zechariah 5:3, and Proverbs 24:24.

An oath was sworn by the defendant in order to exculpate himself from the plaintiff's allegations. Exodus 22:7–8 shows a bailee declaring that the goods deposited were stolen from him. To absolve himself from liability and put the loss upon the owner, the bailee must draw close to God to affirm his innocence. This obviously took the form of an oath.<sup>12</sup> The same point was stated more explicitly with regard to the shepherd, who had no witness to prove his innocence (Exodus 22:9–10).<sup>13</sup> According to Leviticus 6:2–3, a person alleged to have misappropriated a deposit, acquired goods by force, or wrongfully converted to his own use a lost article, was required to take an oath. Of a similar character was the assertion of the eastern tribes concerning their altar (Joshua 22:21–34) and the oath that the kings were required to swear when charged with having concealed Elijah (1 Kings 18:10).<sup>14</sup> Exculpatory oaths were also used among the Jews of Elephantine.<sup>15</sup>

The formula of the oath was similar to that of the curse. Originally, the person taking it would specify the consequences, should his words prove false (e.g., Isaiah 65:15; Jeremiah 29:22). In order to avoid bad omens, the formula then became a mere paraphrase: "God do thus to me and more also, if . . ." (e.g., 1 Samuel 3:17). The same idea was expressed in another form by a positive conditional sentence, where a negative assertion was intended and by a negative conditional sentence in the case of a positive assertion. The person swearing "If . . ." or "if not . . ." omitted the bad consequences to befall him should his sworn statement prove false.<sup>16</sup>

As this oath formula was based on a curse, it could be called "an oath to do evil" (Leviticus 5:4; Psalm 15:4), viz., to do evil to the perjurer.<sup>17</sup> The opposite formula, i.e., the oath to do good, seems to have been based upon the custom of blessing the receiver of the oath. The general phrase: "As you live . . ." (e.g., 1 Samuel 1:26; 17:55; 20:3; 25:26; 2 Samuel 11:11; 2 Kings 2:2; 4:30) was probably a wish for the well-being of the person spoken to, as if one said, "God do such and such good to you and more also, if it is the truth that . . ."

Besides these formulae, an oath could also be made effective by mentioning the divine name. God was called as a witness in promissory oaths and as a judge in declaratory and exculpatory ones. A simple assertion "that . . ." was in the end also considered to be a binding oath.<sup>18</sup>

*b. Prayer and Confession.* Some forms of biblical prayer were clearly influenced by legal procedure. Hebrew thought, as already mentioned, described the relations between God and man under the rule of law, and from there resulted some specific patterns of worship.<sup>19</sup>

The usual term for prayer, *tefilah*, was derived from the root *palal*, meaning to act as judge, to assess, to estimate, and to intervene.<sup>20</sup> Originally a person praying to God asserted his righteousness and asked God to do justice. The supplicant would also mention his merits (e.g., 2 Kings 20:2–3), the good deeds of his ancestors, or the promise made to them (e.g., 1 Kings 8:23–28). Various passages in Job (e.g., 10) reflect these ideas, which also form the background of a number of psalms (e.g., Psalm 35:1; 43:1; 119:154; Lamentations 3:59; Micah 7:9).

Another term describing both a confession and a doxology was *todah* (e.g., Joshua 7:19; 1 Kings 8:33, 35). Biblical law, in common with other legal systems, asked a person sentenced to death to make a public confession of his sin and to praise God.<sup>21</sup> This was necessary not only to effect the atonement but also to make the judges sure of the

correctness of their decision. The term today would likewise express the thanksgiving offering and thanksgiving in general (Leviticus 7:12–13; Psalm 26:7; 42:5).

The concepts of ordeal and legal procedure can be traced in some of the hymns composed for the accompaniment of the thanks offering. Though expressing mainly the gratitude of the offerer for divine deliverance, the sacrifice also probably demanded an act of confession. The ritual of most sacrifices included the laying of hands upon the head of the victim (Leviticus 1:4; 3:2, 8; 4:4, 15, 24, 29, 33; 16:21). Only in the ritual of atonement is mention made of a confession, although a similar declaration was probably part of the ritual of the guilt offering (Leviticus 5:5) and of the burnt offering (Leviticus 1:4).<sup>22</sup> In the words of Philo,

in the laying of hands on the head of the animal we find the clearest possible type of blameless actions and of a life saddled with nothing that leads to censure but in harmony with the laws and statutes of nature. For the law desires, first, that the mind of the worshipper should be sanctified by exercise in good and profitable thoughts and judgements; secondly, that his life should be a consistent course of the best actions, so that as he lays his hands on the victim, he can boldly and with a pure conscience speak in this wise: "These hands have taken no gift to do injustice, nor shared in the proceeds of plunder or overreaching, nor being soiled with innocent blood. None have they maimed or wounded, no deed of outrage or violence have they wrought. They have done no service of any other kind at all which might incur arraignment or censure, but have made themselves humble ministers of things excellent and profitable, such as are held in honour in the sight of wisdom and law and wise and law-abiding men."<sup>23</sup>

The confession described by Philo was similar to that recorded in the Egyptian Book of the Dead, and included a "negative confession." According to the ideas obtained during the middle kingdom, the soul, in order to obtain admission to the afterlife, was supposed to make a declaration about its well-spent life before the court of Osiris. The dead person mentioned a long list of those sins that he had not committed, followed by a positive assertion concerning some of his good deeds.<sup>24</sup> Originally based upon the moral concept of the last judgment, the negative confession later became part of the magic formulae of the Book of the Dead, which was in itself a kind of *laissez passer* to heaven.

Similar formulae, it is well known, were used in Israel at the expiation of an unsolved murder and at the completion of the third year of tithing (Deuteronomy 21:7–8; 26:13–14).<sup>25</sup> The same pattern is also used at the end of the discussion between Job and his three friends (Job 31). Taking an exculpatory oath in answer to his friends' accusations, Job first asserts his purity of soul by one example and then proceeds to describe the numerous curses that are to befall him if he has sinned.

Bearing in mind that participation in the temple service was conditioned on a state of moral worthiness, we may assume the existence of negative confessions as part of the offering ceremonies. Psalms 15 and 24 ask the worshipper whether he is fit, in the light of his moral behavior, to worship in the temple.<sup>26</sup> Galling<sup>27</sup> has accordingly described a special type of psalm, the *Beichtspiegel*, which was used by the worshipper to assert his innocence.

Coming back to the homily of Philo, it seems that the specific occasion for these negative confessions was the imposition of hands upon the sacrifice. The celebrant, in fact, underwent an ordeal and the acceptance of the offering was dependent on his enduring it. Psalm 1, it seems, was used as a kind of sermon to test the worshipper's moral qualities. Psalms 2:1–12 and 3:1–8, parallel admonitions, both asked the offerer to desist from his intention

if he felt himself unworthy. Some of the psalms classified by H. Schmidt<sup>28</sup> as *Gebete des Angeklagten* do not actually reflect any judicial procedure but are rather a means of justifying the worshipper's approach to God.<sup>29</sup> Thus Psalm 26 seems to be a negative confession to be made by the person offering a thanksgiving. In Psalm 66:18, we also find such a declaration as part of an ordinary prayer.

c. *Ordeal Techniques*. Besides the ordeal by words, the Divine Will was also said to be revealed by the casting of lots. This form of response was used for the detection of criminals (Joshua 7:13–26; 1 Samuel 14:38), for the election of the king (1 Samuel 10:19), and for obtaining decisions in civil cases (Proverbs 18:18). Since the operation of this technique was the privilege of priests, the lots formed part of the official vestments. The high priest wore a special "breastpiece of judgment" containing the oracular set of the *Urim and Thummim* (Exodus 28:15, 30; Proverbs 16:33).<sup>30</sup> There existed moreover, a similar custom among the laity. The drawing of lots settled questions connected with the distribution of land, as still maintained today among the Bedouins (Numbers 26:55; 33:54; Ben Sira 14:15).<sup>31</sup>

In order to demonstrate the actual contact with the power of God, the person undergoing the ordeal was asked to draw near to God or, at least, to touch a divine object. For example, the householder taking the oath of exculpation had to approach the sanctuary so that the curse would indeed fall upon him, should his allegation prove false (Exodus 22:7).<sup>32</sup> According to Talmudic practice, the oath should be made while touching the scroll of the Law or at least the phylacteries (*Babylonian Talmud Shevu'ot* 38b).<sup>33</sup>

While the Assyro-Babylonian river-ordeal does not seem to have existed among the Hebrews,<sup>34</sup> there are some references to ordeals by water. A wife suspected of adultery was examined by the "water of bitterness," i.e., a mixture of water from a sacred spring, dust from the sanctuary, and the ink in which the curse was written (Numbers 5:22). A similar procedure was followed with regard to those guilty of making the golden calf (Exodus 32:20; *Babylonian Talmud 'Abodah Zarah* 44a). The place names *'en mishpat* (well of judgment) and *mey merivah* (waters of contention) were perhaps also connected with similar customs.

### 3. Procedure

We have already mentioned the system of self-help that existed during the patriarchal age. Any violation of a person was avenged by the victim's next of kin by way of "redemption" of blood.<sup>35</sup> Even after the conquest, redress was primarily obtained by private action without assistance from a judge. In contrast to Babylonian law,<sup>36</sup> the Hebrew creditor was accorded the right of levying a distress on the debtor's property. Exodus 22:25–26 and Deuteronomy 24:6, 10–13, 17 are appeals to the creditor's benevolence, necessary since no court was involved.<sup>37</sup>

The punishment of the master who had killed his slave was, accordingly, called "vengeance" (Exodus 21:20). The most important manifestation of private justice was the "redemption" of blood, a concept preserved till late into the monarchical period (2 Samuel 3:27, 30). However, this right was limited by the institution of cities of asylum (Numbers 35; Deuteronomy 19) and by the creation of a distinction between unintentional and premeditated killing (Deuteronomy 19; Exodus 21:13).<sup>38</sup> As a result there arose a need for judicial decision. Judgment was given either by the community or by the elders after hearing both the accused and the avenger. The intervention of a judge was also necessary for the infliction of *talion*, thus limiting the plaintiff's right to revenge himself upon the assailant. A wrong committed against a member of the same clan was adjudicated by the common chief by virtue of his *potestas*.

## Legal Proceedings in Biblical Times

Laban against Jacob	Trial of the	Genesis 31:25–55
Blasphemer	Trial of the Sabbath	Leviticus 24:10–23
Breaker	Inheritance of the	Numbers 15:32–36
Daughters	of Zelophehad	Numbers 27:1–11
Marriages of the Daughters	of	Numbers 36:1–13
Zelophehad	Trial of Achan	Joshua 7:1–26
Boaz at the town gate	Trial of Ahimelech	Ruth 4:1–12
Petition of the Woman of Tekoa	Samuel 22:6–23	2 Samuel 14:4–11
Petition of the Two Harlots	Trial of	1 Kings 3:16–28
Naboth	Trial of Micah the	1 Kings 21:1–16
Morasthite	Trial of Uriah ben	Jeremiah 26:18–19; Micah 3:12
Shemaiah	Trial of Jeremiah	Jeremiah 26:20–23
Trial of	Susanna	Jeremiah 26:1–24
		Daniel 13:1–64 (LXX)

The appointment of an arbitrator became necessary in disputes between members of different clans. The kinsmen of both parties formed a mixed tribunal to decide the issue between Laban and Jacob (Genesis 31:37), and there was an implied agreement that their decree would be obeyed and adverse action excluded. Especially when the redemption of blood was replaced by the payment of ransom was there a need for prior accord on the part of both families and an independent award fixing the amount payable (Exodus 21:30).<sup>39</sup>

During the tribal age the husband was entitled to punish his adulterous wife without having recourse to judicial proceedings. The act was considered a wrong against the husband (2 Samuel 12:1–4), and could be condoned by him or settled by the payment of an agreed amount of compensation (Proverbs 6:35).<sup>40</sup>

Early justice being a form of mediation, no court could be moved without the filing of a private claim and the tacit submission of the defendant to the decision (Deuteronomy 25:1; Job 9:19; 23:4). There existed, however, certain crimes that were the concern of the community as a whole. According to the idea of the covenant, the people felt themselves bound to purge the evil from among them, lest they be held collectively responsible for the sin of the individual.<sup>41</sup>

Criminal law seems to have begun with the laws of idolatry (Deuteronomy 13; 17:2–7), where the public was required to inquire into the charges. The witnesses, in these cases, acted both as informants and accusers and were the first to inflict the penalty. At an early date murder and adultery must also have become public rather than private wrongs (Numbers 35:31–34; Deuteronomy 22:22–24). The redemption of blood had become a form of public prosecution, to be applied even within the family (2 Samuel 13:28; 14:5–11).

In civil cases the plaintiff would take hold of the defendant and bring him before the court (Deuteronomy 21:19) or summon him to appear at a hearing (Job 9:19). On the other hand, in criminal cases the accused was put to trial upon the information of witnesses and taken into custody until judgment was pronounced (Leviticus 24:12; Numbers 15:34; 1 Kings 22:27; Jeremiah 37:15). Both parties then submitted their pleadings, accusing their opponents and asserting their own innocence. The form of forensic speech seems to have been preserved in various metaphors used by certain prophets and by the authors of Job and Psalms.<sup>42</sup> Sometimes the accused was

accompanied by counsel standing on his right hand (Psalm 109:31), while there may have been also written statements of claim (Job 31:35).<sup>43</sup>

Rules of evidence were rather rigid and did not give the judge discretion in weighing the evidence submitted by the parties. The original method of proof consisted of real evidence (Genesis 31:39; Exodus 22:12; Deuteronomy 22:17; Amos 3:12). Evidence given by two witnesses was conclusive and this form of proof seems to have been extended from criminal trials to cases of all kinds (Numbers 35:30; Deuteronomy 17:6; 19:15; 1 Kings 21:10). Recalcitrant witnesses could be compelled to give testimony by the imposition of an oath (Leviticus 5:1).

In the absence of proof, the accused had to take an oath or undergo another form of ordeal, and omission to do so implied admission of guilt. There was the case of the Amalekite of whom David said: "Your blood be upon your head, for your own mouth has testified against you, saying, I have slain the Lord's anointed" (2 Samuel 1:16; 4:4–12). The passage seems to indicate that an accused could be sentenced without any evidence for the prosecution besides his own confession. According to Talmudic procedure this was impossible. It is however possible to reconcile the Talmudic rule against self-incrimination with this passage, so that even in biblical law, a person charged with a crime punishable by death could not be convicted on the strength of his own confession. For in this particular case the confession was not true (1 Samuel 31:4) and the author's intention was perhaps to condemn the procedure. The same idea seemed to underlie Joshua 7:19, 22, where the confession of Achan was corroborated by an ordeal as well as by the production of the *corpus delicti*.<sup>44</sup>

We do not, unfortunately, know much about the written evidence used in Hebrew legal procedure, since such documents have not been preserved. Besides the ancient stone or heap of stones that served as a memorial to some legal act, inscribed tablets were used at quite an early date.<sup>45</sup> The deed of divorce (Deuteronomy 24:1) and the deed of sale (Jeremiah 32:10–14) were necessary parts of the acts. The latter appears as a double document, the upper half of which was rolled and sealed, while the lower part remained open for inspection. While the deed of divorce is said to have been written by the husband, i.e., by the transferor, Jeremiah himself wrote the conveyance in his favor. The witnesses signed on the verso after the sealing, as was the rule in demotic deeds. The other particulars apparently were similar to those found in the Aramaic papyri.<sup>46</sup>

On various occasions, the Law prescribed rules of procedure aimed at ensuring an equitable decision (Exodus 23:6–9, Deuteronomy 1:16–17). Having heard the pleadings and received the evidence, the judges took their decision by vote. Exodus 23:2 warns each judge not to change his opinion, if his colleagues tended to do evil; the judgment, however, was made by the majority.<sup>47</sup>

Both parties were addressed in the judgment—the righteous being justified and the guilty condemned (Deuteronomy 25:1; 1 Kings 8:32). This was also the pattern in Egyptian judgments.<sup>48</sup> A husband who had accused his bride of unfaithfulness was himself found guilty if his wife succeeded in proving her innocence (Deuteronomy 22:18–19).

The judges, it seems, were not bound to give reasons for their decisions, although there may have been a tendency to convince the guilty party of his injustice (2 Samuel 12:1–12). Since no ordinary system of judicial review existed, difficult points of law were referred to the central court or to the king (2 Samuel 12:1–12; 14:5–8). There is no reference to the custom of making an unsuccessful plaintiff promise that he would not open his case again, as in Babylonian practice<sup>49</sup> and in the Aramaic papyri.<sup>50</sup>

The judge's duty also included the execution of the punishment by giving the necessary order to the officers, the witnesses, or the people in general (Deuteronomy 13:10; 17:7; 25:2–3). In civil cases, however, the ancient system of self-help certainly lingered on for a long time. The successful claimant, therefore, himself carried out the decision of the court by levying distress upon the defendant's goods or upon his children.

### Notes

1. Roland de Vaux, *Ancient Israel: Its Life and Institutions*, trans. John McHugh (London: Darton, 1961), 238–39; Erwin Seidl, *Einführung in die ägyptische Rechtsgeschichte bis zum Ende des neuen Reiches* (Glückstadt: Augustin, 1951), 33.
2. Compare Codex Hammurabi 5; Godfrey R. Driver and John C. Miles, *The Babylonian Laws* (Oxford: Clarendon, 1952–55), 2:149.
3. Seidl, *Einführung*, 33; Driver and Miles, *Babylonian Laws*, 1:77, 491.
4. *Mishnah Sanhedrin* 1:1; compare *Ketubbot* 1:5.
5. De Vaux, *Ancient Israel*, 239.
6. Compare William F. Albright, "The Judicial Reform of Jehoshaphat," in *Alexander Marx Jubilee Volume* (New York: Jewish Theological Seminary of America, 1950), 61–82; de Vaux, *Ancient Israel*, 237.
7. Women are not mentioned as judges except for Deborah (Judges 4), who was appointed by God.
8. Ze'ev W. Falk, "Two Symbols of Justice," *Vetus Testamentum* 10 (1960): 72.
9. De Vaux, *Ancient Israel*, 242ff.; Friedrich Horst, *Gottes Recht: Gesammelte Studien zum Recht im Alten Testament* (Munich: Kaiser, 1961), 292ff.
10. Compare Codex Hammurabi 131–32; Middle Assyrian Laws A17; Horst, *Gottes Recht*, 292; Driver and Miles, *Babylonian Laws*, 1:284; Godfrey R. Driver and John C. Miles, trans., *The Assyrian Laws* (Oxford: Clarendon, 1936), 68.
11. Compare Boaz Cohen, *Jura* 9 (1958): 1ff.
12. Compare Codex Hammurabi 103; Driver and Miles, *Babylonian Laws*, 1:193.
13. Compare Codex Hammurabi 266; Driver and Miles, *Babylonian Laws*, 1:438–39, 468.
14. Compare Codex Hammurabi 20.
15. Arthur E. Cowley, ed. and trans., *Aramaic Papyri of the Fifth Century, B.C.* (Oxford: Clarendon, 1923), 15–25, 148; Reuven Yaron, *Introduction to the Law of the Aramaic Papyri* (Oxford: Clarendon, 1961), 31–32.
16. Compare Horst, *Gottes Recht*, 301ff.

17. This was perhaps the background to the interpretation given by Judan (fourth century) in Midrash and Psalm 106:32–33: “Moses had sworn, as it is said: ‘And Moses lifted up his hand’ (Numbers 20:11. . . ) Moses’ punishment is attributed to his rash oath; his ill fate resulted from the formula of his oath, viz.: “God do evil to me if . . .”

18. Horst, *Gottes Recht*, 304–6.

19. Compare Berend Gemser, “The ‘rib-’ or Controversy-Pattern in Hebrew Mentality,” *Vetus Testamentum* Supplement 3 (1955): 126, citing various Babylonian parallels.

20. Ephraim A. Speiser, “The Root *pll* in Hebrew,” *Journal of Biblical Literature* 82 (1963): 301–6; the author cites Psalm 109:4, 7. Otherwise, see Dr. Dafydd Rhys Ap-Thomas, “Notes on Some Terms Relating to Prayer,” *Vetus Testamentum* 6 (1956): 230–31.

21. Hubert Grimme, *Zeitschrift für die alttestamentliche Wissenschaft* 58 (1941): 234; Horst, *Gottes Recht*, 162ff., Ben Shammai, “Confession of Sin” (in Hebrew), in *Encyclopaedia Miqra’it* (Jerusalem: Bialik, 1950), 2:874; compare *Mishnah Sanhedrin* 6:2.

22. Compare *Tosefta Menahot* 10:12.

23. Philo, “The Special Laws,” vol. 7 of *Philo*, trans. F. H. Colson (Cambridge: Harvard University Press, 1929), 214–17.

24. Joachim Spiegel, *Die Idee vom Totengericht in der ägyptischen Religion* (Glückstadt: Augustin, 1935); William F. Albright, *From the Stone Age to Christianity* (Baltimore: Johns Hopkins, 1946), 170ff.

25. Compare Shammai, “Confession of Sin,” 2:874; Albright, *Stone Age to Christianity*, 170ff.

26. Compare Targum to 2 Samuel 5:8, Song of Solomon 6:6; Saul Lieberman, *Hellenism in Jewish Palestine* (New York: Jewish Theological Seminary of America, 1950), 166.

27. Kurt Galling, “Der Beichtspiegel,” *Zeitschrift für die alttestamentliche Wissenschaft* 47 (1929): 125ff. Compare Ernst Würthwein, “Erwägung zum Psalm CXXXIX,” *Vetus Testamentum* 7 (1957): 170ff.

28. Hans Schmidt “Die Psalmen,” in *Handbuch zum Alten Testament*, ed. Otto Eissfeldt (Tübingen: Mohr, 1934).

29. Compare Gemser, “The ‘rib-’ or Controversy-Pattern,” 128, explaining these psalms by the “rib pattern” used as a metaphor.

30. De Vaux, *Ancient Israel*, 241; Naphtali Sinai, “Urim and Thummim” (in Hebrew), in *Encyclopaedia Miqra’it*, 1:179; Samuel E. Loewenstamm, “Breastplate of Judgment” (in Hebrew), in *Encyclopaedia Miqra’it*, 3:318.

31. Compare Samuel E. Loewenstamm, “Dividing Inheritance by Lot” (in Hebrew), in *Encyclopaedia Miqra’it*, 1:459. Rabbinical rationalism puts the opposition to decisions by lot already in the mouth of Achan (Joshua 7:18): “Achan said to Joshua: Are you going to catch me by means of the lot? In this generation there is nobody as pious as you and Pinehas. Now, draw the lots between you and him, certainly one will be caught. . . . Our teacher Moses taught us: At the mouth of two witnesses or three witnesses he that is to die shall be put to death” (Deuteronomy 17:6; *Palestinian Sanhedrin* 6:3, 23b; *Babylonian Talmud Sanhedrin* 43b).



32. Compare Anne E. Draffkorn, "Ilani/Elohim," *Journal of Biblical Literature* 76 (1957): 216–24; Ze'ev W. Falk, "Exodus 21:6," *Vetus Testamentum* 9 (1959): 86; Charles F. Fensham, "New Light on Ex. 21:6 and 22:7 from the Laws of Eshnunna," *Journal of Biblical Literature* 78 (1959): 160–61.
33. The term *drawing near for judgment* is based on this practice. See Ze'ev W. Falk, "Hebrew Legal Terms," *Journal of Semitic Studies* 5 (1960): 350.
34. Compare Codex Ur Nammu 10; Codex Hammurabi 131–32; Driver and Miles, *Assyrian Laws*, 86–106.
35. Compare Neufeld, *Hittite Laws*, 1ff.; see de Vaux, *Ancient Israel*, 26–27; Chaim Z. Hirschberg, "Blood Vengeance" (in Hebrew), in *Encyclopaedia Miqra'it*, 2:392; Klaus Koch, "Der Spruch, 'Sein Blut bleibe auf seinem Haupt' und die israelitische Auffassung vom vergossenen Blut," *Vetus Testamentum* 12 (1962): 396ff.
36. Thus, Codex Hammurabi 113; compare Driver and Miles, *Babylonian Laws*, 1:214. Earlier Babylonian law, however, allowed the extra-judicial seizure of goods by the creditor, unless the debtor applied to the court; Julius G. Lautner, *Die richterliche Entscheidung und die Streitbeendigung im altbabylonischen Prozessrechte* (Leipzig: Weicher, 1922), 16–17.
37. Compare Benjamin Cohen, "Self Help in the Jewish and Roman Law," *Revue Internationale des Droits de l'Antiquité* 3 (1955), 107ff.; Ephraim Neufeld, "Self-Help in Ancient Hebrew Law," *Revue Internationale des Droits de l'Antiquité* 5 (1958): 291ff.; and p. 95, below.
38. Max Löhr, *Das Asylwesen im Alten Testamentum* (Halle: Niemeyer, 1930); Nikolai M. Nicolsky, "Das Asylrecht in Israel," *Zeitschrift für die alttestamentliche Wissenschaft* 48 (1930): 146–75; Moshe Greenberg, "The Biblical Concept of Asylum," *Journal of Biblical Literature* 78 (1959): 125–32.
39. Compare Middle Assyrian Laws A10, B2; Driver and Miles, *Assyrian Laws*, 33.
40. Compare Middle Assyrian Laws A15; Neufeld, *Hittite Laws*, 198; Moshe Greenberg, "Some Postulates of Biblical Criminal Law," in *Yehezkel Kaufmann Jubilee Volume: Studies in Bible and Jewish Religion*, ed. M. Haran (Jerusalem: Magnes, 1960), 5–28.; Samuel E. Loewenstamm, *Bulletin of the Israel Society for Biblical Research* 7 (1962): 55ff (in Hebrew); Moshe Weinfeld, *Bulletin of the Israel Society for Biblical Research* 9 (1963–64): 58 (in Hebrew); Hirschberg, "Blood Vengeance," 2:392.
41. Note the similarity in concept of pollution with regard to the creation of public criminal law in Hebrew and Greek laws: Numbers 35:33, Deuteronomy 21:1–2, and John W. Jones, *The Law and Legal Theory of the Greeks* (Oxford: Clarendon, 1956), 254–55.
42. Gemser, "The 'rib-' or Controversy-Pattern," 120–37; de Vaux, *Ancient Israel*, 239–41; Herbert B. Huffman, "The Covenant Lawsuit in the Prophets," *Journal of Biblical Literature* 78 (1959): 285–95.
43. Compare the judicial petition; pp. 3–4.
44. See p. 55 and n. 31, above; confession is not admissible under Talmudic law: *Tosefta Sanhedrin* 11:1; *Babylonian Talmud Sanhedrin* 80b.

45. Compare Falk, "Form of Testimony," 88; Ze'ev W. Falk, "Mutual Obligation in the Ketubah," *Journal of Jewish Studies* 8 (1958): 215.

46. Compare Yaron, *Introduction*, 7ff.

47. Compare Codex Hammurabi 5.

48. Seidl, *Einführung*, 37.

49. Lautner, *Die richterliche Entscheidung*, 16–17; Driver and Miles, *Babylonian Laws*, 1:74.

50. Yaron, *Introduction*, 30–31, 81; Ze'ev W. Falk, "Testate Succession in Jewish Law," *Journal of Jewish Studies* 12 (1961): 168.

# Crime and Punishment

Ze'ev W. Falk

## 1. Responsibility

Hebrew patriarchal society, like that of the Babylonian cities,<sup>1</sup> the Hittites, and many other primitive peoples,<sup>2</sup> was based upon the idea of collective responsibility. Mosaic law, even though it established individual liability of every member of the nation, still preserved various remnants of the ancient system. In contradistinction to the practice ascribed to Lemech (Genesis 4:24), the Hebrew redeemer of blood was permitted to kill only the murderer himself and not his kinsmen. Nevertheless, the elders of a village near which a man had been murdered were morally responsible for the crime (Deuteronomy 21:1–9).<sup>3</sup> The individual who committed a grave offense was “cut off from the people”; the nation was asked “to purge the evil from its midst” and the blessing or curses of the covenant were addressed to every individual Israelite.<sup>4</sup> If the community failed to call the culprit to account, however, it was held collectively responsible to the divine overlord. An example of this process is the story of Achan (Joshua 7; 22:20).

While in Babylonian and perhaps also in Hittite law, the principle of *talion* was applied not only to the criminal himself but also to his dependents,<sup>5</sup> Hebrew courts did not inflict punishment on ascendants or descendants (Deuteronomy 24:16; 2 Kings 14:6; Jeremiah 31:28–29; Ezekiel 18). Divine justice, however, was still described according to the earlier formula as “visiting the iniquity of the fathers upon the children even unto the third and fourth generation” (Exodus 20:5; Leviticus 26:39; Deuteronomy 5:9; Lamentations 5:7).<sup>6</sup>

Other ideas in Hebrew religion also originated from the concept of the vicarious liability of the *paterfamilias*. A man was responsible for his wife’s vow (Numbers 30:16), for the prostitution of his daughter (Leviticus 21:9), and was called to atone for the crimes of his children (Job 1:5). The same role was also ascribed to the high priest and the “suffering servant,” both of whom served as substitutes for the sinful people (Numbers 35:25–34; Isaiah 50:4–15). Even God himself could be said to be profaned by certain acts of his people, such as false swearing (Leviticus 19:12) or ritual offenses (Leviticus 18:21; 21:6, 12).<sup>7</sup>

Biblical language distinguishes between several terms denoting crime: *he* and *pasha* were used for crimes against both man and God, the latter being mainly conceived as insurrections against the overlord. *awon* signified “crooked” as opposed to upright behavior, while *asham* was in the first instance a religious transgression. Each of these terms described not only the act itself but also the state created thereby and the punishment incurred or the fine payable. Biblical thought did not conceive of crime as a singular phenomenon, but rather as a blemish upon the criminal’s character that could be wiped out only by the appropriate sanction.<sup>8</sup>

Animals were considered capable of suffering punishment for their criminal acts. As in Hittite law,<sup>9</sup> Leviticus 20:15–16 prescribed the death penalty for a beast that had had unnatural relations with a man or a woman. The same sanction applied where a human being had been killed by an animal (Genesis 9:5; Exodus 21:28–32).<sup>10</sup> This rule had its counterpart in Athenian law and later in medieval procedure.<sup>11</sup> The rebellious son (Deuteronomy 21:18) and the adulterous bride (Deuteronomy 22:23–27) were likewise held responsible for their acts without

any prior enquiry as to their age at the commission of the crime. No special provision was made for criminal lunatics.

In certain cases, the law itself afforded an excuse for the commission of an act, which could otherwise have been considered criminal. Even after the introduction of regular courts, the redeemer of blood was excused if he killed the slayer outside a city of asylum (Numbers 35:27). The owner of a house who killed a thief in the act of breaking in at night was likewise forgiven (Exodus 22:2).<sup>12</sup> Moreover, in cases of public apostasy it was considered the duty of everyone present to take the law into his own hands, and punish the offender (Exodus 32:27; Numbers 25:7). Whereas a man who killed his slave was punished in the same way as the slayer of a freeman: he was acquitted if the slave survived for a day or two.<sup>13</sup> The reason given, viz., the slave “is his money” (Exodus 21:21), implied that a man would not intentionally kill his slave and that the loss of property was already sufficient punishment.

Hebrew law, like that of other peoples,<sup>14</sup> distinguished between intentional and unintentional crimes. The latter needed religious expiation only (Exodus 21:13–14; Numbers 15:27–31; 35:11; Deuteronomy 17:12). Ignorance of the law and mistakes of fact were recognized as excuses and the accused would be allowed to go free after atoning for his misdeed (Leviticus 4:13–20).<sup>15</sup> Acts committed under duress would likewise not be considered punishable; e.g., a betrothed woman raped in the countryside was presumed to have been forced into the act (Deuteronomy 22:26).<sup>16</sup>

There are various rules with regard to causation, negligence, and act of God. According to Exodus 21:13, the slayer was not punishable if he had “not waited for the victim but God had let him fall into his hand.” This seems to cover even negligent behavior on his part—any unintentional killing being called an act of God. The provisions of Exodus 21:22–25 (striking a pregnant woman during a quarrel between men)<sup>17</sup> and Exodus 21:28–30 (a dangerous ox killing a person) seem to be less lenient owing to the presence of *mens rea* on the part of the accused. This rule appears similar to the principle of “malice aforethought” in English criminal law, as expounded, for example, in *Director of Public Prosecutions v. Beard* [1920] A.C. 479. The absence of *mens rea* was also the idea underlying the other passages on manslaughter (Numbers 35; Deuteronomy 19:4–13).<sup>18</sup>

Since the emphasis was put upon the absence of a guilty mind, the law also held a man responsible for the acts of his servants performed under his orders. This seems to be implied in the story of Uriah’s fatal mission (2 Samuel 11–12), where David rather than Joab was blamed for the murder.<sup>19</sup> Besides the previously mentioned criminal liability for the fatal acts of beasts, there existed a civil obligation of their owner to make good any damage caused by them. This rule also applied to lifeless chattels, if their owner had been negligent (Exodus 21:28–32; 22:4–5).

As to acts committed by the accused himself, it was apparently the rule that no punishment would be imposed unless the *actus reus* was completed. An attempted crime was punishable only in the case of bearing false witness (Deuteronomy 19:19); here the false accusation was itself considered to be a criminal act.<sup>21</sup>

## 2. The Crimes

Apart from private wrongs, which will be treated later, crime is taken to mean those acts the suppression of which is the concern of the community. The sharpness of this definition is, however, lost when we consider that most crimes were originally dealt with by private vengeance, followed, later on, by a private action on the part of the offended party or his relatives.

As already mentioned, idolatry and other forms of insurrection against the suzerainty of God were the most serious of crimes. Disobedience to any decision delivered "before God," (Deuteronomy 17:12), and the cursing of the ruler of the people (Exodus 22:27; 2 Samuel 16:9; 1 Kings 2:8; 21:10) were likewise heinous offenses. The laws being formulated in the pre-monarchical period, there exist no provisions concerning disobedience to the king (compare Joshua 1:18; *Tosefta Terumot* 7:20), or political offenses in general.

Various offenses are connected with the traditional structure of the family. Ill-treatment of the parents (Exodus 21:15, 17), as well as rebellion against them (Deuteronomy 21:18), come under this heading.<sup>22</sup> Similar to the provisions in other oriental laws,<sup>23</sup> incest and unnatural relations are the subjects of many a section of Hebrew law (Leviticus 18; 20). Adultery of a housewife, moreover, changed at quite an early stage from a mere private wrong against the husband into a serious offense (Numbers 5:11–31; Deuteronomy 22:20–22).<sup>24</sup>

Since adultery by a wife had such grave consequences, there was need for a provision regarding false charges of unchastity. A man wrongfully accusing his bride could be sued by his father-in-law (Deuteronomy 22:13–19).<sup>25</sup> On the other hand, offenses against unmarried women were treated rather leniently; the offender was merely compelled to marry the girl and to pay a sum of money to her father (Exodus 22:15–16; Deuteronomy 22:28–19).<sup>26</sup>

Cases of murder, as mentioned above, were not originally considered to be of public concern but only of consequence to the relatives of the victim.<sup>27</sup> Besides the obligation placed upon the redeemer of blood, there also existed the religious idea of pollution, which in turn was connected with the institution of the asylum and the distinction between intentional and unintentional acts (see Exodus 21:12–14; Numbers 35; Deuteronomy 19:4–13). Biblical law, in fact, represents the transition from tribal revenge to judicial procedure, the latter being necessary once *mens rea* was recognized as a prerequisite to crime. The murderer, therefore, could no longer compound his offense, as was the earlier rule,<sup>28</sup> but had to undergo public punishment. In a similar fashion, the right of asylum was restricted to cases of unpremeditated killing, which were adjudicated by the elders. The various cities chosen for this purpose in the different parts of the country had meanwhile taken the place of the single place of asylum in the central sanctuary. The stay in these places was, thus, a kind of punishment rather than an enjoyment of divine protection. Its duration was limited to the lifetime of the high priest.<sup>29</sup>

Kidnapping a free person and selling him into slavery was also a capital crime (Exodus 21:16; Deuteronomy 24:7).<sup>30</sup> Ordinary assault, on the other hand, appears to have been in an intermediate stage, between the Babylonian rule of *talion* and the Hittite provisions for the payment of damages.<sup>31</sup> Originally, the victim was entitled to inflict the same injury upon the attacker, "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, burning for burning, wound for wound, stripe for stripe" (Exodus 21:23–25; Leviticus 24:18–20; Deuteronomy 19:21). In practice, however, the accused could make good the injury by paying a penalty fixed by the aggrieved party (Exodus 21:22, 30).

A crime punished by retaliation was the making of a false accusation by a witness (Deuteronomy 19:16–21). The payment of compensation did not seem to be applicable to this offense.<sup>32</sup> Another heinous crime was the intervention of a woman in an affray between men by grasping the sexual organ of one of the combatants (Deuteronomy 25:11–12). The law expressly excluded the composition in such a case and demanded the mutilation to be carried out against the guilty party.<sup>33</sup>

On the other hand, violations of property rights were usually treated only as civil wrongs, giving rise to actions for restitution or fines.<sup>34</sup>

### 3. Punishment

The tribal system of revenge was replaced by the fixed forms of punishment provided by the law collections of the Pentateuch. The unrestricted power of the injured party over the person of the assailant was limited by the system of *talion*, which was applied in cases of murder, causing bodily harm, and bearing false witness.<sup>35</sup> In practice, however, the crime was often compounded by the payment of a ransom (Exodus 21:30), though Numbers 35:31-33 excluded this usage with regard to murder.<sup>36</sup> There also existed a case of “mirroring punishment,” viz., the woman seizing a man’s testicles lost her hand (Deuteronomy 25:11).<sup>37</sup>

Capital punishment in cases other than murder was intended to purify the community and the country, and to safeguard the existence of the covenant between God and Israel. The death penalty, moreover, was used as a public deterrent (Deuteronomy 17:12-13) as well as a means of atonement for the culprit (*Babylonian Talmud Yoma* 86a).

The execution of a murderer was left to the discretion of the redeemer of blood, while persons put to death for public crimes were mostly stoned and then hanged.<sup>38</sup> For grave sexual offenses the execution took the form of burning (Genesis 38:24; Leviticus 20:14; 21:9).<sup>39</sup> The idolatrous city and persons executed by the king were put to death by the sword, like the enemy killed in battle (Deuteronomy 13:16).<sup>40</sup>

Flogging was the penalty for less heinous offenses, such as a fight between two persons (Deuteronomy 25:1-3), or, perhaps, for first offenses in general (Deuteronomy 21:18; 22:18).<sup>41</sup> We have seen already that the power to inflict this penalty was perhaps included in the Persian privilege given to the postexilic Jewish courts (Ezra 7:26)

At the same time, mention was also made of the privilege to impose sentences of imprisonment, a penalty that does not seem to have been in use in preexilic times. Leviticus 24:12, Numbers 15:34, and similar passages deal with cases of arrest rather than of punishment.<sup>43</sup>

Payment of a fine was another penalty permitted by the Persian charter. Since Hebrew practice knew only of composition or restitution made to the injured party, there was usually no penal confiscation of property.<sup>44</sup> The nearest thing to a fine seems to have been the multiple payment to the prosecutor imposed on a thief (Exodus 22:1; 2 Samuel 12:6; Proverbs 6:31). Rebellion against the king was punished by confiscation of the culprit’s property in addition to his death in the case of Naboth (1 Kings 21). Certain sins against God could be wiped out by making amends to the priests (2 Kings 12:16). The Jewish community having been empowered by the Persian king to impose fines, decided to confiscate all the property of persons who ignored the summons to the assembly (Ezra 10:8). The goods were apparently devoted to the use of the temple.

Most effective was another penalty mentioned with regard to the assembly convened by Ezra: the banishment from the congregation of the exiles (Ezra 10:8). This punishment included loss of property and was rather severe in a period when a person’s protection depended upon his kinship.<sup>45</sup>

In the tribal age, such a person was even declared sacred, meaning that he and his family were to be given as a burnt offering to God (Joshua 7) and that anybody coming into contact with him would share his fate. This usage was originally part of the holy war ritual of Israel, as of other nations,<sup>46</sup> and was applied as a penalty for grave offenses against the divinity (Leviticus 27:29).<sup>47</sup>

#### 4. Compensation and Restitution

The earliest payments intended to make good a wrong took the form of a compensation, the amount being fixed to the offended party (Exodus 21:30). In the course of time, however, the sum was determined by law or by an independent tribunal and the injured party had to be satisfied with the amount so awarded.

Since retaliation was the only recognized punishment for murder, there was no tariff for that crime in Hebrew law, contrary, for instance, to the Hittite Laws, or contemporary Bedouin procedure.<sup>48</sup> Cases of assault, on the other hand, were settled by payment of a compensation fixed by the injured party and confirmed by the judge: "He shall be fined according as the woman's husband shall lay upon him, and he shall pay as the judges determine" (Exodus 21:22). The judicial decision was based upon the actual damage suffered and took into account loss of time and the cost of healing (Exodus 21:19).<sup>49</sup>

Compensation for loss suffered was also the object of the payments imposed upon the seducer, the rapist, and the person who falsely accused his bride (Exodus 22:16; Deuteronomy 22:19, 29). Cases of rape, it seems, were originally the concern of the aggrieved kinship group. The slur on the family's honor could be wiped out only by the attacker's death, as illustrated by Genesis 34.<sup>50</sup> After the settlement, however, capital punishment was reserved for the rape of a married or betrothed woman, while the rape of a girl could be compounded by payment of a fine and the marriage of the attacker and the victim. In each of these cases, the penalty depended upon the standard bride-price of a virgin and the accused had to pay the actual or intended damage.<sup>51</sup>

Originally, a person causing damage to property seems to have been required to supply a new chattel, as shown by the term *shalem* (Exodus 21:36; 22:4; Leviticus 24:18).<sup>52</sup> Only at a later stage did compensation take the form of payment of the damage (Exodus 21:34). As in Babylonian law,<sup>53</sup> the chief cause of injury was the goring ox; mention was also made of unguarded pits, fires, and cattle trespass (Exodus 21:33; 22:4-5).<sup>54</sup> No tariff was fixed for damage to immovables or animals, but the amount payable for the negligent killing of a slave was standardized (Exodus 21:32).<sup>55</sup>

In contrast to the Laws of Hammurabi 22-23, Hebrew law did not deal severely with robbery but remained content with the restitution of the chattel plus one fifth of its value and a religious expiation (Leviticus 6:5). Encroachment upon one's neighbor's property was also considered to be a serious religious offense (Deuteronomy 19:14; 27:17), although no penal sanction was provided.<sup>56</sup> It was rather the concern of God to see to it that the land was restored to its rightful tenant; this idea also existed among the Greeks and Romans.<sup>57</sup>

The finder of a lost chattel was supposed to return it to its owner (Exodus 23:4; Deuteronomy 22:1-3). If he denied the finding, he too was required only to restore the goods together with one fifth of their value and to offer a sacrifice (Leviticus 6:1-6).<sup>58</sup>

Larceny was dealt with more severely, even though much more leniently than in other oriental laws.<sup>59</sup> The ordinary penalty was restitution to the owner together with payment of 100 to 400 percent of the value (Exodus 22:1; 22:3, 6; 2 Samuel 12:6; Proverbs 6:31).

Kidnapping, on the other hand, was punishable by death (Exodus 21:16). Where a thief was unable to restore the chattel together with the penalty, he was sold into serfdom for the prosecutor's benefit (Exodus 22:3). There were no special rules regarding theft from the sanctuary, except for the conversion of goods dedicated to God in the form of the ban, mentioned above. The case of Rachel's theft of the household gods illustrates the earlier procedure of pursuit and search; this has been convincingly pointed out by Daube.<sup>60</sup> A bailee found guilty of converting the deposit to his own use was treated like a thief (Exodus 22:7).<sup>61</sup> There were no penal provisions, however, with regard to receiving stolen property.<sup>62</sup>

### Notes

1. Codex Hammurabi 23; for Nuzian parallels, compare Cyrus H. Gordon, "Biblical Customs and the Nuzu Tablets," *Biblical Archaeologist* 3 (1940): 11.

2. Ephraim Neufeld, *Hittite Laws* (London: Luzac, 1951), 116; Godfrey R. Driver and John C. Miles, *The Babylonian Laws* (Oxford: Clarendon, 1952–55), 1:501.

3. See Codex Hammurabi 23.

4. Jeremiah 31:28 and Ezekiel 18, it is true, put special emphasis on the idea of individual responsibility, but they do not formulate it for the first time.

5. Codex Hammurabi 116, 210, 230; Hittite Laws 44a; on the other hand, see Middle Assyrian Laws A2.

6. David Daube, *Studies in Biblical Law* (Cambridge: Cambridge University Press, 1947), 154ff.; P. J. Verdam, "On fera point mourir les enfants pour les pères en droit biblique," *Revue Internationale des Droits de l'Antiquité* 3 (1949): 393–416; Herbert G. May, "Individual Responsibility and Retribution," *Hebrew Union College Annual* 32 (1961): 107–20; Ze'ev W. Falk, "Collective Responsibility in the Bible and the Aggada" (in Hebrew), *Tarbiz* 30 (1961): 16–20; Meir Weiss, "Some Problems of the Biblical Doctrine of Retribution" (in Hebrew), *Tarbiz* 31 (1962): 236–63.

7. Falk, "Collective Responsibility," 16–20.

8. Jacob Heinemann, "Transgression" (in Hebrew), in *Encyclopaedia Miqra'it* (Jerusalem: Bialik, 1950), 3:99; Harold H. Rowley, *The Faith of Israel* (London: Westminster, 1956), 86–87; Klaus Koch, "Der Spruch, 'Sein Blut bleibe auf seinem Haupt' und die israelitische Auffassung vom vergossenen Blut," *Vetus Testamentum* 12 (1962): 396ff.

9. Neufeld, *Hittite Laws*, 199.

10. For a rationalization of these primitive provisions, compare *Mishnah Sanhedrin* 7:4. See Victor Aptowitzer, "The Rewarding and Punishing of Animals and Inanimate Objects," *Hebrew Union College Annual* 3 (1926): 117ff.

11. Driver and Miles, *Babylonian Laws*, 1:444; Frederick Pollock and Frederic W. Maitland, *The History of English Law before the Time of Edward I*, 2nd ed. (Cambridge: Cambridge University Press, 1923), 2:472–73.



12. Compare Codex Eshnunna 12–13; Codex Hammurabi 21.
13. Compare the English “a year and a day” rule: *R. v. Dyson* (1908) 2 K.B. 454.
14. Codex Hammurabi 206; Neufeld, *Hittite Laws*, 3–4.
15. Compare David Daube, *Revue Internationale des Droits de l'Antiquité* 2 (1949): 189ff.; *Sin, Ignorance and Forgiveness in the Bible* (London: Liberal Jewish Synagogue, 1961); Cohen, “Self Help in the Jewish and Roman Law,” *Revue Internationale des Droits de l'Antiquité* 3 (1955): 107ff.; Ephraim Neufeld, “Self-Help,” *Revue Internationale des Droits de l'Antiquité* 5 (1958): 291; Karel, *Sinai* 18 (1946): 106ff.; *L. Freund Volume* (Tel Aviv, 1954), 21ff.
16. Codex Hammurabi 130; Middle Assyrian Laws A12; Neufeld, *Hittite Laws*, 197.
17. Compare Codex Hammurabi 209–12.
18. Otherwise, see Driver and Miles, *Babylonian Laws*, 1:315.
19. This was also the elder rule of Talmudic law; compare Josephus, *Antiquities*, 14.9.4; *Babylonian Talmud Qidush* 43a. For Greek law, see John W. Jones, *The Law and Legal Theory of the Greeks* (Oxford: Clarendon, 1956), 266.
20. Compare David Daube, “Direct and Indirect Causation in Biblical Law,” *Vetus Testamentum* 11 (1961): 246–6.
21. Compare Josephus, *Antiquities*, 12.9.1.
22. Compare Codex Hammurabi 168–69, and for Greek parallels, see Driver and Miles, *Babylonian Laws*, 1:348. See also Ephraim Neufeld, *Ancient Hebrew Marriage Laws* (London: Longmans, 1944), 254; Abraham Freimann, “Rebellious Son” (in Hebrew), in *Encyclopaedia Miqra'it*, 2:160; Samuel E. Loewenstamm, “Son Hit His Father and Mother” (in Hebrew), in *Encyclopaedia Miqra'it*, 4:951.
23. Codex Hammurabi 154–58; Middle Assyrian Laws A19–20; Neufeld, *Hittite Laws*, 187–200. Compare Samuel E. Loewenstamm, “Whoredom” (in Hebrew), in *Encyclopaedia Miqra'it*, 2:935.
24. Compare Codex Eshnunna 27–28; Codex Hammurabi 129–32; Middle Assyrian Laws A13; Neufeld, *Hittite Laws*, 198; compare Walter J. Kornfeld, “L'adultère dans l'Orient Antique,” *Revue Biblique* 57 (1950): 92–105; Greenberg, “Some Postulates of Biblical Criminal Law,” in *Yehezkel Kaufmann Jubilee Volume: Studies in Bible and Jewish Religion*, ed. Menachem Haran (Jerusalem: Magnes, 1960), 5ff.; Loewenstamm, *Bulletin of the Israel Society for Biblical Research* (in Hebrew), 7 (1962): 55ff.
25. Compare Codex Hammurabi 127, 131; Middle Assyrian Laws A17, 19.
26. Compare Middle Assyrian Laws A55–56. See Neufeld, *Ancient Hebrew Marriage Laws*, 95ff.; Louis M. Epstein, *Sex Laws and Customs in Judaism* (New York: Bloch, 1948), 155ff.; Elijah S. Hartum, “Virgin” (in Hebrew), in *Encyclopaedia Miqra'it*, 2:381. For the violation of a servant, compare Codex Eshnunna 31.
27. Compare Koch, “Der Spruch, ‘Sein Blut bleibe auf seinem Haupt’ und die israelitische Auffassung vom vergossenen Blut,” *Vetus Testamentum* 12 (1962): 396ff.

28. Compare Middle Assyrian Laws A10, B2; Neufeld, *Hittite Laws*, 1. See also Samuel I. Feigin, *Hatequfah* 30–31 (1947): 747ff.
29. Ben Zion Dinur, *Eretz Israel* 3 (1954): 135; Chaim Z. Hirschberg, “Blood Vengeance” (in Hebrew), in *Encyclopaedia Miqra’it*, 2:392; Roland de Vaux, *Ancient Israel: Its Life and Institutions*, trans. John McHugh (London: Darton, 1961), 247; Moshe Greenberg, “The Biblical Concept of Asylum,” *Journal of Biblical Literature* 78 (1959): 125–26.
30. Compare Codex Hammurabi 14; Neufeld, *Hittite Laws*, 19–20; Samuel E. Loewenstamm, “Theft of the Soul” (in Hebrew), in *Encyclopaedia Miqra’it*, 2:538; Daube, *Studies in Biblical Law*, 94ff.
31. Codex Hammurabi 195–214; Neufeld, *Hittite Laws*, 11–18.
32. Codex Hammurabi 1–4; Driver and Miles, *Babylonian Laws*, 1:58ff.
33. Compare Middle Assyrian Laws A7–8; Godfrey R. Driver and John C. Miles, trans., *The Assyrian Laws* (Oxford: Clarendon, 1936), 30, 354–55; Samuel E. Loewenstamm, “Genitalia” (in Hebrew), in *Encyclopaedia Miqra’it*, 4:610.
34. Compare Friedrich Horst, *Gottes Recht: Gesammelte Studien zum Recht im Alten Testament* (Munich: Kaiser, 1961), 167ff., and see pp. 75–76.
35. Compare Codex Hammurabi 3–4, 196–97, 200, 229–30; Neufeld, *Hittite Laws*, 92a, 121a; L.12 table 8:2; Samuel E. Loewenstamm, “Lex Talionis” (in Hebrew), in *Encyclopaedia Miqra’it*, 4:840. Compare the whole section with de Vaux, *Ancient Israel*, 244ff.
36. Samuel E. Loewenstamm, “Ransom” (in Hebrew), in *Encyclopaedia Miqra’it*, 4:231; Ephraim A. Speiser, “Census and Ritual Expiation in Mari and Israel,” *Bulletin of the American Schools of Oriental Research* 149 (1958): 17ff.
37. Compare Codex Hammurabi 192–95, 218, 226, 253.
38. Samuel E. Loewenstamm, “Hanging,” 2:798, and “Capital Punishment” (in Hebrew), in *Encyclopaedia Miqra’it*, 4:946; de Vaux, *Ancient Israel*, 244.
39. On the punishment for adultery, see David Daube, *Origen and the Punishment of Adultery in Jewish Law* (Berlin: Akademie, 1957), 110; and Joseph Blinzler, “Die Strafe für Ehebruch in Bibel und Halacha,” *New Testament Studies* 4 (1958): 32–47; Kornfeld, “L’adultère dans L’Orient Antique,” 92–109.
40. Loewenstamm, “Hanging,” 2:798, and “Capital Punishment,” 4:946.
41. Compare Codex Hammurabi 202; Middle Assyrian Laws A7–8; Samuel E. Loewenstamm, “Flogging” (in Hebrew), in *Encyclopaedia Miqra’it*, 4:1160.
42. Ze’ev W. Falk, “Exodus 21:6,” *Vetus Testamentum* 9 (1959): 89; see p. 38.
43. Samuel E. Loewenstamm, “Imprisoned” (in Hebrew), in *Encyclopaedia Miqra’it*, 1:476; Editorial Board, “Prison” (in Hebrew), in *Encyclopaedia Miqra’it*, 2:82.

44. Fines payable to the royal palace were also abolished in the Hittite Laws, 9, 25. Compare Driver and Miles, *Babylonian Laws*, 1:500.
45. Compare Codex Hammurabi 154.
46. De Vaux, *Ancient Israel*, 2:76; Samuel E. Loewenstamm, "Excommunication" (in Hebrew), in *Encyclopaedia Miqra'it*, 3:290.
47. Compare the Roman *sacer homo*, Theodor Mommsen, *Römisches Strafrecht* (Munich: Beck, 1982), 900ff.; K. Hofmann, *Reallexicon für Antike und Christentum*, 1:428. See Christianus H. W. Brekelmans, *De Herem in het OT* (Nijmegen: Centrale Drukkerij, 1959).
48. There exists only the cultic ransom of half a sheqel; Exodus 30:11–12; compare Loewenstamm, "Ransom," 4:231.
49. Compare Codex Eshnunna 42–48; Codex Hammurabi 203, 206, 209–10.
50. Raphael Patai, *Family, Love and the Bible* (London: Macgibbon and Kee, 1960), 94ff.
51. De Vaux, *Ancient Israel*, 246; Hartum, "Virgin," 2:381.
52. Daube, *Studies in Biblical Law*, 134–44. Compare Richard Haase, *Zeitschrift für die vergleichende Rechtswissenschaft* 66 (1964): 178.
53. Codex Eshnunna 53–55, 58; Codex Hammurabi 250–52.
54. See Adrianus van Selms, *Archiv Orientalní* 18 (1950): 4:321ff.; Elias J. Bickerman, "Two Legal Interpretations of the Septuagint," *Revue Internationale des Droits de l'Antiquité* 3 (1956): 97ff.
55. Compare Leviticus 27:3–4; Codex Hammurabi 250–52.
56. Compare Daube, *Studies in Biblical Law*, 94ff.; David Daube, "Robbery" (in Hebrew), in *Encyclopaedia Miqra'it*, 2:464; Samuel E. Loewenstamm, "Theft" (in Hebrew), in *Encyclopaedia Miqra'it*, 2:536.
57. Elijah S. Hartum, "Trespassing" (in Hebrew), in *Encyclopaedia Miqra'it*, 2:395. Compare Middle Assyrian Laws B8–15; Driver and Miles, *Assyrian Laws*, 302–5.
58. Compare Neufeld, *Hittite Laws*, 45, 60–62, 66, 71. Chaim Z. Hirschberg, "Casualties" (in Hebrew), in *Encyclopaedia Miqra'it*, 1:1.
59. Compare Codex Eshnunna 6, 12–13; Codex Hammurabi 6–13, 21–23, 259–60; Middle Assyrian Laws A1, 3 5; Neufeld, *Hittite Laws*, 91–97, 101–3, 119–43; Loewenstamm, "Theft," 2:536; Horst, *Gottes Recht*, 167ff.
60. Daube, *Studies in Biblical Law*, 201ff.
61. Compare Codex Hammurabi 120, 124, 265.
62. Compare Codex Eshnunna 40; Codex Hammurabi 7, 9.

# Things and Contracts

Ze'ev W. Falk

## 1. Property

During their first settlement of the land, the Hebrew tribes were pastoral people, owning “oxen and asses, flocks and manservants and maidservants” (Genesis 32:6) and acquiring their first immovable property. In order to be able to move easily, the family lived mainly in tents and did not possess many movables. Even at this early stage, however, everyday goods must have been recognized as personal property, while rights of water as well as grazing and burial grounds belonged to the group as a whole.

Immovables were acquired from the native population by conquest or by treaty (Genesis 48:22). The conquerors installed themselves in houses that they had not built and took possession of fields and orchards that they had not planted (Deuteronomy 6:10–11). Some of the real property was purchased from its former owners by peaceful negotiation (Genesis 23; 33:19), while other lands were acquired by colonization (Joshua 17:18).

The earliest settlement was an open land, while the cities were mainly held by the Canaanite population. Land ownership was still vested in the tribal group, division among the different families taking place only gradually. However, in the course of time most of the property had been allotted to the “houses of fathers,” i.e., to small family groups. The law speaks of the landmarks “which they of old time have set in your inheritance,” and considers the family share as an inheritance “that the Lord your God gives you to possess it” (Deuteronomy 19:14).<sup>1</sup>

As usual among peasant people, the ideal was “every man under his vine and under his fig-tree” (1 Kings 5:5), preserving the inheritance of his fathers (1 Kings 21:3). However, this individualism was moderated by the ancient idea of the land being God’s inheritance: “The land shall not be sold in perpetuity, for the land is mine, for you are strangers and sojourners with me” (Leviticus 25:23). The rules of Jubilee and of redemption were, in fact, intended to preserve the ideas of divine ownership and of the common tenancy of the family with regard to any single plot of land.<sup>2</sup>

The full system of common property was preserved in some circles, such as the Rechabite family and the prophet-disciples. Similar remnants of this concept are found in the rule of the levirate, which mentions “brothers dwelling together” (Deuteronomy 25:5), i.e., living in an undivided household and, perhaps, in the division by lot of certain lands (Psalm 16:5–6; Proverbs 1:14; Micah 2:5).

Meanwhile many of the Canaanite cities had passed into Israelite hands and the property within the city walls was divided amongst the new town dwellers. Except for the Levitical cities, which upheld the tribal tradition, the rules of Jubilee and of redemption did not apply in the cities. Instead, there existed only a limited right of redemption exercisable within one year of the date of sale (Leviticus 25:29).

Even in the open country, however, those provisions soon became obsolete, so that transfers of land were made without any limitation based on the rules of Jubilee and redemption. This is the background to Naboth’s reaction toward Ahab’s offer to buy his vineyard (1 Kings 21:2). Under the monarchy it became possible to acquire large estates and to have them cultivated by slaves and hired workers. Poor farmers were often forced to mortgage their holdings, to sell them, and even to suffer their own or their children’s enslavement. By the time of the first

prophets, real as well as personal property changed hands frequently and capital was concentrated in the hands of the few (Isaiah 5:8; Micah 2:2).<sup>3</sup>

A better division of wealth was restored after the destruction of the kingdoms of Israel and Judah and the settlement of the exiles in Babylonia. The family structure probably became more rigid and was the basis of the new settlement in Judaea. Unfortunately, the scarcity of food again endangered the small farmers, until the Mosaic law was reintroduced by Ezra in order to safeguard the economic and social peace.<sup>4</sup>

## 2. Restrictions on Ownership

We have mentioned on several occasions the restrictions imposed upon the owner of property in order to protect the family rights or to preserve the divine ownership of land. The rule of redemption, for instance, allowed the seller of realty to buy back the land at its original price and created a corresponding right of preemption in favor of his next of kin (Leviticus 25:25–28; Ruth 4:1–17; Jeremiah 32:7).<sup>5</sup> Where daughters had inherited their father's estate, they were barred from marriage outside the tribe. The restriction upon their choice was the result of the family's rights in the deceased man's property and of the corresponding restrictions upon the alienation of such property (Numbers 36).

The peasant was not allowed to use the fruits of his fields to the full extent, but had to leave part of them to the poor (Leviticus 19:9–10; 23:22; Deuteronomy 24:19–21). He had also to grant a certain portion to the wayfarer (Deuteronomy 23:24–25). These rights were based on the divine ownership of all property.

Other servitudes could be created by the owner himself. According to Leviticus 27, for example, vows could be made not only concerning goods, but also as to their monetary value. The obligation to give the sanctuary the money value of the chattel, instead of the object itself, seems to have been conceived as a kind of charge *in rem*.

The idea of the divine ownership of land together with the remnants of the tribal structure formed the basis of the regulations concerning sabbatical years. A Hebrew slave could not be kept in bondage for longer than six years, unless he had expressly agreed to remain a slave (Exodus 21:2–6). The period of emancipation was exactly six years from the beginning of servitude, no general year of liberation being known.<sup>6</sup>

Full ownership of land, on the other hand, was limited by a fixed and general sabbatical year, in which the right to enjoy the fruits of the land belonged to the poor and even to the beasts of the field (Exodus 23:10–11). The law dealt mainly with inherited rather than acquired property and created a simultaneous period of rest throughout the country, similar to the seventh day (Leviticus 25:1–7).

Deuteronomy 15:1–6 introduced the rule canceling debts during the sabbatical year. Unlike the rule concerning the liberation of slaves, the period was not made running from the time of the individual loan, so as to form a kind of limitation of seven years. The seventh year was one for all debtors, even for those whose liability had been created a short while before.<sup>7</sup>

Besides the sabbatical year, there also existed a Jubilee year every fifty years. The Jubilee was a further illustration of the belief in the divine ownership of all property (Leviticus 25:8–34). The owner was not to cultivate his field during this year but to leave its produce for the poor. Moreover, all land acquired otherwise than by inheritance reverted back to the original owner, the only exception were lands dedicated to the sanctuary and sold by the priest to a third party (Leviticus 27:16–21). Likewise, Hebrew slaves were liberated by the Jubilee, the assumption

being that they had not been freed in the seventh year. There could be two reasons for this discrepancy between the rules of the Jubilee and of the seventh year: the law of Exodus 21:2–6 was perhaps unknown at the time of Leviticus 25:10, or, and this is more probable, the former rule was not obeyed.<sup>8</sup>

All these restrictions on ownership date from an early period, when tribal concepts were still operative.<sup>9</sup> In the course of the settlement, their application was restricted. Urban houses became the full property of the purchaser after the lapse of the one-year period of redemption. Under the monarchy, the ancient rules were no longer in force, with the result that Zedekiah had to arrange a special release of Hebrew slaves (Jeremiah 34:8–16).<sup>10</sup> Even Nehemiah 5:1–13 still shows the absence of a fixed system of emancipation of slaves and cancellation of debts. It is doubtful whether the rules were applied during the second commonwealth.<sup>11</sup>

### **3. Contracts**

Ancient Hebrew society did not have much use for agreements and contracts. A person willing to make a binding promise would give it a religious basis by attaching an oath to it. God himself was thus involved in the agreement, both as a witness to the undertaking and as a judge in case of its violation.<sup>12</sup> The greater part of rights and duties was founded upon the rules of kinship, while obligations between members of different clans were mainly the result of wrongful acts.

Apart from simple barter contracts befitting the undeveloped economy of the pre-monarchical period, there did not exist many types of legal transactions. The family usually produced all the goods needed and sales of land were confined to cases of extreme poverty.

In the course of the social stratification that took place under the monarchy, opportunity arose for the development of commerce. However, even this was not an appropriate background for the creation of legal rules. Merchandise sold at the gates of the city consisted mainly of food (e.g., 2 Kings 7:1) and perhaps clothes, while the import of goods was the monopoly of the Canaanite traders (Proverbs 31:24; Isaiah 23:8). Some of the more lucrative items were subjects of a royal monopoly (1 Kings 9:26; 22:49), agencies being given to royal merchants in the surrounding states (1 Kings 20:34).

As shown by the archives of the Murashu family, the Babylonian exile brought the Jews into contact with the well-developed economy of a world power. Jewish merchants were engaged in various transactions regarding finance and realty.<sup>13</sup> However, Judaea itself did not develop beyond the limits of an agrarian economy. Besides the various artisans, mention is made of Jewish merchants (Nehemiah 3:32), and of foreign tradesmen selling food (Nehemiah 10:32; 13:16, 20).

While Hebrew law did not develop many provisions with regard to contracts, the possibility of creating legal relations by way of covenant existed from the oldest times. In intertribal relations, as well as in alliances between kings, the covenant form was used to establish a quasi kinship between equals or to secure the obedience of a vassal toward his overlord.

The form used in concluding such pacts was indeed common to various peoples in the ancient Orient, and the best records are found in Hittite sources of the fifteenth–thirteenth centuries.<sup>14</sup> According to the analysis made by V. Korošec,<sup>15</sup> the treaty texts may be divided into six parts: the preamble mentioning the name of the king making the covenant, the historical prologue describing the past benefits conferred by the king on the vassals, the

obligations imposed upon the vassal, provisions demanding the deposit of the text in the temple and its periodic reading in public, the list of divine witnesses (sometimes: heaven and earth) and, finally, the curses and blessings forming the sanction in case of breach.

Similar forms seem to have been in use among the Hebrews.<sup>16</sup> Moreover, in the patriarchal age the parties used to kill an animal as a sign of the punishment to befall the person who broke the covenant. This was also the custom among the tribes of Mari and among the Greeks and Romans.<sup>17</sup> The pact was concluded in the presence of witnesses and sometimes a stone pile or pillar was erected as a memorial. With the introduction of writing, an inscription was added to the stone; finally, the treaty was recorded in a written deed.

While originally the covenant united the parties in all respects, in later sources it is sometimes shown as having a partial effect only. Malachi 2:14 calls matrimony a covenant between the spouses, and Jeremiah 34:15 even uses the term for an exceptional occurrence “proclaiming liberty each to his neighbour and you made a covenant before me.” The covenant, thus, became a form similar to the oath, both being sacred ceremonies adapted to legal purposes.<sup>18</sup> It was often expressed by a handshake representing, perhaps, the union between the contracting parties (Isaiah 45:1; 2 Chronicles 30:8; Ezra 10:19; Lamentations 5:6; Ezekiel 17:18).<sup>19</sup> The covenant form, as well as the oath, was especially useful where the contract was executory on both sides, so that there existed no tangible object that could be transferred.

#### 4. Barter and Sale

Moving along the caravan routes of the Fertile Crescent, the patriarchs had much opportunity to engage in commerce (Genesis 34:10; 42:34).<sup>20</sup> The ancient form of trade was that of barter, whereby commodities were exchanged without any need for formality. The most common contract was perhaps the exchange of cattle (Leviticus 27:10), where both parties performed simultaneously. Contracts of labor, though of an executory character, were still understood as a kind of barter, the salary being given in exchange for the work done (Numbers 18:21, 31). In Ruth 4:7 transactions were no longer limited to pure exchanges, but “redeeming and exchanging” were symbolized by rendering a fictitious consideration. If the text described the delivery of the seller’s sandal to the purchaser, part performance on his part was indicated, while the same act, if done by the purchaser, symbolized the payment of the price (Amos 2:6; 8:6).

Where the sale concerned an immaterial object, such as the birthright of Esau, confirmation was made by oath to conclude the contract (Genesis 25:33).<sup>21</sup>

The value of commodities was originally expressed in units of cattle and sheep, which formed the major part of a person’s wealth. The term *miqneh*, therefore, meant both cattle and possession and *rosh* had the sense of capital as well as of head (of an animal). This was perhaps also the original meaning of *qesitah* (Genesis 33:19; *Targum Onqelos* at Genesis 33:19) and of rabbinical *qeren* denoting horn and capital. A similar duplicity of meaning existed in the Akkadian *qaqqādu* (head and capital sum) and the Sumerian *MSh* (goats and interest), as well as in the Roman *pecus* and *pecunia*.<sup>22</sup>

At the same time rare metal was also used as a means of valuing a commodity to be transferred. The price was determined by reference to a given weight of silver, so that the verb *shaqal* had the meaning of paying as well as of weighing, and the *sheqel* became both a unit of money and a measure of weight. While, originally, the silver used for payment was of an unknown shape, there appeared in Judaea under the Persian occupation various coins named

*darics* or *drachmas*. The former was coined under the reign of Darius; the latter was a Greek coin also current in Palestine.

A purchase of land by Abraham is described in Genesis 23.<sup>23</sup> This passage relating the transfer of the cave of Machpelah mentions all the legal elements in use during the patriarchal age among Israel's neighbors. After the preliminary negotiations had been completed in public near the city gate, the price of the property was agreed upon between the parties. By the payment in full of "four hundred sheqel of silver according to the weights current among the merchants," the property—described by the name of its former owner, its situation, and its fixtures—was said to have passed "as a possession" to the purchaser in the presence of the citizens as witnesses. No mention is made of a written contract as was usual at the time in Babylonia.<sup>24</sup> Indeed, writing, at least for secular purposes, may have been unknown in the tribal age; it is not mentioned among the first inventions of mankind (Genesis 4:21–22). The art was ascribed to God, who had taught it to his people in connection with the transmission of the law (Exodus 32:16). This was also the tradition among other peoples.<sup>25</sup>

In the same fashion, a dispute over water rights was settled orally by a formal payment of the price in the presence of witnesses (Genesis 21:30). The act is called *'edah*, i.e., it is in itself a testimony of the payer's right, without any need for further evidence.

A case of redemption and subsequent release of rights is described in a similar form in Ruth 4:1–10. The transaction was concluded in "the days when the judges ruled"; i.e., in the premonarchical period. Having cited the kinsman before ten of the elders of the city, Boaz stated the facts on which the right of preemption over the piece of land concerned was based. The man expressed his willingness to take advantage of this right, whereupon Boaz informed him of the obligation connected therewith, viz., the acquisition of the widow together with the property. The release resulting from this legal information was another oral contract made between the two parties in the presence of witnesses. Here, too, a formal act took place at the invitation of the transferor (the drawing of the shoe), followed by an assertion of ownership on the part of the transferee.<sup>26</sup> The people present were called by the transferee to witness the act and the declaration, and they accepted this task. However, the whole act was again called a "testimony," meaning the formal gesture preceding the documents of transfer.

Besides the "Deed of the Covenant" (Exodus 24:7), which was necessary to define intertribal or international relations, the law also recognized a "Deed of Divorce" (Deuteronomy 24:1). In this case, it seems, a formal act including a declaration in the presence of witnesses was not an adequate safeguard for the woman, since she usually left the place in order to settle somewhere else. The husband, therefore, was obliged to record the release of his power over her in a written instrument.<sup>27</sup>

With the greater mobility of property during the monarchical period and the reception of commercial usages from abroad, the written testimony became an important part of transfer formalities. The *te'udah* in Isaiah 8:16 had already the meaning of a document and its preparation formed the major part of the land transfer described in Jeremiah 32:6–14.

The text still distinguished between the act of acquisition, the payment of the price, the writing of the deed, the sealing, the appointment of witnesses, the weighing of the silver, and the preservation of the deed. Moreover, the text of the deed seems to have consisted of an assertion of ownership on the part of the purchaser, rather than a transfer of rights by the seller, for the deed was prepared by the purchaser.<sup>28</sup> This form was indeed similar to the Assyro-Babylonian style of documents, speaking from the point of view of the purchaser, debtor, lessee,



bridegroom—respectively.<sup>29</sup> The papyri from Elephantine, on the other hand, were made by the transferor and formed his written declaration in favor of the transferee or consisted of a dialogue.<sup>30</sup>

Hebrew society, being pastoral and agrarian, but never really commercial, did not develop fixed price catalogs for various commodities.<sup>31</sup> The seller was, however, warned not to overcharge the purchaser (Leviticus 25:14).<sup>32</sup>

## 5. Debt and Distress

Hebrew law recognized the lending of money or food as a kind of charity toward kinsmen rather than as a form of investment bearing interest. The debtor was poor, the next of kin was asked to help him gratuitously and to release his claim in the seventh year. No interest might be taken, unless the borrower was a foreigner (Exodus 22:24; Leviticus 25:35–38; Deuteronomy 15:1–11; 23:20–21).<sup>33</sup>

This law, however, was often violated, especially after the stratification and economic transformation of Hebrew society under the monarchy. As shown by the documents of the Murashu family,<sup>34</sup> the Babylonian exilics had become acquainted with banking operations. The Egyptian Jews described in the Aramaic papyri also engaged in small loans for interest, and the same practice is mentioned in the sources from Judaea (Nehemiah 5:1–13; Proverbs 28:8; Ezekiel 18:8–9; 22:12).<sup>35</sup>

Where the debt was not paid on time, liability attached to the person of the debtor. Exodus 22:25 asks the creditor not to put pressure on the debtor (1 Samuel 22:2) and Deuteronomy 15:2 provides for his release in the seventh year.<sup>36</sup> There is no express rule providing the debtor's surrender into slavery. Exodus 22:23 merely rules on the sale of a thief who cannot restore the stolen goods. However, while the latter was liable to be sold to a third person, the ordinary debtor, it seems, was seized by the creditor and made to pay his debt by laboring for him (Proverbs 22:7).

The law did, indeed, deal with the case where a person had sold himself into slavery and it provided for his liberation in the seventh year (Exodus 21:2–4; Leviticus 25:39; Deuteronomy 15:12–18). In theory, there is a difference between the sale of the debtor by himself in satisfaction of the debt and his physical attachment by the creditor. In practice, however, the two cases are not dissimilar, the debtor's consent in the former instance being rather fictitious (Amos 2:6; 8:6).<sup>37</sup>

Payment could also be secured by the delivery of a pledge, to be kept by the creditor until the satisfaction of the debt.<sup>38</sup> Genesis 38:18 speaks of the signet, the cord, and the staff of a debtor, while Exodus 21:7 and Isaiah 50:1 show him surrendering his child.<sup>39</sup> The various forms of real security are also described in the complaint of the poor under Nehemiah:

Our sons and our daughters we are many (mortgaging?) to get grain and keep alive. . . . We are mortgaging our fields, our vineyards and our houses to get grain because of the famine. . . . We have borrowed money for the king's tax upon our fields and our vineyards. Now our flesh is as the flesh of our brethren, our children are as their children; yet we are forcing our sons and our daughters to be slaves and some of our daughters have already been enslaved; but it is not in our power to help it, for other men have our fields and our vineyards. (Nehemiah 5:2–5)

In most cases the pledge was probably agreed on when the debt became due rather than at the date of the contract, though the ordinary loan was given for an indefinite period. The Aramaic papyri included the creditor's right of distress in the original acknowledgment, but they also deferred the execution of this right until the loan became mature.<sup>40</sup>

Dependents could be surrendered by the debtor in the same way as goods. The seizure of children is mentioned in 2 Kings 4:1, while Exodus 21:7 and Isaiah 50:1 speak of their sale, the latter expressly mentioning the satisfaction of debt. No corresponding right existed with regard to the debtor's wife, who seems to have been immune from delivery as a pledge and from seizure.<sup>41</sup>

Even without the debtor's consent, the creditor could levy distress upon his estate. Exodus 22:26–27 and Deuteronomy 24:6, 10–13, 17 show the creditor seizing property in order to compel the debtor to pay; the law merely demanded the adoption of a humane attitude when this right was executed. 2 Kings 4:1 assumes the seizure of the debtor's sons without mentioning the recourse to a court. They were probably put to work until the debt was paid off. According to the law against interest, the work had to be credited to capital rather than to interest.<sup>42</sup>

Another form of personal security for one's own undertaking was the wager. 2 Kings 18:23 and Isaiah 36:8 use the reflexive form of the verb *pledge* to describe the creation of personal liability for a certain promise. Both parties pledge themselves for the result of their bet, which is treated as an obligation of the loser in favor of the winner.

Suretyship for the safe custody of a given person must have been recognized by Hebrew law at an early date. The story of Judah and Benjamin describes the guarantee of a trustee for the safe return of a person given into his care (Genesis 43:9). 1 Kings 20:39 refers to a similar situation. In both cases the surety received a person and made himself liable for this person's reappearance. On failing to fulfil his promise, the surety became personally responsible, but under the second arrangement, he could redeem himself by payment of a liquidated penalty. Biblical sources do not show this form of suretyship as being used to guarantee the appearance of a debtor.

The children mentioned in the complaint made to Nehemiah were sureties personally delivered into the creditor's possession. Similarly, a person could be held hostage by an overlord in order to guarantee the faithfulness of his vassal (2 Kings 14:14); he was then liable to be killed or enslaved for a breach of promise.<sup>43</sup>

The main form of surety developed during the monarchy. At that time Hebrew society became divided into rich landowners and a considerable proletariat and there was more use than before of financial transactions. Suretyship, then, must have become an important means of guaranteeing the repayment of loans. While no examples can be found of the promise of a debtor's appearance, there exist various passages showing guarantees of payment (Proverbs 20:16; 22:26–27; Ben Sira 8:13; 29:19).<sup>44</sup>

Reference is made in these passages to the obligation of the surety. This obligation could concern the redemption price for the surety's person, but more probably it was the result of the assumption of the principal debt by the surety.

A solemn declaration of the surety is mentioned in Genesis 43:9 and Proverbs 6:1–5. The formula was accompanied by a gesture, similar to the Roman and medieval *fidei datio* or *dextera*. By inserting his hand into the creditor's palm, the surety symbolized his entry into the latter's power and, probably, his intervention in favor of

the debtor. A corresponding gesture took place perhaps between the surety and the debtor. Besides the meaning of submission, the handclasp also symbolized the bond created between the two persons.<sup>45</sup>

The sanctions against the defaulting surety mentioned in Proverbs 20:16 and 22:26 concerned only his property, not his person. The debtor, on the other hand, was described in Proverbs 22:7 as the creditor's slave and was shown even as late as the time of *Mishnah Baba Batra* 10:8 to be seized in distress.

Usually, the surety was freed from his liability by payment of the debt. According to Proverbs 6:3 he could also be released by the creditor *ex gratia*.

## 6. Partnership and Agency

In Biblical, as in other laws, co-ownership within the family preceded commercial partnership. The "brothers sitting together" (Deuteronomy 25:5) carried on their common affairs and were responsible for each other.<sup>46</sup> Such a relationship was based on the ties of blood; it could, however, be extended to more distant kinsman or even to confederates in a tribal covenant.

This relationship differs from a modern partnership in that it was not limited to a particular business. It formed rather an overall grouping of the people concerned for all needs and purposes. On the other hand, people sometimes united for a definite commercial purpose, also using the form of the covenant to make the agreement binding on both parties.

Leviticus 6:2 mentions, among the various forms of converting another person's goods for one's own use, a case in which "a man sins and commits a breach of faith against God by deceiving his neighbor in a matter of . . . putting of the hand." According to the Septuagint this should be translated by *koinonia*, while Philo, *De Specialibus Legibus* 4:32, thinks of the handshakes as the means whereby a partnership was created. Both refer to a breach of trust between partners treated as a religious and civil offense. The gesture of the hand, indeed, symbolized the consent of mind as well as the joining of action.

Similar to the Phoenician trading syndicate, the *hubur* was the joint enterprise of the kings of Judah and Israel: "After this, Jehoshaphat king of Judah joined (*ethabar*) Ahaziah king of Israel, who did wickedly. He joined him (*wayehaberehu imo*) in building ships to go to Tarshish, and they built the ships in Ešion geber" (2 Chronicles 20:35–36). A partnership between fishermen is perhaps mentioned in Job 40:30 (41:6 KJV), while Septuagint Proverbs 21:9; 25:24 give the meaning of a joint enterprise to the Hebrew *beyt haver* (also Proverbs 1:14).<sup>47</sup>

A special type of partnership was marriage, being a covenant between the spouses for life. Malachi 2:14 explains the solemnity of the act as follows: "She is your companion (*havertekha*) and your wife by covenant." A marriage alliance between two kings is described in Daniel 11:6 by the term *hithaber*. The handshake included in the marriage ceremony described in Tobit 7:13 may also have been a symbolic expression of companionship.<sup>48</sup>

The various guilds, such as the sons of the prophets (e.g., 1 Kings 20:35), the family of the scribes, the family of the linen workers, the goldsmiths, and the perfumers (1 Chronicles 2:55; 4:21; Nehemiah 3:8) were other forms of corporations created by covenant. Every such union must either have been in possession of a special statute to regulate its common business or else its affairs were governed by accepted custom. It was presided over by a "father" (1 Chronicles 2:55) enjoying a kind of *potestas* over the members and apprentices.<sup>49</sup>

Wherever a group was called to act there arose the need to create some form of agency. The earliest use of this institution, it seems, was for cultic purposes. The “head of a father’s house” or of a clan would sacrifice on behalf of his dependents as well as on his own behalf; later the Aaronic priesthood adopted a similar function in the national framework.

Agency, therefore, developed within the sanctuary as a means of mediation between God and the nation at large. As the priest’s ordination was called *milu’im* (literally: filling) and the person performing the installation ceremony described as “filling their hands” (e.g., Exodus 28:41; Judges 17:5), the existence of a form similar to the Roman *mandatum*<sup>50</sup> may be presumed. The person conducting the ordination used, perhaps, to put some holy tool into the priest’s hand; another possibility is the mere placing of the former’s hand into that of the latter. A person could volunteer for divine service, which was then known as “filling of one’s hands for God” (Exodus 32:29; 2 Chronicles 29:31).

Because of the primitive economy that existed in Israel until the end of the monarchy, there was no incentive for the application of these forms to private laws. Where a slave of a *filius-familias* acted as agent, there was no need for a legal ceremony between him and his principal; a mere promise was sufficient. An example of this form of agency is the commission of Abraham’s servant to acquire a wife for Isaac (Genesis 24).

## 7. Hire

In the pastoral and agrarian society of ancient Israel there was little demand or market for hired labor. The hiring in most cases was a poor foreigner lacking a plot of land of his own (Exodus 12:45; Leviticus 22:10; Deuteronomy 24:14; 1 Samuel 2:5). The contract could be made for a day (Deuteronomy 24:14), a year (Leviticus 25:50, 53; Isaiah 16:14; 21:16), or even longer (Genesis 29:18; Deuteronomy 15:18).

The need for hired workers seems to have arisen mainly at harvest time (Ruth 2:3). The work of shepherding was mostly done by members of the household, but sometimes also by independent contractors (Genesis 31:38–39; Exodus 22:9; Amos 3:12).<sup>51</sup>

Owing to these workers’ lowly status, various laws were necessary for their protection. The employer was forbidden to withhold their wages (Leviticus 19:13; Deuteronomy 24:14) or to violate any other right belonging to them (Jeremiah 22:13; Malachi 3:5). No standard wages, however, were mentioned in Hebrew law, as contracts of hire were exceptional and fixed rates of pay had not yet been established.<sup>52</sup>

The law did not include provisions defining the duty of the hired worker, apart from the duty of custody implied in contracts of deposit. Exodus 22:7–14 distinguishes between three cases: the deposit of money or goods, the pasturing of cattle, and the borrowing of a beast. The bailee of the first category was bound to restore the chattel but was not obliged to preserve it in good condition. If he claimed that the chattel had been stolen from him and that he could not therefore restore it, the matter was referred to an ordeal; if the bailee was found to have been dishonest, a double penalty was inflicted upon him.<sup>53</sup>

The shepherd was treated more severely and could not claim theft as an exemption from liability. He was, in fact, bound to attend constantly to the herd and was freed from the duty of restitution only if he could prove that the loss was caused by beasts of prey (1 Samuel 17:34; Amos 3:12).<sup>54</sup> Sometimes even absolute liability attached to a

contract of pasturage, especially where the wages were paid in kind and the agreement took the form of a lease of cattle (Genesis 31:38–40).<sup>55</sup>

Full liability was also imposed on the borrower, who was responsible for the borrowed beast's injury or death. Only where the owner of the animal was present at the time of injury, did the loss fall upon him. In such a case the assumption was that the damage was unavoidable.

Exodus 22:14 continues: "If it be hire, it comes into the wages." The meaning of this sentence is not free from doubt. According to the usual interpretation, damage caused to a hired object was not to be borne by the hirer; this risk was included in the payment of the price. The provision does not, however, exclude the borrower from all forms of responsibility, for then the price would have been prohibitive. Only the obligation to make good injuries and death caused during the use of the hired animal was excluded.<sup>56</sup>

Contracts of deposit and shepherding, being of rather an informal character, were not, originally, embodied in a written document. Under the influence of Babylonian law, however, postexilic Jewish sources mention deeds of deposit and perhaps also of pasturage (Tobit 5:3; 1 Enoch 89:62–63).

A greater measure of responsibility than that of the hired worker was placed upon the independent contractor. Craftsmen were needed for skilled work, such as the building of the temple or the carrying out of its repairs. No control was exercised over the execution of their work. They were trusted with regard to the quantity of building material needed, they could keep surpluses for themselves and they received exceptional wages. These rights were perhaps due to the efforts of the guilds and to the social importance.<sup>57</sup>

Leases of land and of buildings are not dealt with in biblical legislation. Both during the tribal age and under the early kings, the contrast between rich and poor had not yet developed to the degree known, for instance, in Babylonia.<sup>58</sup> Genesis 47:20–26 ascribes to Egypt the system of royal grants of land on condition that one fifth of the land's income was paid to the Crown. Similarly, the town of *êiqlag* was given to David by the Philistines as feudal estate. No such arrangement is mentioned, however, in Israel proper.

The nearest approach to the feudal system was the concept of the divine ownership of land, as represented, for instance, in the rule of Jubilee. The fields, vineyards, and olive orchards given by the king to his servants (1 Samuel 8:14) may also have been feudal grants.

As a result of the economic changes that took place between the ninth and eighth centuries there arose a landed aristocracy as opposed to the mass of landless town dwellers. It was at this time that the first leases of realty may have been contracted in Israel according to Babylonian examples.<sup>59</sup>

## Notes

1. Compare Friedrich Horst, *Gottes Recht: Gesammelte Studien zum Recht im Alten Testament* (Munich: Kaiser, 1961), 203ff.; similar ideas existed, as mentioned above, in Babylonia, Greece, and Rome.
2. Compare Marmorstein, *Palestine Exploration Quarterly* 85 (1953): 111ff.; Henry, *Palestine Exploration Quarterly* 86 (1954): 5ff.; Roland de Vaux, *Ancient Israel: Its Life and Institutions*, trans. John McHugh (London: Darton, 1961), 251–56; Christopher R. North, *Sociology of the Biblical Jubilee* (Rome: Pontifical Biblical Institute, 1954).

3. Compare Ephraim Neufeld, "Emergence of a Royal-Urban Society," *Hebrew Union College Annual* 31 (1960), 31–53.
4. On the whole chapter, see also de Vaux, *Ancient Israel*, 254; Chaim Z. Hirschberg, "Property" (in Hebrew), in *Encyclopaedia Miqra'it* (Jerusalem: Bialik, 1950), 1:209; Jacob J. Rabinowitz, "Redemption for the Land" (in Hebrew), in *Encyclopaedia Miqra'it*, 2:394; Samuel E. Loewenstamm, "Jubilee" (in Hebrew), in *Encyclopaedia Miqra'it*, 3:578; Albrecht Alt, *Kleine Schriften zur Geschichte des Volkes Israel* (Munich: Beck, 1953–59), 3:348–72.
5. Johannes Pedersen, *Israel: Its Life and Culture* (London: Oxford University Press, 1926–40), 1–2:84ff.; David Daube, *Studies in Biblical Law* (Cambridge: Cambridge University Press, 1947), 39ff.; Rabinowitz, "Redemption for the Land," 2:394; de Vaux, *Ancient Israel*, 254; Ze'ev W. Falk, "Mutual Obligation in the Ketubah," *Journal of Jewish Studies* 8 (1957): 216; Ephraim Neufeld, "Ius Redemptionis in Ancient Hebrew Law," *Revue Internationale des Droits de l'Antiquité* 8 (1961): 32. For the right of preemption, compare Codex Eshnunna 39.
6. Compare Martin David, "The Manumission of Slaves under Zedekiah: A Contribution to the Laws about the Hebrew Slaves," *Oudtestamentische Studien* 5 (1948): 63–79; Robert North, *Sociology of the Biblical Jubilee* (Rome: Pontifical Biblical Institute, 1954).
7. Extraordinary cancellation of debts was introduced by various Babylonian rulers; compare the law described by Fritz R. Kraus, *Ein Edikt des Königs Ammi Saduqa* (Leiden: Brill, 1958); North, *Sociology of the Biblical Jubilee*, and de Vaux, *Ancient Israel*, 254.
8. Compare the discussion in *Sifra ad Leviticus* 25:10 and North, *Sociology of the Biblical Jubilee*.
9. For Nuzian parallels, see Levi, *Eretz Israel* 5 (1959): 21–22; compare Loewenstamm, "Jubilee," 3:578; de Vaux, *Ancient Israel*, 267; Horst, *Gottes Recht*, 213ff.
10. Compare Neufeld, "Emergence of a Royal-Urban Society," 31ff.
11. *Sifra ad Leviticus* 25:10; but see Efraim E. Urbach, *Zion* 25 (1960): 143ff.
12. Compare Horst, *Gottes Recht*, 292ff.
13. Guillaume Cardascia, *Les Archives des Murashû* (Paris: Imprimerie Nationale, 1951). Various transactions, though not on a commercial scale, are found also among the papyri of Elephantine; compare Reuven Yaron, *Introduction to the Law of Aramaic Papyri* (Oxford: Clarendon, 1961).
14. Compare, for instance, the treaties between the Hittite kings and the kings of Ugarit in Jean Nougayrol, *Le Palais Royal d'Ugarit IV: Textes Accadiens des Archives Sud* (Paris: Klincksieck, 1956), 43, 51, 65.
15. Viktor Korošec, *Hethitische Staatsverträge* (Leipzig: Weicher, 1931).
16. George E. Mendenhall, "Covenant Forms in Israelite Traditions," *Biblical Archaeologist* 17 (1954): 50ff.; George E. Mendenhall, "Puppy and Lettuce in Northwest-Semitic Covenant Making," *Bulletin of the American Schools of Oriental Research* 133 (1954): 26–30; J. C. L. Gibson, "Light from Mari on the Patriarchs," *Journal of Semitic Studies* 7 (1962): 46; Charles F. Fensham, "Clauses of Protection in Hittite Vassal-Treaties and the Old Testament," *Vetus Testamentum* 13 (1963): 133–43; Julien Harvey, "Le Rib-Pattern, Requisitoire prophetique sur la rupture de

- l'alliance," *Biblica* 43 (1962): 172–96. On anointing as a form of covenanting, see Ernst Kutsch, "Salbung als Rechtsakt," *Beiheft zur Zeitschrift für die alttestamentliche Wissenschaft* 87 (1963). See also p. 136.
17. Elijah S. Hartum, "Covenant" (in Hebrew), in *Encyclopaedia Miqra'it*, 2:347; Abraham Malamet, "Curse" (in Hebrew), in *Encyclopaedia Miqra'it*, 4:575; Yehoshua M. Grintz, *Zion* 26 (1961): 69–84; Charles F. Fensham, "Maledictions and Benedictions in Ancient Near Eastern Vassal-Treaties and the Old Testament," *Zeitschrift für die alttestamentliche Wissenschaft* 74 (1962): 1–8.
18. Compare the same process in Egyptian law: Erwin Seidl, *Einführung in die ägyptische Rechtsgeschichte bis zum Ende des neuen Reiches* (Glückstadt: Augustin, 1951), 49.
19. Ze'ev W. Falk, "Gestures Expressing Affirmation," *Journal of Semitic Studies* 4 (1959): 268; Ze'ev W. Falk, "Zum jüdischen Bÿrgschaftsrecht," *Revue Internationale des Droits de l'Antiquité* 10 (1963): 49–53.
20. Cyrus H. Gordon, "Abraham and the Merchants of Ur," *Journal of Near Eastern Studies* 17 (1958): 28–31; W. F. Albright, "Abram the Hebrew," *Bulletin of the American Schools of Oriental Research* 163 (1962): 36–54; see, however, Speiser, *Bulletin of the American Schools of Oriental Research* 164 (1961): 23–28.
21. Compare David Daube, *Cambridge Law Journal* 8 (1942): 70f.; Ephraim Neufeld, *Ancient Hebrew Marriage Laws* (London: Longmans, 1944), 263–64; Daube, *Studies in Biblical Law*, 195–96.
22. Compare de Vaux, *Ancient Israel*, 313–14; Godfrey R. Driver and John C. Miles, *The Babylonian Laws* (Oxford: Clarendon, 1952–55), 1:174; Karl Friedrich Thormann, *Der doppelte Ursprung der Mancipatio* (Munich: Beck, 1943), 119, 155 (denying the use of cattle as money).
23. Compare Manfred R. Lehmann, "Abraham's Purchase of Machpelah and Hittite Law," *Bulletin of the American Schools of Oriental Research* 129 (1953): 15–18; B. Perrin, "Trois textes bibliques sur les techniques d'acquisition," *Revue Historique de Droit Français et Etranger* 41 (1963): 5–19.
24. Compare Codex Hammurabi 7, and Yaron, *Introduction*, 79ff.; Evans, "'Coming' and 'Going,'" *Bulletin of the American Schools of Oriental Research* 150 (1958): 32.
25. De Vaux, *Ancient Israel*, 82; Falk, "Mutual Obligation in the Ketubah," 215.
26. For a comparison to the Roman *mancipatio*, see Jacob J. Rabinowitz, *Jewish Law: Its Influence on the Development of Legal Institutions* (New York: Bloch, 1956), 7ff.
27. Originally, divorce may also have been effected orally, see Hosea 2:4; compare de Vaux, *Ancient Israel*, 60; see p. 136, and *Mekhilta ad Exodus* 18:2.
28. Unless Jeremiah wrote the deed on behalf of the seller.
29. Mariano San Nicolo, *Beiträge zur Rechtsgeschichte im Bereiche der keilschriftlichen Rechtsquellen* (Oslo: Aschehoug, 1931), 156. Compare p. 140.
30. Yaron, *Introduction*, 10, 79.

31. Compare Codex Eshnunna 1–4; Ephraim Neufeld, *The Hittite Laws* (London: Luzac, 1951), 176B–186.
32. Abraham Friemann, “Deceit” (in Hebrew), in *Encyclopaedia Miqra’it*, 1:149; on transfers of land, see also Melamed, *Tarbiz* 14 (1942): 11–18; Jacob J. Rabinowitz, “Lords” (in Hebrew), in *Encyclopaedia Miqra’it*, 2:295; Assaf Jubilee Vol. (Jerusalem: 1953), 433–34; de Vaux, *Ancient Israel*, 256–59.
33. For the release of interest in cases of disaster, compare Codex Hammurabi 48.
34. See pp. 3, 88, above.
35. Compare Arthur E. Cowley, ed. and trans., *Aramaic Papyri of the Fifth Century B.C.* (Oxford: Clarendon, 1923), 29–35; Yaron, *Introduction*, 93ff.; Siegfried Stein, “Jewish Law on Interest,” *Historia Judaica* 17 (1955): 3ff.; Jacob J. Rabinowitz, “Away Beyond” (in Hebrew), in *Encyclopaedia Miqra’it*, 2:813; de Vaux, *Ancient Israel*, 260; Ephraim Neufeld, “The Rate of Interest and the Text of Nehemiah 5:11,” *Jewish Quarterly Review* 44 (1953): 194–204; Ephraim Neufeld, “The Prohibitions against Loans at Interest in Ancient Hebrew Laws,” *Hebrew Union College Annual* 26 (1955): 355–412.
36. See pp. 86–97, above.
37. Compare Codex Hammurabi 117–19; Driver and Miles, *Babylonian Laws*, 1:216–17; Guttman, *Dünaburg Volume* (Jerusalem, 1950), 68ff. (denying the existence of bondage for debts); Rabinowitz, *Jewish Law*, 15–16; Neufeld, “Ius Redemptionis,” 29ff.; Ze’ev W. Falk, “Zum jüdischen Handelsrecht,” 11–19.
38. On the law of pledges, see Ephraim Neufeld, “Inalienability of Mobile and Immobile Pledges in the Laws of the Bible,” *Revue Internationale des Droits de l’Antiquité* 9 (1962): 33–34.
39. Compare Codex Hammurabi 49–52, 117–19; Middle Assyrian Laws A48.
40. Cowley, *Aramaic Papyri*, 29–32; Emil G. Kraeling, *The Brooklyn Museum Aramaic Papyri* (New Haven: Yale University Press, 1953), 11; R. Halevy, *Tarbiz* 27 (1958): 31–38; de Vaux, *Ancient Israel*, 261; Yaron, *Introduction*, 96; Falk, “Zum jüdischen Bürgschaftsrecht,” 43–44.
41. Compare Codex Hammurabi 151–52; Driver and Miles, *Babylonian Laws*, 1:216. Compare the Talmudic belief in the responsibility of a man’s wife and children for his vows, *Babylonian Talmud Šabbat* 32b.
42. For the rules of distress levied on persons, compare Codex Eshnunna 22–24; and on distress in general, see Codex Hammurabi 113–19.
43. For Assyrian parallels, see Samuel E. Loewenstamm, “Hostage” (in Hebrew), in *Encyclopaedia Miqra’it*, 2:179.
44. De Vaux, *Ancient Israel*, 264; Neufeld, “Ius Redemptionis,” 39ff.; Falk, “Zum jüdischen Bürgschaftsrecht,” 43ff.
45. Falk, “Zum jüdischen Bürgschaftsrecht,” and Falk, “Gestures Expressing Affirmation,” 268.
46. Abraham Freimann, “Brothers” (in Hebrew), in *Encyclopaedia Miqra’it*, 1:189; Driver and Miles, *Babylonian Laws*, 1:186ff.; Codex Eshnunna 38; Middle Assyrian Laws A25.



47. Compare Samuel E. Loewenstamm, "House of Association" (in Hebrew), in *Encyclopaedia Miqra'it*, 2:72; Albright, *Studies Presented to D. M. Robinson* 1:229ff.; Malamet, "Mari and the Bible," *Journal of American Oriental Society* 82 (1962): 145.
48. The term *partnership* appears also in the Judaeen marriage deed cited in *Palestinian Ketubbot* 7:7, 31c; compare Ze'ev W. Falk, *Marriage and Divorce* (in Hebrew) (Jerusalem: Mif'al ha-shikhpul, 1961), 87, 89; see also p. 144.
49. Compare Klein, *Zion* 2 (1927): 9; de Vaux, *Ancient Israel*, 119–21.
50. Derived from *manus* and *dare*, see Max Kaser, *Das römische Privatrecht* (Munich: Beck, 1955–59), 1:481. For the Hebrew "filling of hands," see Manachem Haran, "Hand-Filling" (in Hebrew), in *Encyclopaedia Miqra'it*, 4:1049; de Vaux, *Ancient Israel*, 2:197. Compare also the parallel expression in the Mari texts.
51. Another form of hired labor was prostitution, mentioned in various biblical sources; see Samuel E. Loewenstamm, "Harlots" (in Hebrew), in *Encyclopaedia Miqra'it*, 1:793; Samuel E. Loewenstamm, "Prostitution" (in Hebrew), in *Encyclopaedia Miqra'it*, 2:935; compare Genesis 30:16. On the Babylonian law of labor, see J. G. Lautner, *Altbabylonische Personenmiete und Erntearbeiterverträge*, vol. 1 of *Studia et Documenta ad Iura Orientis Antiqui Pertinentia* (Leiden: Brill, 1936).
52. Compare Codex Eshnunna 7–11; Codex Hammurabi 257–58, 273–74; Neufeld, *Hittite Laws*, 150ff.; de Vaux, *Ancient Israel*, 118. See, however, "Wages for man and wages for beast" (Zechariah 13:10).
53. Compare Codex Eshnunna 36–37; Codex Hammurabi 124–26.
54. Compare Codex Hammurabi 253–67.
55. Compare Sibylle von Bolla-Kotek, *Untersuchungen zur Tiermiete und Viehpacht im Altertum* (Munich: Beck, 1940): 168; Ze'ev W. Falk "The Expression 'Iron Sheep' in the Talmud" (in Hebrew), *Tarbiz* 26 (1957): 287–91.
56. Compare Codex Lipit Ishtar 34–37; Codex Hammurabi 244–49; Neufeld, *Hittite Laws*, 75–76. On the Hebrew law of deposit and shepherding, see Karel, *Tarbiz* 7 (1936): 258; Cohen, *Revue Internationale des Droits de l'Antiquité* 2 (1949): 133ff.; David Daube, "Rechtsgedanken in den Erzählung des Pentateuchs," *Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft* 77 (1958): 32.
57. Samuel Abramski, "Insult" (in Hebrew), in *Encyclopaedia Miqra'it*, 3:304; Samuel Yeivin, "Work" (in Hebrew), in *Encyclopaedia Miqra'it*, 4:990; Ze'ev W. Falk, "The Inheritance of the Daughter and the Widow in the Miqra and in the Talmud" (in Hebrew), *Tarbiz* 28 (1959): 251; de Vaux, *Ancient Israel*, 119–20.
58. Compare Codex Lipit Ishtar 8; Codex Hammurabi 26ff., 42–47, 60–65; Samuel E. Loewenstamm, "Renter of Land" (in Hebrew), in *Encyclopaedia Miqra'it*, 3:124.
59. Compare San Nicolo, *Beiträge*, 230ff.; de Vaux, *Ancient Israel*, 251ff.; Loewenstamm, "Renter of Land"; see also Amos 5:11, which seems to refer to rents paid in kind.

# Things and Contracts

Ze'ev W. Falk

## 1. Property

During their first settlement of the land, the Hebrew tribes were pastoral people, owning “oxen and asses, flocks and manservants and maidservants” (Genesis 32:6) and acquiring their first immovable property. In order to be able to move easily, the family lived mainly in tents and did not possess many movables. Even at this early stage, however, everyday goods must have been recognized as personal property, while rights of water as well as grazing and burial grounds belonged to the group as a whole.

Immovables were acquired from the native population by conquest or by treaty (Genesis 48:22). The conquerors installed themselves in houses that they had not built and took possession of fields and orchards that they had not planted (Deuteronomy 6:10–11). Some of the real property was purchased from its former owners by peaceful negotiation (Genesis 23; 33:19), while other lands were acquired by colonization (Joshua 17:18).

The earliest settlement was an open land, while the cities were mainly held by the Canaanite population. Land ownership was still vested in the tribal group, division among the different families taking place only gradually. However, in the course of time most of the property had been allotted to the “houses of fathers,” i.e., to small family groups. The law speaks of the landmarks “which they of old time have set in your inheritance,” and considers the family share as an inheritance “that the Lord your God gives you to possess it” (Deuteronomy 19:14).<sup>1</sup>

As usual among peasant people, the ideal was “every man under his vine and under his fig-tree” (1 Kings 5:5), preserving the inheritance of his fathers (1 Kings 21:3). However, this individualism was moderated by the ancient idea of the land being God’s inheritance: “The land shall not be sold in perpetuity, for the land is mine, for you are strangers and sojourners with me” (Leviticus 25:23). The rules of Jubilee and of redemption were, in fact, intended to preserve the ideas of divine ownership and of the common tenancy of the family with regard to any single plot of land.<sup>2</sup>

The full system of common property was preserved in some circles, such as the Rechabite family and the prophet-disciples. Similar remnants of this concept are found in the rule of the levirate, which mentions “brothers dwelling together” (Deuteronomy 25:5), i.e., living in an undivided household and, perhaps, in the division by lot of certain lands (Psalm 16:5–6; Proverbs 1:14; Micah 2:5).

Meanwhile many of the Canaanite cities had passed into Israelite hands and the property within the city walls was divided amongst the new town dwellers. Except for the Levitical cities, which upheld the tribal tradition, the rules of Jubilee and of redemption did not apply in the cities. Instead, there existed only a limited right of redemption exercisable within one year of the date of sale (Leviticus 25:29).

Even in the open country, however, those provisions soon became obsolete, so that transfers of land were made without any limitation based on the rules of Jubilee and redemption. This is the background to Naboth’s reaction toward Ahab’s offer to buy his vineyard (1 Kings 21:2). Under the monarchy it became possible to acquire large estates and to have them cultivated by slaves and hired workers. Poor farmers were often forced to mortgage their holdings, to sell them, and even to suffer their own or their children’s enslavement. By the time of the first

prophets, real as well as personal property changed hands frequently and capital was concentrated in the hands of the few (Isaiah 5:8; Micah 2:2).<sup>3</sup>

A better division of wealth was restored after the destruction of the kingdoms of Israel and Judah and the settlement of the exiles in Babylonia. The family structure probably became more rigid and was the basis of the new settlement in Judaea. Unfortunately, the scarcity of food again endangered the small farmers, until the Mosaic law was reintroduced by Ezra in order to safeguard the economic and social peace.<sup>4</sup>

## 2. Restrictions on Ownership

We have mentioned on several occasions the restrictions imposed upon the owner of property in order to protect the family rights or to preserve the divine ownership of land. The rule of redemption, for instance, allowed the seller of realty to buy back the land at its original price and created a corresponding right of preemption in favor of his next of kin (Leviticus 25:25–28; Ruth 4:1–17; Jeremiah 32:7).<sup>5</sup> Where daughters had inherited their father's estate, they were barred from marriage outside the tribe. The restriction upon their choice was the result of the family's rights in the deceased man's property and of the corresponding restrictions upon the alienation of such property (Numbers 36).

The peasant was not allowed to use the fruits of his fields to the full extent, but had to leave part of them to the poor (Leviticus 19:9–10; 23:22; Deuteronomy 24:19–21). He had also to grant a certain portion to the wayfarer (Deuteronomy 23:24–25). These rights were based on the divine ownership of all property.

Other servitudes could be created by the owner himself. According to Leviticus 27, for example, vows could be made not only concerning goods, but also as to their monetary value. The obligation to give the sanctuary the money value of the chattel, instead of the object itself, seems to have been conceived as a kind of charge *in rem*.

The idea of the divine ownership of land together with the remnants of the tribal structure formed the basis of the regulations concerning sabbatical years. A Hebrew slave could not be kept in bondage for longer than six years, unless he had expressly agreed to remain a slave (Exodus 21:2–6). The period of emancipation was exactly six years from the beginning of servitude, no general year of liberation being known.<sup>6</sup>

Full ownership of land, on the other hand, was limited by a fixed and general sabbatical year, in which the right to enjoy the fruits of the land belonged to the poor and even to the beasts of the field (Exodus 23:10–11). The law dealt mainly with inherited rather than acquired property and created a simultaneous period of rest throughout the country, similar to the seventh day (Leviticus 25:1–7).

Deuteronomy 15:1–6 introduced the rule canceling debts during the sabbatical year. Unlike the rule concerning the liberation of slaves, the period was not made running from the time of the individual loan, so as to form a kind of limitation of seven years. The seventh year was one for all debtors, even for those whose liability had been created a short while before.<sup>7</sup>

Besides the sabbatical year, there also existed a Jubilee year every fifty years. The Jubilee was a further illustration of the belief in the divine ownership of all property (Leviticus 25:8–34). The owner was not to cultivate his field during this year but to leave its produce for the poor. Moreover, all land acquired otherwise than by inheritance reverted back to the original owner, the only exception were lands dedicated to the sanctuary and sold by the priest to a third party (Leviticus 27:16–21). Likewise, Hebrew slaves were liberated by the Jubilee, the assumption

being that they had not been freed in the seventh year. There could be two reasons for this discrepancy between the rules of the Jubilee and of the seventh year: the law of Exodus 21:2–6 was perhaps unknown at the time of Leviticus 25:10, or, and this is more probable, the former rule was not obeyed.<sup>8</sup>

All these restrictions on ownership date from an early period, when tribal concepts were still operative.<sup>9</sup> In the course of the settlement, their application was restricted. Urban houses became the full property of the purchaser after the lapse of the one-year period of redemption. Under the monarchy, the ancient rules were no longer in force, with the result that Zedekiah had to arrange a special release of Hebrew slaves (Jeremiah 34:8–16).<sup>10</sup> Even Nehemiah 5:1–13 still shows the absence of a fixed system of emancipation of slaves and cancellation of debts. It is doubtful whether the rules were applied during the second commonwealth.<sup>11</sup>

### **3. Contracts**

Ancient Hebrew society did not have much use for agreements and contracts. A person willing to make a binding promise would give it a religious basis by attaching an oath to it. God himself was thus involved in the agreement, both as a witness to the undertaking and as a judge in case of its violation.<sup>12</sup> The greater part of rights and duties was founded upon the rules of kinship, while obligations between members of different clans were mainly the result of wrongful acts.

Apart from simple barter contracts befitting the undeveloped economy of the pre-monarchical period, there did not exist many types of legal transactions. The family usually produced all the goods needed and sales of land were confined to cases of extreme poverty.

In the course of the social stratification that took place under the monarchy, opportunity arose for the development of commerce. However, even this was not an appropriate background for the creation of legal rules. Merchandise sold at the gates of the city consisted mainly of food (e.g., 2 Kings 7:1) and perhaps clothes, while the import of goods was the monopoly of the Canaanite traders (Proverbs 31:24; Isaiah 23:8). Some of the more lucrative items were subjects of a royal monopoly (1 Kings 9:26; 22:49), agencies being given to royal merchants in the surrounding states (1 Kings 20:34).

As shown by the archives of the Murashu family, the Babylonian exile brought the Jews into contact with the well-developed economy of a world power. Jewish merchants were engaged in various transactions regarding finance and realty.<sup>13</sup> However, Judaea itself did not develop beyond the limits of an agrarian economy. Besides the various artisans, mention is made of Jewish merchants (Nehemiah 3:32), and of foreign tradesmen selling food (Nehemiah 10:32; 13:16, 20).

While Hebrew law did not develop many provisions with regard to contracts, the possibility of creating legal relations by way of covenant existed from the oldest times. In intertribal relations, as well as in alliances between kings, the covenant form was used to establish a quasi kinship between equals or to secure the obedience of a vassal toward his overlord.

The form used in concluding such pacts was indeed common to various peoples in the ancient Orient, and the best records are found in Hittite sources of the fifteenth–thirteenth centuries.<sup>14</sup> According to the analysis made by V. Korošec,<sup>15</sup> the treaty texts may be divided into six parts: the preamble mentioning the name of the king making the covenant, the historical prologue describing the past benefits conferred by the king on the vassals, the

obligations imposed upon the vassal, provisions demanding the deposit of the text in the temple and its periodic reading in public, the list of divine witnesses (sometimes: heaven and earth) and, finally, the curses and blessings forming the sanction in case of breach.

Similar forms seem to have been in use among the Hebrews.<sup>16</sup> Moreover, in the patriarchal age the parties used to kill an animal as a sign of the punishment to befall the person who broke the covenant. This was also the custom among the tribes of Mari and among the Greeks and Romans.<sup>17</sup> The pact was concluded in the presence of witnesses and sometimes a stone pile or pillar was erected as a memorial. With the introduction of writing, an inscription was added to the stone; finally, the treaty was recorded in a written deed.

While originally the covenant united the parties in all respects, in later sources it is sometimes shown as having a partial effect only. Malachi 2:14 calls matrimony a covenant between the spouses, and Jeremiah 34:15 even uses the term for an exceptional occurrence “proclaiming liberty each to his neighbour and you made a covenant before me.” The covenant, thus, became a form similar to the oath, both being sacred ceremonies adapted to legal purposes.<sup>18</sup> It was often expressed by a handshake representing, perhaps, the union between the contracting parties (Isaiah 45:1; 2 Chronicles 30:8; Ezra 10:19; Lamentations 5:6; Ezekiel 17:18).<sup>19</sup> The covenant form, as well as the oath, was especially useful where the contract was executory on both sides, so that there existed no tangible object that could be transferred.

#### 4. Barter and Sale

Moving along the caravan routes of the Fertile Crescent, the patriarchs had much opportunity to engage in commerce (Genesis 34:10; 42:34).<sup>20</sup> The ancient form of trade was that of barter, whereby commodities were exchanged without any need for formality. The most common contract was perhaps the exchange of cattle (Leviticus 27:10), where both parties performed simultaneously. Contracts of labor, though of an executory character, were still understood as a kind of barter, the salary being given in exchange for the work done (Numbers 18:21, 31). In Ruth 4:7 transactions were no longer limited to pure exchanges, but “redeeming and exchanging” were symbolized by rendering a fictitious consideration. If the text described the delivery of the seller’s sandal to the purchaser, part performance on his part was indicated, while the same act, if done by the purchaser, symbolized the payment of the price (Amos 2:6; 8:6).

Where the sale concerned an immaterial object, such as the birthright of Esau, confirmation was made by oath to conclude the contract (Genesis 25:33).<sup>21</sup>

The value of commodities was originally expressed in units of cattle and sheep, which formed the major part of a person’s wealth. The term *miqneh*, therefore, meant both cattle and possession and *rosh* had the sense of capital as well as of head (of an animal). This was perhaps also the original meaning of *qesitah* (Genesis 33:19; *Targum Onqelos* at Genesis 33:19) and of rabbinical *qeren* denoting horn and capital. A similar duplicity of meaning existed in the Akkadian *qaqqādu* (head and capital sum) and the Sumerian *MSh* (goats and interest), as well as in the Roman *pecus* and *pecunia*.<sup>22</sup>

At the same time rare metal was also used as a means of valuing a commodity to be transferred. The price was determined by reference to a given weight of silver, so that the verb *shaqal* had the meaning of paying as well as of weighing, and the *sheqel* became both a unit of money and a measure of weight. While, originally, the silver used for payment was of an unknown shape, there appeared in Judaea under the Persian occupation various coins named

*darics* or *drachmas*. The former was coined under the reign of Darius; the latter was a Greek coin also current in Palestine.

A purchase of land by Abraham is described in Genesis 23.<sup>23</sup> This passage relating the transfer of the cave of Machpelah mentions all the legal elements in use during the patriarchal age among Israel's neighbors. After the preliminary negotiations had been completed in public near the city gate, the price of the property was agreed upon between the parties. By the payment in full of "four hundred sheqel of silver according to the weights current among the merchants," the property—described by the name of its former owner, its situation, and its fixtures—was said to have passed "as a possession" to the purchaser in the presence of the citizens as witnesses. No mention is made of a written contract as was usual at the time in Babylonia.<sup>24</sup> Indeed, writing, at least for secular purposes, may have been unknown in the tribal age; it is not mentioned among the first inventions of mankind (Genesis 4:21–22). The art was ascribed to God, who had taught it to his people in connection with the transmission of the law (Exodus 32:16). This was also the tradition among other peoples.<sup>25</sup>

In the same fashion, a dispute over water rights was settled orally by a formal payment of the price in the presence of witnesses (Genesis 21:30). The act is called *'edah*, i.e., it is in itself a testimony of the payer's right, without any need for further evidence.

A case of redemption and subsequent release of rights is described in a similar form in Ruth 4:1–10. The transaction was concluded in "the days when the judges ruled"; i.e., in the premonarchical period. Having cited the kinsman before ten of the elders of the city, Boaz stated the facts on which the right of preemption over the piece of land concerned was based. The man expressed his willingness to take advantage of this right, whereupon Boaz informed him of the obligation connected therewith, viz., the acquisition of the widow together with the property. The release resulting from this legal information was another oral contract made between the two parties in the presence of witnesses. Here, too, a formal act took place at the invitation of the transferor (the drawing of the shoe), followed by an assertion of ownership on the part of the transferee.<sup>26</sup> The people present were called by the transferee to witness the act and the declaration, and they accepted this task. However, the whole act was again called a "testimony," meaning the formal gesture preceding the documents of transfer.

Besides the "Deed of the Covenant" (Exodus 24:7), which was necessary to define intertribal or international relations, the law also recognized a "Deed of Divorce" (Deuteronomy 24:1). In this case, it seems, a formal act including a declaration in the presence of witnesses was not an adequate safeguard for the woman, since she usually left the place in order to settle somewhere else. The husband, therefore, was obliged to record the release of his power over her in a written instrument.<sup>27</sup>

With the greater mobility of property during the monarchical period and the reception of commercial usages from abroad, the written testimony became an important part of transfer formalities. The *te'udah* in Isaiah 8:16 had already the meaning of a document and its preparation formed the major part of the land transfer described in Jeremiah 32:6–14.

The text still distinguished between the act of acquisition, the payment of the price, the writing of the deed, the sealing, the appointment of witnesses, the weighing of the silver, and the preservation of the deed. Moreover, the text of the deed seems to have consisted of an assertion of ownership on the part of the purchaser, rather than a transfer of rights by the seller, for the deed was prepared by the purchaser.<sup>28</sup> This form was indeed similar to the Assyro-Babylonian style of documents, speaking from the point of view of the purchaser, debtor, lessee,

bridegroom—respectively.<sup>29</sup> The papyri from Elephantine, on the other hand, were made by the transferor and formed his written declaration in favor of the transferee or consisted of a dialogue.<sup>30</sup>

Hebrew society, being pastoral and agrarian, but never really commercial, did not develop fixed price catalogs for various commodities.<sup>31</sup> The seller was, however, warned not to overcharge the purchaser (Leviticus 25:14).<sup>32</sup>

## 5. Debt and Distress

Hebrew law recognized the lending of money or food as a kind of charity toward kinsmen rather than as a form of investment bearing interest. The debtor was poor, the next of kin was asked to help him gratuitously and to release his claim in the seventh year. No interest might be taken, unless the borrower was a foreigner (Exodus 22:24; Leviticus 25:35–38; Deuteronomy 15:1–11; 23:20–21).<sup>33</sup>

This law, however, was often violated, especially after the stratification and economic transformation of Hebrew society under the monarchy. As shown by the documents of the Murashu family,<sup>34</sup> the Babylonian exilics had become acquainted with banking operations. The Egyptian Jews described in the Aramaic papyri also engaged in small loans for interest, and the same practice is mentioned in the sources from Judaea (Nehemiah 5:1–13; Proverbs 28:8; Ezekiel 18:8–9; 22:12).<sup>35</sup>

Where the debt was not paid on time, liability attached to the person of the debtor. Exodus 22:25 asks the creditor not to put pressure on the debtor (1 Samuel 22:2) and Deuteronomy 15:2 provides for his release in the seventh year.<sup>36</sup> There is no express rule providing the debtor's surrender into slavery. Exodus 22:23 merely rules on the sale of a thief who cannot restore the stolen goods. However, while the latter was liable to be sold to a third person, the ordinary debtor, it seems, was seized by the creditor and made to pay his debt by laboring for him (Proverbs 22:7).

The law did, indeed, deal with the case where a person had sold himself into slavery and it provided for his liberation in the seventh year (Exodus 21:2–4; Leviticus 25:39; Deuteronomy 15:12–18). In theory, there is a difference between the sale of the debtor by himself in satisfaction of the debt and his physical attachment by the creditor. In practice, however, the two cases are not dissimilar, the debtor's consent in the former instance being rather fictitious (Amos 2:6; 8:6).<sup>37</sup>

Payment could also be secured by the delivery of a pledge, to be kept by the creditor until the satisfaction of the debt.<sup>38</sup> Genesis 38:18 speaks of the signet, the cord, and the staff of a debtor, while Exodus 21:7 and Isaiah 50:1 show him surrendering his child.<sup>39</sup> The various forms of real security are also described in the complaint of the poor under Nehemiah:

Our sons and our daughters we are many (mortgaging?) to get grain and keep alive. . . . We are mortgaging our fields, our vineyards and our houses to get grain because of the famine. . . . We have borrowed money for the king's tax upon our fields and our vineyards. Now our flesh is as the flesh of our brethren, our children are as their children; yet we are forcing our sons and our daughters to be slaves and some of our daughters have already been enslaved; but it is not in our power to help it, for other men have our fields and our vineyards. (Nehemiah 5:2–5)

In most cases the pledge was probably agreed on when the debt became due rather than at the date of the contract, though the ordinary loan was given for an indefinite period. The Aramaic papyri included the creditor's right of distress in the original acknowledgment, but they also deferred the execution of this right until the loan became mature.<sup>40</sup>

Dependents could be surrendered by the debtor in the same way as goods. The seizure of children is mentioned in 2 Kings 4:1, while Exodus 21:7 and Isaiah 50:1 speak of their sale, the latter expressly mentioning the satisfaction of debt. No corresponding right existed with regard to the debtor's wife, who seems to have been immune from delivery as a pledge and from seizure.<sup>41</sup>

Even without the debtor's consent, the creditor could levy distress upon his estate. Exodus 22:26–27 and Deuteronomy 24:6, 10–13, 17 show the creditor seizing property in order to compel the debtor to pay; the law merely demanded the adoption of a humane attitude when this right was executed. 2 Kings 4:1 assumes the seizure of the debtor's sons without mentioning the recourse to a court. They were probably put to work until the debt was paid off. According to the law against interest, the work had to be credited to capital rather than to interest.<sup>42</sup>

Another form of personal security for one's own undertaking was the wager. 2 Kings 18:23 and Isaiah 36:8 use the reflexive form of the verb *pledge* to describe the creation of personal liability for a certain promise. Both parties pledge themselves for the result of their bet, which is treated as an obligation of the loser in favor of the winner.

Suretyship for the safe custody of a given person must have been recognized by Hebrew law at an early date. The story of Judah and Benjamin describes the guarantee of a trustee for the safe return of a person given into his care (Genesis 43:9). 1 Kings 20:39 refers to a similar situation. In both cases the surety received a person and made himself liable for this person's reappearance. On failing to fulfil his promise, the surety became personally responsible, but under the second arrangement, he could redeem himself by payment of a liquidated penalty. Biblical sources do not show this form of suretyship as being used to guarantee the appearance of a debtor.

The children mentioned in the complaint made to Nehemiah were sureties personally delivered into the creditor's possession. Similarly, a person could be held hostage by an overlord in order to guarantee the faithfulness of his vassal (2 Kings 14:14); he was then liable to be killed or enslaved for a breach of promise.<sup>43</sup>

The main form of surety developed during the monarchy. At that time Hebrew society became divided into rich landowners and a considerable proletariat and there was more use than before of financial transactions. Suretyship, then, must have become an important means of guaranteeing the repayment of loans. While no examples can be found of the promise of a debtor's appearance, there exist various passages showing guarantees of payment (Proverbs 20:16; 22:26–27; Ben Sira 8:13; 29:19).<sup>44</sup>

Reference is made in these passages to the obligation of the surety. This obligation could concern the redemption price for the surety's person, but more probably it was the result of the assumption of the principal debt by the surety.

A solemn declaration of the surety is mentioned in Genesis 43:9 and Proverbs 6:1–5. The formula was accompanied by a gesture, similar to the Roman and medieval *fidei datio* or *dextera*. By inserting his hand into the creditor's palm, the surety symbolized his entry into the latter's power and, probably, his intervention in favor of



the debtor. A corresponding gesture took place perhaps between the surety and the debtor. Besides the meaning of submission, the handclasp also symbolized the bond created between the two persons.<sup>45</sup>

The sanctions against the defaulting surety mentioned in Proverbs 20:16 and 22:26 concerned only his property, not his person. The debtor, on the other hand, was described in Proverbs 22:7 as the creditor's slave and was shown even as late as the time of *Mishnah Baba Batra* 10:8 to be seized in distress.

Usually, the surety was freed from his liability by payment of the debt. According to Proverbs 6:3 he could also be released by the creditor *ex gratia*.

## 6. Partnership and Agency

In Biblical, as in other laws, co-ownership within the family preceded commercial partnership. The "brothers sitting together" (Deuteronomy 25:5) carried on their common affairs and were responsible for each other.<sup>46</sup> Such a relationship was based on the ties of blood; it could, however, be extended to more distant kinsman or even to confederates in a tribal covenant.

This relationship differs from a modern partnership in that it was not limited to a particular business. It formed rather an overall grouping of the people concerned for all needs and purposes. On the other hand, people sometimes united for a definite commercial purpose, also using the form of the covenant to make the agreement binding on both parties.

Leviticus 6:2 mentions, among the various forms of converting another person's goods for one's own use, a case in which "a man sins and commits a breach of faith against God by deceiving his neighbor in a matter of . . . putting of the hand." According to the Septuagint this should be translated by *koinonia*, while Philo, *De Specialibus Legibus* 4:32, thinks of the handshakes as the means whereby a partnership was created. Both refer to a breach of trust between partners treated as a religious and civil offense. The gesture of the hand, indeed, symbolized the consent of mind as well as the joining of action.

Similar to the Phoenician trading syndicate, the *hubur* was the joint enterprise of the kings of Judah and Israel: "After this, Jehoshaphat king of Judah joined (*ethabar*) Ahaziah king of Israel, who did wickedly. He joined him (*wayehaberehu imo*) in building ships to go to Tarshish, and they built the ships in Ešion geber" (2 Chronicles 20:35–36). A partnership between fishermen is perhaps mentioned in Job 40:30 (41:6 KJV), while Septuagint Proverbs 21:9; 25:24 give the meaning of a joint enterprise to the Hebrew *beyt haver* (also Proverbs 1:14).<sup>47</sup>

A special type of partnership was marriage, being a covenant between the spouses for life. Malachi 2:14 explains the solemnity of the act as follows: "She is your companion (*havertekha*) and your wife by covenant." A marriage alliance between two kings is described in Daniel 11:6 by the term *hithaber*. The handshake included in the marriage ceremony described in Tobit 7:13 may also have been a symbolic expression of companionship.<sup>48</sup>

The various guilds, such as the sons of the prophets (e.g., 1 Kings 20:35), the family of the scribes, the family of the linen workers, the goldsmiths, and the perfumers (1 Chronicles 2:55; 4:21; Nehemiah 3:8) were other forms of corporations created by covenant. Every such union must either have been in possession of a special statute to regulate its common business or else its affairs were governed by accepted custom. It was presided over by a "father" (1 Chronicles 2:55) enjoying a kind of *potestas* over the members and apprentices.<sup>49</sup>

Wherever a group was called to act there arose the need to create some form of agency. The earliest use of this institution, it seems, was for cultic purposes. The “head of a father’s house” or of a clan would sacrifice on behalf of his dependents as well as on his own behalf; later the Aaronic priesthood adopted a similar function in the national framework.

Agency, therefore, developed within the sanctuary as a means of mediation between God and the nation at large. As the priest’s ordination was called *milu’im* (literally: filling) and the person performing the installation ceremony described as “filling their hands” (e.g., Exodus 28:41; Judges 17:5), the existence of a form similar to the Roman *mandatum*<sup>50</sup> may be presumed. The person conducting the ordination used, perhaps, to put some holy tool into the priest’s hand; another possibility is the mere placing of the former’s hand into that of the latter. A person could volunteer for divine service, which was then known as “filling of one’s hands for God” (Exodus 32:29; 2 Chronicles 29:31).

Because of the primitive economy that existed in Israel until the end of the monarchy, there was no incentive for the application of these forms to private laws. Where a slave of a *filius-familias* acted as agent, there was no need for a legal ceremony between him and his principal; a mere promise was sufficient. An example of this form of agency is the commission of Abraham’s servant to acquire a wife for Isaac (Genesis 24).

## 7. Hire

In the pastoral and agrarian society of ancient Israel there was little demand or market for hired labor. The hiring in most cases was a poor foreigner lacking a plot of land of his own (Exodus 12:45; Leviticus 22:10; Deuteronomy 24:14; 1 Samuel 2:5). The contract could be made for a day (Deuteronomy 24:14), a year (Leviticus 25:50, 53; Isaiah 16:14; 21:16), or even longer (Genesis 29:18; Deuteronomy 15:18).

The need for hired workers seems to have arisen mainly at harvest time (Ruth 2:3). The work of shepherding was mostly done by members of the household, but sometimes also by independent contractors (Genesis 31:38–39; Exodus 22:9; Amos 3:12).<sup>51</sup>

Owing to these workers’ lowly status, various laws were necessary for their protection. The employer was forbidden to withhold their wages (Leviticus 19:13; Deuteronomy 24:14) or to violate any other right belonging to them (Jeremiah 22:13; Malachi 3:5). No standard wages, however, were mentioned in Hebrew law, as contracts of hire were exceptional and fixed rates of pay had not yet been established.<sup>52</sup>

The law did not include provisions defining the duty of the hired worker, apart from the duty of custody implied in contracts of deposit. Exodus 22:7–14 distinguishes between three cases: the deposit of money or goods, the pasturing of cattle, and the borrowing of a beast. The bailee of the first category was bound to restore the chattel but was not obliged to preserve it in good condition. If he claimed that the chattel had been stolen from him and that he could not therefore restore it, the matter was referred to an ordeal; if the bailee was found to have been dishonest, a double penalty was inflicted upon him.<sup>53</sup>

The shepherd was treated more severely and could not claim theft as an exemption from liability. He was, in fact, bound to attend constantly to the herd and was freed from the duty of restitution only if he could prove that the loss was caused by beasts of prey (1 Samuel 17:34; Amos 3:12).<sup>54</sup> Sometimes even absolute liability attached to a

contract of pasturage, especially where the wages were paid in kind and the agreement took the form of a lease of cattle (Genesis 31:38–40).<sup>55</sup>

Full liability was also imposed on the borrower, who was responsible for the borrowed beast's injury or death. Only where the owner of the animal was present at the time of injury, did the loss fall upon him. In such a case the assumption was that the damage was unavoidable.

Exodus 22:14 continues: "If it be hire, it comes into the wages." The meaning of this sentence is not free from doubt. According to the usual interpretation, damage caused to a hired object was not to be borne by the hirer; this risk was included in the payment of the price. The provision does not, however, exclude the borrower from all forms of responsibility, for then the price would have been prohibitive. Only the obligation to make good injuries and death caused during the use of the hired animal was excluded.<sup>56</sup>

Contracts of deposit and shepherding, being of rather an informal character, were not, originally, embodied in a written document. Under the influence of Babylonian law, however, postexilic Jewish sources mention deeds of deposit and perhaps also of pasturage (Tobit 5:3; 1 Enoch 89:62–63).

A greater measure of responsibility than that of the hired worker was placed upon the independent contractor. Craftsmen were needed for skilled work, such as the building of the temple or the carrying out of its repairs. No control was exercised over the execution of their work. They were trusted with regard to the quantity of building material needed, they could keep surpluses for themselves and they received exceptional wages. These rights were perhaps due to the efforts of the guilds and to the social importance.<sup>57</sup>

Leases of land and of buildings are not dealt with in biblical legislation. Both during the tribal age and under the early kings, the contrast between rich and poor had not yet developed to the degree known, for instance, in Babylonia.<sup>58</sup> Genesis 47:20–26 ascribes to Egypt the system of royal grants of land on condition that one fifth of the land's income was paid to the Crown. Similarly, the town of *êiqlag* was given to David by the Philistines as feudal estate. No such arrangement is mentioned, however, in Israel proper.

The nearest approach to the feudal system was the concept of the divine ownership of land, as represented, for instance, in the rule of Jubilee. The fields, vineyards, and olive orchards given by the king to his servants (1 Samuel 8:14) may also have been feudal grants.

As a result of the economic changes that took place between the ninth and eighth centuries there arose a landed aristocracy as opposed to the mass of landless town dwellers. It was at this time that the first leases of realty may have been contracted in Israel according to Babylonian examples.<sup>59</sup>

## Notes

1. Compare Friedrich Horst, *Gottes Recht: Gesammelte Studien zum Recht im Alten Testament* (Munich: Kaiser, 1961), 203ff.; similar ideas existed, as mentioned above, in Babylonia, Greece, and Rome.
2. Compare Marmorstein, *Palestine Exploration Quarterly* 85 (1953): 111ff.; Henry, *Palestine Exploration Quarterly* 86 (1954): 5ff.; Roland de Vaux, *Ancient Israel: Its Life and Institutions*, trans. John McHugh (London: Darton, 1961), 251–56; Christopher R. North, *Sociology of the Biblical Jubilee* (Rome: Pontifical Biblical Institute, 1954).

3. Compare Ephraim Neufeld, "Emergence of a Royal-Urban Society," *Hebrew Union College Annual* 31 (1960), 31–53.
4. On the whole chapter, see also de Vaux, *Ancient Israel*, 254; Chaim Z. Hirschberg, "Property" (in Hebrew), in *Encyclopaedia Miqra'it* (Jerusalem: Bialik, 1950), 1:209; Jacob J. Rabinowitz, "Redemption for the Land" (in Hebrew), in *Encyclopaedia Miqra'it*, 2:394; Samuel E. Loewenstamm, "Jubilee" (in Hebrew), in *Encyclopaedia Miqra'it*, 3:578; Albrecht Alt, *Kleine Schriften zur Geschichte des Volkes Israel* (Munich: Beck, 1953–59), 3:348–72.
5. Johannes Pedersen, *Israel: Its Life and Culture* (London: Oxford University Press, 1926–40), 1–2:84ff.; David Daube, *Studies in Biblical Law* (Cambridge: Cambridge University Press, 1947), 39ff.; Rabinowitz, "Redemption for the Land," 2:394; de Vaux, *Ancient Israel*, 254; Ze'ev W. Falk, "Mutual Obligation in the Ketubah," *Journal of Jewish Studies* 8 (1957): 216; Ephraim Neufeld, "Ius Redemptionis in Ancient Hebrew Law," *Revue Internationale des Droits de l'Antiquité* 8 (1961): 32. For the right of preemption, compare Codex Eshnunna 39.
6. Compare Martin David, "The Manumission of Slaves under Zedekiah: A Contribution to the Laws about the Hebrew Slaves," *Oudtestamentische Studien* 5 (1948): 63–79; Robert North, *Sociology of the Biblical Jubilee* (Rome: Pontifical Biblical Institute, 1954).
7. Extraordinary cancellation of debts was introduced by various Babylonian rulers; compare the law described by Fritz R. Kraus, *Ein Edikt des Königs Ammi Saduqa* (Leiden: Brill, 1958); North, *Sociology of the Biblical Jubilee*, and de Vaux, *Ancient Israel*, 254.
8. Compare the discussion in *Sifra ad Leviticus* 25:10 and North, *Sociology of the Biblical Jubilee*.
9. For Nuzian parallels, see Levi, *Eretz Israel* 5 (1959): 21–22; compare Loewenstamm, "Jubilee," 3:578; de Vaux, *Ancient Israel*, 267; Horst, *Gottes Recht*, 213ff.
10. Compare Neufeld, "Emergence of a Royal-Urban Society," 31ff.
11. *Sifra ad Leviticus* 25:10; but see Efraim E. Urbach, *Zion* 25 (1960): 143ff.
12. Compare Horst, *Gottes Recht*, 292ff.
13. Guillaume Cardascia, *Les Archives des Murashû* (Paris: Imprimerie Nationale, 1951). Various transactions, though not on a commercial scale, are found also among the papyri of Elephantine; compare Reuven Yaron, *Introduction to the Law of Aramaic Papyri* (Oxford: Clarendon, 1961).
14. Compare, for instance, the treaties between the Hittite kings and the kings of Ugarit in Jean Nougayrol, *Le Palais Royal d'Ugarit IV: Textes Accadiens des Archives Sud* (Paris: Klincksieck, 1956), 43, 51, 65.
15. Viktor Korošec, *Hethitische Staatsverträge* (Leipzig: Weicher, 1931).
16. George E. Mendenhall, "Covenant Forms in Israelite Traditions," *Biblical Archaeologist* 17 (1954): 50ff.; George E. Mendenhall, "Puppy and Lettuce in Northwest-Semitic Covenant Making," *Bulletin of the American Schools of Oriental Research* 133 (1954): 26–30; J. C. L. Gibson, "Light from Mari on the Patriarchs," *Journal of Semitic Studies* 7 (1962): 46; Charles F. Fensham, "Clauses of Protection in Hittite Vassal-Treaties and the Old Testament," *Vetus Testamentum* 13 (1963): 133–43; Julien Harvey, "Le Rib-Pattern, Requisitoire prophetique sur la rupture de

- l'alliance," *Biblica* 43 (1962): 172–96. On anointing as a form of covenanting, see Ernst Kutsch, "Salbung als Rechtsakt," *Beiheft zur Zeitschrift für die alttestamentliche Wissenschaft* 87 (1963). See also p. 136.
17. Elijah S. Hartum, "Covenant" (in Hebrew), in *Encyclopaedia Miqra'it*, 2:347; Abraham Malamet, "Curse" (in Hebrew), in *Encyclopaedia Miqra'it*, 4:575; Yehoshua M. Grintz, *Zion* 26 (1961): 69–84; Charles F. Fensham, "Maledictions and Benedictions in Ancient Near Eastern Vassal-Treaties and the Old Testament," *Zeitschrift für die alttestamentliche Wissenschaft* 74 (1962): 1–8.
18. Compare the same process in Egyptian law: Erwin Seidl, *Einführung in die ägyptische Rechtsgeschichte bis zum Ende des neuen Reiches* (Glückstadt: Augustin, 1951), 49.
19. Ze'ev W. Falk, "Gestures Expressing Affirmation," *Journal of Semitic Studies* 4 (1959): 268; Ze'ev W. Falk, "Zum jüdischen Bÿrgschaftsrecht," *Revue Internationale des Droits de l'Antiquité* 10 (1963): 49–53.
20. Cyrus H. Gordon, "Abraham and the Merchants of Ur," *Journal of Near Eastern Studies* 17 (1958): 28–31; W. F. Albright, "Abram the Hebrew," *Bulletin of the American Schools of Oriental Research* 163 (1962): 36–54; see, however, Speiser, *Bulletin of the American Schools of Oriental Research* 164 (1961): 23–28.
21. Compare David Daube, *Cambridge Law Journal* 8 (1942): 70f.; Ephraim Neufeld, *Ancient Hebrew Marriage Laws* (London: Longmans, 1944), 263–64; Daube, *Studies in Biblical Law*, 195–96.
22. Compare de Vaux, *Ancient Israel*, 313–14; Godfrey R. Driver and John C. Miles, *The Babylonian Laws* (Oxford: Clarendon, 1952–55), 1:174; Karl Friedrich Thormann, *Der doppelte Ursprung der Mancipatio* (Munich: Beck, 1943), 119, 155 (denying the use of cattle as money).
23. Compare Manfred R. Lehmann, "Abraham's Purchase of Machpelah and Hittite Law," *Bulletin of the American Schools of Oriental Research* 129 (1953): 15–18; B. Perrin, "Trois textes bibliques sur les techniques d'acquisition," *Revue Historique de Droit Français et Etranger* 41 (1963): 5–19.
24. Compare Codex Hammurabi 7, and Yaron, *Introduction*, 79ff.; Evans, "'Coming' and 'Going,'" *Bulletin of the American Schools of Oriental Research* 150 (1958): 32.
25. De Vaux, *Ancient Israel*, 82; Falk, "Mutual Obligation in the Ketubah," 215.
26. For a comparison to the Roman *mancipatio*, see Jacob J. Rabinowitz, *Jewish Law: Its Influence on the Development of Legal Institutions* (New York: Bloch, 1956), 7ff.
27. Originally, divorce may also have been effected orally, see Hosea 2:4; compare de Vaux, *Ancient Israel*, 60; see p. 136, and *Mekhilta ad Exodus* 18:2.
28. Unless Jeremiah wrote the deed on behalf of the seller.
29. Mariano San Nicolo, *Beiträge zur Rechtsgeschichte im Bereiche der keilschriftlichen Rechtsquellen* (Oslo: Aschehoug, 1931), 156. Compare p. 140.
30. Yaron, *Introduction*, 10, 79.

31. Compare Codex Eshnunna 1–4; Ephraim Neufeld, *The Hittite Laws* (London: Luzac, 1951), 176B–186.
32. Abraham Friemann, “Deceit” (in Hebrew), in *Encyclopaedia Miqra’it*, 1:149; on transfers of land, see also Melamed, *Tarbiz* 14 (1942): 11–18; Jacob J. Rabinowitz, “Lords” (in Hebrew), in *Encyclopaedia Miqra’it*, 2:295; Assaf Jubilee Vol. (Jerusalem: 1953), 433–34; de Vaux, *Ancient Israel*, 256–59.
33. For the release of interest in cases of disaster, compare Codex Hammurabi 48.
34. See pp. 3, 88, above.
35. Compare Arthur E. Cowley, ed. and trans., *Aramaic Papyri of the Fifth Century B.C.* (Oxford: Clarendon, 1923), 29–35; Yaron, *Introduction*, 93ff.; Siegfried Stein, “Jewish Law on Interest,” *Historia Judaica* 17 (1955): 3ff.; Jacob J. Rabinowitz, “Away Beyond” (in Hebrew), in *Encyclopaedia Miqra’it*, 2:813; de Vaux, *Ancient Israel*, 260; Ephraim Neufeld, “The Rate of Interest and the Text of Nehemiah 5:11,” *Jewish Quarterly Review* 44 (1953): 194–204; Ephraim Neufeld, “The Prohibitions against Loans at Interest in Ancient Hebrew Laws,” *Hebrew Union College Annual* 26 (1955): 355–412.
36. See pp. 86–97, above.
37. Compare Codex Hammurabi 117–19; Driver and Miles, *Babylonian Laws*, 1:216–17; Guttman, *Dünaburg Volume* (Jerusalem, 1950), 68ff. (denying the existence of bondage for debts); Rabinowitz, *Jewish Law*, 15–16; Neufeld, “Ius Redemptionis,” 29ff.; Ze’ev W. Falk, “Zum jüdischen Handelsrecht,” 11–19.
38. On the law of pledges, see Ephraim Neufeld, “Inalienability of Mobile and Immobile Pledges in the Laws of the Bible,” *Revue Internationale des Droits de l’Antiquité* 9 (1962): 33–34.
39. Compare Codex Hammurabi 49–52, 117–19; Middle Assyrian Laws A48.
40. Cowley, *Aramaic Papyri*, 29–32; Emil G. Kraeling, *The Brooklyn Museum Aramaic Papyri* (New Haven: Yale University Press, 1953), 11; R. Halevy, *Tarbiz* 27 (1958): 31–38; de Vaux, *Ancient Israel*, 261; Yaron, *Introduction*, 96; Falk, “Zum jüdischen Bürgschaftsrecht,” 43–44.
41. Compare Codex Hammurabi 151–52; Driver and Miles, *Babylonian Laws*, 1:216. Compare the Talmudic belief in the responsibility of a man’s wife and children for his vows, *Babylonian Talmud Šabbat* 32b.
42. For the rules of distress levied on persons, compare Codex Eshnunna 22–24; and on distress in general, see Codex Hammurabi 113–19.
43. For Assyrian parallels, see Samuel E. Loewenstamm, “Hostage” (in Hebrew), in *Encyclopaedia Miqra’it*, 2:179.
44. De Vaux, *Ancient Israel*, 264; Neufeld, “Ius Redemptionis,” 39ff.; Falk, “Zum jüdischen Bürgschaftsrecht,” 43ff.
45. Falk, “Zum jüdischen Bürgschaftsrecht,” and Falk, “Gestures Expressing Affirmation,” 268.
46. Abraham Freimann, “Brothers” (in Hebrew), in *Encyclopaedia Miqra’it*, 1:189; Driver and Miles, *Babylonian Laws*, 1:186ff.; Codex Eshnunna 38; Middle Assyrian Laws A25.

47. Compare Samuel E. Loewenstamm, "House of Association" (in Hebrew), in *Encyclopaedia Miqra'it*, 2:72; Albright, *Studies Presented to D. M. Robinson* 1:229ff.; Malamet, "Mari and the Bible," *Journal of American Oriental Society* 82 (1962): 145.
48. The term *partnership* appears also in the Judaeen marriage deed cited in *Palestinian Ketubbot* 7:7, 31c; compare Ze'ev W. Falk, *Marriage and Divorce* (in Hebrew) (Jerusalem: Mif'al ha-shikhpul, 1961), 87, 89; see also p. 144.
49. Compare Klein, *Zion* 2 (1927): 9; de Vaux, *Ancient Israel*, 119–21.
50. Derived from *manus* and *dare*, see Max Kaser, *Das römische Privatrecht* (Munich: Beck, 1955–59), 1:481. For the Hebrew "filling of hands," see Manachem Haran, "Hand-Filling" (in Hebrew), in *Encyclopaedia Miqra'it*, 4:1049; de Vaux, *Ancient Israel*, 2:197. Compare also the parallel expression in the Mari texts.
51. Another form of hired labor was prostitution, mentioned in various biblical sources; see Samuel E. Loewenstamm, "Harlots" (in Hebrew), in *Encyclopaedia Miqra'it*, 1:793; Samuel E. Loewenstamm, "Prostitution" (in Hebrew), in *Encyclopaedia Miqra'it*, 2:935; compare Genesis 30:16. On the Babylonian law of labor, see J. G. Lautner, *Altbabylonische Personenmiete und Erntearbeiterverträge*, vol. 1 of *Studia et Documenta ad Iura Orientis Antiqui Pertinentia* (Leiden: Brill, 1936).
52. Compare Codex Eshnunna 7–11; Codex Hammurabi 257–58, 273–74; Neufeld, *Hittite Laws*, 150ff.; de Vaux, *Ancient Israel*, 118. See, however, "Wages for man and wages for beast" (Zechariah 13:10).
53. Compare Codex Eshnunna 36–37; Codex Hammurabi 124–26.
54. Compare Codex Hammurabi 253–67.
55. Compare Sibylle von Bolla-Kotek, *Untersuchungen zur Tiermiete und Viehpacht im Altertum* (Munich: Beck, 1940): 168; Ze'ev W. Falk "The Expression 'Iron Sheep' in the Talmud" (in Hebrew), *Tarbiz* 26 (1957): 287–91.
56. Compare Codex Lipit Ishtar 34–37; Codex Hammurabi 244–49; Neufeld, *Hittite Laws*, 75–76. On the Hebrew law of deposit and shepherding, see Karel, *Tarbiz* 7 (1936): 258; Cohen, *Revue Internationale des Droits de l'Antiquité* 2 (1949): 133ff.; David Daube, "Rechtsgedanken in den Erzählung des Pentateuchs," *Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft* 77 (1958): 32.
57. Samuel Abramski, "Insult" (in Hebrew), in *Encyclopaedia Miqra'it*, 3:304; Samuel Yeivin, "Work" (in Hebrew), in *Encyclopaedia Miqra'it*, 4:990; Ze'ev W. Falk, "The Inheritance of the Daughter and the Widow in the Miqra and in the Talmud" (in Hebrew), *Tarbiz* 28 (1959): 251; de Vaux, *Ancient Israel*, 119–20.
58. Compare Codex Lipit Ishtar 8; Codex Hammurabi 26ff., 42–47, 60–65; Samuel E. Loewenstamm, "Renter of Land" (in Hebrew), in *Encyclopaedia Miqra'it*, 3:124.
59. Compare San Nicolo, *Beiträge*, 230ff.; de Vaux, *Ancient Israel*, 251ff.; Loewenstamm, "Renter of Land"; see also Amos 5:11, which seems to refer to rents paid in kind.

# Persons

Ze'ev W. Falk

## 1. Women

Two preliminary remarks must be made before the legal position of women can be considered. Hebrew society, like others, cannot be defined by legal concepts only, since religious, moral, and other social norms played an important role. The law, for instance, treated women harshly, whereas custom operated in her favor. The legal rule, in such cases, preserves the more ancient attitude, which was no longer applied in practice. Juridical sources, unless corroborated by other evidence, must therefore be used with caution for an historical investigation. But a careful study of these sources may give us a clue to the historical reality in earlier times.<sup>1</sup>

Similarly a distinction should be made between the legal position of a married woman and that of a *feme sole*. Disqualifications attaching to the former belong more to the law of persons than to the law of the family. Some of these restrictions should be referred to, however, since they illustrate the status of woman and not merely the relationship arising from marriage.

While socially the wife was considered her husband's partner ("God said unto them," Genesis 1:27–28), assistant ("helper," Genesis 2:18), and mistress of the household (Proverbs 31:10–28), in law she was accorded a lower status. The terms of betrothal were equal to those of purchase: the husband became the owner (*ba'al*) of his wife and she was reckoned amongst his goods (Genesis 20:3; Exodus 20:17; 21:3).<sup>2</sup> In accordance with the rules of redemption applying to property, a childless widow was subject to the right of the levirate.<sup>3</sup> The law did not, however, allow a husband to sell his wife, but he could sell his daughter and give her away in marriage (Exodus 21:7; Deuteronomy 21:14).

In spite of being capable of committing most of the offenses (the standard phrase: "When a man or a woman do so and so . . .," e.g., Numbers 5:6), women did not enjoy equality of rights. Under the tribal system they were unable to inherit but were themselves part of the family estate. After the settlement of Canaan, when the concept of private property replaced that of the joint family estate, daughters were permitted to succeed to their father's property in the absence of male heirs (Numbers 27:1–11). They were not entitled, however, to divide the property with their brothers.<sup>4</sup> On the other hand, the mother was probably recognized as guardian of her minor children (Genesis 24:55; 2 Kings 4:1).<sup>5</sup>

Women appeared in court as plaintiffs and probably also as defendants (1 Kings 3:16; 2 Kings 6:26; 8:5), but did not act as witnesses.<sup>6</sup> No limitation seems to have applied in contracts and in torts. Abigail, for instance, figures as an experienced mistress of the house, making a present to David without reference to her husband (1 Samuel 25:14, 18–19, 27, 35). The good wife described in Proverbs 31:16, likewise, "considers a field and buys it, with the fruits of her hands she plants a vineyard."<sup>7</sup> Such a businesswoman could certainly be sued in contract in her own right, though none of the sources mentions such a case.<sup>8</sup> On the other hand, the compensation due for causing a miscarriage to a married woman was payable to her husband (Exodus 21:22),<sup>9</sup> while the seduction or rape of a minor gave rise to a claim by her father (Exodus 22:16–17; Deuteronomy 22:28–29).<sup>10</sup>



A form of tutelage was imposed upon both the minor and the married woman with regard to their vows. While a widow or divorcee was bound by any vow just as a man, the vows of a minor or married woman were subject to supervision by the father or the husband, who were allowed to render them null and void “in that day” (Numbers 30:3–16).<sup>11</sup>

In general, it seems, a woman was not deemed capable of public office and could not be queen, priestess, or judge. Jezebel and Athaliah were exceptions and their exercise of royal power may have been modeled on Tyrian examples. On the other hand, women were considered worthy of charismatic leadership, especially of prophecy. In this capacity they were also active as judges, deciding by divine inspiration, e.g., Deborah (Judges 4:4).

## 2. Infants

Though there exist few legal provisions relating to the capacity of minors, they were probably excluded from many of the privileges enjoyed by the adult population. The census, being based upon the numbering of the army, included only “every male head by head from twenty years and upward” (Exodus 30:14; 38:26; Numbers 1:2–3; 26:2; 1 Chronicles 27:23; 2 Chronicles 25:5). The age limit for the Levites was even higher; according to Numbers 8:24 it was twenty-five; according to Numbers 4:3, thirty.

Another classification was connected with the money valuation of persons regarding their vows (Leviticus 27:1–13). The maximum payment was demanded from persons between twenty and sixty who had vowed their value, while smaller sums were fixed for persons under or over these age groups.

Responsibility for disloyalty to God was imposed on those over twenty (Numbers 14:29), while persons under that age were free from the divine punishment.<sup>12</sup> Even a maiden (*na'arah*) was criminally responsible for acts of adultery (Deuteronomy 22:20, 23), but we do not know which age was meant by this term. A rebellious son could be put to death (Deuteronomy 21:18–21), even though he was probably below the age of puberty.

There was no provision with regard to an infant’s capacity to contract. The marriage of minor daughters was arranged by their fathers, consummation taking place when the age of puberty was reached (Deuteronomy 22:16).

According to rabbinical tradition, childhood ceased at the age of thirteen for boys and twelve in the case of girls. The following six months were still considered a period of youth (*ne'urim*), i.e., a time when the daughter remained in her father’s house even though she had reached the stage of puberty.<sup>13</sup>

## 3. Foreigners

The legal systems of Babylonia and Assyria applied to all persons within the state and made no distinction between citizen and foreigner. Hittite law, on the other hand, paid regard to a person’s citizenship when dealing with cases of murder, robbery, or abduction.<sup>14</sup> The law of Israel represented a double transition: from the personal system of the tribal age to the territorial concept governing all persons within the state, and later, in the postexilic community, from the territorial system of the state to a personal system of religious allegiance.<sup>15</sup>

The status of the foreigner must have become a problem during the patriarchal age. A person’s rights and duties were at that time dependent upon the blood relationship and upon his belonging to a family, clan, or tribe. Everybody was everybody’s “brother” and entitled to his protection and redemption in case of need. In addition to

the real or imaginary relations, there lived, however, within tribal society a number of foreigners, free as well as unfree. Their exceptional status is understandable when one considers that even Hebrews of a different clan were classed, in the exclusive structure of tribal society, as foreigners (Judges 19:16). The foreigner was a sojourner (*ger*) with the clan or with some individual householder who gave him protection, and he was the counterpart of the “brother” (Deuteronomy 24:14).

The “mixed multitude” mentioned in the Exodus (Exodus 12:38), as well as “the rabble that was among them” (Numbers 11:4) were examples of such foreign elements living among the tribes of Israel. In order to be fully admitted, the men had to undergo circumcision (Genesis 34:14; Exodus 12:48),<sup>16</sup> while no demand was made of the women (Deuteronomy 21:10–14; Ruth 1).

After the settlement, the tribes of Israel accepted various groups of native inhabitants as protected foreigners. Some of them, like the Gibeonites (Joshua 9), surrendered to the conquerors by formal treaty.<sup>17</sup> Others simply stayed in their cities, which were occupied by Israel (1 Kings 9:20; 1 Chronicles 22:1; 2 Chronicles 2:16).<sup>18</sup> The majority of these foreigners had not been circumcised nor had they entered into the divine covenant. Nevertheless they became assimilated to their surroundings. Some of them were made slaves of the state or the sanctuary. Others were poor people living on their daily wages, while a few reached important positions in the administration or became rich by commerce.

The law, unlike religious worship, probably applied to foreigners of both categories, i.e., to those merely resident in Israel as well as to those formally admitted into the community. Leviticus 25:47 shows some of them employing Israelite servants, while Deuteronomy 28:43–44 speaks of a foreigner lending money to a citizen. Even the poor client was capable of instituting legal proceedings against his patron (Deuteronomy 1:16). According to the constitution foreseen by Ezekiel 47:22, foreign clients would enjoy equal rights with regard to the allotment of tribal lands.<sup>19</sup> Ezekiel seems, however, to be thinking already of those people who had been admitted as proselytes and had become full members of the community.

Various provisions of the criminal law expressly include foreigners amongst the offenders. The foreigner, just like the ordinary citizen, was responsible for manslaughter and for killing someone else’s cattle (Leviticus 24:21–22). He was also liable to the usual punishment, if found guilty of idolatry or blasphemy (Leviticus 20:2; 24:16) or if he committed one of the heinous sexual offenses (Leviticus 18:26).<sup>20</sup>

#### **4. Slaves**

Biblical law concerning unfree persons, apart from its humanity, was similar to that of other Near Eastern peoples. Slave labor was used in domestic service and thus made for a close relationship between master and servant in everyday life. In spite of the legal status, the slave’s position was in practice closer to that of a *filius-familias* than to that of a mere chattel.<sup>21</sup>

Some of the slaves were captives of war and were considered to have been acquired by the person who had spared their lives (Numbers 31:26; Deuteronomy 20:10–14; 21:10). Foreign slaves could also be acquired by purchase (Exodus 12:44; Leviticus 22:11; 25:44–45). Hebrew children were enslaved by sale if their fathers saw no other way of meeting their obligations (2 Kings 4:1; Nehemiah 5:5; Proverbs 22:7; Isaiah 50:1; Amos 2:6; 8:6). Poor people might be driven to sell themselves into serfdom (Leviticus 25:39) in order to pay their debts, or to

change from temporary to permanent slavery in order to retain their security (Exodus 21:2–6; Deuteronomy 15:16–17).<sup>22</sup>

The Bible distinguishes between the “purchased” and the “houseborn” slave—called also “the son of the house” (Genesis 15:3; 17:12; Leviticus 22:11). This distinction is also mentioned in Babylonian documents, though without apparent legal significance. The master could choose a wife for his servant, and the children born from such union became his slaves, even though their father had meanwhile been freed (Exodus 21:4). This was, therefore, another important source of slaves, whenever the supply from the other sources diminished. On the other hand, the children of a marriage between a freeman and an unfree woman, according to the patriarchal system, were probably free.<sup>23</sup>

While the law did not distinguish between domestic slaves and those belonging to the king or temple, the latter formed a special category both in Israel and in the neighboring states. A certain proportion of the captives were reserved for the king and for God, and formed a permanent supply of manpower for state and temple purposes (Numbers 31:30–47; Joshua 9:23–27; 2 Samuel 8:11). The state slaves were employed in the mines of the *‘Arava* and were known as “Slaves of Solomon” (1 Kings 9:20–21, 27). The temple slaves, called *nethinim* (dedicated), developed in the course of time into a cultic guild of religious functionaries and returned from the Babylonian exile together with other strata of Hebrew society (1 Chronicles 9:2; Nehemiah 7:57; 10:29; 11:3; Ezra 2:55; 7:7; Ezekiel 44:7–9).<sup>24</sup>

Treated as a member of the family, the slave was to be circumcised and the laws of the Sabbath and the festivals applied to him. In the absence of legal heirs, his master sometimes appointed him as his successor (Genesis 15:3). Where the master had only daughters, he could perpetuate his name by giving one of them to the slave and adopting him as a son (1 Chronicles 2:34; *Babylonian Talmud Pesahim* 113a).

Although the owner could beat his slave and punish him for alleged misconduct, he was not allowed to kill him. Causing the death of a slave by beating was punishable by death just like an ordinary case of manslaughter. Only where the death occurred after an interval of two days or longer was the master to be acquitted (Exodus 21:20–21).<sup>25</sup>

The owner who caused his slave to lose a limb was bound to set him free (Exodus 21:26). On the other hand, where a slave had been gored to death by another man’s ox, the master was to be paid thirty *sheqel* of silver, the average price of a slave (Exodus 21:32). No further responsibility attached to the owner of the ox. Similarly a third person was not liable to compensate the slave for bodily injury caused to him.<sup>26</sup>

The status of the Hebrew slave was better than that of the foreigner. Besides the limitation of service, which will be dealt with later, the law provided for a friendly relationship between master and servant. Taking into consideration the temporary character of the service, the Hebrew slave had to be treated like a hired worker and was sometimes the owner of property of his own (Leviticus 25:39–46, 49).<sup>27</sup>

Female slaves were employed to provide sexual satisfaction and to breed children. In accordance with Babylonian law,<sup>28</sup> the master could cohabit with his wife’s female slave in order that children might be born to him and be deemed his wife’s. If a female slave was appointed mate to another slave, their children became houseborn slaves and belonged to their mother’s master (Exodus 21:4). Her betrothal to a freeman was the third possibility and

created a matrimonial relationship of a special kind.<sup>29</sup> The woman was at the same time wife to her husband and servant to her master. In practice, however, the duty of service to the master was probably not enforced.

A Hebrew daughter sold by her father as a servant was acquired on the implied condition that she could be retained as a concubine by her master or by a member of his family (Exodus 21:7–11).<sup>30</sup>

Biblical law recognized various ways in which a slave could acquire his freedom. An Israelite who had sold himself to a foreigner in order to meet his obligations might be redeemed by his next of kin or could, possibly, become rich enough to redeem himself (Leviticus 25:47–54).<sup>31</sup> The former, being part of the tribal custom of redemption, was the earlier practice. The redeemer would offer the owner the price of the slave or a suitable substitute. During the tribal age the rule must have applied to any person sold outside his tribe. However, redemption in later periods was limited to slaves sold to non-Hebrew masters. The obligation of redemption was then extended to all the compatriots of any Israelite who fell into the hands of a gentile (Nehemiah 5:8).<sup>32</sup>

Self-redemption must have developed at a later date, since it became possible only when the slave owned some special property. An intermediate stage was perhaps reached when an *extraneus* took a fictitious part in the transaction.<sup>33</sup> Finally, a unilateral grant of freedom (Leviticus 19:20) became possible. Relying on the example of the Aramaic papyrus of 427, we may assume some manumissions to have taken the form of a dedication to God and to have been witnessed by a deed.<sup>34</sup>

By law, a slave was entitled to freedom if he had lost a limb by his master's act. A female slave was likewise freed, if her owner failed to make her his wife or the wife of a member of his family, although he had purchased her for this purpose (Exodus 21:7–11).

Similar to the provisions of Codex Hammurabi 117, biblical law limited the service of a Hebrew slave to six years, assuming that the debt had been worked off during this period (Exodus 21:2; Deuteronomy 15:12; Nehemiah 5; Jeremiah 34:8–22). The rule did not apply to the female slave sold specially for marriage (Exodus 21:7–11), and the passages in Deuteronomy and Jeremiah, giving the same right to a woman, probably refer to the ordinary female servant. According to Leviticus 25:39, 46, an Israelite slave was to be released in the Jubilee, while his foreign counterpart did not enjoy this privilege. Both the rules of the seventh year and of the Jubilee were possibly based on independent traditions and in any case were they seldom enforced.<sup>35</sup>

The restitution of fugitive slaves was provided for by contract rather than by law. The agreement arrived at for this purpose was perhaps similar to the extradition treaties known from Nuzi (1 Samuel 30:15; 1 Kings 2:39; Jeremiah 26:20–23).<sup>36</sup> On the other hand, Deuteronomy 23:16 grants protection to the fugitive and prohibits his extradition.<sup>37</sup>

## Notes

1. Roland de Vaux, *Ancient Israel: Its Life and Institutions*, trans. John McHugh (London: Darton, 1961), 67–69.
2. On the status of the widow, compare p. 34 and p. 153.
3. See pp. 154–55, below.

4. Compare Godfrey R. Driver and John C. Miles, *The Babylonian Laws* (Oxford: Clarendon, 1952–55), 1:335–41; Ze'ev W. Falk, "The Inheritance of the Daughter and the Widow in the Bible and in the Talmud," *Tarbiz* 28 (1952): 9–15; see also pp. 173–74.

5. Compare Codex Hammurabi 29; Ephraim Neufeld, *The Hittite Laws* (London: Luzac, 1951), 171; see pp. 153–54.

6. In Elephantine, too, women acted as parties in court, though no female witnesses to documents are mentioned, see Reuven Yaron, *Introduction to the Law of the Aramaic Papyri* (Oxford: Clarendon, 1961), 42.

7. Compare Codex Hammurabi 38–39.

8. Neither does there exist any provision regarding her liability in tort. For liability in contract compare Codex Hammurabi 151–52.

9. Compare Middle Assyrian Laws A20, 50–52.

10. Compare Middle Assyrian Laws A55–56.

11. There are no provisions regarding corporal punishment inflicted by the husband upon his wife, as, for instance, laid down in Middle Assyrian Laws A59 (except perhaps for cases of adultery, see p. 58).

12. Compare *Manual of Discipline* in D. Barthélemy, J. T. Milik, *Qumran Cave I* (Oxford: Clarendon, 1955), 108–18; George W. Buchanan, "The Old Testament Meaning of the Knowledge of Good and Evil," *Journal of Biblical Literature* 75 (1956): 114–20; Robert Gordis, "The Knowledge of Good and Evil in the Old Testament and the Qumran Scrolls," *Journal of Biblical Literature* 76 (1957): 123–38; Joseph M. Baumgarten, "On the Testimony of Women in 1QSa," *Journal of Biblical Literature* 76 (1957): 266–69; Arnold Paucker, "Yiddish Versions of Early German Prose Novels," *Jewish Quarterly Review* 10 (1959): 151–67; Sidney B. Hoenig, "On the Age of Mature Responsibility in 1QSa," *Jewish Quarterly Review* 48 (1957–58): 371–75.

13. *Mishnah Nidah* 5:6; *Tosefta Nidah* 4:1–2; Bernard J. Bamberger, "Qetanah, Na'arah, Bogereth," *Hebrew Union College Annual* 32 (1961): 281–94.

14. Mariano San Nicolo, *Beiträge zur Rechtsgeschichte der keilschriftlichen Rechtsquellen* (Oslo: Aschehoug, 1931), 106–10; Neufeld, *Hittite Laws*, 134.

15. Compare Alfred Bertholet, *Die Stellung der Israeliten und der Juden zu den Fremden* (Freiberg: Mohr, 1896); Johannes Pedersen, *Israel: Its Life and Culture* (London: Oxford University Press, 1926–40), 1–2:39ff.; Isaac Seligmann, "Foreigner" (in Hebrew), in *Encyclopaedia Miqra'it* (Jerusalem: Bialik, 1950), 2:546–49; de Vaux, *Ancient Israel*, 116–18; Thomas M. Horner, "Changing Concepts of the 'Stranger' in the Old Testament," *Anglican Theology Review* 42 (1960): 49–53.

16. Ze'ev W. Falk, "Endogamy in Israel" (in Hebrew), *Tarbiz* 32 (1963): 28; compare n. 15 and p. 130.

17. Albrecht Alt, *Die Ursprünge des israelitischen Rechts* (Leipzig: Hirzel, 1934), 183ff. (= *Kleine Schriften zur Geschichte des Volkes Israel* [Munich: Beck, 1953], 278–332); Yehezkel Kaufmann, *The Biblical Account of the Conquest of Palestine* (Jerusalem: Magnes, 1953), 67–68; Jacob Liver, "Excessive" (in Hebrew), in *Encyclopaedia Miqra'it*, 3:953–54; Yehoshua M. Grintz, *Zion* 21 (1961): 69–84, and p. 88, above.

18. These are similar to the Greek *metoikoi*; compare Paul Vinogradoff, *Outlines of Historical Jurisprudence* (London: Oxford University Press, 1920–22), 2:95.

19. On the preexilic position, see Bertholet, *Die Stellung der Israeliten und der Juden*; Mayer Sulzberger, "The Status of Labour in Ancient Israel," *Jewish Quarterly Review* 13 (1922–23): 397–459; Melamed, *Tarbiz* 14 (1943): 11–18; compare Marmorstein, *Palestine Exploration Quarterly* 85 (1953): 111–17.

20. For intermarriage, see pp. 129–31.

21. Compare Isaac Mendelsohn, *Slavery in the Ancient Near East* (New York: Oxford University Press, 1949); Isaac Mendelsohn, "On Slavery in Alalah," *Israel Exploration Journal* 5 (1955): 65–72; Boaz Cohen, "Civil Bondage in Jewish and Roman Law," *Louis Ginzberg Jubilee Volume* (New York: American Academy for Jewish Research, 1945), 113–32; de Vaux, *Ancient Israel*, 125–40; Ephraim Neufeld, "Ius Redemptionis in Ancient Hebrew Law," *Revue Internationale des Droits de l'Antiquité* 8 (1961): 29ff.

22. For the bondage of debtors, see pp. 93–94.

23. Thus, the sons of Bilhah and Zilpah were free and lawful heirs of Jacob; so was Ishmael until his dismissal. Distinction could be made, though, between children borne by a slave for a childless wife and those borne by an ordinary slave. The former had, perhaps, the status of adopted children. Compare Ze'ev W. Falk, "Testate Succession in Jewish Law," *Journal of Jewish Studies* 12 (1961): 72; Falk, "Endogamy in Israel," 21–22. See also Codex Hammurabi 146–47; Mendelsohn, *Slavery*, 56.

24. Ephraim A. Speiser, "Unrecognized Dedication," *Israel Exploration Journal* 13 (1963): 69–73; Baruch A. Levine, "The Netinin," *Journal of Biblical Literature* 82 (1963): 207–12.

25. See p. 69, above.

26. For parallels in Babylonian law see Mendelsohn, *Slavery*, 64. See also Boaz Cohen, *Proceedings of the American Academy for Jewish Research* 20 (1951): 158.

27. Mendelsohn, *Slavery*, 66–67, 74.

28. Codex Hammurabi 146–47; Mendelsohn, *Slavery*, 50–51.

29. Ze'ev W. Falk, "The Deeds of Manumission of Elephantine," *Journal of Jewish Studies* 5 (1954): 114–17; Falk, "Endogamy in Israel," 24. For Nuzian parallels, see Mendelsohn, *Slavery*, 10–13.

30. Compare N. Avigad, "The Epitaph of a Royal Steward from Siloam Village," *Israel Exploration Journal* 3 (1953): 137.

31. Compare Reuven Yaron, "Redemption of Persons in the Ancient Near East," *Revue Internationale des Droits de l'Antiquité* 6 (1959): 155–76; Neufeld, "Ius Redemptionis," 35.

32. Compare *Mishnah Sheqalim* 2:5.

33. Compare Ze'ev W. Falk, "Manumission by Sale," *Journal of Semitic Studies* 3 (1958): 127.

34. Falk, "The Deeds of Manumission," 116; Yaron, *Introduction*, 38.

35. Compare p. 86. On Babylonian parallels, see Mendelsohn, *Slavery*, 76.

36. Mendelsohn, "On Slavery in Alalakh," 68–69.

37. Perhaps the land of Israel, being a divine domain, was therefore an asylum for fugitive slaves; compare Isaiah 16:3; pp. 7–8. See Codex Lipit Ishtar 12; Codex Eshnunna 49–51; Codex Hammurabi 15–20; Neufeld, *Hittite Laws*, 20–21; Mendelsohn, *Slavery*, 63.

# The Family

Ze'ev W. Falk

## 1. The Father's House

Relations within the family, more than any other institution in biblical law, were based upon the ancient tribal system. Children were considered to belong to their father's family, as shown, for instance, in the various lists of pedigree cited in the Bible (Numbers 1:18).<sup>1</sup> Sometimes, however, descent from the same mother was emphasized, as in polygamous houses there tended to be a special loyalty between children of the same mother. Kinship through the mother, therefore, ranked perhaps as a more serious bar to marriage than the corresponding relationship through the father. Genesis 20:12, Numbers 26:59, and 2 Samuel 13:13, for example, refer to a period when marriage between relatives through the father was still possible, but no case of marriage between maternal relatives is mentioned.<sup>2</sup>

According to the patriarchal system, the wife entered the family of her husband's father, which remained together so long as the eldest common ancestor was alive. Such an extended family was the house of Jacob described in Genesis. The law of the levirate marriage mentions "the brothers dwelling together," apparently even after their father's death (Deuteronomy 25:5).

On her marriage the bride was handed over by her family to the bridegroom or his family. She became his, like any other property (Exodus 20:17), and he was called *ba'al*, i.e., her master (Genesis 20:3). However, while patriarchal power over his children and their dependents was accorded to the head of the family (Genesis 38:24; 42:37), at least until the centralization of justice (Deuteronomy 21:18–21), there existed no corresponding right over a wife.<sup>3</sup>

The stories of Abraham and Isaac surrendering their wives (Genesis 12:11–20; 26:6–11) should not be cited as proof of the patriarchal powers of the husband. Neither can the same idea be deduced from the story of the Gibeon mob who abused the concubine surrendered to them by her husband (Judges 19:25). These are exceptional cases and do not constitute proof of legal rights.

## 2. Matrilocal Marriage

Hebrew marriage, while ordinarily of the patriarchal and patrilocal type, could sometimes take the form of a matrilocal arrangement. The patriarch Jacob is said to have married into his father-in-law's family and when he finally departed, he did so secretly (Genesis 29:16–32:1). The case is usually compared with the *beena* or *ṣadiqa* types of marriage, described by anthropologists.<sup>4</sup> In these forms of family structure, the wife's residence is accepted by the husband as the matrimonial domicile, the whole family comes under the guidance of the wife's father or brothers and the offspring belong to her clan. Sometimes, as perhaps in the Middle Assyrian Laws,<sup>5</sup> marriage seemed to be linked with the father-in-law's adoption of the groom who then took the place of a son and successor. In these cases, the deviation from the patriarchal system is easily understood.

A similar interpretation has been given to the marriage of Jacob, it being assumed that Laban had no male issue at the time of the marriage and only regretted the adoption of Jacob after the birth of his sons.<sup>6</sup>



However, this case seems to be more complicated and does not fit into the patterns described. Jacob's marriage is definitely not matriarchal, nor were his offspring considered part of their mother's family. The bride was acquired by seven years' work in the service of her father, and she complained later of having been sold (Genesis 31:14–15).<sup>7</sup> The payment of a bride-price was not consistent with the entry of the groom into his father-in-law's family. Nor would the bride have been given away (Genesis 29:23), but rather would have admitted her husband to come to her.

Laban considered that all Jacob's family belonged to him (Genesis 31:43), and thus emphasized the matriarchal character of the union. Laban's statement is, however, to be taken with caution. It could have been unwarranted in law and might be understood in its emotional rather than legal context.

A similar relationship was that between Gideon and his Sichemite concubine (Judges 8:30–31; 9:1–3). She seems to have resided with her family, and their son felt himself to be close to his maternal uncles. This would point in the direction of matriarchal marriage. On the other hand, this son succeeded his father as leader, indicating that the patrilinear system was applied in this case. The woman, in fact, remained with her family and her husband merely visited her from time to time. She was a concubine and Gideon had probably not paid any bride-price to her father.

The marriage of Samson shows similar traits, partly due to the fact that his wife was a foreigner (Judges 14–15). Though his choice did not meet with his parents' approval, he asked them to take her. He himself, however, made the offer to the woman and arranged the wedding festivities. The description of the nuptials as "taking of the bride" seems to indicate the patriarchal system,<sup>8</sup> though no bride-price was mentioned. Samson's next visit was accompanied by a rather small present (Judges 14:9; compare Genesis 38:17). The dissolution of such a union must also have been quite an informal affair, thus justifying the father of the bride's assumption that Samson had decided to leave her forever (Judges 15:2). This marriage has, therefore, been compared with the Arab *djoz musarrib*, in which the husband does not cohabit with his wife but visits her in her father's house.<sup>9</sup>

Two cases are mentioned, in which the son-in-law was perhaps adopted in lieu of a male heir. Marriage of this type was of a matrilocal form (1 Chronicles 2:34–35; Ezra 2:61).<sup>10</sup>

### 3. Concubinage

Beside the ordinary marriage there existed various forms of concubinage. In other societies a man took a concubine in order to circumvent the law of monogamy; among the Hebrews who recognized polygyny there must have been some other reason for the development of this special type of union. The Hebrew word *pilegish* may have described, originally, the special status of a foreign wife who did not enjoy the full rights of a daughter of Israel. Only at a later date was it probably used also in the sense of a native woman.<sup>11</sup>

The *pilegish* was known as her husband's "wife" both if she was a free woman or a servant, although she had not, perhaps, been acquired in either case by payment of a bride-price.<sup>12</sup> Unfaithfulness on the part of a *pilegish*, as well as on the part of a slave-wife in general, was not so serious an offense as ordinary adultery (Leviticus 19:20; Judges 19:2).<sup>13</sup> Divorce by the husband took perhaps a form similar to that used in the case of a legal wife. The *pilegish* could, however, also leave her husband without his consent (Judges 19).<sup>14</sup> This right may have been the result of the fact that the husband had not paid a bride-price for her.

The Hebrew bondwoman, on the other hand, was acquired by the payment of her price to her father and the marital relationship was created by “appointment” (*ya’ad*) rather than by betrothal (*aras*). While the woman was entitled to all the rights of a legal wife, there was no need for a formal divorce. Before consummation of the marriage, the owner could manumit her by receiving a redemption payment. After consummation, however, he was obliged either to let her go without payment or to fulfil his marital duties (Exodus 21:7–11). These rights were not given to a foreign bondwoman (Leviticus 25:44).<sup>15</sup>

The position of a female captive of war was remarkable. According to Deuteronomy 20:14, she could be spared and taken as a servant, while Deuteronomy 21:10–11 allowed her captor to take her to wife. While the relationship of the Hebrew bondwoman was described by a peculiar term, the marriage to the captive woman meant that the man “would be her husband and she his wife.”<sup>16</sup> No mention was made of any act of manumission; the termination of the marriage was possible only by way of divorce and not by sale.<sup>17</sup>

#### 4. Polygyny

In Israel, as in most polygynous societies, the vast majority of people lived in monogamy, a small faction only making use of the privilege.<sup>18</sup> The main reason for desiring more than one wife must have been childlessness, the second wife being taken to provide the husband with a successor. Moreover, among royalty and the rich in general a plurality of women and children became a sign of status and wealth.

A technique in the polygynous society of Nuzi and Assyria, by which further marriages were prohibited, seems to have been also known among the Hebrews. In Genesis 31:50 Laban places an obligation upon his son-in-law Jacob not to be cruel to his daughters by taking further wives. Though not providing for monogamy, this practice in fact limited the husband’s liberty and thus protected the right of the wife. A contractual obligation of this character was probably imposed when the bride was of a higher status than the bridegroom, or where women enjoyed equality of status.<sup>19</sup>

Deuteronomy 17:17 for the first time limited by law the royal practice of several political marriages, “lest his heart turn away.” Polygyny was, as yet, undesirable only for the king and not for the ordinary men of Israel. Only the king had the means to maintain several wives and their children, and there was no need for an injunction against bigamy by people of limited means. Monogamy became perhaps the rule for the high priest (Leviticus 21:13; *Babylonian Talmud Yoma* 13a), who thus followed the example of the Egyptian priests.<sup>20</sup>

After the exile, a new concept of marriage is mentioned, which must have had a bearing upon the status of woman. When describing the symbolic marriage between God and Israel, Ezekiel 16:8 adds: “Yea, I plighted my troth to you and entered into a covenant with you, says the Lord God, and you became mine.” The marriage ceremony described in the course of this metaphor included an oath and a covenant between the spouses.

A similar expression was used in Malachi 2:13–16, when the current practice of lighthearted divorce was criticized:

You cover the Lord’s altar with tears, with weeping and groaning because He no longer regards the offering or accepts it with favor at your hand. You ask: Why does He not? Because the Lord was witness to the covenant between you and the wife of your youth, to whom you have been faithless, though she is

your companion and your wife by covenant. . . . So take heed to yourselves, and let none be faithless to the wife of his youth. For He hates divorce, says the Lord the God of Israel.

The concept underlying this speech is one of marriage as a covenant entered into before God and watched by him. If a husband could be said to have been faithless to his wife by putting her aside and marrying another, this is not far from the ideal of monogamy. The prophet, in fact, accuses his listeners of two wrongs: breach of the faith (in our opinion—marriage to another woman) and divorce. The Septuagint Malachi 2:13–16, on the other hand, identifies the faithlessness with divorce, so that the argument, according to that translation, is not concerned with bigamy at all.

True, the full meaning of these ideas was not immediately understood nor did they have the force of legal norms. In Jeremiah 3:6–10 and Ezekiel 23, for instance, God's relation toward Judah and Israel is described in terms of a bigamous family, with Judah and Israel depicted as sisters both married to the Lord. This would not have been appropriate in a monogamous society.<sup>21</sup>

## 5. Endogamy and Exogamy

During the tribal period, marriage was contracted within the kinship group. Originally the rule, perhaps, applied even to close relatives, requiring marriage with a man's paternal sister. Later, the same tendency took the form of a preference for one's niece or cousin (Genesis 11:29; 20:12; 24; 28).

The practice was probably linked with two legal institutions of great importance that formed the basis of Hebrew tribal society. One was the obligation imposed on every member of the group to maintain its integrity. Accordingly he was bound to "redeem" certain basic elements, if lost, so as to preserve the full strength of the kinship group. The objects of this redemption were: the blood of his slain brother, the body of a poor brother who had become enslaved, property sold outside the family, and the widow of a deceased brother who should be prevented from remarriage outside the family. A similar idea, perhaps, made a man marry his close relative so as to prevent her from leaving the family.<sup>22</sup>

Secondly, endogamy may have been the result of the original community of goods and the rules of succession based thereon. In law, woman was treated like other property belonging to her father or husband. The head of the family, therefore, when succeeding to the estate of his predecessor, had a claim to his concubines and, perhaps, to his wives.<sup>23</sup> A similar right devolved upon the successor with regard to the ancestor's daughters, even if they were his own sisters.<sup>24</sup> Endogamy was thus a right no less than a duty.

Even during the patriarchal era, however, marriages took place outside the kinship group (Genesis 26:34; 38:2; 41:45; Exodus 2:21; 18:2; Numbers 12:1). Matrimonial relations between freemen and slaves were also mentioned, particularly where the wife had not borne children (Genesis 16; 30:3–13).<sup>25</sup> As mentioned already,<sup>26</sup> a foreigner was asked to be circumcised before marrying a daughter of Israel. True, this demand is mentioned in the course of the deceit committed by the sons of Jacob (Genesis 34:14), but the statement must have been in accordance with actual custom, or it would not have been believed. The expression "bridegroom of blood" (Exodus 4:25–26),<sup>27</sup> seems to be a reference to this rite of initiation.

As in the legal system for the Babylonians and Hittites,<sup>28</sup> Hebrew tribal law included certain rules against incest. There were, for instance, to be no sexual relations between ascendants and descendants, nor between maternal

brothers and sisters.<sup>29</sup>

In the course of the holy war against the peoples of Canaan, various rules against intermarriage with the native population were promulgated (Exodus 34:11–16; Deuteronomy 7:1–5).<sup>30</sup> After the conquest, however, these rules were often disregarded, as mentioned in many stories of the Bible (Ruth 1:4; 2 Samuel 3:3; 11:3; 1 Kings 7:13–14; 11:1; 16:31). The result was a gradual process of assimilation.

Meanwhile, the tribal system had been replaced by the idea of a nation, which differed in both race and religion from the surrounding population. Endogamic tendencies must, therefore, have become weaker, while the rules of exogamy could be more elaborate (Leviticus 18; 20; Deuteronomy 27:20–23).

The final step was taken by Ezra and Nehemiah, who applied the ancient rules of racial endogamy under new circumstances (Ezra 9; Nehemiah 10:31; 13:23–28). During the exile and in the absence of a national framework, the ancient family structure was strengthened. This caused a new awareness of the need for endogamy. In order to make the rules more effective, offenders were compelled to divorce their foreign wives and abandon their children, although the latter, according to the patriarchal-agnatic principle, were formerly considered Jewish.

Both in the Apocrypha and in the Talmud, we again find a strong endogamic tendency (Tobit 1:9; 3:15; 4:12; 6:11; Judith 8:2) within kinship, religion, and race.<sup>31</sup>

### Notes

1. Compare Johannes Pedersen, *Israel: Its Life and Culture* (London: Oxford University Press, 1926–40), 1–2:46–60; Louis M. Epstein, *Marriage Laws in the Bible and the Talmud* (Cambridge: Harvard University Press, 1942); David R. Mace, *Hebrew Marriage* (London: Epworth, 1953), 76ff.; Roland de Vaux, *Ancient Israel: Its Life and Institutions*, trans. John McHugh (London: Darton, 1961), 38ff.

2. Though we should not perhaps rely upon this *argumentum e silentio*.

3. Mace, *Hebrew Marriage*, 192. Compare pp. 58, 110.

4. Ephraim Neufeld, *Ancient Hebrew Marriage Laws* (London: Longmans, 1944), 58–59; Mace, *Hebrew Marriage*, 76ff.; de Vaux, *Ancient Israel*, 48ff.; Werner Plautz, “Zur Frage des Mutterrechts im Alten Testament,” *Zeitschrift für die alttestamentliche Wissenschaft* 74 (1962): 9–30.

5. Middle Assyrian Laws A25–27, 30, 32, 33, 36, 38; compare Godfrey R. Driver and John C. Miles, trans., *The Assyrian Laws* (Oxford: Clarendon, 1936), 34ff.

6. Compare Cyrus H. Gordon, “The Story of Jacob and Laban in the Light of the Nuzi Tablets,” *Bulletin of the American Schools of Oriental Research* 66 (1937): 25–27; Millar Burrows, “The Complaint of Laban’s Daughters,” *Journal of the American Oriental Society* 57 (1937): 259–76, and n. 4; but see Moshe Greenberg, “Another Look at Rachel’s Theft of the Teraphim,” *Journal of Biblical Literature* 81 (1962): 239–48.

7. Compare p. 143, below.

8. Compare pp. 138–39.

9. Adrianus van Selms, "The Best Man and Bride—From Sumeritz St. John," *Journal of Near Eastern Studies* 9 (1950): 65–74.

10. On adoption, see pp. 166–67.

11. Julian Morgenstern, "Additional Notes on 'Beena Marriage (matriarchat) in Ancient Israel,'" *Zeitschrift für die alttestamentliche Wissenschaft* 49 (1931): 22–23; Werner Plautz, "Monogamie und Polygynie im Alten Testament," *Zeitschrift für die alttestamentliche Wissenschaft* 75 (1963): 9–10.

12. Compare *Babylonian Talmud Sanhedrin* 21a; Samuel E. Loewenstamm, "Bride-Price" (in Hebrew), in *Encyclopaedia Miqra'it* (Jerusalem: Bialik, 1950), 4:703.

13. Ephraim Neufeld, *Ancient Hebrew Marriage Laws* (London: Longmans, 1944), 164–65 and p. 153.

14. Ze'ev W. Falk, "Endogamy in Israel" (in Hebrew), *Tarbiz* 32 (1963): 22–23; Plautz, "Monogamie und Polygynie," 9–10.

15. Neufeld, *Ancient Hebrew Marriage Laws*, 68ff.

16. This corresponds to the formula of legal marriage; compare pp. 136, 137–39.

17. Neufeld, *Ancient Hebrew Marriage Laws*, 77ff.; Falk, "Endogamy in Israel," 22–23.

18. Neufeld, *Ancient Hebrew Marriage Laws*, 118ff.; Mace, *Hebrew Marriage*, 121ff.; de Vaux, *Ancient Israel*, 45–46; Raphael Patai, *Family, Love and the Bible* (London: Macgibbon and Kee, 1960), 35ff.; Ze'ev W. Falk, *Marriage and Divorce* (in Hebrew) (Jerusalem: Mif'al ha-shikhpul, 1961), 4ff.; Plautz, "Monogamie und Polygynie," 3–27. On monogamy in Babylonia, see Codex Lipit Ishtar 27–28; Codex Hammurabi 141, 144–48, 167; on Egyptian sources see Erwin Seidl, *Einführung in die ägyptische Rechtsgeschichte* (Glückstadt: Augustin, 1939), 55. Polygyny was legal in Assyria (Middle Assyrian Laws A41); for Nuzi and Ugarit compare Isaac Mendelsohn, "The Family in the Ancient Near East," *Biblical Archaeologist* 11 (1948): 24ff.

19. Compare Georg Eisser and Julius Lewy, *Die altassyrischen Rechtsurkunden vom Kültepe* (Leipzig: Hinrichs, 1930), no. 1; Pfeiffer and Speiser, "One Hundred New Selected Nuzi Texts," *Annual of the American Schools of Oriental Research*, no. 55; Gordon, *Analecta Orientalia* 12 (1935): 171; Falk, *Marriage and Divorce*, 4ff.; Reuven Yaron, *Introduction to the Law of the Aramaic Papyri* (Oxford: Clarendon, 1961), 60.

20. Diodorus of Sicily 1:80; Herodotus 2:92; Seidl, *Einführung*, 55; Rafa Taubenschalg, *The Law of Greco-Roman Egypt in the Light of Papyri* (New York: Herald Square, 1944), 70; P. W. Pestman, *Marriage and Matrimonial Property in Ancient Egypt: A Contribution to Establishing the Legal Position of Women* (Leiden: Brill, 1961), 3.

21. Compare David R. Mace, *Hebrew Marriage* (London: Epworth, 1953), 137. On polygamy in post-biblical times, see S. Lowy, "The Motivation of Fasting in Talmudic Literature," *Journal of Jewish Studies* 9 (1958): 19–38; Falk, *Marriage and Divorce*, 4ff.

22. Compare Mace, *Hebrew Marriage*, 144ff.; de Vaux, *Ancient Israel*, 54–55; Patai, *Family*, 20–34; Falk, "Endogamy in Israel," 30.

23. William R. Smith, *Kinship and Marriage in Early Arabia* (Boston: Beacon, 1966), 104–11; Paul Koschaker, *Revue Hittite et Asiatique* 3 (1933): 80; Neufeld, *Ancient Hebrew Marriage Laws*, 99, 239; Matitiahu Tsevat, “Marriage and Monarchical Legitimacy in Ugarit and Israel,” *Journal of Semitic Studies* 3 (1958): 237–43; Falk, “Endogamy in Israel,” 30.

24. Smith, *Kinship and Marriage*, 96; Paul Koschaker, *Zeitschrift für Assyriologie und verwandte Gebiete* 8 (1933): 31; Cyrus H. Gordon, *Journal of Biblical Literature* 54 (1935): 226; Cyrus H. Gordon, *Revue Biblique* 44 (1935): 38; Ze’ev W. Falk, “Endogamy in Israel” (in Hebrew), *Tarbiz* 32 (1963): 30.

25. Compare Codex Hammurabi 145–46; Godfrey R. Driver and John C. Miles, *The Babylonian Laws* (Oxford: Clarendon, 1952–55), 1:304; Isaac Mendelsohn, *Slavery in the Ancient Near East* (New York: Oxford University Press, 1949), 51; Cyrus H. Gordon, “Biblical Customs and the Nuzu Tablets,” *Biblical Archaeologist* 3 (1940): 1; Falk, “Endogamy in Israel,” 30; and pp. 116, 126–27, above.

26. Compare p. 113.

27. Compare de Vaux, *Ancient Israel*, 78–79; Hans Kosmala, “The Bloody Husband,” *Vetus Testamentum* 12 (1962): 14–28.

28. Codex Hammurabi 154–58; Driver and Miles, *Babylonian Laws*, 1:318–22; Ephraim Neufeld, *The Hittite Laws* (London: Luzac, 1951), 189–90, 195.

29. Neufeld, *Ancient Hebrew Marriage Laws*, 191ff.; Mace, *Hebrew Marriage*, 150ff. Compare p. 123.

30. Neufeld, *Ancient Hebrew Marriage Laws*, 216ff.

31. Against Victor Aptowitz, “Spuren des Matriarchats im jüdischen Schrifttum,” *Hebrew Union College Annual* 5 (1928): 289ff.; Klein, *Monatsschrift für die Geschichte und Wissenschaft des Judentums* 80 (1936): 196–97, ascribing these tendencies to preexilic times. Compare Adolph Büchler, *Studies in Jewish History: The Adolph Büchler Memorial Volume*, ed. Israel Brodie and Joseph Rabinowitz (London: Oxford University Press, 1956), 64–98; Falk, “Endogamy in Israel,” 21, 28.

# Marriage and Divorce

Ze'ev W. Falk

## 1. Marriage Terms

Biblical Hebrew knows of various terms to describe betrothal and marriage, but there exists few data concerning the actual ceremonies. It is therefore worthwhile to start this chapter with a description of terms. Let us begin with the words used to describe the preliminary stipulation.

*daber*: Betrothal was preceded by *negotiations* about the conditions; the bridegroom or his father usually approached the bride's family to ask them for her hand.<sup>1</sup> Genesis 34:8–11 describes the negotiations that took place between the groom's father (Hamor) and the family of the bride (Dinah, the daughter of Jacob), while the description in Judges 14:7 states that the man himself (Samson) spoke to the woman. In 1 Samuel 25:40, David wooed Abigail by sending messengers to her: *wayedaber ba-Abigail* literally means that he spoke to somebody else about her, while the servants then addressed her directly. Concerning a girl under age, Song of Solomon 8:8 mentions her brothers speaking for her.

In these cases nothing is said of the bride-price, apparently the *dibur* taking the place of the bargaining for it. The writer of the above passages may not have been interested in the legal elements of betrothal, but rather in the offer and acceptance leading to it.

*'amar*: This synonym seems to have had a more formal meaning. Proverbs 7:4 commends to the listener: "Say (*'emor*) to wisdom: You are my sister, and call insight your kinswoman." This is a figure of speech not to be taken in a technical sense. Nevertheless there seems to be a certain reference to the common Eastern formula of relationship, which was used as a constitutive declaration. By means of such *declarations*, a relationship could be created (e.g., marriage, kinship) or dissolved (e.g., divorce, removal from the family).<sup>2</sup>

The phrase "you are my sister" or "you are my kinswoman" probably created a relationship of brotherhood and indicated the acceptance of the person addressed into the family. Since that person was a woman, the occasion for applying to her the term *sister* seems to have been marriage (Song of Solomon 5:1–2).<sup>3</sup> True, the expression was not always used in relation to marriage (Job 17:14; Jeremiah 3:4, 19), but in our context, the next verse, Proverbs 7:5, also suggests this meaning.

The ceremony of covenanting between God and Israel described in Deuteronomy 26:17–18 included perhaps a mutual statement of the stipulations implied in the covenant. This is, again, reminiscent of marriage. Finally, the rabbinical term *ma'amar* had the meaning of the marriage formula used by the levir and of the oral declaration of divorce.<sup>4</sup>

*sha'al*: The preliminaries probably took the form of question and answer, the bridegroom's declaration thus being called a *question*. Perhaps in this sense Genesis 26:7 shows the men of the locality asking Isaac about his wife, and in 2 Chronicles 11:23 Rehoboam is said to have "asked" a multitude of wives.<sup>5</sup>

1 Kings 2:21 even preserves the form of such a request, though in that particular case it was not addressed to the father of the bride: "Let Abishag the Shunnamite be given to Adonijah your brother as his wife." In the same way, in

the Aramaic papyri the bridegroom asks for his bride as follows: "I have come to your house that you might give to me X, your daughter, to wifedom."<sup>6</sup>

*'aras*: This is the usual term of *betrothal*, describing the bridegroom's acquisition of a right over the bride. In 2 Samuel 3:14, David demands back his wife whom he had "betrothed at the price of a hundred foreskins of the Philistines." This is a reference to the promise mentioned in 1 Samuel 18:25. Even after the consummation of the marriage, legal rights were still traced back to the act of betrothal.<sup>7</sup>

In the following paragraphs, we shall consider some of the terms of marriage that were taken from the law of property.

*mohar, mahar*: Various opinions have been voiced on the *payment* that accompanied the betrothal. According to some scholars, *mohar* was a bride-price.<sup>8</sup> Others explain it as a compensation payment for the *traditio puellae*, to be returned later on in the form of a dowry.<sup>9</sup>

True, there is a difference between the sale of a bondwoman (Exodus 21:7) and the giving away of a daughter in marriage (Deuteronomy 22:16). However, the difference does not seem to have been in the material element of the act but rather in the formula coupled therewith, viz., in the declaration by the person giving the girl away as to whether she was to be a free wife or a bondwoman.

The nature of the transaction is illustrated in the story of Shechem and Dinah (Genesis 34), where a real bargain had to be struck between the two families with regard to the bride-price. In the law of seduction (Exodus 22:17), on the other hand, there already existed a standard price that had to be paid for a virgin. The payment of this price was the act of betrothal, as shown by the use of the verb *mahar* (paying the *mohar*) in both meanings.<sup>10</sup> Incidentally, the payment was made whether the girl was given to the seducer or not, for its object was to compensate the father, who could no longer give his daughter into marriage as a virgin.

The ordinary bride-price seems to have been mentioned in the law concerning rape (Deuteronomy 22:29). The amount of fifty *sheqel* in this context should however be compared with the thirty *sheqel* payable for a woman's vow (Leviticus 27:4). The difference in the evaluation of a woman may be due, besides the differences in sources, to the seriousness of the offense,<sup>11</sup> to the greater weight of the *sheqel* used in the sanctuary,<sup>12</sup> or to the disregard in Leviticus 27 of the fact of virginity.

We shall now consider several terms that describe the acquisition of goods but also took on special meanings in relation to marriage.

*laqaḥ*: This verb means to *take*, to accept, and to buy, but it is also used in the sense of to conquer. If employed with regard to a woman, the term signifies her being taken by the bridegroom without active participation on the part of her father, though with his consent. It is thus similar to the Akkadian *aḥāzu* and the Roman *uxorem ducere*.<sup>13</sup>

Lot's sons-in-law, for instance, are called "takers of his daughters" (Genesis 19:14), indicating a consummated marriage. In the same sense, Genesis 25:20 says of Isaac that "he took Rebekah," referring to the nuptials after the preliminaries had been arranged by the servant of his father Abraham. In Genesis 24:67 the taking of Rebekah to wife by Isaac is presented as a unilateral act without reference to any further participation of the bride's father.



Sometimes *laqaḥ* is used with regard to the bridegroom's agent (Hagar took an Egyptian wife for her son Ishmael, Genesis 21:21; Abraham sent his servant to take a wife for Isaac, Genesis 24:3–4, 48) and may indicate engagement as well as marriage, although the latter seems more likely. The expressions “who had betrothed a wife but not taken her” (Deuteronomy 20:7) and “who would take her (the captive) for yourself as wife” (Deuteronomy 21:11) certainly describe marriage. This is also the meaning of “the taking” in the law of levirate (Deuteronomy 25:5)<sup>14</sup> and in the story of Ruth 4:13, where there was nobody to give the woman away.

Later on, Talmudic law emphasized the holiness of betrothal, making it as binding as a consummated marriage. Consequently, the verb *laqaḥ* took the meaning of the legal rather than the actual taking of possession, i.e., of betrothal rather than of marriage (*Babylonian Talmud Yebamot* 61a, 97a; *Qidushin* 2a, 22a, 50b; *Sotah* 12a, see also *Mishnah Ketubbot* 1:6). Another reason for this change in meaning might be the fact that the use of *laqaḥ* in the sense of marriage had meanwhile become rare.<sup>15</sup>

*nasa'*: This is a relatively late synonym of *laqaḥ* and indicates marriage as well as lifting up, bearing, carrying, and taking. Judges 21:23 uses the term when the Benjaminites took possession of Israelite daughters dancing in the vineyards. A similar meaning is found in Ezra 9:2 when the Israelites took foreign women to wife on their return from Babylon. Comparison should indeed be made between Ezra 9:12 and Nehemiah 13:25, both of which use the term *nasa'*, and Genesis 34:9, 21, Deuteronomy 7:3, and Judges 3:6, where the earlier term, *laqaḥ*, is used for the same act.

The father of the bridegroom could be said to have taken a woman for his son. In this case, the reference was to the leading of the bride into the bridegroom's house (Psalm 45:15–16). Ben Sira 7:23, likewise, advised the father to take a woman for his son while the latter was still a minor, the intention being the celebration of the nuptials and not only the engagement.<sup>16</sup>

Talmudic language, on the other hand, used the *hiphil* form for the act of the father (e.g., *Mekhilta de R. Ishma'el* on Exodus 21:10). This causative form of the verb seems to reflect the son's emancipation, after which the bridegroom himself led the nuptials, the father merely assisting in the ceremony.

*qanah*: Two meanings are ascribed to this root: on the one hand, to *acquire* and to buy, including also to redeem and to possess, and, on the other, to *create*, to give life. The latter usage stems perhaps from the Canaanite and may be found, for instance, in the case of Eve bearing Cain in Genesis 4:1, and of wisdom being “brought forth” before the world was, in Proverbs 8:22–25. The former use may be traced to various other passages.<sup>17</sup> It is in the former sense that the verb is used to denote marriage.

In Ruth 4:5, 10 the widow was said to have been bought together with the dead kinsman's estate. This raises the question of how the transaction was possible, since there was nobody entitled to give her away.<sup>18</sup> The only answer is in the interpretation of *qanah* as a unilateral act, similar to the Roman *mancipatio*. The buyer probably occupied the property in the presence of the former owner and of witnesses, at the same time making a declaration like that mentioned in Ruth and similar to that custom in Roman law.<sup>19</sup>

*qanah*, then, meant the execution or the *carrying out* of the transaction, not the agreement; that is, the *in domum deductio* rather than the betrothal. However, in Ruth the term was already used to signify legal acquisition as distinguished from taking possession.<sup>20</sup> The Jewish formula of engagement also preserved the unilateral character of the transaction, applying only to the bridegroom's act.<sup>21</sup> Moreover, while various synonyms were

used for the act of the groom, the part of the bride or her guardian was usually expressed in the indirect form. The verb *qanah* in the sense of purchase and of betrothal was also preserved in the early parts of the Mishnah (*Qidushin* 1:1).

*ba'al*: This verb means to become the *owner* of a wife, and is derived from the noun *ba'al* (master, owner).<sup>22</sup> Both Genesis 20:3 and Deuteronomy 22:22 called a married woman *be'ulat ba'al*, meaning a wife "owned by her husband." Deuteronomy 24:1 speaks of taking a wife and becoming her master, which must be the *in domum deductio* or, according to the Talmudic interpretation, the consummation of the marriage.

Deuteronomy 21:13 uses the term together with the word for intercourse: "You may go in to her and be her husband and she shall be your wife." The two latter phrases are parallel to each other, the former defining the status of the husband and the latter that of the wife. Together they seem to be reminiscent of the ancient marriage formula: "She is my wife and I am her husband."<sup>23</sup>

*hayah le... le'ishah*: The verb *hayah* means to exist, to be, or to happen and, if connected with the preposition *le...*, to become the property of someone. In relation to a woman, therefore, the phrase defines the *status of a wife* and probably also indicates the fact that marriage has been consummated.<sup>24</sup>

Besides Deuteronomy 21:13, Genesis 24:67 (Isaac marrying Rebekah) and Ezekiel 16:8 (God marrying Jerusalem) use this term as the final expression of acquisition after various marriage ceremonies. In Hosea 3:3, on the other hand, even the illegal relation between a married woman and another man is called by the same name.

According to the rules of the Levitical priesthood, a brother had to defile himself by attending the funeral of "his virgin sister who is near to him that has not been a husband's" (Leviticus 21:3; compare Ezekiel 44:25). The early Rabbis held this sister to have been betrothed but not yet married,<sup>25</sup> while later sources excluded even a fiancée from among the next of kin for whom a priest might defile himself.<sup>26</sup> This was in line with the tendency, mentioned above, of strengthening the effect of betrothal.

The corresponding rule in Leviticus 22:12 denied the priestly privileges to "a priest's daughter who became an outsider's," which again meant consummation.<sup>27</sup> The prohibition on remarriage to one's divorced former wife (Deuteronomy 24:4; Jeremiah 3:1), likewise, applied only where "she had become another man's wife," but not where she had merely become betrothed to her second husband. Again, the Rabbis of the first century C.E. applied the impediment after mere betrothal to another man.<sup>28</sup>

*nathan*: The antonym of *laqah* and *nasa'*, it has the meaning of *giving* a chattel and also of *traditio puellae*. In Judges 15:6 (the Timnite giving his daughter to Samson's best man) and 2 Samuel 12:11 (Nathan's prophecy to David), the giving away of a woman without legal effect is intended. Genesis 16:5 (Sarai giving Hagar to Abram) and Exodus 21:4, likewise, describe the giving of a female slave by her master to a man without mentioning any further ceremony. That the act indicated by this word is marriage rather than betrothal is shown clearly in 1 Samuel 18:19.

Since a girl could be given away for marriage or for slavery, her handing over used to be accompanied by the statement of a formula defining her status. If marriage was intended, she was given "as a wife" (e.g., 1 Samuel 18:19)<sup>29</sup> or "into wifedom," as usual in Assyrian and Aramaic documents.<sup>30</sup>

Again, *nathan*, in the course of time, came to mean the legal rather than the actual transfer, and in the Talmud the passages containing the verb are interpreted with reference to betrothal.<sup>31</sup>

*makhar*: Usually denoting the *sale* of goods, this verb was sometimes employed with regard to marriage. Exodus 21:7, for instance, speaks of the sale of one's daughter as a bondswoman with the intention of marriage. Likewise, Proverbs 31:10 describes "the sale" (i.e., the price) of a good wife who is more precious than jewels. Such an expression is notable, appearing, as it does, in a chapter showing the enhanced status of woman in postexilic society.

How, then, should one understand the complaint of Jacob's wives against their father Laban: "Is there any portion or inheritance left to us in our father's house? Are we not regarded by him as foreigners? For he has sold us and used up the silver given for us" (Genesis 31:14–15). The passage has been cited as evidence against the theory of marriage-by-purchase, the complaint showing the illegality of such a sale. The treatment "as foreigners" has indeed been connected with the status of a strange wife in contemporary *fellahin* society and with the Assyrian and Nuzian documents, which provided for a bride to be treated "like a citizen."<sup>32</sup>

However, the promise to treat the woman as a citizen applies to adopted daughters or foreign wives. It does not fit in with the ordinary marriage entered into between Jacob and Laban's daughters. If the terms of sale were used in the matrimonial ceremony, why should the father have been blamed for selling the bride? Did, for instance, the sale of a daughter as a bondswoman (Exodus 21:7) mean that she was treated like a foreigner?

The first question asked by Jacob's wives concerning their rights of inheritance should be understood in a rhetorical sense, forming, as it does, a declaration of independence, like that of Sheba's renunciation of any inheritance interest in 2 Samuel 20:1 and the northern kingdom's separation in 1 Kings 12:16. As stated in Talmudic sources,<sup>33</sup> marriage gave the bride independence from her father.

Accordingly, the sale was probably the cause of their treatment as foreigners and not its result. Having sold his daughters to their husband, Laban lost his parental rights over them and even kinship relations toward them.

The term *nokhri*, it is true, usually meant a member of a foreign nation, but during the tribal period it referred to any person outside one's own clan. Thus, as a result of the sale, Rachel and Leah became Jacob's and were estranged from their father and brothers. Likewise, the sale of a bondswoman "to a foreign people" (Exodus 21:8) meant any transfer to a person outside the family group.<sup>34</sup> The opinion may, therefore, be ventured that there existed a semantic relationship between *makhar* (to sell) and *nokhri* (stranger); for if the purchaser was a foreigner, the commodity became estranged from the seller by virtue of the sale.

Laban's daughters' complaint lay in the last sentence, namely, that the bride-price had been used by their father instead of being returned to the couple as compensation for their dismissal from the family property.<sup>35</sup>

*shilah*: The *pi'el* form of the verb *shalah* is used in the sense of extending, *sending*, expelling, and throwing, while the original meaning was perhaps to set somebody or something free.<sup>36</sup> It was in this sense that the term would also be used for marriage and divorce, referring to the father or husband, respectively. Thus Judges 12:9 tells of Izban: "Thirty daughters had sent abroad and thirty daughters he brought in from outside for his sons."

This is a description of patriarchal marriage, the term *shilah* standing for consent to the bride's withdrawal from parental power. It thus illustrates the passive part played by the father of the bride, while *nathan* and *makhar* describe his active participation, in the *traditio puellae*. *Shilah*, then, was the antonym of the above mentioned terms indicating occupation by the bridegroom, and may have represented the earlier custom of marriage without handing over possession of the bride.<sup>37</sup>

*haverah*: This noun is used in Malachi 2:14 to describe a married woman and as a synonym of *covenanter*. The verb *havar* originally described the acts of uniting, joining, and generally creating a bodily association and may therefore be used in the sense of sexual intercourse (Ben Sira 12:14). The union was probably symbolized by a handshake and came to be specially connected with the contract of partnership.<sup>38</sup>

The wife can be called her husband's companion. Ben Sira 7:25, indeed, advises the father: "Give your daughter away and a business will be the outcome (*weyese' 'eseq*)." In Babylonian Aramaic the *'itpa'el* form of the verb *'asaq* has the meaning of contracting a marriage, and during the third century C.E. a similar term was cited in a deed of marriage: "If X be married to Y, her husband, and she be displeased with his companionship (*shutafuth*), she shall take half of the amount fixed in the contract."<sup>39</sup> The same idea can be found in the term for marriage used by the seventh century Chaldean Church: *'isara' de shutafuta'*, i.e., "bond of partnership."<sup>40</sup>

## 2. Betrothal

Like most legal systems, biblical law distinguished between the two stages of the marriage relation: the betrothal and the nuptials. Usually, a year or even more was to pass between these stages, especially where the bride or bridegroom had been under age at the time of the betrothal.<sup>41</sup> The bride meanwhile stayed with her family, the bridegroom perhaps even being prohibited from visiting her.

The main element of betrothal was the payment of the *mohar* whereby a *ius ad rem* for marriage was acquired. In form, at least, this transaction was similar to the purchase of a slave, unless the parties specially declared that a legal marriage was to be effected.

We have already seen that the bridegroom or his agent came to the house of the bride's father to ask for her hand. Where the answer was in the affirmative, discussion on the *mohar*, as far as it was not yet standardized, followed. Payment was then made and gifts were exchanged, the father probably promising the return of the *mohar* at the time of the marriage, sometimes with the addition of a considerable dowry.

This promise, whether express or implied, distinguished matrimonial from commercial relations. As mentioned above, the term *'amar* described the declaration defining the wife's status after the marriage.<sup>42</sup> In the absence of direct evidence as to the expression used, we must refer to various metaphors that seem to be based on the customary formula. Hosea 2:19–20, for instance, uses the bridegroom's promise to describe God's relationship toward Israel: "I will betroth you to me for ever; I will betroth you to me in righteousness and in justice in steadfast love and in mercy; I will betroth you to me in faithfulness."

It is rather difficult to distinguish the phrases describing the particular relationship between God and the people from those that belonged to the ordinary betrothal ceremony. The first clause, however, has many parallels in legal as well as in literary sources, which seems to indicate an actual custom.<sup>43</sup>

Ezekiel 16:8, moreover, mentions an oath and a covenant as required before the bride became the speaker's wife. Again, these forms do not seem to have been due to the special situation described in the metaphor, but rather reflect the general custom (Proverbs 2:17; Malachi 2:14). The bridegroom undertook to return at the prescribed date, to consummate the marriage, and to treat his wife according to custom. The promise, it should be noted, was made toward the bride herself, while the *mohar* transaction took place between her father and the bridegroom or his representative.

In the Elephantine papyri on the other hand, the bridegroom addressed the guardian of the bride as follows: "I have come to your house that you might give me X your daughter in wifehood. She is my wife and I am her husband from this day and forever."<sup>44</sup> The same form was customary in the society described in Tobit 7:12–14: "And Re'u'el said: Take her to yourself from henceforth according to the manner. You are her brother and she is yours; but the merciful God shall give all good success to you. And he called his daughter Sarah, and took her by the hand, and gave her to be wife to Tobias, and said: Behold, take her to yourself after the law of Moses and lead her away to your father. And he blessed them; and called Ednah his wife, and took a letter, and wrote an instrument and sealed it."<sup>45</sup>

Both these sources describe betrothal as an introduction to the act of marriage and as a transaction between the bride's guardian and the husband. The former also mentions the act as characterized by the giving of the bride "for wifehood." As explained above, this must have been a most important element in the ceremony. Its counterpart in the second passage is the reference to the custom or the law of Moses. There follow the declaration of relationship (husband-wife or brother-sister) representing the ceremony of the covenant and the reference to the act's everlasting effect, both discussed above. The whole transaction was attested by a written contract, the execution of which was however delayed until the nuptials.<sup>46</sup>

After the exile, Hebrew betrothal was no longer a mere civil affair but must have implied religious sanctions.<sup>47</sup> Deuteronomy 22:24 had already ascribed to the betrothal far-reaching results with regard to the bride's obligation of fidelity,<sup>48</sup> and the idea of the covenant added further importance to the act.

### 3. Bride-Price and Dowry

The material element of betrothal was the payment of the *mohar*. In Genesis 34:12, Shechem offers to pay any price fixed by the bride's family, and Exodus 22:16–17 obliges the seducer to pay the bride-price to the father. Instead of actual payment of a bride-price, if the groom lacked the necessary means, as in the case of Jacob (Genesis 29:18; 31:15), the bride-price was satisfied in the form of service to the father-in-law.

The payment of bride-price has been compared with the Babylonian *tirḥâtum*<sup>49</sup> and the Arab *mahr*,<sup>50</sup> and the practice has been described as marriage-by-purchase.<sup>51</sup> Refuting the latter theory, some authors consider the *mohar* as a kind of compensation given to the bride's family. That marriage by *mohar* could not have been a simple sale is shown by the distinction drawn between ordinary marriage and the sale of a Hebrew bondswoman (Exodus 21:7–11), and the custom of providing the bride with a dowry.<sup>52</sup> The custom, which existed in Babylonia,<sup>53</sup> was known also in Israel. Laban's daughters complained that their father had spent their money (Genesis 31:15). Caleb's daughter asked for some springs of water as a blessing (Joshua 15:18), which seems to refer to her share in the inheritance, and Solomon's wife brought the city of Gezer as a dowry (1 Kings 9:16). In the Aramaic papyri,

too, the *mohar* was included in the dowry,<sup>54</sup> while Tobit 8:21 mentions a dowry amounting to half of the parents' property.

While this custom mitigated the commercial character of the *mohar*, there seem to have existed marriages without any payment at all.<sup>55</sup> The betrothal of Rebekah (Genesis 24) is an example. In accordance with Assyrian practice,<sup>56</sup> the bride was given certain ornaments and her brother and mother received gifts, but no *mohar* was paid to the father. Though the payment of the bride-price was not part of the ceremony, Rebekah became a legal wife and not merely a concubine.

Payment could perhaps have been dispensed with whenever there existed another reason for the marriage. In the case of Rebekah this was expressed in the answer of the bride's brother and father: "The thing comes from God; we cannot speak to you bad or good" (Genesis 24:50). There was, likewise, no need for the payment of a new *mohar* in cases of levirate marriages or, perhaps, of endogamy, both being contracted by law rather than by consent.<sup>57</sup>

#### 4. The Nuptials

Having dealt with the various expressions used to describe the *in domum deductio*, we may assume that this act formed the main element in the marriage ceremony. The bride was either taken by the bridegroom at the date fixed by him for the marriage (e.g., Isaac and Rebekah, Genesis 24:55, 67; Samson, Judges 14:8), or given away by her guardian in a similar ceremony (Jacob and Leah, Genesis 29:23; Psalm 45:15).<sup>58</sup>

This was certainly an occasion for the reciting of blessings (Genesis 24:60; Ruth 4:11–12; Tobit 10:11–12) and for expressing the idea that God himself had arranged the match (Genesis 24:50; Proverbs 19:14). This latter conception was connected with the covenant that was entered into at the marriage and that formed its religious foundation (Proverbs 2:17; Malachi 2:14).

In Hosea 2:2, in the Aramaic papyri and in Tobit 7:12, the mutual relationship of the spouses is defined by a formula of alliance,<sup>59</sup> which fitted into the marriage ceremony and could be used as its central element. Having received the bride, the husband was expected to renew his declaration of faith and to confer clearly upon the bride the status of lawful wife.

From the earliest times, marriage was accompanied by a feast that could last as long as seven days (Genesis 29:27–28; Judges 14:12). This common meal was intended to link the two families together and may often have been opened by a *shelamim* sacrifice.<sup>60</sup> In any case, certain religious elements must have been connected with the celebration of the covenant although there is no direct evidence of their existence.

The biblical sources do not refer to written marriage contracts, which were well-known, for instance, in Babylonian society.<sup>61</sup> Obviously, in the case of divorce, there was need for a deed witnessing the release of the husband's rights over his former wife (Deuteronomy 24:1; Isaiah 50:1), but no corresponding document seems to have been necessary for the celebration of marriage. Among the Aramaic papyri, on the other hand, there exist several marriage contracts,<sup>62</sup> and Tobit 7:12–14 also speaks of a written instrument of marriage. Both among the Jews of the first century B.C.E. and among the Samaritans,<sup>63</sup> deeds of marriage were in use.

Biblical marriage may therefore be presumed to have been an oral transaction. The bride was acquired in the presence of the community whose members functioned as witnesses to the act (Ruth 4:10–11). The later marriage documents merely recorded this oral ceremony without adding any constitutive elements to the act. Indeed, so long as the *mohar* was paid to the bride's father in cash, there was little need for a written instrument, even though part of the sum paid was returned in the form of a dowry. When, however, the *mohar* changed into a form of insurance against widowhood or divorce, a written document became necessary. The undertaking itself, therefore, was called by the rabbis—*kethubah* (writing), as distinguished from the other clauses that were based on oral consent only. The main intention of the Elephantine marriage contracts was likewise to provide for cases of widowhood and divorce, though obligations during the marriage were added.

## 5. Divorce

Though there are no direct provisions in the Bible concerning the law of divorce, it may be inferred from the Hebrew patriarchal structure. Basically, divorce was an arbitrary, unilateral, private act on the part of the husband and consisted of the wife's expulsion from the husband's house.<sup>64</sup> The usual term for a divorced woman is *gerushah*, meaning "expelled" (Leviticus 21:7, 14; 22:13; Numbers 30:10–12; Ezekiel 44:22), which shows the passive role she played. Examples of this procedure are perhaps found in Sarah's demand in Genesis 21:10 (though referring to Hagar, an unfree woman) and Hosea 9:15.<sup>65</sup> The same idea is expressed by the synonyms *shilah* and *hoši* (sending away, putting out).<sup>66</sup>

However, from the beginning there must have existed certain formulae to express the finality of the separation. There was first the so-called *formula contraria*: "She is not my wife and I am not her husband" (Hosea 2:4), which is probably recited in the presence of witnesses. Another formula used perhaps expressed the woman's right to go where she wanted (e.g., Deuteronomy 21:14) and to marry another man of her choice.<sup>67</sup> While the Aramaic papyri show divorce to have taken place *ba'edah* (*coram publico*), no such requirement is mentioned in the Bible.<sup>68</sup>

At a later stage (but before Deuteronomy 24:1; Isaiah 50:1; and Jeremiah 3:8), the husband was required to deliver a bill of divorce to his wife at her expulsion. This was necessary in order to prevent him from retracting his earlier decision and claiming rights over his ex-wife. The deed was called *sefer kerithuth*, the literal translation being "deed of cutting asunder." While this term may refer to an ancient symbolical act,<sup>69</sup> it came, in the course of time, to stand for the act of divorce itself and fulfilled the function of a *formula contraria*.<sup>70</sup>

Besides these elements, the bill of divorce perhaps began with a recital of the marriage.<sup>71</sup> The wife could then be said to have been "cut off" from her husband and his family, the latter releasing all rights over her. This undertaking may have been expressed in the form of a deed of "removal,"<sup>72</sup> and it perhaps included the clause "from this day and for ever."<sup>73</sup>

The husband was bound finally to make up his mind and not to make such a decision lightly. According to Deuteronomy 24:4 and Jeremiah 3:1, he was not allowed to take back his former wife, if she had meanwhile married another man. There was in fact no legal restriction on arbitrary divorce, but an unjust act of this kind was condemned by the woman's family and, perhaps, by public opinion.

Where a husband charged his bride with unchastity (Deuteronomy 22:13–14), he may have been motivated by the wish to justify his divorcing her. Besides the other punishment, he was therefore denied the right of any

subsequent divorce; this was a partial talionic sanction.<sup>74</sup> A similar restriction was placed upon the seducer who married his victim (Deuteronomy 22:28–29). Here, too, the man had exploited the girl without giving her the status of a married woman. He was punished by way of *talio*, by the prevention of a subsequent divorce.<sup>75</sup>

While Deuteronomy 24:1 mentions the finding of “some indecency” in a wife as a justification for ordinary divorce,<sup>76</sup> no distinction was made between the woman who had borne children to her husband and the childless wife.<sup>77</sup> Biblical law, moreover, did not include any provision for the payment of a sum to the divorcee. Where the woman had brought her husband a dowry, she was probably entitled to demand it back, but there did not exist any further obligation insuring her against arbitrary divorce. Only in the postexilic Aramaic papyri was a provision for payment of “divorce money” included.<sup>78</sup>

The idea that marriage formed a covenant between the spouses must have limited the right of divorce. Prophecies like Micah 2:9–10 and Malachi 2:14 represented a new attitude toward persons executing this right.

Being almost her husband’s property, the wife was not originally able to demand a divorce. Where, however, a husband had refused his wife her conjugal rights, she was permitted to leave him. Exodus 21:10–11, it is true, accorded to this privilege to the free-born bondwoman. But the rights of the former were defined as *mishpat habanoth* (custom of the daughters), i.e., they seem to have been similar to that of a legal wife.<sup>79</sup>

A similar rule probably existed in respect of a concubine. In Judges 19:2 we read of the Levite’s concubine who “had played the harlot against him [or was angry with him<sup>80</sup>] and went away from him to her father’s house.” It is possible that the free status of such a woman was due to the absence of any bride-price, by payment of which an ordinary wife passed into her husband’s power. A concubine, then, retained a certain connection with her family and was allowed to return to it at will.<sup>81</sup>

The wife’s power of divorce was not compatible with the Hebrew patriarchal structure. Only in the postexilic papyri of Elephantine were both spouses capable of dissolving the marriage at will. While the two biblical passages spoke only of a woman leaving her husband without any divorce formalities, the clauses in the Aramaic marriage deeds refer to the wife making exactly the same declaration as the husband in order to effect dissolution of the marriage.<sup>82</sup>

## 6. Widowhood

It seems that under the patriarchal system all family as well as property rights were passed on from the head of the clan to the son chosen to become successor. The widow of the former patriarch, therefore, passed into the power of his heir, unless she were his mother. In ordinary society, this rule became obsolete at an early stage, but as late as the monarchical period the custom was still known among royalty.<sup>83</sup>

Where the widow had adult sons, she would usually stay with and be maintained by them (Ruth 4:15; Isaiah 51:18). Among the royal family, she even played a political role, being known by the name of *gevira*.<sup>84</sup> During her children’s minority, the widow acted as their guardian where no redeemer was forthcoming (the widow of Zarephath, 1 Kings 17:12; see also 2 Kings 4:7; 8:1–6).<sup>85</sup> A childless widow returned to her father’s house, except where she stayed with the deceased husband’s family under the rule of levirate (Tamar, Genesis 38:11; Leviticus



22:13; Ruth 1:8). She did not, however, return into the full power of her father and could enter into vows independently (Numbers 30:10–11).

A certain reluctance toward the remarriage of widows, as well as of divorcees, is found in various legal provisions. We have already mentioned the prohibition to taking back one's ex-wife after her marriage to another man.<sup>86</sup> The rule of levirate, likewise, limited the widow's right of remarriage outside the family. The moral disapproval of such marriages found expression in the priestly rules (Leviticus 21:7, 14; Ezekiel 44:22).<sup>87</sup> In practice, however, widows often remarried, as shown for instance by the cases of Abigail (1 Samuel 25:38, 42) and Bathsheba (2 Samuel 11:27).

Although the widow was not given any share in her late husband's estate, she was certainly entitled to get back her dowry and any separate property given to her (Judges 17:2; 1 Samuel 25:14–42). The sale of her deceased husband's property by Naomi (Ruth 4:3–9) may, however, be a reference to later developments. The property was perhaps promised to Naomi as a marriage gift<sup>88</sup> or bequeathed to her at marriage to provide for her husband's predeceasing her without leaving a child. The latter provision was usual in the Aramaic marriage deeds of the fifth century B.C.E.<sup>89</sup>

An important remnant of the tribal age is the rule of levirate. We have spoken of the laws of redemption as designed to preserve the complete size of the clan; the rule of levirate had a similar purpose. Where one of the brethren had died without leaving a son, his wife was not to marry outside the group but became, without any formality, the wife of the deceased's brother. Insofar as the rule referred to the woman, it was similar to the rule of redemption. Moreover, Hebrew society considered sons as the family's greatest blessing and could not allow the name of the deceased to be "wiped out from Israel." It therefore used the rule of the levirate to provide at least a posthumous successor.<sup>90</sup>

According to the story of Tamar in Genesis 38, the brother of the deceased was obliged to take the widow, and the child born from that union was considered as the deceased's successor. Where the elder brother did not fulfil this duty or was unable to do so, it devolved upon the younger brother and perhaps also upon the widow's father-in-law.

Deuteronomy 25:5–10 limits the application of levirate to the case where the brothers lived on an undivided estate and allows the levir to avoid the marriage by making a declaration before the elders and by the ceremony of "loosening his sandal" (Deuteronomy 25:9).

Finally Ruth 4, mentions the rule of levirate as the implied result of the redemption of property. It was therefore applied to more distant relatives outside the small family of the deceased, but no sanction fell upon the kinsman who refused to marry the widow. Similarly, the Mishnah speaks of the "commandment of loosening the sandal" as an alternative to the "commandment of levirate," and sometimes even as the preferable practice (*Yebamot* 12:1; *Bekorot* 1:7).

## Notes

1. Adolph Büchler, *Studies in Jewish History: The Adolph Büchler Memorial Volume*, ed. Israel Brodie and Joseph Rabinowitz (London: Oxford University Press, 1956), 126.

2. David Daube, *Studies in Biblical Law* (Cambridge: Cambridge University Press, 1947), 7–8; David Daube and Reuven Yaron, “Jacob’s Reception by Laban,” *Journal of Semitic Studies* 1 (1956): 60; Reuven Yaron, *Introduction to the Law of the Aramaic Papyri* (Oxford: Clarendon, 1961), 46, and compare p. 88.

3. Compare Helmut Thierfelder, *Die Geschwisterehe im hellenistisch-römischen Ägypten* (Münster: Aschendorf, 1960).

4. According to Leopold Loew, *Gesammelte Schriften* (Szegedin: Baba, 1893), 3:277, *ma’amar* represents the more ancient form of betrothal consisting of a formula only without payment of the bride-price. This opinion contradicts the explanation given by *Babylonian Talmud Yebamot* 52a and *Palestinian Yebamot* 2:1, 3c, according to which *ma’amar* was the betrothal made by the levir in the ordinary form. The latter interpretation, however, does not explain why a special term was used for the betrothal by the levir, if all its elements were similar to those of an ordinarily betrothal. It seems, therefore, that *ma’amar* was originally the formula of betrothal usually accompanying the payment. The betrothal by the levir, on the other hand, could be effected by use of the formula without payment, “for the woman was given to him by Heaven” (*Mishnah Nedarim* 10:6). The betrothal of the brother’s widow could, therefore, be called *ma’amar* (statement) only, whereas the ordinary betrothal also included a payment. In the second century C.E. the betrothal by the levir was assimilated to the ordinary form of betrothal, so that the interpretation cited above could be made. Indeed, during the Middle Ages the process of assimilation was so effective that the marriage between the levir and the widow included the custom of reciting the blessings under the canopy; see Louis M. Epstein, *Marriage Laws in the Bible and the Talmud* (Cambridge: Harvard University Press, 1942), 117. See also Eberhard Nestle, “Miscellen,” *Zeitschrift für die alttestamentliche Wissenschaft* 28 (1908): 229 and pp. 145–47, 150–51. For the oral divorce, compare *Mekhilta ad Exodus* 18:2.

5. Compare Samuel E. Loewenstamm, “Notes on the Alalakh Tablets,” *Israel Exploration Journal* 6 (1956): 224.

6. Yaron, *Introduction*, 45. The term *to ask* exists also in the tablets of Alalah.

7. Büchler, *Studies in Jewish History*, 126, distinguishes between the meaning of *‘aras* in our passage, i.e., marriage, and that in Deuteronomy 20:7; 28:30, where the intention is of betrothal. Above, however, is an attempt to understand the reference to betrothal even after marriage has taken place. The former act, then, creates the right *ad rem*, while the second act meant merely the execution of this right. On the payment of the bride-price, compare David H. Weiss, “A Note on *aser lo orasah*,” *Journal of Biblical Literature* 81 (1962): 67–69.

8. Paul Koschaker, “Eheschliessung und Kauf nach alten Rechten, mit besonderer Berücksichtigung der älteren Keilschriftsrechte,” *Archiv Orientalni* 18 (1950): 210–96; Ephraim Neufeld, *Ancient Hebrew Marriage Laws* (London: Longmans, 1944), 198.

9. Jakob Neubauer, *Beiträge zur Geschichte des biblisch-talmudischen Eheschliessungsrecht* (Leipzig: Hinrichs, 1920); Millar Burrows, *The Basis of Israelite Marriage* (New Haven: American Oriental Society, 1938); Roland de Vaux, *Ancient Israel: Its Life and Institutions*, trans. John McHugh (London: Darton, 1961), 48–50.

10. On *mohar* (bride-price), see Neufeld, *Ancient Hebrew Marriage Laws*, 94ff.; David R. Mace, *Hebrew Marriage* (London: Epworth, 1953), 168ff.; de Vaux, *Ancient Israel*, 48–49; Raphael Patai, *Family, Love and the Bible* (London: Macgibbon and Kee, 1960), 49–50; Samuel E. Loewenstamm, “Bride-Price” (in Hebrew), in *Encyclopaedia Miqra’it* (Jerusalem: Bialik, 1950), 4:702.

11. Compare Codex Eshnunna 31.

12. De Vaux, *Ancient Israel*, 309–10.

13. Koschaker, “Eheschliessung und Kauf,” 214, 238. Compare Codex Eshnunna 27. Otherwise Büchler, *Studies in Jewish History*, 135, who explains the verb as receiving the bride from the person entitled to give her away.

14. Contra see Büchler, *Studies in Jewish History*, 135, following the rabbinical interpretation, and Büchler’s corresponding explanation of Genesis 19:14.

15. For an example of the use, see *Tosefta Yebamot* 12:4. Even in late sources *laqah* was sometimes used as a synonym for nuptials; see *Palestinian Ketubbot* 4:4, 28b, interpreting Deuteronomy 22:14, and *Genesis Rabbah* on Genesis 19:14.

16. Segal, commenting on Ben Sira 7:23, refers to *Babylonian Talmud Yebamot* 62b and *’Abot* 5:21.

17. Compare Peter Katz, “The Meaning of the Hebrew Root Ktis-,” *Journal of Jewish Studies* 5 (1954): 126–31.

18. Compare Harold H. Rowley, “The Marriage of Ruth,” *Harvard Theological Review* 11 (1947): 90.

19. Max Kaser, *Das römische Privatrecht* (Munich: Beck, 1955–59), 1:38; Jacob J. Rabinowitz, *Jewish Law: Its Influence on the Development of Legal Institutions* (New York: Bloch, 1956), 7. Compare p. 92.

20. Büchler, *Studies in Jewish History*, 129.

21. For the Roman parallel, see Karl Friedrich Thormann, *Der doppelte Ursprung der Mancipatio* (Munich: Beck, 1943), 270–74.

22. The verb *ba’al* (owning) seems to be related to *pa’al* (making), which parallel the two meanings of *qanah*, just mentioned. Compare Mitchell Dahood, “Qoheleth and Northwest Semitic Philology,” *Biblica* 43 (1962): 361.

23. Compare Yaron, *Introduction*, 46.

24. Otherwise Büchler, *Studies in Jewish History*, 135.

25. Thus *Sifra* on Leviticus 21:3, and the discussion of *mukath ’es* at the end of the passage where *hayah* is interpreted as *concupitus*.

26. *Babylonian Talmud Yebamot* 60a (R. Jose and R. Shime’on). Compare *Sifre ad Deuteronomy* 21:15, interpreting *hayah* as *betrothal*.

27. *Babylonian Talmud Yebamot* 68a.

28. *Sifre* and *Midrash Tana’im* on Deuteronomy 24:2.

29. Ze’ev W. Falk, “Endogamy in Israel” (in Hebrew), *Tarbiz* 32 (1963): 22; compare Genesis 29:26.

30. M. Schorr, *Urkunden des altbabylonischen Zivil und Prozessrechts* (Leipzig: Hinrichs, 1913), 540; Arthur E. Cowley, ed. and trans., *Aramaic Papyri of the Fifth Century, B.C.* (Oxford: Clarendon, 1923), 41–50; Emil G. Kraeling, *The Brooklyn Museum Aramaic Papyri* (New Haven: Yale University Press, 1953), 2, 7; Yaron, *Introduction*, 45.

31. E.g., *Sifre* and *Midrash Tana'im* and Deuteronomy 22:16.

32. Neubauer, *Beiträge*, 73, 205. See, however, Martin David, *Vorm en Wezen van de Huwelijksluiting naar de oud* (Leiden: Brill, 1934), 100; Burrows, "The Complaint of Laban's Daughters," *Journal of the American Oriental Society* 57 (1937): 215, 264; Godfrey R. Driver and John C. Miles, trans., *The Assyrian Laws* (Oxford: Clarendon, 1936), 142, 158; Godfrey R. Driver and John C. Miles, trans., *The Babylonian Laws* (Oxford: Clarendon, 1952–55), 1:263; Mace, *Hebrew Marriage*, 187.

33. Compare Numbers 30:10; *Mishnah Ketubbot* 4:2. According to the Talmud, however, the daughter was emancipated only by the nuptials, not by betrothal.

34. Isaac Mendelsohn, *Slavery in the Ancient Near East: A Comparative Study of Slavery in Babylonia, Assyria, Syria, and Palestine from the Middle of the Third Millennium to the End of the First Millennium* (New York: Oxford University Press, 1949), 10–11; *Targum Onqelos* for Exodus 21:8.

35. Compare Ephraim A. Speiser, "New Kirkuk Documents Relating to Family Laws," *Annual of the American Schools of Oriental Research* 10 (1930): 22–24; Burrows, "The Complaint of Laban's Daughters," 270.

36. L. Kopf, "Arabischen Etymologien und Parallelen zum Bibelwörterbuch," *Vetus Testamentum* 8 (1958): 207; David Daube, "Rechtsgedanken in den Erzählung des Pentateuchs," *Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft* 77 (1958): 35.

37. On the relation to prehistoric marriage-by-capture, see Neufeld, *Ancient Hebrew Marriage Laws*, 77ff.; de Vaux, *Ancient Israel*, 59; Patai, *Family*, 46.

38. Ze'ev W. Falk, "Zum jüdischen Bürgerschaftsrecht," *Revue Internationale des Droits de l'Antiquité*, 10 (1963): 50–51; p. 97.

39. *Palestinian Ketubbot* 7:7, 31c; compare J. N. Epstein, *Jahrbuch der jüdisch-literarischen Gesellschaft* 6 (1908): 369; Louis M. Epstein, *The Jewish Marriage Contract: A Study in the Status of the Woman in Jewish Law* (New York: Jewish Theological Seminary of America, 1927), 204.

40. Jean Dauvillier and Charles de Clercq, *Le mariage en droit canonique oriental* (Paris: Recueil Sirey, 1936), 48; Ze'ev W. Falk, *Marriage and Divorce* (in Hebrew) (Jerusalem: Mif'al ha-shikhpul, 1961), 58.

41. Compare Deuteronomy 20:7; 22:23; 28:30; compare *Mishnah Ketubbot* 5:2. On betrothal, see Neufeld, *Ancient Hebrew Marriage Laws*, 94ff., 142ff.; Mace, *Hebrew Marriage*, 167ff.; de Vaux, *Ancient Israel*, 57–58, and pp. 135–37, above.

42. Compare pp. 136, 142.

43. Compare Psalm 113:2; Isaiah 9:6, and Canaanite sources Samuel E. Loewenstamm, "Increase and Reform" (in Hebrew), in *Encyclopaedia Miqra'it*, 1:796; Samuel E. Loewenstamm, "Notes on the Alalakh Tablets," *Israel Exploration Journal* 6 (1956): 224; Samuel E. Loewenstamm, *Tarbiz* 32 (1963): 313ff. The reference to eternity appears also in Elephantine, see Yaron, *Introduction*, 47; Tobit 7:12–13 (according to some versions), in Jewish deeds of betrothal and divorce: *Palestinian Qiddušin* 1:2, 59a; *Babylonian Talmud Gi in* 85b, and in the Greek deed Dura Europos 30 of 232 C.E.

44. Yaron, *Introduction*, 45–46.
45. Compare Frank Zimmerman, *The Book of Tobit* (New York: Harper, 1958).
46. Compare Codex Eshnunna 27–28; Codex Hammurabi 128; Middle Assyrian Laws A34, 36; de Vaux, *Ancient Israel*, 58.
47. Against Isaac Mendelsohn, “The Family in the Ancient Near East,” *Biblical Archaeologist* 11 (1948): 24ff.; de Vaux, *Ancient Israel*, 58.
48. Compare Codex Eshnunna 26; Codex Hammurabi 130; Driver and Miles, *Babylonian Laws*, 1:282. On the dissolution of betrothals, see Judges 14:20; Codex Eshnunna 25; Codex Hammurabi 159–61; Falk, *Marriage and Divorce*, 34–35.
49. Codex Hammurabi 138, 159–61, 163–64, Middle Assyrian Laws A38; Neufeld, *Ancient Hebrew Marriage Laws*, 94ff.; Driver and Miles, *Babylonian Laws*, 1:249; Mace, *Hebrew Marriage*, 168ff.; de Vaux, *Ancient Israel*, 50; Loewenstamm, “Bride-Price,” 4:702.
50. De Vaux, *Ancient Israel*, 50; Patai; *Family*, 49; Loewenstamm, “Bride-Price,” 4:702.
51. Koschaker, “Eheschliessung und Kauf,” 210ff. See pp. 137–38.
52. Burrows, *The Basis of Israelite Marriage*, 1; Mace, *Hebrew Marriage*, 169; de Vaux, *Ancient Israel*, 49.
53. Codex Eshnunna 18; Codex Hammurabi 138, 163–64, 183–84; Driver and Miles, *Babylonian Laws*, 1:253–54; Alalah text 92; Neo-Babylonian Laws 8–9; compare A. Van Praag, *Droit matrimonial Assyro-Babylonien* (Amsterdam: Noord-Hollandsche, 1945), 135–36; Reuven Yaron, “Matrimonial Mishaps at Eshnunna,” *Journal of Semitic Studies* 8 (1963): 3.
54. Yaron, *Introduction*, 48.
55. Compare Codex Hammurabi 139.
56. Middle Assyrian Laws A38.
57. See pp. 136–37; for the formula accompanying the payment compare Middle Assyrian Laws A38.
58. On the nuptials, see Neufeld, *Ancient Hebrew Marriage Laws*, 148ff.
59. See pp. 136–37, 145–47.
60. On this sacrifice, compare de Vaux, *Ancient Israel*, 2:294; Jacob Licht, “Sacrifice” (in Hebrew), in *Encyclopaedia Miqra’it*, 2:901.
61. Codex Hammurabi 128; Neufeld, *Ancient Hebrew Marriage Laws*, 152ff.; Driver and Miles, *Babylonian Laws*, 1:145ff.
62. Cowley, *Aramaic Papyri*, 44–50; Kraeling, *Brooklyn Museum*, 2, 7; Yaron, *Introduction*, 40–41.

63. *Babylonian Talmud Šabbat* 14b; Neufeld, *Ancient Hebrew Marriage Laws*, 158.
64. Neufeld, *Ancient Hebrew Marriage Laws*, 176ff.; Mace, *Hebrew Marriage*, 241ff.; Reuven Yaron, "On Divorce in Old Testament Times," *Revue Internationale des Droits de l'Antiquité* 4 (1957): 117ff.; de Vaux, *Ancient Israel*; Patai, *Family*, 101; Falk, *Marriage and Divorce*, 96ff.
65. Falk, "Endogamy in Israel," 22–23.
66. Yaron, "On Divorce in Old Testament Times."
67. Compare Codex Hammurabi 137, 156, 172; Yaron, *Introduction*, 64; Falk, *Marriage and Divorce*, 111; Yaron, "Matrimonial Mishaps at Eshnunna," 14.
68. Yaron, *Introduction*, 54; Falk, *Marriage and Divorce*, 102.
69. Rabinowitz, *Jewish Law*, 6; Jacob J. Rabinowitz, "Divorce" (in Hebrew), in *Encyclopaedia Miqra'it*, 2:552.
70. Yaron, *Introduction*, 55. Compare Ben Sira 25:26 using a similar expression.
71. Compare Deuteronomy 22:16, where the pleadings begin with the recital of the marriage, and the deed of divorce from Ugarit, Jean Nougayrol, *Le Palais Royal d'Ugarit IV: Textes Accadiens des Archives Sud* (Paris: Klincksieck, 1956), 17, 159; Reuven Yaron, "A Royal Divorce at Ugarit," *Orientalia* 32 (1963): 22ff.
72. Compare Neufeld, *Ancient Hebrew Marriage Laws*, 180; Yaron, *Introduction*, 33, 64, 103.
73. Compare Yaron, *Introduction*, 47, 116; Jean Nougayrol, *Palais Royal d'Ugarit* 3 (Paris: Imprimerie Nationale, 1955), 17, 159; Yaron, "A Royal Divorce at Ugarit," 22.
74. Falk, *Marriage and Divorce*, 97; Reuven Yaron, "Review of Ze'ev W. Falk's, 'Marriage and Divorce, Reforms in the Family Law of German-French Jewry,'" *Tijdschrift voor Rechtsgeschiedenis* 30 (1962): 390.
75. Otherwise Reuven Yaron, "CP Jud. 144 et Alia," *Jura* 13 (1962): 173.
76. Neufeld, *Ancient Hebrew Marriage Laws*, 176ff.; Yaron, "On Divorce in Old Testament Times," 127; Modrzejewski, *Jura* 12 (1961): 178ff.
77. Compare Codex Eshnunna 59; Codex Hammurabi 137–40; Neufeld, *Ancient Hebrew Marriage Laws*, 181; Emile Szlechter, *Les lois d'Eshnunna* (Paris: Sirey, 1954), 52–53.
78. Compare Codex Hammurabi 137–39; Middle Assyrian Laws A37–38; *ana ittishu* 7:4; Neufeld, *Ancient Hebrew Marriage Laws*, 184; Yaron, *Introduction*, 56, 114; Yaron, "Royal Divorce," 26.
79. Compare Codex Hammurabi 142–43; *ana ittishu* 7:4; D. Norr, *Studi in Onore di Emilio Betti* (Milan: Giuffrè, 1961), 3:507ff.
80. Thus Septuagint Judges 19:2 and Akkadian parallels; compare Driver, *Die Welt des Orients* 1 (1947): 20.

81. Koschaker, "Eheschliessung und Kauf," 211; Paul Koschaker, *Journal of Cuneiform Studies* 5 (1951): 104; Norr, *Studi*, 507ff. See also pp. 126–27.
82. Yaron, *Introduction*, 53.
83. Neufeld, *Ancient Hebrew Marriage Laws*, 239ff.; Matitiahu Tsevath, "Marriage and Monarchical Legitimacy in Ugarit and Israel," *Journal of Semitic Studies* 3 (1958): 237ff.; de Vaux, *Ancient Israel*, 179.
84. De Vaux, *Ancient Israel*, 180–81.
85. Abraham Freimann, "Widow" (in Hebrew), in *Encyclopaedia Miqra'it*, 1:363; de Vaux, *Ancient Israel*, 69; p. 110.
86. See pp. 151–52.
87. This tendency is preserved in the book of Judith 8:4; 16:22.
88. Compare Codex Hammurabi 171; Middle Assyrian Laws A46. The Qara'ites interpreted the passage as Naomi's right to sell her husband's estate in order to draw her marriage portion. Compare also the reference to her children's property, which is explained as a reference to the mother's right of succession.
89. Yaron, *Introduction*, 71ff. Compare also 2 Maccabees 3:10, and the bequest in favor of the widow in Judith 8:7.
90. Neufeld, *Ancient Hebrew Marriage Laws*, 23ff.; Mace, *Hebrew Marriage*, 95ff.; de Vaux, *Ancient Israel*, 63ff.; Samuel E. Loewenstamm, "Husband's Brother" (in Hebrew), in *Encyclopaedia Miqra'it*, 3:444; Patai, *Family*, 82ff. Compare Middle Assyrian Laws A30, 33, 43; Ephraim Neufeld, *The Hittite Laws* (London: Luzac, 1951), 193; Codex Justinianus 5:5, 8.

# Children

Ze'ev W. Falk

## 1. Patria Potestas

Biblical sources reflect the transition from absolute to limited *patria potestas*, which took place in Hebrew society.<sup>1</sup> The Canaanite custom of human sacrifice was from the beginning condemned, although the stories of Isaac and of Jephthah's daughter reflect similar ideas within Israel. Reuben's offer in Genesis 42:37 to have his two sons killed should he not return Benjamin to Jacob, even if not meant to be taken seriously, pointed to the father's right to pledge his child as surety for the fulfillment of an obligation. The exceptional events in Sodom (Genesis 19:8) and Gibeah (Judges 19:24) and the express prohibition against prostituting one's daughter in Leviticus 19:29<sup>2</sup> also illustrate the extent of the patriarchal power. The father's right of punishment was later transferred to the local courts.<sup>3</sup>

The idea that an unborn child belonged legally to its father, who was also the claimant in cases of miscarriage (Exodus 21:22),<sup>4</sup> reflected the Hebrew notion of patriarchy. There was no thought of the violation of any right of the mother. Since a man's children were considered part of his property, he could originally be punished by their being harmed;<sup>5</sup> even in later practice they could be taken in distress.<sup>6</sup>

While the father's power during the patriarchal age extended to sons and daughters alike, the former seem to have been emancipated at an early date, perhaps even before the settlement. The parents, it is true, still very often chose a wife for their son, although sometimes the son himself contracted the marriage (Genesis 26:34; 27:46; Judges 14:2, 7). On the other hand, the daughter was in most cases married off by her father, except, perhaps, where she married for the second time, or when circumstances differed because of rape or seduction (Genesis 34:12; Exodus 22:16); the father was also entitled to sell his daughter into servitude (Exodus 21:7).<sup>7</sup>

One of the results of this parental power was the father's right to receive the compensation payable in the case of the rape or seduction of his daughter (Exodus 22:16; Deuteronomy 22:19). He was also entitled to her bride-price. Morally he was bound to use these payments for the benefit of his daughter, and he would probably take her wishes into account before proceeding with the marriage (Genesis 24:57).

## 2. Adoption

Both the polygynous structure of the Hebrew family and the rule of the levirate reduced the problems of childless marriages.<sup>8</sup> There was, in consequence, less need than in other ancient Eastern societies for the creation of an artificial parent-child relationship. Nevertheless, various references in the Bible point to the fact that adoption was known in Israel even though not treated in the law.<sup>9</sup>

The adoption of Moses (Exodus 2:10) and of Genubath (1 Kings 11:20), it is true, took place in Egypt and could not be cited as examples of a native custom.<sup>10</sup> On the other hand, the idea of divine adoption, at least of the king, probably existed from the time of the monarchy (2 Samuel 7:14; Psalm 2:7).<sup>11</sup> Such a metaphor reflects a custom known to the listener; the formula mentioned in the latter source is indeed similar to that of Babylonian law.



Another reference to adoption, though less direct, is shown in the neighbors' attitude toward the birth of Ruth's son, when they called him Naomi's child (Ruth 4:16–17). The clearest case is that of Esther "taken as a daughter" by her cousin (Esther 2:7).

An adoption *mortis causa*, whereby the rules of succession were altered, was effected by the declaration made by Jacob regarding Ephraim and Manasseh (Genesis 48:5).<sup>12</sup> The necessity for such a fiction will shortly be considered. The relations of Abraham toward Hagar and of Jacob toward Bilhah and Zilpah (Genesis 16:2–15; 30:3–13) seem to be based on Babylonian law,<sup>13</sup> and the wife's relation toward the children borne by the slave is similar to adoption. However, the childless wife may have considered herself a godmother to them rather than an adoptive mother.

Finally, a deed of adoption had been found among the Aramaic papyri.<sup>14</sup> Though the purpose of this transaction is not quite clear, the adoption seems to have been part of the liberation of a slave.

### Notes

1. Compare Ephraim Neufeld, *Ancient Hebrew Marriage Laws* (London: Longmans, 1944), 250ff.; David R. Mace, *Hebrew Marriage* (London: Epworth, 1953), 216ff.; Meir Weiss and Abraham Freimann, "Patriarchs" (in Hebrew), in *Encyclopaedia Miqra'it* (Jerusalem: Bialik, 1950), 1:14–18.

2. Compare Raphael Patai, *Family, Love and the Bible* (London: Macgibbon and Kee, 1960), 114ff.

3. See pp. 25–27.

4. Compare Codex Hammurabi 209–14; Middle Assyrian Laws A21, 50–53; Ephraim Neufeld, *The Hittite Laws* (London: Luzac, 1951), 17–18.

5. See pp. 68–69; compare David Daube, *Studies in Biblical Law* (Cambridge: Cambridge University Press, 1947), 160ff.; Ze'ev W. Falk, "Collective Responsibility in the Bible and the Aggada" (in Hebrew), *Tarbiz* 31 (1961): 16.

6. See p. 95; Ze'ev W. Falk, "Zum jüdischen Bürgschaftsrecht," *Revue Internationale des Droits de l'Antiquité* 10 (1963): 43. Compare Codex Hammurabi 117; Middle Assyrian Laws A48.

7. Compare Nuzi deeds in Isaac Mendelsohn, *Slavery in the Ancient Near East* (New York: Oxford University Press, 1949), 10–11. The special status of the daughter as distinguished from the son is also shown in the rule concerning her vows, see Numbers 30:4–6, although the sexes are not always distinguished, see Exodus 21:31–32.

8. Cyrus H. Gordon, "Biblical Customs and the Nuzu Tablets," *Biblical Archaeologist* 3 (1940): 1ff. Abraham Freimann, "Adoption" (in Hebrew), in *Encyclopaedia Miqra'it*, 1:431–33; compare Martin David, "Adoptie in het oude Israel," *Med. Kon. Ned. Akad. V. Wetench. Let* 18 (1955): 85–103; Roland de Vaux, *Ancient Israel: Its Life and Institutions*, trans. John McHugh (London: Darton, 1961), 85–87.

9. On adoption in the ancient East, compare Codex Hammurabi 185–93; Middle Assyrian Laws A28 and many adoption deeds from Nuzi, Babylonia, Assyria, and Ugarit.

10. Compare Erwin Seidl, *Ägyptische Rechtsgeschichte der Saiten-und Perserzeit* (Glückstadt: Augustin, 1968), 67.

11. De Vaux, *Ancient Israel*, 171.

12. For a similar case in Ugarit, see Isaac Mendelsohn, "On the Preferential Status of the Eldest Son," *Bulletin of the American Schools of Oriental Research* 156 (1959): 39ff.; compare Malamet, "Mari and the Bible," *Journal of the American Oriental Society* 82 (1962): 148.

13. Codex Lipit Ishtar 27; Codex Hammurabi 145–46, 170–71; Gordon, "Biblical Customs and the Nuzu Tablets," 3; Godfrey R. Driver and John C. Miles, *The Babylonian Laws* (Oxford: Clarendon, 1952–55), 1:333; Adrianus van Selms, *Marriage and Family Life in Ugaritic Literature* (London: Luzac, 1954), 72; Patai, *Family, Love and the Bible*, 70. For the reputed adoption of Jacob by Laban, see Moshe Greenberg, "Another Look at Rachel's Theft of the Teraphim," *Journal of Biblical Literature* 81 (1962): 239ff.

14. Emil G. Kraeling, *The Brooklyn Museum Aramaic Papyri* (New Haven: Yale University Press, 1953), 8; Reuven Yaron, *Introduction to the Law of the Aramaic Papyri* (Oxford: Clarendon, 1961), 40; Ze'ev W. Falk, "Manumission by Sale," *Journal of Semitic Studies* 3 (1958), 127; compare Codex Hammurabi 190.

# Succession

Ze'ev W. Falk

## 1. Freedom of Disposition

The law of succession is in fact a part of family law, which in turn is a result of the prevailing social structure. We have seen that in patriarchal society all the functions of the family vested in the father, including the full management of the family property.<sup>1</sup> When the father died, there arose the need for a new leader to guide the family in religious, military, and economic matters. In order to prevent a split of the group, the father used to appoint the worthiest of his sons to succeed him in the patriarchal office. In Hebrew law, then, succession by will preceded succession by law.<sup>2</sup>

In general, the leadership passed to the firstborn son who fulfilled all the deceased's functions. Originally the whole estate devolved upon him.<sup>3</sup> However, the power of leadership did not pass automatically, but had to be conferred by the father in a special blessing: "Be lord over your brothers, and may your mother's sons bow down to you" (Genesis 27:29, 37).

Under the patriarchal system, a father was free to choose a younger son as his successor if he found the eldest unworthy of the office. One example is the disinheritance of Reuben (Genesis 49:3–4; 1 Chronicles 5:1); another, appointment of King Solomon instead of his elder brother Adonijah (1 Kings 1:17–18; 2:15).<sup>4</sup>

Even the law of Deuteronomy 21:16–17 regulating the right of the firstborn still speaks of "the day on which one causes one's sons to inherit," referring to an oral testament. This was perhaps the first limitation on the ancient freedom of disposition, obliging the father to respect the right of his firstborn by giving him a double portion. A will was also called "the command given to one's sons" or "to one's house" (Genesis 49:29, 33; 2 Samuel 17:23; 1 Kings 2:1; 2 Kings 20:1) and included moral as well as material dispositions.<sup>5</sup>

Job 42:15, indeed, mentions a testamentary disposition that gave equal shares to both daughters and sons, but this was certainly an exception to the general rule of succession. Genesis 15:2–3 (Abram and Eliezer) and Proverbs 17:2 ("a wise servant . . . shall have part of the inheritance") also refer to testamentary dispositions in favor of slaves, including probably the grant of their freedom. The marriage deeds of Elephantine provided for the mutual rights of the spouses in the absence of children. This is again a kind of testamentary arrangement. Among these papyri are some specific gifts in contemplation of death.<sup>6</sup> Tobit 8:21 and 14:13 show the bride's parents promising their son-in-law an inheritance as a dowry, while Ben Sira 33:20 advises the owner of property against handing it over during his lifetime to "son, wife, friend or brother." Other donations are referred to in Judith 8:7, Jubilees 45:16, and Testament of Job 45–46.

Assuming that freedom of testation existed in Hebrew law, we must ask why Abraham had to make gifts to the sons of his concubines and to "send them away from Isaac his son, while he yet lived" (Genesis 25:6), and why Jacob had to adopt his grandchildren Ephraim and Manasseh (Genesis 48:5, 22) in order to confer upon them the right to inherit a share of his estate together with his sons. These passages seem to indicate a tendency toward limiting the patriarchal power of free disposition, although this right was never abolished.

## 2. Legal Succession

It is possible to understand the origins of the Hebrew law of succession by referring to the word *nahalah*, which meant both “real property” and “inheritance.” As in Greek law,<sup>7</sup> every private estate was considered by the Hebrews after the settlement to have been allotted by Moses and Joshua to a particular house or family. The main function of the rules of succession was to preserve this original distribution among the different tribes, clans, and families.

The law of levirate (Deuteronomy 25:5), for instance, was based upon the assumption prevailing shortly after the settlement that only male heirs could be successors. Brothers still lived on an undivided estate, distribution having taken place only on a clan level. The firstborn expected from a levirate marriage was said to be the only one to “succeed to the name” of the deceased. This corresponds perhaps to the former rule of universal succession mentioned above.<sup>8</sup>

Another stage is represented by the law of primogeniture (Deuteronomy 21:15–17). The distribution of the land had proceeded as far as household level, and there was no justification for the exclusive right of the firstborn. He was, however, still entitled to a double share in his father’s estate.<sup>9</sup> Even this rule did not make the firstborn legal heir to a double share, but merely required the father to give this to him by will. The transaction was effected by an acknowledgment of the firstborn as such, reminiscent of the formulae of adoption and dismissal from the rights of succession.<sup>10</sup> The application of this rule to “all that he has” shows that personal as well as real property was included in the estate.<sup>11</sup>

The remainder of the estate was divided in equal shares among the deceased’s sons. The dismissal of the sons of the concubines described in Genesis 25:5–6 proves that they were considered heirs equal to the chief wife’s sons and excluded only in this particular case. The same rule probably applied to the sons of a bondwoman, if the father so decided (Genesis 21:10–13; 30; 49), while the son of a prostitute, it seems, did not inherit (the sons of Gilead could expel Jephthah, Judges 11:1–2).<sup>12</sup>

Finally, daughters were entitled to inherit in default of sons provided that they married within the clan (Numbers 27:1–11; 36). These passages reflect the tribal system as it existed shortly after the settlement. According to the demand of Zelophehad’s daughters, the order of succession was fixed. Sons inherited according to law; in default, the estate was “transferred” to the daughters; and in their default, it passed in turn to the deceased’s brothers, uncles, or generally to his kinsmen. Though similar to the Athenian *epiklerate*, the Hebrew law of female succession allowed the heiress to choose her own husband, her choice being limited, however, to members of her clan.<sup>13</sup>

No mention is made of the father’s right to inherit the estate of a son who predeceased him, the explanation being that the family estate could not have been owned by the son during his father’s lifetime.<sup>14</sup> In the Aramaic papyri, on the other hand, both father and mother are referred to as possible heirs.<sup>15</sup>

The widow was not granted any right in the inheritance, neither was the daughter allotted a share where sons survived.<sup>16</sup> We have mentioned above the marriage contracts from Elephantine, which provided for the rights of the surviving spouse in default of children. While the widower was appointed heir, the widow seems to have enjoyed a mere life interest, sometimes *durante viduitate* only. Biblical law, on the other hand, did not ordinarily

allow a woman any portion in the family property, in order to prevent its passing to another family. This is also the reason for the absence of a provision making the widower heir to his deceased wife's property.<sup>17</sup>

The law of succession did not provide for the right of a creditor to demand satisfaction from the estate, although this right must have existed at least so long as the sons themselves could be seized in distress. A corresponding clause is usually included in the Aramaic papyri.<sup>18</sup>

### Notes

1. See p. 25, above.

2. For Roman law this theory has been established by Bonfante, *Scritti Giuridici* 1 (Turin, 1926), 101ff.; compare Max Kaser, *Das römische Privatrecht* (Munich: Beck, 1955–59), 1:82; Ze'ev W. Falk, "Testate Succession in Jewish Law," *Journal of Jewish Studies* 12 (1961): 67.

3. Compare Egyptian law in Erwin Seidl, *Einführung in die ägyptische Rechtsgeschichte bis zum Ende des neuen Reiches* (Glückstadt: Augustin, 1951), 57. On the Hebrew firstborn, compare Johannes Pedersen, *Israel: Its Life and Culture* (London: Oxford University Press, 1926–40), 3–4:312ff.; Ephraim Neufeld, *Ancient Hebrew Marriage Laws* (London: Longmans, 1944), 263ff.; Elijah S. Hartum, "Firstborn" (in Hebrew), in *Encyclopaedia Miqra'it* (Jerusalem: Bialik, 1950), 2:123; Roland de Vaux, *Ancient Israel: Its Life and Institutions*, trans. John McHugh (London: Darton, 1961), 72; Isaac Mendelsohn, "On the Preferential Status of the Eldest Son," *Bulletin of the American Schools of Oriental Research* 156 (1959): 38–39; Ze'ev W. Falk, "Endogamy in Israel" (in Hebrew), *Tarbiz* 32 (1963): 31–32.

4. Compare Codex Hammurabi 168–69; Godfrey R. Driver and John C. Miles, *The Babylonian Laws* (Oxford: Clarendon, 1952–55), 1:348; compare Ze'ev W. Falk, "Mutual Obligations in the Ketubah," *Journal of Jewish Studies* 8 (1958): 215; Falk, "Testate Succession," 67.

5. Otherwise, Reuven Yaron, *Gifts in Contemplation of Death in Jewish and Roman Law* (Oxford: Clarendon, 1960), 7–8.

6. Reuven Yaron, *Introduction to the Law of the Aramaic Papyri* (Oxford: Clarendon, 1961), 65ff. Compare Codex Hammurabi 150, 165.

7. Paul Vinogradoff, *Outlines of Historical Jurisprudence* (London: Oxford University Press, 1920–22), 2:202–3.

8. Compare pp. 153–54.

9. See p. 172. For Babylonian parallels, compare Driver and Miles, *Babylonian Laws*, 1:331.

10. David Daube, *Studies in Biblical Law* (Cambridge: Cambridge University Press, 1947), 5ff. See pp. 135–36, 146–47, 149, 151; compare Codex Hammurabi 170–71.

11. Compare Leviticus 25:46 applying the term *naḥal* to slaves.

12. Compare Codex Lipit Ishtar 25, 27; Codex Hammurabi 170–71; Driver and Miles, *Babylonian Laws*, 1:332; de Vaux, *Ancient Israel*, 90; Samuel E. Loewenstamm, "Inheritance" (in Hebrew), in *Encyclopaedia Miqra'it*, 3:790.

13. Falk, "Endogamy in Israel," 32–33.

14. Samuel E. Loewenstamm, "Israel Exploration," *Qiryat Sefer* 34 (1959): 47.

15. Yaron, *Introduction*, 68. According to Rabbi Johanan (third century C.E.), the mother inherited her son's property (*Babylonian Talmud Baba Batra* 114b), and this was also the view of the Qara'ites who referred to Ruth 4:9.

16. Compare Codex Lipit Ishtar 22; Codex Hammurabi 172, 180–82, 184.

17. For the position in Babylonian law, see Driver and Miles, *Babylonian Laws*, 1:334ff. The Talmudic right of inheritance of the widower in default of children (*Mishnah Baba Batra* 8:1) probably developed from a contractual provision, such as that included in the Aramaic papyri. See Louis M. Epstein, *The Jewish Marriage Contract: A Study in the Status of the Woman in Jewish Law* (New York: Jewish Theological Seminary of America, 1927), 121ff.

18. Arthur E. Cowley, ed. and trans., *Aramaic Papyri of the Fifth Century B.C.* (Oxford: Clarendon, 1923), 29–32; Emil G. Kraeling, *The Brooklyn Museum Aramaic Papyri* (New Haven: Yale University Press, 1953), 11; Yaron, *Introduction*, 97.

# Addenda

Ze'ev W. Falk

Looking back, after one-and-a-half decades, to my study on *Hebrew Law in Biblical Times* (Jerusalem, 1964), I would like to mention later literature and later ideas on the subject that should be added to it. The page numbers in brackets in the text refer to the location in the main text where the related topics are discussed.

A number of bibliographical aids are now available to the student, of which the following should be named: the *Revue historique de droit français et étranger*, within the framework of its general bibliography of ancient law, include a survey of publications on biblical law as from 1963; since 1967 this survey has been compiled by M. H. Prévost. S. M. Paul has published a useful bibliography of the same in J. Gilissen (ed.), *Bibliographical Introduction to Legal History and Ethnology* (Brussels, 1974), and in a larger version (Hebrew) at Jerusalem (Akademon, 1973). The *Index of Articles on Jewish Studies*, published by I. Joel, within the framework of "Kiryat Sefer," *The Bibliographical Quarterly of the Jewish National and University Library* (Jerusalem, 1969), also gives some data on Hebrew law, though it is by no means exhaustive. The most complete aid to scholars of Hebrew law is N. Rakover, *Bibliography of Jewish Law* (Jerusalem, 1975), covering publications in Hebrew; a second volume covering publications in foreign languages, hopefully, is to follow soon. Together with the bibliographical surveys mentioned already [p. x, above], these publications are useful tools for future study in the field of biblical law.

## The Sources

The main problem in any discussion of biblical law is, of course, the absence of definite dates in the sources, and discussion continues on the relative order of the various legal passages [1–4]. Regarding the patriarchal and pre-Mosaic era we have only a short legal passage of laws given to Noah (Genesis 9:1–7) and the narrative passages of Genesis and Exodus reflecting legal usage. Among the Pentateuchal laws we notice the pre-monarchical and agrarian background, reflecting their early date. Especially in the so-called "Book of the Covenant" little can be fixed at or after the time of kingship.<sup>1</sup>

The discussion on the apodictic and casuistic formulations [2–3] is continuing.<sup>2</sup> However, while originally the distinction had been proposed in order to trace the origin of biblical laws, no such conclusion seems to be justified at our present state of knowledge. Both casuistic and apodictic formulations can be found outside the Bible and neither of them is necessarily connected with legal life.

The only method, therefore, to develop a history of ancient Hebrew law seems to be the legal and historical analysis of the various sources [3–4]. There may be very ancient ideas preserved in a late source<sup>3</sup> and both the early and later phases of a norm may coexist for a while beside each other. Attention must always be paid to the sources themselves, and as long as their statement is not contradicted by positive proof, we should follow their historical concepts.

Unfortunately, we have almost no extrabiblical records to illustrate the functioning of ancient Hebrew law. Some contemporary documents, however, may help us in the understanding of the legal background to certain biblical passages. Thus the Aramaic papyri of Elephantine can be drawn upon for the deed of purchase mentioned in Jeremiah 32:11 [3]. Likewise, the Murashu tablets, if indeed they include Jewish names, show the encounter during the Babylonian exile with neo-Babylonian law. The fact that these documents were written in Akkadian does not preclude their influence on Jewish thought and practice.

In addition to the traditional theories of biblical criticism, A. S. Diamond establishes a later criterion for dating the sources, viz., the secular versus the religious approach. In his view, the former is the early one, which was gradually replaced by the second.<sup>4</sup> This theory seems to raise as many textual problems as it tries to answer, and may be refuted by the following arguments in favor of the religious character of Ancient law:

(1) The law is part of the covenant (Exodus 15:25; 24:3; 34:10; Joshua 24), which is an indication of its divine source. (2) In the patriarchal age, religious and legal functions were concentrated in the hands of the family chief [25], so that there was little occasion for separation of concepts. (3) Moses and the judges (including Deborah) were religious as well as legal functionaries. (4) The kings played a religious as well as a legal role. (5) The administration of justice was linked with the sanctuary (Deuteronomy 17:8; 23:10; 1 Kings 8:31–53). (6) The composition of the central court (Deuteronomy 17:8–13; 2 Chronicles 19:11) points to the interrelationship of law and religion. (7) The separation of secular and religious law may have been prevalent in Israel. Indeed, the Egyptian concept of *ma'at*, represented by the king, is based on the interdependence of law and religion. There is no more reason to ascribe the origin of Hebrew legal philosophy to the secularist pattern of Mesopotamia, or to that of Hittite law, than to the corresponding world of ideas current in Egypt.<sup>5</sup> This does not mean that law and religion were basically the same, but that they had a common basic norm.<sup>6</sup>

Therefore, law was not the creation of kingship but rather its basis and prerequisite [5]. The references that are usually quoted to prove the opposite are not to the point: the division of booty (1 Samuel 30:24) is the act of a military commander, not of a king; Tamar's statement regarding her marriage to her paternal brother (2 Samuel 13:12) does not so much prove the royal power of legislation as the ignorance of Leviticus 18:9; 20:16, and Deuteronomy 27:22. The claim of the woman of Tekoa does not concern a case of lawmaking but a royal pardon. The king plays indeed a judicial role and he is responsible for the administration of justice, but no rule is ascribed to him.<sup>7</sup>

The law is part of the Torah, which must be read from time to time in public to renew the religious duty of obedience [7]. This practice has its counterpart in a royal edict of Nuzi.<sup>8</sup>

The biblical idea that the king is under the rule of law must also have had its parallels in Mesopotamian thought. There, too, the cosmic order and law had its bearing on the behavior of the king. The central idea of righteousness [8] may therefore also be traced in the royal name *Ammi Saduqa*.<sup>9</sup>

This term is an example of the possibilities lying in the study of biblical language for the knowledge of Hebrew law [8].<sup>10</sup>

Speaking of the legal sources [11–15] we must mention in the first place a particularity of biblical law as compared with other legal systems: law is part of the divine Torah and imposed by God on the people. The central fact of biblical legislation is the covenant of Sinai, forming the basic norm of the various duties. Other norms are ascribed to a special command from God to Moses, while in the book of Deuteronomy, Moses imposes the laws in the name of God. However, the people always take an active part in the covenant (Exodus 19:8; 24:3, 7; Joshua 24:16; 21:24; 2 Kings 23:3), so that the legislative process actually takes the form of a dialogue.<sup>11</sup>

Even the cases of judge-made law [11–12] are all connected with divine decisions; this shows, again, the union of religion and law.<sup>12</sup>



It is, therefore, peculiar that U. Cassuto, in his commentary on Exodus 21, declares *consuetudo* and royal legislation to be the major elements of Hebrew law; the laws of the Torah, on the other hand, are conceived by him as mere moral commandments. This theory was probably established in order to explain why rules of the Torah were disregarded at a later time, although, according to Cassuto's view, the Torah was already in existence. Thus the need for apologetics has led him to deprive the Torah of its legal character, which is perhaps a worse assertion than assuming its gradual edition.<sup>13</sup>

Indeed, unlike Urnammu, Lipit Ishtar, and Hammurabi, the kings of Israel did not prepare restatements of the law but had it copied from the text possessed by priests and Levites (Deuteronomy 17:18). The king of Israel was definitely not the legislator, not even the author of a legal text.<sup>14</sup>

Custom, it is true, was important in Israel as in other civilizations, especially where the law did not cover all spheres of life. However, it would not be in accordance with biblical sources to assume that laws on murder and other crimes did not crystallize in a legislative form.

The main interest of biblical scholars has been attracted by the identity and similarity noticeable in various passages with regard to the surrounding cultures. The problem of autonomy versus cultural dependence is indeed basic for the understanding of biblical law and religion [15]. An example of how foreign ideas could be absorbed and then ascribed to Mosaic law is Exodus 18:13–27 and Deuteronomy 1:9–18. We may assume that other laws were likewise borrowed from the common stock of legal ideas and nevertheless included in divine legislation.<sup>15</sup>

The decisive feature of patriarchal society was certainly monotheism (Exodus 3:16; Joshua 24:2; Isaiah 51:2), not the distinct mode of legal life. Thus, the significant element in the rule of the goring ox is the prohibition of his meat (Exodus 21:28), which gives to the rules a different meaning from that of Codex Eshnunna 54–55 and Codex Hammurabi 250–52. Likewise, the *ius talionis* in Leviticus 24:17–22 declares the equality of the native and the sojourner as well as of the rich and the poor, while the corresponding provision in Codex Hammurabi 196ff. does not emphasize this aspect. On the other hand, Codex Hammurabi 209–10 and 229–30 allows the vicarious responsibility of the child for the father's offense, while Exodus 21:31 and Deuteronomy 24:16 deny this responsibility.

### **Tribe, Nation, and State**

The background of biblical law is the law that was customary during the patriarchal age [23–26]. If possible, distinction should be made even in this early phase between primary and secondary institutions and norms. Thus, beside the marriage by way of payment (Genesis 34:12), there existed a marriage based on kinship, probably on the exchange of daughters between blood relations (Genesis 24). Likewise, marriage of a captive dates also from this early age, as reflected in Genesis 6:2, Deuteronomy 21:10–14, and Judges 21.

Parallels to the ancient concept of family property [25] can be found in a Nuzi will prohibiting the alienation of the property,<sup>16</sup> and in the fictitious adoption to effect a sale.<sup>17</sup> Sales of land must have been exceptional so that there was no need for a deed or any other writing (Genesis 23:17–20; 33:19–20; Ruth 4:7; 1 Chronicles 21:24–25).

Likewise, the development after the settlement [26–29] can be traced in the pentateuchal legal passages.<sup>18</sup> No assumption should, however, be made that development took place in a straight line. According to the Pentateuch,

unity was achieved under Moses, Joshua, and the elders, then centrifugal forces prevailed until the establishment of the monarchy.<sup>19</sup>

An example of the development is the transfer of judicial powers from the local assembly to the local elders. At the trial of Jeremiah, the people at large are involved [36].<sup>20</sup> In most cases, however, the right of speech had become limited to the elders, representing all the rest of the people. The same process may be traced in other cultures.<sup>21</sup>

The development of later Hebrew law depended, of course, on the attitude of the ruler and his willingness to grant the Jews autonomy and self-government. The legislative policy of Darius was inclined to allow Hebrew law to be applied and developed [39].<sup>22</sup> The liberal attitude toward the Jews, therefore, was just one example of the general tolerance of the Persian rulers.

### **Administration of Justice**

Judicial appointments and functions were always closely linked to the king of the day [48].<sup>23</sup> The divine participation in the judicial process expressed itself in the use of oaths and curses [50–52].<sup>24</sup> Among the formulae of oaths, the expression "to do good" [52] has its counterpart in Tosefta Shevu'ot 2:15, and is similar to the formula mentioning the life of a person, e.g., the king.<sup>25</sup>

The forensic term *todah*, meaning confession, has also the sense of praise and thanksgiving [52–55]. The common element in both expressions is the idea that praise to God means that God has given man more than is due to him (compare Genesis 32:11 and Judges 5:11). Likewise, an accused person confessing his guilt, thereby justified the sentence and praised justice.

Two forms of divine<sup>26</sup> intervention in the judicial process are the *Urim and Thummim* and the trial by battle.<sup>27</sup> The main object of the procedure is the prevention of private action by the law [56]. Biblical law limits the right of levying distress on the debtor's property, just as Babylonian law prohibited it.<sup>28</sup> Likewise, the rules of asylum prevented private vengeance.<sup>29</sup>

A source of information on procedure and law may be found in some of the prophetic discourses using forensic situations by way of metaphor.<sup>30</sup> The rules of evidence [59–60] were meant to prevent any doubt or future dispute, but inscriptions and deeds were not common in Israel unless written for religious purposes.<sup>31</sup>

A significant element of Hebrew legal procedure was the effort to convince the guilty party, so as to stabilize the situation and prevent further contention [59]. This is the idea underlying two parables.<sup>32</sup> This technique is therefore similar to the Babylonian undertaking not to open a certain case again.<sup>33</sup>

However, the unsuccessful party was not asked to pay the costs. In Nuzi he sometimes had to render an ox as costs.<sup>34</sup> Perhaps this is the background to the assertion made by the righteous judge in Israel in Numbers 16:15 and 1 Samuel 12:3.

### **Crime and Punishment**

Unlike modern Western law, the legal system of the ancient Hebrews was based on the idea of collective responsibility [67–70].<sup>35</sup> However, the extradition of Saul's descendants to the Gibeonites (2 Samuel 21:1–19) does not necessarily prove the practical application of this idea, but could be taken as an idea introduced from outside.<sup>36</sup>

While Babylonian and Hittite laws permitted the practice of paying blood-money instead of suffering capital punishment, this practice was prohibited by Numbers 35:31–32 and Deuteronomy 19:13 [69–70]. The early practice seems to have been in favor of this payment, just as in the case of death caused by negligence (Exodus 21:30), it was considered to be appropriate.

Among the capital crimes is kidnapping [72].<sup>37</sup> The violation of property rights, on the other hand, was not a serious offense, the reason being the comparatively late notion of private property. On this point Hebrew law still represents the ancient tribal system, regarding the family as the owner of property.<sup>38</sup>

A significant element of biblical law is the rule of *talion* [73], which could, however, be excluded by payment of a ransom.<sup>39</sup> Another particularity of biblical law is the prevalence of capital punishment.<sup>40</sup> For less heinous offenses corporal punishment was afflicted.<sup>41</sup> However, on certain occasions the curse was the sanction falling upon the transgressor, and the belief in its terrible consequence seems to have had a practical effect.<sup>42</sup>

In most disputes the judges would impose mere payment of compensation [75].<sup>43</sup> An example is the rule of the goring ox.<sup>44</sup> Even in cases of larceny and robbery the private rather than the criminal character of the act prevailed.<sup>45</sup>

### **Things and Contracts**

The law of property [83–85] starts among the Hebrews with the notion of inheritance.<sup>46</sup> Among the most ancient data of legal practice is the description of the acquisition by Abraham of the Cave of Machpelah.<sup>47</sup>

Private property was limited by various duties toward the needy, such as the wayfarer [85–87].<sup>48</sup> Another limitation was the rule that the Hebrew servant must be released after six years of work. When the notion of private property became more prevalent and family solidarity weakened, the release of servants became illustory and had to be specially imposed by King Zedekiah [87].<sup>49</sup>

The law of contracts must have developed among the Hebrew tribes from the notion of covenant and divine supervision of promises [87–89].<sup>50</sup> The covenant was often accompanied by a common meal.<sup>51</sup>

A special problem must have arisen when the Hebrew carried on negotiations and made contracts with people of a different legal tradition [87–91]. In order to give effect to an acquisition of property they must have followed the proper law of the seller. Still it seems that they did not, for a long time, make use of documents, although this was customary in the area. Contracts were mainly of the barter category.<sup>52</sup> In spite of the fact that the patriarchs definitely came into contact with a written legal system<sup>53</sup> they seem to have reverted back to the custom of preliterate nomad society. Therefore, in Hebrew law mention is made of documents of transfer only at a late stage. The use of writing for legal and administrative purposes was probably introduced during the monarchy by

professional scribes.<sup>54</sup> Writing for religious purposes, especially to preserve the Torah, was, however, customary from an early date.

Since the ordinary contract took place in an oral form, the gestures expressing the agreement became important [90]. The use of the shoe, for instance, has its counterpart in the use of the garment in Nuzi.<sup>55</sup> When documents were mentioned with regard to divorce and transfer of land [91], they were probably similar to Cuneiform and Aramaic deeds. Thus, the double text, customary in the area,<sup>56</sup> may be presumed to have been used in the case of Jeremiah 32:11. Another limitation on the right of private property is the release of interest [93].<sup>57</sup>

The law of surety is an interesting example of the existence of a body of legal rules outside the legal texts of the Bible [93–97].<sup>58</sup> A contract that is both covered in the legal and the narrative portions of the Pentateuch is that of shepherding [99].<sup>59</sup>

### Persons

The status of women in biblical law [109–11] must be understood as a reaction against the worship of female goddesses and the role of women in fertility cults.<sup>60</sup>

Hebrew law is basically a system of personal law, distinguishing between citizens and foreigners [112–14]. The legal systems of the Babylonian and Assyrian states, on the other hand, applied to all present within their boundaries. But even there the class distinctions may have had their origin in the distinction between citizens and foreigners. In Hebrew law, too, distinction must be made between the *nokhri*, the stranger living in the country for a while, the *ger*, having permanent residence therein, and the *toshav*, who seems to have been in the employment and under the special protection of a citizen. Special moral protection was accorded to the second of these categories.<sup>61</sup> The ethical elements of Hebrew law are represented in the status of slaves [114–18].<sup>62</sup>

### The Family

The impact of the patriarchal age on Hebrew law is felt mostly in the field of family structure [123–31].<sup>63</sup> Beside legal marriage there existed the possibility of concubinage [126–27].<sup>64</sup> While the Hebrew family structure was polygynous, monogamy could be imposed by contract [127–28]. A parallel is Alalah 91, 93. We may also use the allegory of Ezekiel 16:8 as a source of marriage. True, it refers to the covenant between God and the patriarchs, but it would not have been understandable if it did not correspond with the ordinary marriage ceremony.

### Marriage and Divorce

Marriage was composed of two elements: the real one corresponding to the purchase of goods, and the ideal one, expressed by a special formula [135–45].<sup>65</sup> Corresponding with biblical *mohar* [137] is Babylonian and Assyrian *tirhātu*.<sup>66</sup> The term *mattan* corresponds with Babylonian and Assyrian *nudunnu*.<sup>67</sup> Unfortunately the rules of divorce are mentioned in the legal passages only *en passant* [150–53].<sup>68</sup> The act of "cutting asunder" [151] has its counterpart in Nuzi *sissikta bataqu*.<sup>69</sup> Judges 19:2 may be an indication of the greater freedom granted to a concubine, as existed also in Greek and Roman society.<sup>70</sup>

Among the rules of the widow, mention must be made of the queen-mother [153–54].<sup>71</sup> According to the patriarchal system, the father negotiated the marriage for his son. However, sons became emancipated at quite an early phase and hence could contract a marriage by themselves [166].<sup>72</sup>

### Children and Succession

Another institution not mentioned in the legal passages but nevertheless existing in custom was adoption [166–67].<sup>73</sup> The integration of legal rules in narratives can be seen in the rules of succession [171].<sup>74</sup>

Thus, the study of Hebrew law on whatever subject should indeed start with the most ancient sources, taking into consideration other oriental laws and the growing literature of legal and historical analysis.

### Notes

1. Mention should be made here of the studies of F. Charles Fensham, "Aspects of Family Law in the Covenant Code in Light of Ancient Near Eastern Parallels," *Diné Israel* 1 (1969): 5–19, and Shalom M. Paul, "The Patriarchate in the Light of the Nuzi Documents" (in Hebrew), *Diné Israel* 2 (1970): 23–28, as well as of the latter's *Studies in the Book of Covenant* (Leiden: Brill, 1970).

2. Of the greater number of publications, mention should be made of Erhard Gerstenberger, *Wesen und Herkunft des apodiktischen Rechts* (Neukirchen: Neukirchener, 1965); Herbert Petschow, "Zu den Stilformen antiker Gesetze und Rechtssammlungen," *Journal of Semitic Studies* 10 (1965): 24–38, and Moshe Weinfeld, "The Origin of the Apodictic Law: An Overlooked Source," *Vetus Testamentum* 23 (1973): 63–75.

3. Compare Ephraim A. Speiser, "Leviticus and the Critics," in *Yehezkel Kaufmann Jubilee Volume*, ed. Menachem Haran (Jerusalem: Magnes, 1960), 29–45.

4. Arthur S. Diamond, *Primitive Law, Past and Present* (London: Methuen, 1971).

5. Ze'ev W. Falk, "Two Symbols of Justice," *Vetus Testamentum* 10 (1960): 72.

6. On the distinction of terms, see Ze'ev W. Falk, "'Words of God' and 'Judgments,'" in *Studi E. Volterra* 6 (1972): 155–59. And on the basic unity of law and religion in biblical thought, see Jacob J. Finkelstein, "Justice in the Ancient East" (in Hebrew), *Encyclopaedia Miqra'it*, 5:558–618.

7. Compare Jacob Liver, "King" (in Hebrew), *Encyclopaedia Miqra'it*, 4:1092; Samuel E. Loewenstamm, "Convocation Law" (in Hebrew), *Encyclopaedia Miqra'it*, 5:620–28.

8. See Ephraim A. Speiser and Robert H. Pfeiffer, "One Hundred New Selected Nuzi Texts," *Annual of the American Schools of Oriental Research* 16 (1936): 109; compare Moshe Weinfeld, "Reading Scriptures in Synagogue" (in Hebrew), *Encyclopaedia Miqra'it*, 7:265–67.

9. Compare Fritz R. Kraus, *Ein Edikt des Königs Ammi Saduqa von Babylon* (Leiden: Brill, 1958); Jacob Licht, "Justice" (in Hebrew), *Encyclopaedia Miqra'it*, 6:683.

10. Compare on this point, Hans J. Boecker, *Redeformen des Rechtslebens des Alten Testament* (Neukirchen: Neukirchener, 1964); Isaac L. Seeligman, "Zur Terminologie für das Gerichtsverfahren im Wortschatz des biblischen Hebraisch," *Vetus Testamentum Supplement* 16 (1967): 251–78; Ze'ev W. Falk, "Hebrew Legal Terms: II," *Journal of Semitic Studies* 12 (1967): 241–44; Ze'ev W. Falk, "Hebrew Legal Terms: III," *Journal of Semitic Studies* 14 (1969): 39–44; Ze'ev W. Falk, "On Legal Terms" (in Hebrew), *Sinai* 77 (1975): 17–21; Loewenstamm, "Convocation Law," 5:614–37. On the term *shofet*, see "Ruler and Judge" (in Hebrew), *Leshonenu* 30 (1966): 243–47; Tokuya Ishida, "Judge" (in Hebrew), *Encyclopaedia Miqra'it*, 7:577–83.

11. On the function of the covenant in Hebrew law, see George E. Mendenhall, *Law and Covenant in Israel and the Ancient Near East* (Pittsburgh: Biblical Colloquium, 1955).

12. Compare W. H. Snaith, "The Daughters of Zelophehad," *Vetus Testamentum* 16 (1966): 124–27; Jacob Weingren, "The Case of the Daughters of Zelophehad," *Vetus Testamentum* 16 (1966): 518–22; Jacob Weingreen, "The Case of the Woodgatherer (Numbers XV. 32–36)," *Vetus Testamentum* 16 (1966): 361–64; Anthony Philipps, "The Case of the Woodgatherer Reconsidered," *Vetus Testamentum* 19 (1969): 125–28.

13. See also Loewenstamm, "Convocation Law," 5:620–28.

14. Compare Finkelstein, "Justice in the Ancient East," 5:610–14.

15. As to this process, see Ze'ev W. Falk with Reuven Yaron, "The Laws of Eshnunna," *Biblica* 51 (1970): 130–33; Finkelstein, "Justice in the Ancient East," 5:609; and Bernard S. Jackson, "The Problem of Exodus 21:22–25 (Ius Talionis)," *Vetus Testamentum* 23 (1973): 273–304.

16. See Ephraim A. Speiser, "New Kirkuk Documents Relating to Family Laws," *Annual of the American Schools of Oriental Research* 10 (1930): 20.

17. *Ibid.*, 13ff. As to Naboth's vineyard, compare Klaus Baltzer, "Naboths Weinberg (1.Kön.21). Der Konflikt zwischen israelitischem und kanaanischem Bodenrecht," *Wort und Dienst* 7 (1965): 73–88; Francis I. Anderson, "The Socio-Juridical Background of the Naboth Incident," *Journal of Biblical Literature* 85 (March 1966): 46–57.

18. Compare, for example, Ze'ev W. Falk, "Sociological Notes on Deuteronomy" (in Hebrew), *Diné Israel* 3 (1972): 37–43.

19. Compare Samuel E. Loewenstamm, "Moses" (in Hebrew), *Encyclopaedia Miqra'it*, 5:482–95; Moshe D. Cassuto, "Joshua, Son of Nun" (in Hebrew), *Encyclopaedia Miqra'it*, 3:542–43; Jacob Liver, "People, Nation" (in Hebrew), *Encyclopaedia Miqra'it*, 6:235–39; H. Raviv, "Organization of the Tribes of Israel" (in Hebrew), *Encyclopaedia Miqra'it*, 7:494–97; Yair Zakovich and Samuel E. Loewenstamm, "Book of Judges" (in Hebrew), *Encyclopaedia Miqra'it*, 7:583–98.

20. Compare F. Lothar Hossfeld and I. Meyer, "Der Prophet vor dem Tribunal. Neuer Auslegungsversuch von Jeremiah 26," *Zeitschrift für die alttestamentliche Wissenschaft* 86 (1974): 30–50.

21. Compare, for instance, Alalah 2.

22. On this policy, see Eduard Meyer, *Kleine Schriften* (Halle: Niemeyer, 1924), 2:94ff.; Albert T. Olmstead, "Darius as Lawgiver," *American Journal of Semitic Languages and Literature* 51 (1935): 247–49; E. Bresciani, *Studi Classici e*

*Orientali* 7 (1958): 153ff.; Richard Frye, "Laws and Justice" (in Hebrew), *Encyclopaedia Miqra'it*, 6:601; and the central exhibit in the Shayad Monument, Teheran.

23. Compare Alalah 7; Georges Boyer, *Archives Royales de Mari* (Paris: Imprimerie Nationale, 1958), 8:238; Finkelstein, "Justice in the Ancient East," 5:609–10; J. P. M. van der Ploeg, "Les Jugés en Israël," *Volume Card. Ottaviani* (1969), 1:463–507; Georg C. Macholz, "Die Stellung des Königs in der israelitischen Gerichtsverfassung," *Zeitschrift für die alttestamentliche Wissenschaft* 84 (1972): 157–82; "Zur Geschichte der Justizorganisation in Juda," *Zeitschrift für die alttestamentliche Wissenschaft* 85 (1973): 314–40.

24. Compare D. R. Hillers, *Treaty Curses and the Old Testament Prophets* (Rome: Pontifical Biblical Institute, 1964); W. Schottroff, *Der altisraelitische Fluchspruch* (Neukirchen: Neukirchener, 1968); Manfred R. Lehmann, "Biblical Oaths," *Zeitschrift für die alttestamentliche Wissenschaft* 81 (1969): 74–92; Samuel E. Loewenstamm, "Oath" (in Hebrew), *Encyclopaedia Miqra'it*, 7:479–91.

25. For a Babylonian parallel, see Boyer, *Archives Royales de Mari*, 8:172ff.

26. Compare Falk, "On Legal Terms," 17–21.

27. Compare Ze'ev W. Falk, "Legal Archaeology," *Jura* 17 (1966): 167–70; F. Charles Fensham, "Ordeal by Battle in the Ancient Near East and the Old Testament," *Studi Volterra* 6 (1969): 127–35; F. Charles Fensham, "The Battle between the Men of Joab and Abner as a Possible Ordeal by Battle?" *Vetus Testamentum* 20 (1970): 356.

28. Compare Boyer, *Archives Royales de Mari*, 8:230.

29. Compare L. Delekat, *Asylie und Schutzorakel am Zionheiligtum* (Leiden: Brill, 1967); Jacob Licht, "Vengeance" (in Hebrew), *Encyclopaedia Miqra'it*, 5:917–21.

30. See Julien Harvey, *Le Plaidoyer Prophétique contre Israël après la Rupture de l'Alliance* (Montreal, 1967); James Limburg, "The Root R-I-B and the Prophetic Lawsuit Speeches," *Journal of Biblical Literature* 88 (1969): 291–304.

31. Compare Gene M. Tucker, "Witnesses and 'Dates' in Israelite Contracts," *Catholic Biblical Quarterly* 28 (1996): 42–45; Ze'ev W. Falk, "Oral and Written Testimony," *Jura* 19 (1968): 113–19; Bruno Volkwein, "Masoretisches edut, edwot, edot: 'Zeugnis' oder 'Bundesbestimmungen'?" *Biblische Zeitschrift* 13 (1969): 18–40; Samuel E. Loewenstamm, "Evidence" (in Hebrew), *Encyclopaedia Miqra'it*, 6:81. On the papyri, compare E. Volterra, "Sulla redazione dei contratti nell'antico diritto ebraico [Gen. 23, Jer. 32, Ruth 4]," *Syntelesia Arangio Ruiz* (1964): 1190–97, and on Exodus 22:2 compare John W. McKay, "Exodus 23:1–3, 6–8: A Decalogue for the Administration of Justice in the City Gate," *Vetus Testamentum* 21 (1971): 311–25.

32. Compare Uriel Simon, "The Poor Man's Ewe-Lamb: An Example of a Juridical Parable," *Biblica* (1967): 207–42.

33. Compare Alalah 7; Boyer, *Archives Royales de Mari*, 8:241, and documents from Nuzi.

34. Compare Speiser and Pfeiffer, "One Hundred New Selected Nuzi Texts," 71.

35. Compare Ze'ev W. Falk, "Collective Responsibility in the Bible and the Aggada" (in Hebrew), *Tarbiz* 30 (1961): 16–20; "Merits of the Father in Ezekiel" (in Hebrew), *Bet Miqra* 17 (1972): 393–97. P. Maon, *Responsabilité et Culpabilité Solidaires dans les Très Anciennes Institutions Bibliques* (Louvain, 1964); Anthony Phillips, *Ancient Israel's*

*Criminal Law* (Oxford: Blackwell, 1970); H. Eberhard von Waldow, "Social Responsibility and Social Structure in Early Israel," *Catholic Biblical Quarterly* 32 (1970): 182–204.

36. Compare *Babylonian Talmud Yebamot* 79a; Loewenstamm, "Convocation Law," 5:630. On criminal responsibility in Babylonian law, see W. Nörr, "Zum Schuldgedanken im altbabylonischen Strafrecht," *Zeitschrift für Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 75 (1958): 1–31; and on the liability for damage caused by an animal in Babylonian and Hebrew law, see Adrianus van Selms, "The Goring Ox in Babylonian and Biblical Law," *Archiv Orientalni* 18 (1950): 321–30.

37. Discussed by Albrecht Alt, *Kleine Schriften* 2, 1:333ff.

38. Compare Finkelstein, "Justice in the Ancient East," 5:613; Bernard S. Jackson, *Theft in Early Jewish Law* (Oxford: Clarendon, 1972).

39. On the idea in general, see Pinchas Doron, "A New Look at an Old Lex [Lex Talionis]," *Journal of the Ancient Near Eastern Society of Columbia University* 1/2 (1969): 21–27.

40. For comparison, see Codex Eshnunna 26; Codex Hammurabi 1; and see Edwin M. Good, "Capital Punishment and Its Alternatives in Ancient Near Eastern Law," *Stanford Law Review* 19 (1967): 947–77; Paul Rémy, "La Condition de la Femme dans les Codes du Proche-Orient et les Codes d'Israels," *Sciences Ecclésiastiques* 19 (1967): 323–50; Hermann Schulz, "Das Todesrecht im Alten Testament," *Beiheft zur Zeitschrift für die alttestamentliche Wissenschaft* 114 (1969).

41. Compare Richard Haase, "Körperliche Strafen in den altorientalischen Rechtssammlungen. Ein Beitrag zum altorientalischen Strafrecht," *Revue Internationale des Droits de l'Antiquité* 10 (1963): 55–75.

42. See Willy Schottroff, *Der altisraelitische Fluchspruch* (Neukirchen: Neukirchener, 1969).

43. Compare Gillis Gerleman, "Die Wurzel šlm," *Zeitschrift für die alttestamentliche Wissenschaft* 85 (1973): 1–14.

44. See Reuven Yaron, "The Goring Ox in Near Eastern Laws," *Israel Law Review* 1 (1966): 396–406.

45. See Jackson, *Theft in Early Jewish Law*.

46. A parallel of which may be found in Boyer, *Archives Royales de Mari*, 8:191ff.

47. See B. Perrin, "Trois textes bibliques sur les techniques d'acquisition [Gen. 23; Ruth 4; Jer. 32:8–15]," *Revue Histoire du Droit Française et Etrangère* 41 (1963): 5–19, 177–195, 387–417; Jean-Philippe Lévy, *Mélanges Philippe Meylan* (Lausanne: Université, Faculté de Droit, 1963), 157ff.; and P. Maon, *Dictionnaire de la Bible*, suppl. 47:1337–53; Herbert Petschow, "Die neubabylonische Zweigesprachsurkunde und Genesis 23," *Journal of Cuneiform Studies* 19 (1965): 103–20; Gene M. Tucker, "The Legal Background of Genesis 23," *Journal of Biblical Literature* 85 (1966): 77–84; Loewenstamm, "Convocation Law," 5:617–18.

48. Compare Speiser and Pfeiffer, "One Hundred New Selected Nuzi Texts," 76.

49. Compare Martin Kessler, "The Law of Manumission in Jer 34," *Biblische Zeitschrift* 15/1 (1971): 105–8.



50. For a parallel, see Alalāú 2, 3, and on covenant, see Mendenhall, *Law and Covenant in Israel and the Ancient Near East*; Klaus Baltzer, *Das Bundesformular* (Philadelphia: Fortress, 1971); Dennis J. McCarthy, *Old Testament Covenant* (Oxford: Blackwell, 1972); Dennis J. McCarthy, *Treaty and Covenant* (Rome: Pontifical Biblical Institute, 1963).

51. Compare Boyer, *Archives Royales de Mari*, 8:195; and see Falk, "Oral and Written Testimony," 113–19. As to the formulation of conditions, see Ze'ev W. Falk, "On Conditions in Hebrew Law," in *Etudes offertes à Jean Macqueron* (Aix-en-Provence, 1970), 297–99.

52. On *qesitah* as a means of payment, compare I. Rabinowitz, "Piece of Money" (in Hebrew), *Encyclopaedia Miqra'it*, 7:282.

53. Compare the documents of Alalah, Nuzi, Mari, and Ugarit, and Godfrey R. Driver and John C. Miles, *The Babylonian Laws* (Oxford: Clarendon, 1952–55), 1:84.

54. See Moshe Cassuto and Jacob Licht, "Writing" (in Hebrew), *Encyclopaedia Miqra'it*, 4:372–77.

55. Compare Speiser and Pfeiffer, "One Hundred New Selected Nuzi Texts," 32; Abraham Malamat, *Vetus Testamentum* Supplement 15 (1965): 225. On the function of witnesses, see Loewenstamm, "Evidence," 6:81.

56. Compare Mariano San Nicole, *Beiträge zur Rechtsgeschichte im Bereiche der keilschriftlichen Rechtsquellen* (Oslo: Aschelhoug, 1931), 124; Boyer, *Archives Royales de Mari*, 8:159–60; Reuven Yaron, *Introduction to the Law of the Aramaic Papyri* (Oxford: Clarendon, 1961), 24.

57. For parallels see Alalah 29, 42; Samuel E. Loewenstamm, "Neshekh and T/Marbit," *Journal of Biblical Literature* 88 (1969): 78–80; Hillel Gamoran, "The Biblical Law against Loans on Interest," *Journal of Near Eastern Studies* 30 (1971): 127–34; Robert P. Maloney, "Usury and Restrictions on Interest-Taking in the Ancient Near East," *Catholic Biblical Quarterly* 36 (1974): 1–20.

58. On the term, compare Jean Nougayrol, *Palais Royal d'Ugarit* (Paris: Imprimerie Nationale, 1955), 3:306 (hereafter *PRU*); and generally see Ze'ev W. Falk, "On Suretyship in Hebrew Law," *Recherches Société J. Bodin* 28 (1972): 18–26; Samuel E. Loewenstamm, "Surety" (in Hebrew), *Encyclopaedia Miqra'it*, 6:367–70. On the delivery of a child as security, compare Alalāú 18ff., 48–49; Boyer, *Archives Royales de Mari*, 8:199, 219; Speiser and Pfeiffer, "One Hundred New Selected Nuzi Texts," 24ff. On the delivery of the debtor's wife as security, see Boyer, *Archives Royales de Mari*, 8:221. On the guarantee of appearance compare Ugarit 1581 (*PRU* 305); Boyer, *Archives Royales de Mari*, Alalah 82ff.; Boyer, *Archives Royales de Mari*, 8:224.

59. Compare Jacob J. Finkelstein, "An Old Babylonian Herding Contract and Genesis 31:38f," *Journal of the American Oriental Society* 88 (1968): 30–36.

60. On that status, see Rémy, "La Condition de la Femme," 107–27, 291–320; Anthony Phillips, "Some Aspects of Family Law in Pre-exilic Israel," *Vetus Testamentum* 23 (1973): 349–61; Ze'ev W. Falk, "Die Stellung der Frau in der Halakhah," *Freiburger Rundbrief* 25 (1973): 206–11; a critical feminist statement is Leonard J. Swidler, *Women in Judaism* (Metuchen, N.J.: Scarecrow, 1976).

61. See Leviticus 19:33–34; Moshe Weinfeld, "Foreigner" (in Hebrew), *Encyclopaedia Miqra'it*, 5:866–67. On the status of the Gibeonites, see F. Charles Fensham, "The Treaty between Israel and the Gibeonites," *Biblical*

*Archaeologist* 27 (1964): 96; Joseph Blenkinsopp, "Are There Traces of the Gibeonite Covenant in Deuteronomy?" *Catholic Biblical Quarterly* 28 (1966): 207.

62. See W. Starck, *Die Sklaverei im Spiegel der altorientalischen und alttestamentlichen Gesetzgebung* (Vienna, 1965); Isaac Mendelsohn and Shmuel Ahitov, "Slavery" (in Hebrew), *Encyclopaedia Miqra'it*, 6:1–13. On temple slavery, see Menahem Haran, "Temple Slaves" (in Hebrew), *Encyclopaedia Miqra'it*, 5:983–86; Baruch A. Levine, "Servants of Solomon" (in Hebrew), *Encyclopaedia Miqra'it*, 6:25–26. On the Hebrew slave, see Samuel E. Loewenstamm, "Jewish Slave" (in Hebrew), *Encyclopaedia Miqra'it*, 6:13–14. For parallels to the sale of Hebrew daughters, see Speiser, "New Kirkuk Documents," 25–26; on liberation by dedication, see Alalah 15; Boyer, *Archives Royales de Mari*, 8:237; and on liberation in general, see Speiser and Pfeiffer, "One Hundred New Selected Nuzi Texts," 25, 40. On the extradition of a slave, see Alalah 2.

63. See Jacob Liver, "Extended Family" (in Hebrew), *Encyclopaedia Miqra'it*, 5:582–88; Anson F. Rainey, "Family Relationships in Ugarit," *Orientalia* 34 (1965): 10–22; and compare Ze'ev W. Falk, "Marriage" (in Hebrew), *Encyclopaedia Miqra'it*, 5:857–63.

64. See Ze'ev W. Falk, "Concubine" (in Hebrew), *Encyclopaedia Miqra'it*, 6:456. For a parallel to the "appointment" of the Hebrew bondwoman, see Alalah 92 and the sale *ana kallûti*, A. Van Praag, *Droit Matrimonial Assyro-Babylonien* (Amsterdam: Noord-Hollandsche, 1945), 82–83, 117–18. For parallels to the taking of Hagar, Bilhah, and Zilpah [128], see Ugarit 16267 (PRU 229); John van Seters, "The Problems of Childlessness in Near Eastern Law and the Patriarchs of Israel," *Journal of Biblical Literature* 87 (1968): 401–8. On the exclusion of various categories from connubium, see Ze'ev W. Falk, "Those Excluded from the Congregation" (in Hebrew), *Bet Miqra* 62 (1975): 341–51.

65. On the former, see Paul Koshaker, "Eheschliessung und Kauf nach alten Rechten, mit besonderer Berücksichtigung der älteren Keilschriftrechte," *Archiv Orientalni* 18 (1950): 210–96; Driver and Miles, *Babylonian Laws*, 1:254ff.; on the latter, D. Nörr, "Zum Schuldgedanken im altbabylonischen Strafrecht," *Zeitschrift für Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 78 (1961): 118ff. The concept of "sistership" [134] appears in Nuzi, see Speiser, "New Kirkuk Documents," 21ff.; Speiser, "The Wife-Sister Motif in the Patriarchal Narratives," *Biblical and Other Studies* 1 (1963): 15–28; David Noel Freedman, "A New Approach to the Nuzi Sistership Contract," *Journal of the Ancient Near Eastern Society of Columbia University* 2/2 (1970): 77–85. On the form and meaning of the covenant, compare Th. C. Vriesen, "Das *hiphel* von amar in Deut. 26, 17–18," *Ex Oriente Lux Jahrbuch* 17 (1964): 210.

66. See van Praag, *Droit matrimonial*, 128.

67. Compare Speiser, "New Kirkuk Documents," 23–24. See also Werner Plautz, *Zeitschrift für die alttestamentliche Wissenschaft* 77 (1964): 298–318; and compare Falk, "Legal Archaeology," 172ff.; *Tel-Aviv University Law Review* 3 (1974): 829ff. On the rabbinical term *qanah* [137–38] see, however, David Weiss, "The Use of 'קָנָה' in Connection with Marriage," *Harvard Theological Review* 51 (1964): 244–48. Regarding the use of a written marriage deed [147], see Alalah 91ff. On the marriage of Isaac [136] see M. Wolfgang Roth, "The Wooing of Rebekah: A Tradition-Critical Study of Genesis 24," *Catholic Biblical Quarterly* 34 (1972): 177–87. As to the term *haya le . . . le'ishah*, compare *Babylonian Talmud Qiddushin* 5a, *Nedarim* 67b. On the complaint of Laban's daughters [141], see Driver and Miles, *Babylonian Laws*, 1:271ff. For the term *companion*, see Ze'ev W. Falk, "Über die Ehe in den biblischen Propheten," *Zeitschrift für Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 40 (1973): 36–

44; and for *htn*, T. C. Mitchell, "The Meaning of the Noun HTN in the Old Testament," *Vetus Testamentum* 19 (1969): 93–112.

68. Compare A. Toeg, "Does Deuteronomy XXIV, 1–4 Incorporate a General Law on Divorce?" *Diné Israel* 2 (1970): 524; Ulrich Nembach, "Ehescheidung nach Alttestamentlichem und jüdischem Recht," *Theologische Zeitschrift* 26 (1970): 161–71; on Egyptian divorce, A. Théorides, "La Repudiation de la Femme en Egypte et dans les Droits Orientaux Anciens," *Bulletin de la Société française d'Égyptologie* 47 (1966): 6–19.

69. See Speiser and Pfeiffer, "One Hundred New Selected Nuzi Texts," 32. On remarriage after divorce, see Reuven Yaron, "The Restoration of Marriage," *Journal of Jewish Studies* 17 (1966): 1–11; James D. Martin, "The Forensic Background to Jeremiah III:1," *Vetus Testamentum* 19 (1969): 89–92; T. R. Hobbes, "Jeremiah 3:1–5 and Deuteronomy 24:1–4," *Zeitschrift für die alttestamentliche Wissenschaft* 86 (1974): 23–29. On the "custom of the daughters" [151], see Shalom M. Paul, "Ex. 21:10. A Threefold Maintenance Clause," *Journal of Near Eastern Studies* 28 (1969): 48–53, and Ze'ev W. Falk, *The Divorce Action of the Wife in Jewish Law* (in Hebrew) (Jerusalem, 1973).

70. On the woman's right to divorce, see also Alalah 92; Ugarit 1641 (*PRU* 301).

71. Compare Herbert Donner, *Festschrift J. Friedrich* (Heidelberg, 1959), 105ff. On Naomi's rights to her late husband's estate [151–52], see Thomas and Dorothy Thompson, "Some Legal Problems in the Book of Ruth," *Vetus Testamentum* 18 (1968): 79–99; and on the levirate, see George W. Coats, "Widow's Rights: A Crux in the Structure of Genesis 38," *Catholic Biblical Quarterly* 34 (1972): 461–66; B. N. Wambacq, "Le mariage de Ruth," *Mélanges E. Tisserant* 1 (1964): 449–59. On the "loosening of the sandal," see the above-mentioned *sissikta bataqu*, and Middle Assyrian Laws A31, *Palais Royal d'Ugarit*; 1 Q 44: 76, 300.

72. Compare Otto Eissfeldt, "Sohnespflchten im Alten Orient," *Syria* 43 (1966): 39–47.

73. On this subject, see Nörr, *Zeitschrift für Savigny-Stiftung für Rechtsgeschichte* 78, 118ff.; Falk, "Legal Archaeology," 170ff.; M. H. Prévost, "Remarques sur l'Adoption dans la Bible," *Revue Internationale des Droits de l'Antiquité* 14 (1967): 69–77; Herbert Donner, "Adoption oder Legitimation? Erwägungen zur Adoption im Alten Testament auf dem Hintergrund der altorientalischen Rechte," *Oriens Antiquus* 8 (1969): 87–119; Hans J. Boecker, "Anmerkungen zur Adoption im Alten Testament," *Zeitschrift für die alttestamentliche Wissenschaft* 86 (1974): 86. For comparison, see Alalah 16; Ugarit 1592, 16294, 16200, 16344 (*PRU* 302ff); Boyer, *Archives Royales de Mari*, 8:178ff.; Speiser, "New Kirkuk Documents," 7ff.

74. On succession in general, see J. Brugmann et al., *Essays in Oriental Laws of Succession* (Leiden: Brill, 1969). For comparison regarding testamentary disposition [170], see Alalah 6, Ugarit 16129 (*PRU* 305); and Speiser, "New Kirkuk Documents," 18ff. On primogeniture [171], see Joseph P. Henniger, "Zum Erstgeborenenrecht bei den Semiten," in *Festschrift W. Caskel* (Leiden, 1968), 162–83; compare Speiser, "New Kirkuk Documents," 10; Boyer, *Archives Royales de Mari*, 8:181; Middle Assyrian Laws B1. As to the rights of widows and daughters [172], compare Ze'ev W. Falk, "The Inheritance of the Daughter and the Widow in the Miqra and in the Talmud," *Tarbiz* 28 (1952): 9–15; Codex Hammurabi 172; Ugarit 16267, 16250, 8145 (*PRU* 302).

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