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Honors Thesis

FROM MERCY SEAT TO JUDGMENT SEAT:
A SOURCE-CRITICAL EXAMINATION OF PRIESTLY ADJUDICATION
IN THE PENTATEUCH

by
Tyler Joshua Harris

Submitted to Brigham Young University in partial fulfillment
of graduation requirements for University Honors

Ancient Near Eastern Studies Program
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ABSTRACT

FROM MERCY SEAT TO JUDGMENT SEAT: A SOURCE-CRITICAL EXAMINATION OF PRIESTLY ADJUDICATION IN THE PENTATEUCH

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Ancient Near Eastern Studies Program

Bachelor of Arts

This thesis analyzes evidentiary passages in the Pentateuch through a source-critical lens to better understand the varied adjudicative ideologies they reflect and the role of priests in them. By selecting important pericopes for this analysis through keywords and narrative details, and then by categorizing them according to the pentateuchal source attributions as represented by Richard Elliott Friedman in his *The Bible with Sources Revealed*, I use a given source's data to sketch the judicial outlook of said source, including if and to what degree priests operated as judges. Through such a method, this thesis concludes that the Yahwist and Elohist sources each envision a representative judiciary that may have included some priests, but only as incidental to its composition. The Priestly source, on the other hand, is shown to invest Aaronide priests with what can be understood as legal authority surpassed only by Moses. The Deuteronomist source, as the most detailed regarding its vision of adjudication, is shown to reflect a possible synthesis and development of earlier judicial outlooks, with a dispersed representative judiciary headed by a centralized court comprised of both non-priestly and priestly judges.

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INTRODUCTION

In reconstructing the social history of ancient Israel, modern critical scholarship of the Hebrew Bible has long since associated the priesthood depicted in the biblical text with the sacrificial system of the Israelites' religious sanctuaries. In many ways, this emphasis was already present and influential in the scholarship of the late nineteenth century, when scholars often (almost exclusively) equated Israelite priests with their sacrificial role.¹ One natural explanation for this connection of priests with sacrifice is the preponderance of biblical material that pushes this link to the forefront of critical examination. For example, the second half of Exodus predominantly consists of instruction on the investiture of Aaron and his descendants as cultic officiants and on the construction of the tabernacle as the locus of the sacrificial system, followed by narrational descriptions of such instruction being completed (Exod 25–31, 35–40). Similarly, the first half of Leviticus more or less outlines the various types of sacrifices the Aaronide priests are to officiate over while also interspersing accounts of such sacrifices being executed, both properly and illicitly (Lev 1–10, 16–17). Ranging to the end of the Hebrew Bible, the oracle of Malachi gains opening momentum with a castigation against addressed priests on the topic of sacrifice (Mal 1).² Given the prevalence of material supporting such a

¹ See, for example, Julius Wellhausen, *Prolegomena to the History of Israel* (trans. J. Sutherland Black and Allan Menzies; 1885; repr., Atlanta: Scholars Press, 1994), 121–51, in which Wellhausen's discussion on Israelite priests and Levites almost entirely focuses on their involvement in sacrificial ritual and inclusion in the sacrificial cultus. Another early example of this emphasis can be seen in the late 19th century thoughts found in William Robertson Smith, *Lectures on the Religion of the Semites: Second and Third Series*, ed. David J. A. Clines and Philip R. Davies, JSOTSup 183 (Sheffield: Sheffield Academic, 1995), 44. In addressing Wellhausen's work, I acknowledge his important role in this period of scholarship while I disavow his polemic approach to religious traditions and stances contrary to his own, including his anti-Semitic characterization of early Judaism. For a similar approach, see Jeffrey Stackert, *A Prophet Like Moses: Prophecy, Law, and Israelite Religion* (Oxford: Oxford University Press, 2014), 16.

² Much of the material in the Hebrew Bible that focuses on the roles of priests is located in the legal literature of the Pentateuch and in texts commonly considered as emerging in the postexilic period. References to priests in the Former Prophets, especially in the texts recounting the monarchic period, are subsumed in the predominantly political focus of those texts. On this, see Wellhausen, *Prolegomena*, 138.

focus, it is little wonder that important pioneers in early biblical criticism concentrated on the sacrificial specialization of priests, even to the degree of contrasting priests with other functionaries, such as judges and prophets.³

As the twentieth century progressed, however, scholars increasingly began to acknowledge the nuanced overlap in activity these functionaries shared. Regarding priests, most scholars still emphasized sacrifice as the premier sacerdotal duty as did their academic predecessors, but some also illuminated the non-sacrificial roles of priests.⁴ Specifically, they demonstrated that priests, beyond being officiants over sacrificial activity in a temple setting, are also shown by the biblical text to function as sanctuaries custodians, diviners, instructors, and magistrates.⁵ Such non-sacrificial activities and

³ For example, see Wellhausen, *Prolegomena*, 141.

⁴ For example, in the mid-twentieth century, Roland de Vaux called attention in his treatment of the priestly office to the non-sacrificial roles of priests, including divinatory and didactic functions. He concluded, however, that this diversity of priestly roles tapered with time, eventually leaving for the priest essentially only control over sacrifice. Roland de Vaux, *Ancient Israel: Its Life and Institutions*, trans. John McHugh (New York: McGraw-Hill, 1961), 356. Against this tapering, however, see Joseph Blenkinsopp, *Sage, Priest, Prophet: Religious and Intellectual Leadership in Ancient Israel*, LAI (Louisville: Westminster John Knox, 1995), 83. See also Aelred Cody, *A History of Old Testament Priesthood*, AnBib 35 (Rome: Pontifical Biblical Institute, 1969), 11–14, where he states that “[a] descriptive definition of Israelite priesthood made on the basis of sacrifice is insufficient, and in fact misleading for the early period” (p. 12). At the end of the twentieth century, Blenkinsopp noted the functional diversity of priests—“in Israel, the priest discharged tasks outside the cultic sphere, serving, for example, as scribe and magistrate”—but, like de Vaux, ultimately emphasized the ascendancy of sacrifice among priestly duties. Joseph Blenkinsopp, *Sage, Priest, Prophet*, 2, 80–81. See also Richard D. Nelson, *Raising Up a Faithful Priest: Community and Priesthood in Biblical Theology* (Louisville: Westminster John Knox, 1993), where he addresses several non-sacrificial priestly functions in a single chapter (pp. 39–53) while dedicating the following chapter to sacrifice and the involvement of priests in it (pp. 55–82). For a treatment of non-sacrificial priestly responsibilities and communal authority in Judea during the later Second Temple period, see the chapter on “The Priests and Levites Outside the Temple” in E. P. Sanders, *Judaism: Practice and Belief, 63 BCE–66 CE* (London: SCM, 1992), 170–89.

⁵ See the abundant citation of biblical material compiled from de Vaux, *Ancient Israel*, 345–57; Blenkinsopp, *Sage, Priest, Prophet*, 80–83; and Nelson, *Raising Up a Faithful Priest*, 40–53; Num 1:53; 3:23, 28, 29, 32, 35, 38; 4:5; Deut 10:8; Judg 17–18; 1 Sam 1–2; 7:1; 2 Sam 15:24–29; 1 Kgs 2:26–27, 35; 4:1; 12:31; 2 Kgs 23:8; Ezek 45:4 (on priestly maintenance of sanctuaries); Exod 18:15, 19; 28:6–14; 28:15–30; 29:5; 33:7–11; 39:2–7; 39:8–21; Lev 8:8; 16:8–10; Num 12:6–8; 27:21; Deut 33:8–10; Judg 1:1–2; 8:26–27; 17:5; 18:14, 17, 20; 1 Sam 1:17; 2:18; 2:28; 9:9; 10:22; 14:3; 14:18–19; 14:36–37; 14:41–42; 21:10; 22:18; 23:6; 23:9–12; 28:6; 30:7–8; 2 Sam 2:1; 5:23–24; 6:14, 20; 1 Kgs 20:13–14; 22:6; 2 Kgs 3:11; 22:14; Isa 30:22; Jer 21:1–2; Ezek 21:26–27; Hos 3:4; 4:12; Zech 10:2; Prov 16:33; Ezra 2:63; Neh 7:65 (on priestly oracular divination, especially through use of the ephod and the Urim and Thummim); Exod 22:26; 44:23; Lev 10:10–11; Deut 31:9–13; 31:24–26; 33:10; Josh 18:6; 2 Kgs 12:2; 17:24–28; Isa 2:3; Jer 2:8; 18:18; Ezek 7:26; Hos 4:6; Mic 3:11; 4:2; Hag 2:11–13; Zech 7:1–3; Mal 2:7 (on priestly teaching and maintenance of Torah); Gen 14:19–20; Exod 29:18; Lev 1:17; 2:6, 15; 9:22; 13:8, 15, 17;

responsibilities point to ancient Israelite priests being integrated into society more thoroughly than at the altar alone.

In this thesis, I hope to contribute to the turn of scholarship focusing on the various non-sacrificial functions of priests by conducting a source-critical investigation of priestly involvement in the adjudicative system of ancient Israel as described in the Pentateuch. In doing so, this work uses the division of pentateuchal sources to track and make clear that different parts of the Pentateuch portray different ideologies about how the judiciary was selected, of whom it was comprised, and what authority judges had in ancient Israel, the details of which reflect the extent of ideal priestly involvement in the Israelite judiciary as viewed by the various writers.⁶ Such an analysis of pentateuchal evidence for signs of priestly involvement in Israelite adjudication allows us to trace the diversity of thought on this matter that circulated within ancient Israel, as well as has the potential to contribute to reconstructions of Judean social history postdating the period

14:36; 19:7; 22:23, 25; Num 6:24–27; Deut 10:8; 27:12–26; Josh 8:33–34; Ezek 18:9; Joel 2:17; Hag 2:14; Pss 20:1–5; 67; 115:14–15; 118:26; 121:7–8; 122:6–7; 128:5; 134:3; Ezra 6:10; 9:6–15; 1 Chr 23:13 (on priestly blessings and declarations); Exod 22:7–8; 30:7, 13; Lev 5:15; 24:8; 27:3–7, 8, 12, 18, 25; Num 5:11–28; 10:1–10; 27:21; 31:6, 21–24; Deut 10:8; 17:8–13; 19:17; 20:2–4; 21:5; Josh 6; 7:14–18; Judg 17; 20:27–28; 1 Sam 2:13–14, 35; 4; 1 Sam 14:18–19, 40–42; 21:6; 22:9–19; 23:9–12; 30:7–8; 2 Sam 8:16–18; 11:11; 20:23–26; 1 Kgs 1:39; 4:1–6; 12:31; 13:33; 14:26–27; 15:18; 2 Kgs 10:11; 11:12; 12:4–16; 16:8, 10–16; 19:2; 22:4–7, 14; 25:18–21; Jer 20:1–6; 29:25–29; 35:4; Ezek 44:24; 45:12; Amos 7:10–14; Ps 2; 7:3–5; 45; 110; 1 Chr 15:24; 2 Chr 5:12; 13:12, 14; 19:8–11; 29:26 (on integration of priests in administration, including the judiciary). Although such references both sketch the contours of these spheres of activity and portray priests as active participants in them, taken together they provide extensive biblical evidence for considerable priestly involvement in ancient Israelite society beyond officiating over sacrifices.

⁶ Treatments on the judiciary of ancient Israel are numerous, many of which stand as brief or ancillary discussions in studies focused on law in the Hebrew Bible—for a few examples, see Robert R. Wilson, “Israel’s Judicial System in the Preexilic Period,” *JQR* (New Series) 74 (1983): 229–48; Raymond Westbrook and Bruce Wells, *Everyday Law in Biblical Israel: An Introduction* (Louisville: Westminster John Knox, 2009), 35–40; William S. Morrow, *An Introduction to Biblical Law* (Grand Rapids: Eerdmans, 2017), 232–34; Douglas A. Knight, *Law, Power, and Justice in Ancient Israel*, LAI (Louisville: Westminster John Knox, 2011), 65–82; Eryl Wynn Davies, “Litigation: Trial Procedure, Jurisdiction, Evidence, Testimony,” in *The Oxford Handbook of Biblical Law*, ed. Pamela Barmash (Oxford: Oxford University Press, 2019), 45–58, here 45–51. Much of the literature approaches the issue of the judiciary from a canonical approach or from a diachronic historical-critical approach. However, I know of no treatment that parallels what this thesis aims to provide—a comparison of priestly involvement in the adjudicative ideologies attested in the literary context of the main pentateuchal sources posited by the Documentary Hypothesis.

when the diverse traditions of the Pentateuch's sources are generally understood as being first combined—that is, during the Achaemenid Persian period.⁷ Notwithstanding the synthesizing and harmonizing result of such a compilation, this thesis also aims to serve as a reference, through its organization of data and analysis by source, whereby the diverse traditions of priestly adjudication in the Pentateuch subsequently adapted and implemented in both text and society during the postexilic period may be identified.

To achieve its aims, this thesis identifies and analyzes a number of key passages to understand the diversity of judicial ideologies present in pentateuchal source material. Since data pertaining to the issue of priestly adjudication in the Yahwist, Elohist, and Priestly sources are both limited and allusive, the present work briefly summarizes the significant information from relevant passages in these sources, concluding that the Yahwist and Elohist sources each depict a representative judiciary headed by Moses, whereas the Priestly source largely situates prerogatives that can be qualified as adjudicatory with Aaronide priests. The Deuteronomist source, on the other hand, is more explicit in its presentation of adjudicative priests, and therefore merits a more detailed analysis in this study. Such an analysis concludes that this pentateuchal source depicts a multi-level judicial institution, with a representative judiciary locally dispersed throughout Israel and a centralized high court staffed by priestly and non-priestly judges who hold supreme legal authority.

The focus of this thesis on the judicial function of priests should not be misconstrued as a position that the judiciary of ancient Israel solely, or even predominantly, consisted of priests. Indeed, in addition to that of priests as argued herein,

⁷ The position of pentateuchal compilation during the Achaemenid period holds broad support. Nuances that complicate this position, however, are equally present in the literature, such as varying hypotheses on how long the process of compilation, codification, and promulgation extended toward the Common Era and what impetus, if any, catalyzed the compilation process. For recent stances on these issues, consult the views collected in James W. Watts, ed., *Persia and Torah: The Theory of Imperial Authorization of the Pentateuch*, SBL Symposium Series 17 (Atlanta: Society of Biblical Literature, 2001) and in Gary N. Knoppers and Bernard M. Levinson, eds., *The Pentateuch as Torah: New Models for Understanding Its Promulgation and Acceptance* (Winona Lake, IN: Eisenbrauns, 2007).

scholarship has noted the adjudicative authority held by figures as varied as kings, elders, *patresfamilias*, and military officers throughout the history of ancient Israel.⁸ Such judicial reconstructions situate well with what is known of judicial structures throughout the ancient Near East more broadly. For example, Moshe Weinfeld has called attention to the parallels between judicial officers as depicted in biblical texts and the judicial function of officers as attested in Middle Assyrian, Hittite, and extrabiblical Judahite texts, as well as those from Elephantine.⁹

Further comparanda regarding the judicial institutions of ancient Mesopotamia and Egypt also provide contextualization for the legal authorities of ancient Israel. Seeing that functionaries focused solely on adjudication did not exist in the social structure of the Neo-Assyrian Empire, it appears that legal authority was an additional prerogative assigned primarily to its monarchs and administrative officials, especially peripatetic viziers and bailiffs.¹⁰ In the Neo-Babylonian Empire, however, designated adjudicators did exist, especially in connection with royal courts, and comprised the empire's broad judiciary together with provincial administrators, local leaders, and municipal elders.¹¹ Regarding judges in the Third Intermediate Period of ancient Egypt, scholars dispute whether the judicial institutions that continued from the New Kingdom period were

⁸ In addition to relevant sections of the literature cited in n. 6 above, see specifically Robert R. Wilson, "Enforcing the Covenant: The Mechanisms of Judicial Authority in Early Israel," in *The Quest For the Kingdom of God: Studies in Honor of George E. Mendenhall*, ed. H. B. Huffmon, F. A. Spina, and A. R. W. Green (Winona Lake, IN: Eisenbrauns, 1983), 59–75; Moshe Weinfeld, "Judge and Officer in Ancient Israel and in the Ancient Near East," *IOS* 7 (1977): 65–88, here 65–66; Hector Avalos, "Legal and Social Institutions in Canaan and Ancient Israel," in *Civilizations of the Ancient Near East*, ed. Jack M. Sasson, 4 vols. (New York: Scribner's Sons, 1995; repr. in 2 vols., Peabody, MA: Hendrickson, 2006), 1:615–31, here 1:621–23; Tikva Frymer-Kenski, "Anatolia and the Levant: Israel," in *A History of Ancient Near Eastern Law*, ed. Raymond Westbrook, 2 vols., HdO 72 (Atlanta: SBL Press, 2003), 2:975–1046, here 2:986–90; Bernard M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (Oxford: Oxford University Press, 1997), 110 (incl. n. 30).

⁹ See Weinfeld, "Judge and Officer," 71–72.

¹⁰ On this, see Karen Radner, "Mesopotamia: Neo-Assyrian Period," in Westbrook, *A History*, 2:883–910, here 2:886–90. See also the broad discussion in Samuel Greengus, "Legal and Social Institutions of Ancient Mesopotamia," *CANE* 1:469–84, here 1:473–74.

¹¹ On this, see Joachim Oelsner, Bruce Wells, and Cornelia Wunsch, "Mesopotamia: Neo-Babylonian Period," in Westbrook, *A History*, 2:911–74, here 2:918–20.

headed by scribes, non-administrative (i.e., solely adjudicative) judges, or priests.¹² With the coterminous beginnings of the Egyptian Late Period and Demotic law, the symbolic legal authority of the monarch reemerged while local courts were headed by “priest-judges” until judicial authority transferred to other officials beginning in the Hellenistic period.¹³ Such data show that the reconstructions of ancient Israelite judicial systems fit well in the broader ancient Near Eastern legal milieu.

In light of such historical comparanda, however, it is important to address that there is no explicit mention of the Israelite monarch possessing legal authority or controlling judicial structures in the sources of the Pentateuch. Silence on this matter is particular noteworthy in the Deuteronomist source, where legal precepts regarding the king’s role can be found (e.g., Deut 17:14–20).¹⁴ The lack of royal adjudication in the Pentateuch may reflect an avoidance of anachronism by those involved in the early production and transmission of pentateuchal material, seeing that the Israelite monarchy did not emerge until after the conquest period, and thus after the narrative events of this corpus. Another possible explanation is that royal adjudication can be found in the Pentateuch, but only implicitly so. Such an approach would be demonstrated in understanding the God of the Israelites as a divine sovereign with ultimate legal authority or in understanding Moses’s judicial activity in light of a view of his office as proto-monarchical.

An equally viable explanation is the purposeful omission of explicit references to royal adjudication in the final compilation of the Pentateuch. The origins of the pentateuchal sources throughout the monarchic preexilic period (see below) and mentions of monarchic judgment in the Deuteronomistic History (e.g., 1 Kgs 3) make the lack of

¹² On this, see Richard Jasnow, “Egypt: Third Intermediate Period,” in Westbrook, *A History*, 2:777–818, here 2:791–92.

¹³ On this, see Joseph G. Manning, “Egypt: Demotic Law,” in Westbrook, *A History*, 2:819–62, here 2:826–31.

¹⁴ On this topic, see Levinson, *Deuteronomy and the Hermeneutics*, 126–27.

material regarding the judicial authority of kings in the final form of the Pentateuch all the more suspicious. Although argued from silence, it is conceivable that the redactor of the Pentateuch omitted details regarding royal adjudication from source documents because such details had little relevance in the context of the Pentateuch's compilation, given the lack of an Israelite king after the exile until well into the Hellenistic period.¹⁵ Regardless of why monarchical judicial authority is not addressed in the Pentateuch, its absence corresponds with the need to assign legal authority to other functionaries, including priests.

In its conclusions, however, this thesis does not attempt to engage in reconstructing the social histories of judges or priests contemporaneous with the narrational events or the compositional development of the sources addressed herein. That is to say, determinations made here regarding priests, judges, and other functionaries do not necessarily reflect lived experiences and realities during either the exodus period or different periods in monarchic Israel and Judah when the pentateuchal sources were composed. Rather, the inquiry of this work takes place primarily at the literary level of the Pentateuch, attempting to understand what ideas and themes regarding priestly adjudication can be gathered from the text alone. The potential benefit of such a study for future sociohistorical research would most likely apply to the period when the compiled Pentateuch first appears, i.e., the Achaemenid Persian period.¹⁶

Aside from the above issue of approach, a few methodological matters are also worth discussing before commencing into the body of the thesis. The first regards how source criticism is both defined and used in the present study. Source criticism of the

¹⁵ On the singular pentateuchal redactor, see Joel S. Baden, *The Composition of the Pentateuch: Renewing the Documentary Hypothesis*, AYBRL (New Haven: Yale University Press, 2012), 220–21. Against intentional omissions of details from source material by the redactor, however, see Baden, *Composition of the Pentateuch*, 224–25.

¹⁶ For an example that uses pentateuchal (and Persian-period biblical) texts to draw sociohistorical conclusions, see Anders Runesson's argument regarding the origins and development of Torah reading as a communal activity and the synagogue as an institution in Anders Runesson, *The Origins of the Synagogue: A Socio-Historical Study*, ConBNT 37 (Stockholm: Almqvist & Wiksell, 2001), 237–400.

Pentateuch emerges from the observation that many details regarding that corpus of literature can be best explained through a position that the Pentateuch is not a unified monolithic work, but rather is a composition with a complex formulation spanning communities, time, and space. One important potential source-critical model for the composition of the Pentateuch used in this study is the popular reconstruction of the Documentary Hypothesis.¹⁷

In its most basic and widely accepted sense, the Documentary Hypothesis posits that the received Pentateuch was originally composed of distinct and independent sources containing ancient Israel's narrative history and legal precepts that were eventually redacted into a harmonized corpus. While a thorough discussion about the number and intricacies of source-critical theories of pentateuchal composition generally, and the Documentary Hypothesis specifically, falls outside the scope of the present work, several theoretical commonplaces of the hypothesis are assumed by this paper.

One of these assumed commonplaces is that the Pentateuch's textual origins lie primarily with four early sources, named for the distinct qualities that each possesses—the Yahwist (J), the Elohist (E), the Priestly (P), and the Deuteronomist (D).¹⁸ While the field of source criticism consists of theories beyond the four-source model of the Documentary Hypothesis alone—including competing models of pentateuchal

¹⁷ For some introductory treatments on source criticism in general and the Documentary Hypothesis specifically, see Norman C. Habel, *Literary Criticism of the Old Testament*, GBS (Philadelphia: Fortress, 1971); John Barton, *Reading the Old Testament: Method in Biblical Study*, rev. and enl. ed. (Louisville: Westminster John Knox, 1996), 20–29; Ernest Nicholson, *The Pentateuch in the Twentieth Century: The Legacy of Julius Wellhausen* (Oxford: Clarendon, 1998), 3–28; Pauline A. Viviano, “Source Criticism,” in *To Each Its Own Meaning: An Introduction to Biblical Criticisms and Their Application*, ed. Steven L. McKenzie and Stephen R. Haynes, rev. and exp. ed. (Louisville: Westminster John Knox, 1999), 35–57; Jean-Louis Ska, *Introduction to Reading the Pentateuch*, trans. Sr. Pascale Dominique (Winona Lake, IN: Eisenbrauns, 2006), 102–12.

¹⁸ For discussions on the discovery of these pentateuchal sources popularized by scholars like Wellhausen and Karl Heinrich Graf, see Richard Elliott Friedman, *Who Wrote the Bible?*, 2nd ed. (San Francisco: HarperSanFrancisco, 1997), 18–27; G. I. Davies, “Introduction to the Pentateuch,” in *The Pentateuch*, ed. John Muddiman and John Barton, The Oxford Bible Commentary (Oxford: Oxford University Press, 2010), 16–53, here 18–21.

composition,¹⁹ secondary independent sources,²⁰ involvement of and contributions made by the redactor(s) of the disparate sources,²¹ and so on—a simplified four-source model provides this thesis with a helpful framework for the categorization and analysis of the pentateuchal texts analyzed herein. Thus, the present work speaks of pentateuchal passages relevant to this study as belonging to one of the four primary document sources as traditionally understood.

An additional commonplace from the Documentary Hypothesis assumed in this thesis is the existence of a methodology that separates the composite pentateuchal text into its separate forms and accurately assigns these separated passages to their correct sources of origin. Indeed, even among scholars that hold to the general conclusions of the Documentary Hypothesis (e.g., four primary document sources), there are a number of methodological approaches used to divide and classify the pentateuchal text.²² Given its spatial limitation, this thesis is not able to parse out the discussions on the evidences for competing source attributions of the passages discussed herein (although, where relevant, it will attempt to note alternative possibilities). Rather, for the sake of convenience, the present study leans primarily on the conclusions of Richard Elliott Friedman, a source critic whose attributions are generally well-defended and representative of the methodological approach he uses to divide the Pentateuch into its constituent sources. The prioritization of Friedman’s views in this thesis is more or less a function of two works he has produced, namely *The Bible with Sources Revealed* and *Who Wrote the*

¹⁹ For example, see discussions of the “Fragmentary Hypothesis” and the “Supplementary Hypothesis” in Baden, *Composition of the Pentateuch*, 55–56, 60–61; G. I. Davies, “Introduction to the Pentateuch,” 18–19, 22.

²⁰ For example, see mentions of such sources in Richard Elliott Friedman, *The Bible with Sources Revealed: A New View into the Five Books of Moses* (San Francisco: HarperSanFrancisco, 2003), 40 n. on v. 1 (the “Book of Records”); 52 n. on v. 1 (Gen 14); 114 n. on v. 1 (Gen 49); 153 n. on v. 1 (the Exodus Decalogue); 364 n. on v. 1 (Deut 33).

²¹ For example, see Friedman, *Bible with Sources Revealed*, 4–5, passim; idem, *Who Wrote the Bible?*, 226–33; Baden, *Composition of the Pentateuch*, 214–229.

²² For example, compare the methodology of Friedman’s division and classification of the text in Friedman, *Bible with Sources Revealed*, 7–31, with that of Baden in Baden, *Composition of the Pentateuch*, 27–33.

Bible?. *The Bible with Sources Revealed* is perhaps the only published work that offers a division of the entire pentateuchal text into proposed documentary sources. Given the compiled and accessible nature of Friedman's work in that resource, this thesis largely adopts his source attributions as an adequate starting point from which to engage in this particular analysis.²³ Similarly, since this thesis is not primarily concerned with arguing the historical issues relating to the pentateuchal sources, it will also assume for the sake of convenience the accessible conclusions of Friedman's work regarding the temporal, geographic, and demographic provenances of the sources in his *Who Wrote the Bible?*. In short, leaning upon the work of Friedman allows for the majority of space in this thesis to focus on its primary objective, being the analysis of priestly involvement in the judiciary of ancient Israel as recorded in pentateuchal sources.

In relation to the dependence of this thesis upon Friedman's work, the final point regarding source criticism to discuss here is the placement of P in the sequence of the pentateuchal sources and its impact on the analysis of the ancient Israelite judiciary. As mentioned above, J and E envision a representative judiciary with no explicit integration of priests, P locates adjudicative authority with Aaronide priests, and D describes a multi-leveled judicial system comprised of a representative judiciary dispersed across the local landscape together with a high court at the central cultic site comprised of priests and appointed officials. While J and E are widely understood as being the earliest pentateuchal sources, the temporal placement of P in relation to D is still contested.²⁴ In

²³ Friedman's conclusions and presentation in this work are not without criticism, however—see Christoph Levin, review of *The Bible with Sources Revealed: A New View into the Five Books of Moses*, by Richard Elliott Friedman, *RBL* 9 (2007): 120–24. Some of Levin's disagreements with Friedman—for example, the former's disbelief of E (p. 122)—directly challenge the analysis in this thesis, while other criticisms, like the lack of visible delineation between P and the Holiness Code (p. 123), cut against the simplicity that makes this work accessible. Thus, it follows that source attributions of the passages analyzed in this thesis offered by others that differ with Friedman's conclusions would naturally affect the analyses conducted and the conclusions reached herein. However, in order to provide comparison for Friedman's division of the pentateuchal text, the source attributions of other scholars may be cited.

²⁴ On this, see John Van Seters, *The Pentateuch: A Social-Science Commentary*, 2nd ed., Cornerstone (London: Bloomsbury T&T Clark, 2015), 57–58.

light of the source-specific conclusions regarding the integration of priests in the judiciary listed above, the two possibilities in relating P to D (i.e., P before D or D before P) naturally result in two possible models in the development of the judiciary.

If P is understood to follow D, as is the position of Wellhausen and many source critics,²⁵ then the model of judicial development is a transformative one—transitioning from an early representative judiciary (J and E) to an intermediate judiciary partially representative and partially exclusive to priests (D) and finally to a judiciary exclusively under sacerdotal control (P). On the other hand, if P is understood to precede D, as is the position of Friedman and a small group of other scholars,²⁶ then the model of judicial development is a synthetic one—starting with a representative judiciary (J and E); then shifting across the entire spectrum to the antithesis of an exclusive judiciary, here comprised of Aaronide priests (P); and concluding with the synthesis of a hybrid model (D), with a local judiciary of a representative makeup reflecting the outlook of J and E together with a centralized high court that largely reflected the priestly exclusivity of legal authority represented in P. As the deviation in these models demonstrate, the placement of P has important implications for understanding the possible development of the ancient Israelite judiciary.

Notwithstanding the potential significance of P's dating or position relative to other sources in determining the literary and/or historical development of the judiciary, the defense of either one of these models falls outside the scope of this thesis. The purpose of this study, rather, is to demonstrate the separate literary visions of the pentateuchal sources regarding the integration of priests into the judiciary and priestly adjudication. This approach to the pentateuchal data is relevant most particularly for an understanding of how such data would have been understood following the compilation

²⁵ On the position of Wellhausen and others regarding the postexilic date of P and P's awareness of D, see Wellhausen, *Prolegomena*, 34–35; Friedman, *Who Wrote the Bible?*, 162–73; Van Seters, *The Pentateuch*, 57.

²⁶ On the position regarding the preexilic date of P and D's awareness of P, see Friedman, *Bible with Sources Revealed*, 4, 21–24; idem, *Who Wrote the Bible?*, 208–10.

of the Pentateuch. Once the document sources were placed together, any attempted obsoleting of earlier judicial system(s) by a superseding program of adjudication, whether literary or historical, would have been erased by the harmonizing effect of the pentateuchal compilation. This is to say, for example, that even if D was the latest source and that the hopeful implementation of its judicial program was based on its simultaneous integration and obsolescence of judicial plans in J, E, and P, the combination of the sources in the formation of the Pentateuch grounded any ascendancy of D, placing it at equal status with the other sources and thus equalizing the force of all pentateuchal material.

Such an equalization may even be arguable from a historical perspective on the grounds of the Babylonian captivity and exile. If the dating of all pentateuchal sources can be situated generally in the preexilic period (see below), then the devastating destruction of Jerusalem, deportation of Judah's elite (including the literati), and extended exile would have certainly interrupted any historical realia relating to Israelite judicial structures and their operations. These traumatic events would also have likely interfered with any literary program attempting to purge earlier judicial ideologies in lieu of an ascendant school's judicial views taking place in the decades immediately preceding 587/6 BCE.

All this is not to say that there was no literary or even historical dependence of one pentateuchal source's judicial outlook on that of an earlier source. Indeed, there are several instances in this thesis where I call attention to cases where literary or ideological dependence is particularly clear. Rather, the explanation in the above paragraphs serves to inform the reader that the purpose of this thesis is not to articulate or defend any model of diachronic development in the judiciary of ancient Israel, or the correct sequence of the pentateuchal sources for that matter,²⁷ but rather to understand the varied and separate

²⁷ For an important approach to pentateuchal material that is unconcerned with the historical provenance of its text and that proves unable to determine the placement of P (!), see the relevant summary in Baden, *Composition of the Pentateuch*, 246–48.

literary perspectives of the Pentateuch's sources from a synchronic approach, one that understands the varying ideologies of the sources as equally important, such as they would have been in the composite Pentateuch.

A second methodological matter worth discussion regards how the passages treated in this thesis were selected. The method used to determine pericopes of evidentiary value for the present investigation of priestly adjudication in the Pentateuch is, of necessity, an eclectic one, based on both philology and literary details. On the one hand, it relies upon certain Hebrew terms to help designate passages as being potentially significant for the study of judicial processes as they relate to priestly involvement. Among the foremost of these were occurrences of the root שפט. With its basic semantic value relating to judgment, instances of the root שפט, whether in nominal or verbal forms, played a role in determining passages of possible value for the present investigation.²⁸ A similar consideration was given to the root בהן, with a semantic gloss relating to the office and function of priests.²⁹ Naturally, there are additional terms with relevance for judgment, such as להבדיל (“to separate”), דין (“claim”), צדק (“righteousness”), and ריב (“dispute”), and for priests, such as אהרן (“Aaron”) and לוי (“Levi,” “Levite”), that are analyzed at the source or passage level in this thesis, but these were not common enough in contexts bearing directly on priestly adjudication across all document sources to use them in the initial selection process. On the other hand, there are some passages treated in this thesis that have instances of neither שפט nor בהן. These passages were selected because of the literary details contained within them pertaining to the topic of this study. In other words, some passages, without express reference to judgment or priests, contain narratives or legal material with significance for the

²⁸ On the verb שפט, see Ludwig Koehler, Walter Baumgartner, and Johann Jakob Stamm, *The Hebrew and Aramaic Lexicon of the Old Testament*, trans. and ed. Mervyn E. J. Richardson, study ed., 2 vols. (Leiden: Brill, 2001), here 2:1622–26. On the substantive שפט, see *HALOT*, study ed., 2:1624–25. On the noun משפט, see *HALOT*, study ed., 1:651–52.

²⁹ On the verb בהן, see *HALOT*, study ed., 1:461. On the noun בהן, see *HALOT*, study ed., 1:461–62.

identification of priestly adjudication in the Pentateuch. After passages were deemed potentially significant by philological and literary factors and collected, those considered most pertinent and important for the current investigation were selected for analysis within the limited space of this thesis.

The final methodological matter of consideration regards how the analyses in this thesis are conducted. Since the issue of pentateuchal source divisions in this work is addressed by Friedman's attributions, the majority of space and effort in this thesis attempts to address through literary exegesis how selected passages touch on the matter of priestly adjudication. Although there are a few passages that explicitly deal with both priests and adjudication, most of the analyses below focus on attempting to establish a given individual or group, whether wholly or partially, as priestly and/or Levitical; on identifying a particular action, theme, or motif as judicial; or on both. Following this pattern of analysis, the sum of observations noted in each passage synthesizes into a component of a given source's ideology regarding priestly adjudication. These passage-based components are then brought together and used to draw general conclusions about a given source's attitude on priestly adjudication.

By way of outline, the remainder of this thesis is structured according to the sequence of the pentateuchal sources as hypothesized by Friedman. The first section consists of a summary of relevant data in J, E, and P. The brevity of this section is due in part to the limited space of this work, as well to as the lack of explicit material in J and E regarding Israelite priests and in P regarding adjudication. The following section, however, provides a detailed examination of D, given its express mention of judicial priests in several places. This examination contains analyses of pertinent passages in the source—namely Deut 1:9–18; Deut 16:18–20; Deut 17:8–13; Deut 19:15–21; and Deut

21:1–9.³⁰ A brief conclusion then closes the thesis, summarizing and synthesizing the data collected from the various documentary sources pertaining to priestly involvement in the judiciary of ancient Israel.

³⁰ Pertinent information including critical attribution of passages to pentateuchal sources and critical positions on the dating, provenance, and ideologies of distinct documentary sources are given below where treated.

משפט טרם דברים: ADJUDICATION AND PRIESTS
IN THE YAHWIST, ELOHIST, AND PRIESTLY SOURCES

In order to understand the multiple and diverse judicial ideologies in the Pentateuch, it is necessary to analyze each source on its own terms. Due to the limited and implicit manner in which J, E, and P address the topic of priestly adjudication, contributions from these sources to the present investigation are summarized together in this section, beginning with the former two and concluding with the latter.³¹

Historical reconstructions based on source attributions made by Friedman understand J and E as reflecting the earliest developmental stages of ancient Israelite religion.³² The literary dependence of P and D on J and E also date these latter sources relatively early.³³ Additional analysis provides the final forms of these two sources with a provenance in the divided kingdoms of Judah and Israel, with J likely being written between 848–722 BCE in Judah by an author loyal to Judah, and E likely being written between 922–722 BCE by an author in the northern kingdom with a vested interest in Israel.³⁴ Since discussions of J and E often treat the pair in that order and as coterminous, the following analysis begins with J.

³¹ On distinguishing the sequencing of J and E, see Baden, *Composition of the Pentateuch*, 247, where he summarizes his position that such sequencing cannot be determined from literary evidence.

³² See Friedman, *Who Wrote the Bible?*, 26, especially his reference to the work of Graf and Wellhausen.

³³ On the literary dependence of P on J and E, see Friedman, *Bible with Sources Revealed*, 26–27; cf. Baden, *Composition of the Pentateuch*, 247. On the literary dependence of D on J and E, see Baden, *Composition of the Pentateuch*, 247.

³⁴ For geographic provenances, see Friedman, *Who Wrote the Bible?*, 61–67 (esp. 61 and 67), 71. On p. 72, Friedman goes further to suggest that the author of E “was a Levitical priest, probably from Shiloh, and therefore possibly descended from Moses.” For temporal provenances, see Friedman, *Who Wrote the Bible?*, 87; cf. Stackert, *A Prophet Like Moses*, 31–32, where his argument for the dependence of D on J and E and the dating of D to around 670 BCE provide J and E with a *terminus ante quem* of the early seventh century BCE.

The relevant data, if relatively sparse, from J for the present study primarily derive from Exod 2:11–15 and Num 25:1–5, which reflect a basic judicial system in which priests have little to no discernable role. For example, Exodus 2:11–15 records the last acts of Moses in Egypt before his flight to Midian, including his killing of an Egyptian (vv. 11–12) and his intervention in an altercation between two Hebrew men (vv. 13–14).³⁵ Although narrational details preclude understanding Moses in any official judicial capacity in this passage, his actions and the language used in a rhetorical refutation of his authority (v. 14, “Who placed you as an officer (לְאִישׁ שָׂר) and judge (וּשְׁפֹט) over us?”)³⁶ can be understood as allusions to Moses’s future as a leader and judge over the Israelites.³⁷ It may be significant that this pericope is situated between two passages in J that highlight Moses’s connection with the tribe of Levi and with Midianite priesthood—Exod 2:1–10 depicts Moses and his biological parents as Levites,³⁸ and Exod 2:16–22 reports Moses’s marriage into a priestly Midianite family³⁹—but it is not clear that the author of this material viewed Moses’s Levitical or priestly connections as relevant to his judicial responsibilities.

³⁵ For the attribution of Exod 2:11–15 to J, see John Van Seters, *The Life of Moses: The Yahwist as Historian in Exodus-Numbers* (Louisville: Westminster John Knox, 1994), 30; William H. C. Propp, *Exodus 1–18: A New Translation with Introduction and Commentary*, AB 2A (New York: Doubleday, 1999), 162; Wellhausen, *Prolegomena*, 346; Friedman, *Bible with Sources Revealed*, 120–21; Baden, *Composition of the Pentateuch*, 74, 274–75 n. 117.

³⁶ Unless indicated otherwise, all translations derive from the present author.

³⁷ On the possible legal quality of Moses’s execution of the Egyptian, see Ronald Hendel, “The Exodus in Biblical Memory,” *JBL* 120 (2001): 601–22, here 617; cf. Gordon F. Davies, *Israel in Egypt: Reading Exodus 1–2*, JSOTSup 135 (Sheffield: JSOT Press, 1992), 134–35. On the legal quality of the language in this passage, especially in vv. 13–14, see Gordon Davies, *Israel in Egypt*, 133. Unlike Gordon Davies, John Durham sees the usage of שָׂר here in a general sense, not in its function as a juridical term. John I. Durham, *Exodus*, WBC 3 (Waco, TX: Word, 1987), 19. The narrative as it stands, however, still requires Moses to have made some determination regarding who should be questioned, and it is that determination that contributes to the judicial atmosphere of this episode. Propp speaks to the term’s “judicial connotations” and how its use here suggests Moses’s cognitive activity before raising his query. Propp, *Exodus 1–18*, 164.

³⁸ Van Seters understands this reference to the heritage of Moses’s parents as wholly genealogical and not related with priesthood at all. Van Seters, *The Life of Moses*, 26.

³⁹ On Moses’s marriage and its possible historicity, see Mark Leuchter, *The Levites and the Boundaries of Israelite Identity* (Oxford: Oxford University Press, 2017), 60; Hendel, “The Exodus,” 615–16.

In a second relevant passage found in J, Numbers 25:1–5 reports a case of apostasy at Shittim that could have implications for this topic.⁴⁰ According to this passage, as a result of certain Israelites associating with Moabite women and worshipping their gods, apparently including Baal Peor (vv. 3, 5), the Lord tells Moses to execute a lethal purge of the Israelites, a purge that Moses conducts through the judges of Israel as agents. The passage significantly contributes to the adjudicative ideology of J in its explicit reference to a standing Israelite judiciary, “the judges of Israel” (v. 5, שפטי ישראל).⁴¹ The phrase “each his own people” (v. 5, איש אנשיו) in the execution order Moses gives to the judges suggests that these judges held authority over distinct jurisdictions, in which case it assumes (but does not delineate) certain judicial boundaries within the community.⁴² Alternatively, the phrase could rather (or also) mean that the judges were representative of the tribal plurality of ancient Israel, with officials from each tribe contributing to the judicial process.⁴³ In either case, Moses’s role in the execution orders (vv. 4, 5) and authority to command the judiciary (v. 5) are to some degree suggestive of his role also being judicial.⁴⁴ This posited judicial role of Moses in this passage, together with his oversight of the purge, may have connection to the motifs of execution and adjudication in Exod 2:11–15. Thus, the data from Exod 2:11–15 and Num

⁴⁰ On the attribution of this passage to J, see Friedman, *Bible with Sources Revealed*, 287; Wellhausen, *Prolegomena*, 356. Philip Budd is somewhat ambivalent on attributing the passage to one source, saying in one place that the passage belongs to the combined JE text, and in another place that the passage is a “truncated Yahwistic tradition.” Philip J. Budd, *Numbers*, WBC 5 (Waco, TX: Word, 1984), 275, 281. Baruch Levine does similarly, having in one place the attribution of “JE,” whereas stating later, in his association of the passage with Hos 9 and Deut 32, that Num 25:1–5 is connected to “northern Israelite writers of the ninth-to-eighth centuries B.C.E.”—the same community that Friedman understands as producing J. Baruch A. Levine, *Numbers 21–36: A New Translation with Introduction and Commentary*, AB 4A (New York: Doubleday, 2000), 279, 294.

⁴¹ The LXX and the Samaritan Pentateuch both have the equivalent of שבטי ישראל (“the tribes of Israel”) here rather than שפטי ישראל (“the judges of Israel”), a difference of only one letter. The MT is followed here, although it should be noted that following these variants results in the loss of this reference to the judiciary in J.

⁴² On the judges in this passage having jurisdictional authority, see Martin Noth, *Numbers: A Commentary*, OTL (Philadelphia: Westminster, 1968), 197; Levine, *Numbers 21–36*, 285.

⁴³ In agreement with the representative sense of this judiciary, see Budd, *Numbers*, 280.

⁴⁴ Levine understands the sentences given by the Lord in v. 4 and by Moses in v. 5 to be legal in nature. Levine, *Numbers 21–36*, 302.

25:1–5 portray J’s vision of the ancient Israelite judiciary as existent, headed by Moses, and possibly representative in makeup, but with no clear distinction given to priestly authority. Such data, however, stop short of describing the precise composition of the judicial body or the actual mechanics of its organization. In these two regards, we find clarity in another one of the pentateuchal sources—E.

As the sole relevant passage from E analyzed herein, Exod 18:13–27 provides significant insight on its source’s vision of ancient Israelite adjudication.⁴⁵ After seeing Moses act in judgment (vv. 13–14) and hearing an explanation of his judicial procedures (vv. 15–16), Moses’s father-in-law Jethro (v. 14; cf. Exod 18:1) provides a number of suggestions to Moses that effectively amount to the creation and operating procedures of a judiciary (vv. 17–23), all of which Moses subsequently enacts (vv. 24–26). Most importantly for this thesis, the passage treats the creation of a judicial body comprised of individuals who are selected and appointed by Moses, and who have certain moral and ethical requisite qualities (vv. 21–22). These judicial figures are to be selected “from all the people” (v. 21, מכל־העם; also v. 25, מכל־ישראל, “from all Israel”), thus creating a representative judiciary, and to be appointed over jurisdictions of varying size (vv. 21, 25).⁴⁶ They are to hold primary responsibility over legal matters considered “light” or “small” (vv. 22, 26, קטן), whereas they are to bring “weighty” (v. 22, גדל) and “difficult” (v. 26, קשה) cases to Moses to rule upon. Moses is not only to execute his premier legal office according to Jethro’s proposition, but also to function in a didactic role as well (v.

⁴⁵ For the attribution of Exod 18 to E, see Friedman, *Bible with Sources Revealed*, 149–51; Baden, *Composition of the Pentateuch*, 121; Propp, *Exodus 1–18*, 627; Stackert, *A Prophet Like Moses*, 91–92; cf. Van Seters, *The Life of Moses*, 209, where he attributes the whole of Exod 18 to J. For a thorough review of scholarship on the attribution of this chapter (or its components) to various sources, see Jaeyoung Jeon, “The Visit of Jethro (Exodus 18): Its Composition and Levitical Reworking,” *JBL* 136 (2017): 289–306, here 289–90.

⁴⁶ For an alternative view, see Nahum M. Sarna, *Exodus: The Traditional Hebrew Text with the New JPS Translation*, JPS Torah Commentary (Philadelphia: Jewish Publication Society of America, 1991), 100, where he confirms the partitive nature of the judiciary’s selection, but understands the result as a “supratribal system,” in that, according to Sarna’s reading, the organization of the judiciary here seems to ignore the typical “tribal-patriarchal” assignment of legal authority to local elders while also lacking any explicit mention of Israel’s multi-tribal structure.

20). Furthermore, elsewhere in the passage the intersection of Moses's judicial activity and his consultation of God (vv. 15–16, 19) suggests that Moses's judicial office is somewhat divinatory or oracular in nature.⁴⁷ With this in mind, and notwithstanding E's earlier establishment of Moses's identity as a Levite (Exod 4:14) and his connection by marriage to the Midianite priest Jethro,⁴⁸ this passage does not describe Moses as a priest. Nonetheless, as indicated by these details, Exod 18:13–27 provides significant insights that inform our understanding of the ancient Israelite judiciary in E and in the Pentateuch as a whole.

As indicated by Exod 2:11–15, Num 25:1–5, and Exod 18:13–27, J and E share similar ideologies regarding adjudication. Both point to a representative judiciary, but E is clearer on this matter. The same can be said of both Moses's judicial role generally and his position of authority over the judiciary. Both sources attribute a Levitical heritage to Moses and connect him to a priestly family, but stop short of directly qualifying him as a priest and thus offer no clear indication that priestly lineage was a qualifying factor for

⁴⁷ In his comment synthesizing the instructions of Jethro in 18:19 and 18:22, Durham states regarding the need for a figure like Moses to treat unprecedented and thus difficult legal cases: "A new problem would demand special wisdom and experience, and in all likelihood, the consultation of God, *by holy oracle* or by some other means, in order to determine the application of covenant principle to a situation not previously faced" (emphasis added). Durham, *Exodus*, 251. In agreement with the oracular sense of Moses's judgment here, see Ze'ev W. Falk, *Hebrew Law in Biblical Times: An Introduction*, 2nd ed. (Provo, UT: Brigham Young University Press; Winona Lake, IN: Eisenbrauns, 2001), 47; Van Seters, *The Life of Moses*, 213.

⁴⁸ See the source attribution and commentary in Friedman, *Bible with Sources Revealed*, 124 (esp. n. on v. 14), where he concludes that the relationship between Moses and Aaron is not truly fraternal, but rather tribal. Whether fraternal or tribal, however, the language of the verse suggests Moses's Levitical heritage.

adjudication in these sources.⁴⁹ In fact, Israelite priests are not expressly mentioned in any of the three passages treated here. Thus, if priests were a part of the respective judicial visions of J and E, their involvement in the judiciary would only be incidental to its representative nature, and only proportionally so.

The comparable adjudicative ideologies of J and E can be contrasted with that of the Pentateuch's Priestly source (P). According to Friedman, P was composed in its final form between 722–609 BCE.⁵⁰ He also qualifies the author of the source as an individual representing the concerns of Aaronide priests, if not an Aaronide priest himself, who conducted his work in Judah, most likely in the temple city of Jerusalem.⁵¹ With its large number of legal passages and highlighting of Aaronide figures, P seems to focus on empowering the priests whose interests it represents. Due to limits of space in the present thesis, the passages drawn upon to provide information for P's views on adjudication are

⁴⁹ In a canonical or "source-synthetic" reading of the Pentateuch, perhaps Moses's Levitical heritage in J and E could be understood as priestly, especially in light of D's conflation of priests and Levites in several places (see below); for a view from this approach, see Hendel, "The Exodus," 619. A notable historical-critical approach also lends support to an understanding of Moses as priestly. Mark Leuchter has carefully analyzed the evidence regarding the Mushites, an early Israelite priestly group whose sacerdotal authority was inextricably connected to their claimed descent from Moses, whom they regarded as their priestly patron ancestor. See Mark Leuchter, "The Levites in the Hebrew Bible," *RC* 11.5–6 (2017): 1–12, here 4, doi:10.1111/rec3.12235; idem, *The Levites*, 69–74, esp. 69–70. Neither of these approaches, however, change the observation that, at the literary level, J and E each lack a clear ideology on ancient Israelite priesthood, including the cultic enfranchisement of the Levites. Thus, for the purposes of this study, Moses's Levitical heritage in J and E cannot be considered an indication of priestly quality.

⁵⁰ See Friedman, *Who Wrote the Bible?*, 210. The *terminus post quem* for the source's composition is based on the supposed redaction of J and E when the latter was brought to Judah following the fall of the Israelite kingdom, since Friedman understands P to be dependent on the combined JE text (see above). In other words, the *terminus post quem* for P is the date of the combination of J and E (see pp. 188–89). The *terminus ante quem* for the source's composition is based on conclusions developed by Friedman (see pp. 161–87; 207–16). He sees the usage of P in prophetic literature antedating the postexilic period (i.e., Jeremiah and Ezekiel), the frequent use of the Tabernacle in the source (in his estimation, as a concealed reference to the First Temple), and D's awareness of P all as indications that P was written before the death of Josiah. Friedman further argues that P was written during the reign of Hezekiah but stops short of qualifying his supporting evidence as "absolute proof" (cf. pp. 207–14, esp. pp. 213–14). For an opposing viewpoint that challenges the dependence of P on the JE redacted text, see Baden, *Composition of the Pentateuch*, 188–92.

⁵¹ See Friedman, *Who Wrote the Bible?*, 188.

limited to Exod 28:15–30, Lev 10:8–11, Num 15:32–36, Num 25:6–19, and Num 27:15–23.⁵²

An important starting place for an analysis of adjudication in P is William Propp’s observation that the source makes no mention of a lay judiciary.⁵³ This lack of explicit mention has made the investigation in this source distinctive from that conducted in J and E and also from what comes next in the section on D. Here, I have attempted to carefully draw out the implicit and embedded details regarding adjudicative responsibilities and functions, details I believe the author of P largely understood to fall under the jurisdiction of the source’s favored Aaronides, but without going so far as to use explicit language to state so.

In Exod 28:15–30, Aaron is invested with the vestments of his presiding office, particularly the “breastpiece of judgment” (vv. 15, 29, 30, חֶשֶׁן מִשְׁפָּט).⁵⁴ The literal investiture of the Aaronide is required, according to the Lord, “that he may function as priest for me” (Exod 28:3, 4, לְכַהֵנִי-לִי).⁵⁵ Here, the breastpiece, clearly connected to the cultic sanctuary and the Aaronide’s service of the Lord (vv. 29, 30), is infused with

⁵² For other passages with possible relevance to an analysis of the adjudicative tradition in P not directly addressed in the following section, see Lev 10:16–20 (a possibly legal discussion between Moses and Aaron on correct cultic praxis); Lev 19:15 (general ethics regarding judgment); Num 34:16–29 (a prototype of priestly involvement in a diarchy and a leading body comprised of tribal representatives); and Num 35:9–34 (cities of refuge and provisions regarding the amnesty of those who commit manslaughter).

⁵³ “Elsewhere in the Bible, judgment is usually considered the province of the *šōpēṭ* ‘judge’ or *melek* ‘king,’ but unlike JE and D, the Priestly source makes no explicit provision for monarchy or a lay judiciary.” William H. C. Propp, *Exodus 19–40: A New Translation with Introduction and Commentary*, AB 2A (New York: Doubleday, 2006), 525. The lack of an explicit judiciary in P means that implicit reflections of the source’s vision of judges and justice must be gleaned from passages, which I attempt to do below.

⁵⁴ For the attribution of Exod 28 to P, see Friedman, *Bible with Sources Revealed*, 166–68; Propp, *Exodus 19–40*, 365–70.

⁵⁵ On the function of literal investiture as a display of taking an office, such as the clothing of Aaron in sacred vestments as an indication of his priesthood, see Cornelis Houtman, *Exodus*, trans. Johan Rebel and Sierd Woudstra, 4 vols., HCOT (Leuven: Peeters, 1993–2002), 3:466, 473.

judicial value (i.e., חשן משפט in משפט)⁵⁶—the passage stops short, however, of explaining how such judgment would be executed using the vestment and its accompanying oracular objects, “the Urim and Thummim” (v. 30, האורים והתמים).⁵⁷ Nevertheless, the language of judgment is combined with divine service, the sanctuary, and responsibility to represent collective Israel upon the person of Aaron.⁵⁸

The directives given by the Lord to Aaron in Lev 10:8–11 contribute coherency to some of the unconnected strokes painted in Exod 28.⁵⁹ Just as the wearing of the vestments described in Exod 28 is limited to Aaron and his progeny (thus setting them apart as Israel’s ritual functionaries), this passage prohibits the consumption of alcohol

⁵⁶ This adjudicative quality might be anticipated in the rendering of חשן in this passage as “‘place for speaking,’ ‘oracle [instrument]’” in the LXX. Houtman, *Exodus*, 3:492. Medieval Jewish exegetes (Ibn Ezra and Rashbam) understood the judicial value of the breastpiece as related to its encasing of the Urim and Thummim and its ability to assist with “intractable legal disputes.” Propp, *Exodus 19–40*, 438. Additionally, de Vaux understands the qualification of the breastpiece as one of judgment as a function of its association with the Urim and Thummim. De Vaux, *Ancient Israel*, 158. Levinson understands the inclusion of the breastpiece of judgment, together with the Urim and Thummim, among the priestly vestments of Exod 28 as one of the strongest indications of priestly adjudication in ancient Israelite tradition. Levinson, *Deuteronomy and the Hermeneutics*, 111.

⁵⁷ Weinfeld cites Exod 28:30 in his discussion of judicial activity at “provincial sanctuaries” before cultic centralization, apparently understanding the Urim and Thummim in this verse as one example of objects used in “sacral lot-casting.” Moshe Weinfeld, *Deuteronomy and the Deuteronomistic School* (Oxford: Oxford University Press, 1972; repr., Winona Lake, IN: Eisenbrauns, 1992), 234. Propp also states that “the Urim and Thummim may have been used in thorny legal disputes, which ... were adjudicated at the shrine.” Propp, *Exodus 19–40*, 442. For further commentary on the function of the Urim and Thummim, see de Vaux, *Ancient Israel*, 352; Houtman, *Exodus*, 3:493–97; Durham, *Exodus*, 387–88, 390; Propp, *Exodus 19–40*, 442–43; Stackert, *A Prophet Like Moses*, 170.

⁵⁸ For a cogent analysis of how the breastpiece of judgment and the Urim and Thummim, among other components of the priestly vestments, represent symbols of Aaronide priestly power, see Christophe Nihan and Julia Rhyder, “Aaron’s Vestments in Exodus 28 and Priestly Leadership,” in *Debating Authority: Concepts of Leadership in the Pentateuch and the Former Prophets*, ed. Katharina Pyschny and Sarah Schulz, BZAW 507 (Berlin: de Gruyter, 2018), 45–67. For more on the connection between the Urim and Thummim and practices of priestly divination in later periods, see Matthew J. Grey, “Priestly Divination and Illuminating Stones in Second Temple Judaism,” in *The Prophetic Voice at Qumran: The Leonardo Museum Conference on the Dead Sea Scrolls, 11–12 April 2014*, ed. Donald W. Parry, Stephen D. Ricks, and Andrew C. Skinner, STDJ 120 (Leiden: Brill, 2017), 21–57.

⁵⁹ For the attribution of this passage to P, see Friedman, *Bible with Sources Revealed*, 204. For treatments on the originality of this passage (or parts of it) within its literary context, see John E. Hartley, *Leviticus*, WBC 4 (Waco, TX: Word, 1992), 131; Jacob Milgrom, *Leviticus 1–16: A New Translation with Introduction and Commentary*, AB 3 (New York: Doubleday, 1991), 617. For the purposes of this thesis, the assumption is made with Friedman, notwithstanding the possibility of being a relatively late addition, that the passage ultimately belongs to P.

(v. 9, יין ושכר לא־תשת, lit. “wine and beer you will not drink”)⁶⁰ by Aaronides in connection with their cultic service.⁶¹ Elsewhere, namely in the case of the Nazarite vow, abstinence from alcohol contributes to the sense of social separation.⁶² In light of this, such abstinence in the case of the Aaronides strengthens the distinctiveness of their collective identity. This separate status of priests, a cadre with several prerogatives and responsibilities unique to their group, figuratively positioned them both laterally outside of the Israelite community and vertically into a hierarchical status above them. This exterior and superior position of Aaronides afforded them the ability to manage the Israelites in a number of ways, including their role in maintaining cosmic order by keeping separate (להבדיל)⁶³ the ritually clean (טמא) from the ritually unclean (טהור)⁶⁴ and

⁶⁰ On the translation of שכר as “beer,” see *HALOT*, study ed., 2:1501; Milgrom, *Leviticus 1–16*, 612; cf. Baruch A. Levine, *Numbers 1–20: A New Translation with Introduction and Commentary*, AB 4 (New York: Doubleday, 1993), 219–20. Since Hannah responds to Eli’s inquiry accusing her of drunkenness by stating “wine and beer (יין ושכר) I have not drank” (1 Sam 1:15), I find it possible to understand יין ושכר as a synecdoche or merism denoting alcohol generally. On this understanding, see Christophe Nihan, *From Priestly Torah to Pentateuch: A Study in the Composition of the Book of Leviticus*, FAT 2/25 (Tübingen: Mohr Siebeck, 2007), 591.

⁶¹ De Vaux understands the prohibition of alcohol as one measure priests took to avoid “any confusion between the sacred and the profane” while they executed their cultic responsibilities. De Vaux, *Ancient Israel*, 348. Erhard Gerstenberger reads the prohibition in the broader milieu of “narcotics and stimulants” used to occasion “religious ecstasy.” Erhard S. Gerstenberger, *Leviticus: A Commentary*, trans. Douglas W. Stott, OTL (Louisville: Westminster John Knox, 1996), 123. Milgrom both discusses biblical polemic against the drunkenness of priests as evidence of “the reality that evoked it” and cites ancient Near Eastern accounts of “cultic intoxication.” Milgrom, *Leviticus 1–16*, 612.

⁶² On separation and the Nazarite vow, see Levine, *Numbers 1–20*, 219, 231, 234–35. Also see Nihan, *From Priestly Torah*, 591, where he posits that the aim of the parallel abstinence of Aaronides and Nazarites was the avoidance of alcohol’s altering effects, effects which were perceived as contrary to the maintenance of holiness.

⁶³ On the verb בדל, see *HALOT*, study ed., 1:110. The root בדל, reflecting a semantic of separation, plays a significant role throughout P—in the dividing acts of the first creation account (Gen 1:4, 6–7, 14, 18); in describing the function of the veil in the tabernacle (Exod 26:33); and in qualifying the status of the Levites relative to the rest of Israel (Num 8:14). P even depicts the Lord as one who separates (cf. Lev 20:24, 26; Num 16:9). Thus, with regards to separating, the priest reflects the deity by taking part in maintaining cosmic order. On the use of הבדיל as a leitmotif in P’s creation account, see Gerstenberger, *Leviticus*, 125. For the attribution of these passages connected with בדל to P, see Friedman, *Bible with Sources Revealed*, 33–35 (Gen 1); 163–65 (Exod 26); 222–23 (Lev 20); 254–55 (Num 8); 269 (Num 16:4–11).

⁶⁴ Compare להבדיל בין הטמא ובין הטהור (Lev 10:10) with ולהבדיל ... ובין הטמא ובין הטהור (Lev 11:47). Milgrom understands the Israelites at large as the subject of הבדיל in Lev 11:47. Milgrom, *Leviticus 1–16*, 615. Even if the Israelites executed such food laws at an individual level, priests still likely maintained and taught the traditions regarding טמא and טהור food and made determinations on special or confusing cases.

the holy from the profane (v. 10).⁶⁵ This role of Aaronides as “separators,” although described with cultic language, was likely manifest socially as adjudicatory in nature.⁶⁶ The passage also reports the Lord assigning the Aaronides to maintain and promulgate the legal traditions originating with Moses (v. 11).⁶⁷ Thus, the synthesis of Exod 28 with the priestly prescriptions in Lev 10 results in a fusion of sacerdotal prerogatives lying within cultic, didactic, and adjudicative spheres.⁶⁸

Reflections of this ideology can be found in several passages in P. For example, Numbers 15:32–36,⁶⁹ the “account of the wood gatherer,” can be qualified as what might be called an “oracular adjudication scene,” a narrative with a fixed structure and style that centers on a legal ruling transmitted by Moses to the people from the Lord regarding a respective issue.⁷⁰ The depiction of Moses as oracular adjudicator in this episode seems to draw from earlier material supporting his premier legal authority, such as Exod 18:13–

⁶⁵ On the intersection of these categories and cosmic separation, see Mary Douglas, *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo* (London: Routledge & Kegan Paul, 1966; repr., London: ARK Paperbacks, 1988), 41–57, esp. 53, where she defines holiness in part as the maintenance of distinct categories and classes of things, particularly the order set forth in the creation. See also Mark S. Smith, *The Priestly Vision of Genesis 1* (Minneapolis: Fortress, 2010), 90–94, where he discusses P’s use of *הבדיל* in Gen 1 and its connections to both the prescription in Lev 10:10 and the categories of animals in Lev 11, and 254 n. 31, where he comments on Douglas’s contribution on this nexus.

⁶⁶ For a rather clear example on the gravity a priest’s ruling could have on an individual, see Lev 13:8. Indeed, if Lev 10:10 enfranchises Aaronides with authority to enforce the laws of the following corpora (Lev 11–15; Lev 17–26), then priests would have held legal authority over a broad section of Israelite life, including eating, childbirth, dermal medicine, bodily discharges, sexuality, harvesting crops, illicit spirituality, and festival observances. On the connection between Lev 10:10 and certain topics in the corpus of Lev 11–15, see Levinson, *Deuteronomy and the Hermeneutics*, 113.

⁶⁷ Understanding Lev 10:10, 11 together, Hartley states: “The priests interpret the law in response to specific situations put to them by members of the congregation.” Hartley, *Leviticus*, 135. If this is the case, then Lev 10:10–11 draws from E’s judicial procedure outlined in Exod 18:13–27. For an additional example of understanding vv. 10–11 in a legal manner, see Stackert, *A Prophet Like Moses*, 170. On the significance of the Lord assigning Aaron and his progeny to be teachers of the Torah, see Nihan, *From Priestly Torah*, 601–2, 618.

⁶⁸ Although he interjects an understanding of laity-initiated inquiries and general ethical instruction (such as is found Exod 18:13–27) into his reading of Lev 10:8–11, Hartley’s understanding of the latter passage as indicative of priestly judicial-didactic function is likely correct and could stand without imposing such interjections directly into the context of Lev 10. Hartley, *Leviticus*, 138.

⁶⁹ On the attribution of Num 15:32–36 to P, see Friedman, *Bible with Sources Revealed*, 268; Budd, *Numbers*, 175. On the legal nature of Num 15:32–36, see Budd, *Numbers*, 176.

⁷⁰ On this structure, see Michael Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford: Clarendon, 1985), 102.

27.⁷¹ The account of the wood gatherer in Num 15:32–36 and other oracular adjudication scenes are reflective,⁷² whether intentionally or not, of the priestly promulgation of Mosaic legal traditions akin to that prescribed in Lev 10.⁷³ Between such oracular adjudication scenes and the legal corpora contained within it, P, or rather its authorial origins connected with the Aaronide priesthood, fulfills the priestly responsibilities mandated in Lev 10:10–11.

References to Phinehas the priest and grandson of Aaron in Num 25:6–19 are perhaps the closest reflection in P of the lay judge described in earlier pentateuchal traditions.⁷⁴ This can be seen in the placement of Phinehas’s account directly after Num 25:1–5, which mentions lay judges.⁷⁵ The adjacent nature of the two accounts in Num 25 allows for a reading of the chapter as a unit, one that narrows in focus from the broad narrational view of Moses and the judiciary in vv. 1–5 to the specific actions of Phinehas

⁷¹ Fishbane seems to oppose understanding the content of Exod 18:13–27 as the legal foundation of these similar oracular narratives. Fishbane, *Biblical Interpretation*, 102. However, nothing in his position seems to preclude the possibility that the author of P included these structured narrative oracular accounts having in mind the divinatory judicial procedure of Moses preserved in the E passage of Exod 18:13–27.

⁷² Compare Num 15:32–36 with Lev 24:10–23; Num 9:6–14; Num 27:1–11; and Num 36:1–12. For the attribution of these passages to P, see Friedman, *Bible with Sources Revealed*, 229–30 (Lev 24:10–23), 255–56 (Num 9:6–14); 292 (Num 27:1–11); and 307–8 (Num 36:1–12); cf. Stackert, *A Prophet Like Moses*, 170, where he attributes the scenes in Lev 24 and Num 9; 15; 27 to H, a composition he understands as a “supplement to P” (p. 174 n. 8), and 175, where he states that Num 36:1–12 only mimics these four scenes in H. Scholars recognize the connections between Num 15:32–26 and Lev 24:10–23—for example, see Budd, *Numbers*, 175; Levine, *Numbers 1–20*, 398. Fishbane places all but the scene in Num 36 into a common category, described as “four *ad hoc* legal situations” resolved by “oracular adjudication” (his italics). Fishbane, *Biblical Interpretation*, 98. On p. 104 of this work, Fishbane begins his analysis of Num 36 by addressing its connection to the four passages he groups together, specifically the ruling regarding the daughters of Zelophehad in Num 27:1–11, but separates it from these four passages perhaps because of its dependence on Num 27 and thus as a later literary composition. For the purposes of this thesis, however, P’s vision of Israel’s legal traditions relative to the other three major pentateuchal sources is the extent of the present analysis’s distinction regarding source divisions and their strata.

⁷³ That is to say, I understand the priestly author of these oracular adjudication scenes fulfilling the duty assigned to priests in Lev 10:11 through the scribal acts of recording and promulgating these accounts. In a similar way of thinking, Stackert understands the need for further oracular inquiry in these oracular adjudication scenes (he excludes Num 36:1–12) as “exemplifications of the priestly duties outlined in Lev 10:10–11.” Stackert, *A Prophet Like Moses*, 170, 178–79. In the latter location, Stackert also posits that Hag 2:11–14 could represent an example of priests engaged in oracular adjudication similar to the processes highlighted by these scenes and called for in Lev 10:11.

⁷⁴ For the attribution of Num 25:6–19 to P, see Friedman, *Bible with Sources Revealed*, 288.

⁷⁵ On the relation of Num 25:6–19 to Num 25:1–5, see Budd, *Numbers*, 277; Wellhausen, *Prolegomena*, 356; Levine, *Numbers 21–36*, 280.

in vv. 6–19.⁷⁶ On the other hand, Phinehas’s execution of Zimri and Cozbi, when taken independent of vv. 1–5, shows the zealous priest executing judgment without any consultation with or direction from Moses or the Lord, thus positioning his actions and their impetus outside of what might otherwise have been expected in P.⁷⁷ In either case, the depiction of Phinehas as a judicial functionary can be secured and placed in a context of righteous violence noted in connection with Moses in both J (Num 25:1–5) and P (Num 15:32–36).⁷⁸

Lastly, the contributions to the adjudicative traditions of P contained in Num 27:15–23 compound with those offered by other passages.⁷⁹ Eleazar’s possession of the Urim in Num 27 brings the adjudicative undertones of Exod 28:15–30 through toward the

⁷⁶ One narrative detail bearing on a possible harmonized reading of vv. 1–5, 6–19 is the cause of the collective weeping mentioned in v. 6. On the death of Aaron (according to his reconstruction of P, the episode immediately preceding Num 25:6–19) as the precedent of the weeping in Num 25:6, see Friedman, *Bible with Sources Revealed*, 288; idem, *Who Wrote the Bible?*, 204. On the other hand, for a reading that sees Num 25:6 as the result of “the fate of the many Israelites and their leaders who had met their death after engaging in pagan worship,” i.e., as apparently following Num 25:1–5 see Levine, *Numbers 21–36*, 280.

Secondly, there are the instances of inner-biblical exegesis that combine the accounts of Baal Peor (vv. 1–5) and Phinehas’s zeal (vv. 6–19) together. To begin, even Num 25:18 combines the narratives of Baal Peor and Phinehas’s zeal—the phrase “in the day of the plague concerning the matter of Peor” combines the mention of Peor, which appears in vv. 1–5 but not in vv. 6–19 (except for in this phrase), with the mention of a plague, which appears in vv. 6–19 but not in vv. 1–5. Starting from Friedman’s attribution of v. 18 to P, this verse may reflect the conflating agenda of P’s author. Other references to these passages as a combined unit include Num 31:16 (“Peor” [cf. Num 25:1–5] with “plague,” “congregation” [cf. Num 25:6–19]) and Deut 4:3 (“Baal of Peor” [cf. Num 25:1–5] with an implied reference to a plague of the Lord [cf. Num 25:6–19])—the joint references in these instances suggest the combination of the Peor and Phinehas narratives no later than the final redaction of the Pentateuch. Non-pentateuchal references to the combined passages include Josh 22:17 (“Peor” [cf. Num 25:1–5] with “plague,” “congregation” [cf. Num 25:6–19]) and Ps 106:28–31 (“attached,” “Baal of Peor,” “ate sacrifices” [cf. Num 25:1–5] with “Phinehas,” “the plague was stayed” [cf. Num 25:6–19]). On the other hand, Hos 9:10 makes mention of Baal Peor but with no accompanying details from the Phinehas passage.

⁷⁷ That is to say, this thesis has thus identified the premier legal authority in P to be Aaron (or perhaps the leading Aaronide following Aaron’s death, which Phinehas is not in this account; see the above analyses of Exod 28:15–30; Lev 10:8–11) and/or Moses (see Num 15:32–36; other “oracular adjudication scenes”). In the response of Phinehas recorded in this passage, neither Moses or the chief Aaronide are consulted regarding the crime of Zimri and Cozbi.

⁷⁸ The instances of the oracular adjudication scenes in Num 15:32–36 and in Lev 24:10–23, both of which report the transmission of an oracle demanding the execution of the guilty party and the exercise of capital punishment through Moses as an oracular judicial authority, evoke the connection between Moses and the motif of execution in Exod 2:11–15 and Num 25:1–5.

⁷⁹ For the source attribution of this passage, see Friedman, *Bible with Sources Revealed*, 292–93; Baden, *Composition of the Pentateuch*, 286 n. 82; Budd, *Numbers*, 305.

end of P.⁸⁰ With the impending passing of Moses alluded to in the passage, Eleazar is elevated to a position complementary with that of Joshua, Moses's designated successor,⁸¹ who will ultimately depend on the priest for his access to the divine will and, as a result, his ultimate success as Israel's next leader.⁸²

The result of these passages in P, or rather the composite of each pericope's ideological thrust regarding judgment, presents the Aaronide caste as a locus of consolidated authority that increased over time, especially when Moses was no longer allowed to lead the Israelites. While this consolidation of power, prerogatives, and responsibilities was pluriform in nature, it likely included judicial control over Israel to a large extent, if not entirely so.

As the above summaries reflect, the three non-Deuteronomistic sources seem to reflect two different ideological models of the ancient Israelite judiciary. The first of these models, as depicted by relevant passages in both J and E, is a judiciary with a representative composition that makes no explicit attempt to integrate priests as such into its official structure. The second of these models, represented by connected data in P, is an adjudicative system where priests, narrowly defined as those of Aaronide descent, essentially hold exclusive legal authority in Israel in a variety of legal categories, especially those where their oracular abilities give them a position of elevated status.

⁸⁰ On the connection of Exod 28:30 to Num 27:21 through the Urim, see Stackert, *A Prophet Like Moses*, 170.

⁸¹ For a contrary view, see Stackert, *A Prophet Like Moses*, 173–74, where he agrees with Itamar Kislev's conclusions that the references to Eleazar in Num 27:19, 21 are "secondary additions meant to elevate the position of the priest vis-à-vis Joshua," thus leaving the original account in P with no mention of Eleazar or his oracular prerogative.

⁸² For all intents and purposes, Eleazar is the full successor of Aaron as the next presiding Aaronide priest; Aside from Aaron's status as the initial figure in his eponymous lineage, Eleazar has the same symbols and prerogatives of the priesthood that Aaron had, including the vestments of the presiding priest (cf. Num 20:26, 28) and presumably his cultic responsibilities as well. Joshua, on the other hand, is not the full successor of Moses by any means. The use of מְהוּדָד in Num 27:20 reflects a partitive notion, suggesting that Moses only imparted a portion of his "power" or "majesty" to Joshua. Joshua's partial succession of Moses is also affirmed by Num 27:21, which describes the dependence that Joshua will have on the priest for oracular guidance in his leadership of Israel. Given that P portrays Moses receiving oracles without the aid of a priest, this oracular directive to Joshua seems to limit the degree to which he succeeds Moses in ability. On this, see Budd, *Numbers*, 307; Levine, *Numbers 21–36*, 351.

משפט במקום אשר יבחר: ADJUDICATION AND PRIESTS
IN THE DEUTERONOMIST SOURCE

With brief treatments of the relevant pericopes in J, E, and P completed, this second analytical section of the thesis focuses on the adjudicative traditions of D. As the following analyses indicate, D makes frequent use of material from the other pentateuchal sources, both in unworked quotations and in ideologically conditioned paraphrases. Located entirely in the book of Deuteronomy, the initial composition of this source is critically dated by Friedman to the latter part of King Josiah's reign, approximately 622–609 BCE.⁸³ Although the different groups involved in the composition of D varied ideologically to a small degree, one diachronically consistent theme throughout the composition of this source is the centralization of cultic activity at a single Israelite sanctuary.⁸⁴ Through an analysis of five relevant passages—Deut 1:9–18, Deut 16:18–20, Deut 17:8–13, Deut 19:15–21, and Deut 21:1–9—this section aims to

⁸³ Friedman states, in one place, that the composition of Deuteronomy took place “around the year 622 B.C.” Friedman, *Who Wrote the Bible?*, 116. In another part of the same work, he places the creation of Deuteronomy in the context of the composition of the Deuteronomistic History, the first edition of which antedates the death of King Josiah. Friedman, *Who Wrote the Bible?*, 123, 146. Although there is supplemental material in D that postdates the Babylonian destruction of Judah in 586 BCE, none of the passages analyzed in this thesis are attributed to these late additions, at least according to Friedman's source attributions (see below). The Deuteronomic law code, the legal core of D, is likely an earlier corpus around which D, and in turn the Deuteronomistic History, was composed. Friedman connects the Deuteronomic law code to the priests of Shiloh and posits that the code “reflected the interests of the Shiloh priests at just about any time after the division of Israel and Judah.” Friedman, *Who Wrote the Bible?*, 123. Cf. Stackert, *A Prophet Like Moses*, 31–32, where he proposes the dating of D around 670 BCE based on its likely reuse of the Succession Treaty of Esarhaddon (672 BCE); and Runesson, *Origins of the Synagogue*, 245–52, where he argues for dating Deuteronomy as a whole—it is ambiguous whether or not his perspective is source-critical—to the early years of Persian-period Yehud.

⁸⁴ On this, see Richard D. Nelson, *Deuteronomy: A Commentary*, OTL (Louisville: Westminster John Knox, 2002), 146. For the ideological principles of the Deuteronomic law code (Deut 12–26) derived from the Shilonite priests, including provisions for Levites and limits on monarchic power, see Friedman, *Who Wrote the Bible?*, 122. For the views of the Deuteronomistic Historian, who emphasizes loyalty to the Israelite God, covenants, and the collected teachings of Moses in a single corpus, the Torah, see Friedman, *Who Wrote the Bible?*, 135.

understand how D envisioned the ancient Israelite judiciary and the involvement of priests within it.

Deuteronomy 1:9–18:

Deuteronomistic Reflections on the First Israelite Judiciary

The D passage of Deut 1:9–18 brings the treatment of the judiciary to the very beginning of this source and the canonical work it comprises.⁸⁵ As D's account regarding the necessity and creation of an expanded Israelite administration antedating the entrance of Canaan, Deut 1:9–18 has clear parallels with the account of Exod 18:13–27 in E. However, D's view of the early judiciary also varies from its use of E in important ways. By highlighting both the similarities and differences between the two accounts, Deut 1:9–18 can be understood to denote the existence of a judicial organization in D's vision of Israelite antiquity, but only by providing a sketch that must be compounded with further analyses on other adjudicative contexts in this pentateuchal source.

This passage fits within the greater literary context of Moses's review of the Israelites' activities, beginning with their departure from Horeb (cf. 1:6–8). Before Moses leads the people away from the mount (cf. 1:19), he determines that he is incapable of bearing the leadership of the people on his own (1:9). Moses continues his discourse by recognizing that the Israelites were indeed quite numerous, like unto the stars of the heavens in number (1:10). Moses follows with a petition of the Lord that the Israelites be multiplied even further (1:11). These matters aside, Moses returns to the initial issue at

⁸⁵ On the attribution of Deut 1:9–18 to D, see Friedman, *Bible with Sources Revealed*, 310. Friedman makes distinctions in his attributions of passages to D between association with an “original, Josianic edition of the Deuteronomistic history,” a “second, exilic edition,” and “a law code that takes up chapters 12–26.” Friedman, *Bible with Sources Revealed*, 5. Since all the passages analyzed in this section on D are attributed by Friedman to either the earlier edition of the source or to the law code, which he understands to have been integrated into the earlier edition of the source (see p. 330 n. on v. 1), attributions made to these various sections of the source are simplified in this thesis by encompassing them into the broader designation of D.

hand—how he will continue to bear the disputes of the people unaided (1:12).⁸⁶ Thus, Moses instructs the Israelites to select wise, understanding, and informed men for their tribes who, in turn, he will appoint as their chiefs (1:13). Moses reminds the people that they agreed with the proposition at the time (1:14).

Moses then apparently takes the wise and informed men selected by the people and sets these men over the people as chiefs, in a hierarchical structure with varying jurisdictional authorities over thousands, hundreds, fifties, and tens (1:15). These chiefs are also to be officers (שטרים) for the Israelite tribes as well (1:15).⁸⁷ Moses then gives a charge to the judges of the people, telling them to listen to the cases of their kinfolk and to adjudicate on civil cases righteously, regardless of whether disputes are between two Israelites or between an Israelite and his foreign guest (1:16). These judges are to avoid bias in their rulings; to hear out all cases, regardless of whether the incident is small or great; and to not be intimidated by any legal party (1:17). Regarding these directives, the judge is to remember that judgment belongs to God (1:17). When a case occurs that is too difficult for these judges to adjudicate, they are to bring it to Moses, who will hear it out (1:17). In conclusion, Moses reminds the people that it is by his rulings that the people ought to conduct themselves (1:18). This overview evokes the account of Moses, Jethro, and the establishment of the judiciary in E (Exod 18:13–27; see above). However, while D's reflection of the judiciary established at the mountain of the deity shares details with the comparable account in E, it also varies from it in significant ways.

⁸⁶ The use of ריב (“disputes”) here likely foreshadows the need for judicial intervention. See Duane L. Christensen, *Deuteronomy 1:1–21:9*, rev. ed., WBC 6A (Waco, TX: Word, 2001), 22; Jack R. Lundbom, *Deuteronomy: A Commentary* (Grand Rapids: Eerdmans, 2013), 172; Nelson, *Deuteronomy*, 19.

⁸⁷ An important variant for לשבטיכם in the MT here is the Greek equivalent of לשפטיכם (“for your judges”) in the LXX, an alternative reading based on only a difference of one letter in the Hebrew. On this, see Moshe Weinfeld, *Deuteronomy 1–11: A New Translation with Introduction and Commentary*, AB 5 (New York: Doubleday, 1991), 136.

Deuteronomy 1:9–18 and Exod 18:13–27 have many parallel elements.⁸⁸ These accounts in D and E recount the need for the expansion of the leadership structure on the dual basis of the Israelites’ number and Moses’s lack of support (cf. Deut 1:9–13; Exod 18:14, 18, 23).⁸⁹ Both seem to reflect a representative composition of the leadership structure (cf. Deut 1:13, 15; Exod 18:21, 25).⁹⁰ Both seem to connect tribal leaders, hierarchical offices, and judicial roles (cf. Deut 1:15–16; Exod 18:25–27).⁹¹ Both outline qualifications for prospective leaders (cf. Deut 1:13; Exod 18:21). Both speak of legal cases within a spectrum of difficulty and assign Moses the responsibility of solving the most difficult issues (cf. Deut 1:17; Exod 18:22, 26).⁹² The similarities between the two passages suggest that both treat the same topic, and thus that Deut 1:9–18 reveals D’s

⁸⁸ The account of the judiciary in Deut 1:9–18 is also dependent on the account of the establishment of the council of seventy elders in the E passages of Num 11. On this, see the discussion in Stackert, *A Prophet Like Moses*, 157–64, incl. 158 n. 65. On the portions of Num 11 attributed to E (vv. 11–12, 14–17, 24b–30), see Baden, *Composition of the Pentateuch*, 90–102; Stackert, *A Prophet Like Moses*, 91–92; cf. Friedman, *Bible with Sources Revealed*, 258–60, where he attributes the entire chapter to E. In any case, seeing that the establishment of the elders is not connected directly to adjudication as much as to general administration and leadership, the passage is not included in this thesis. On the distinction of the E narrative of the elders from the adjudicative accounts paralleled in Exod 18:13–27 and Deut 1:9–18, see Weinfeld, “Judge and Officer,” 65 n. 1.

⁸⁹ See Weinfeld, *Deuteronomy 1–11*, 137; Lundbom, *Deuteronomy*, 171–72; cf. Stackert, *A Prophet Like Moses*, 158–59, where he connects the burden of Moses described in Deut 1:9, 12 with similar material in the account of the elders in Num 11:14, 17. While comparanda for Deut 1’s descriptions of Moses’s burden in Num 11 are more tightly collated, many of these same elements can also be found in Exod 18, albeit dispersed: לֹא, *qal* of יָבֹלֵד, לִדְבָר with pronominal suffix (v. 18); *qal* of נִשָּׂא (v. 22).

⁹⁰ See Weinfeld, *Deuteronomy 1–11*, 135. Here, Weinfeld comments that לְשִׁבְטֵיכֶם in Deut 1:13 means “one per tribe,” connecting this with אִישׁ אֶחָד לְשִׁבְטֵיכֶם in Deut 1:23. However, the numerical reference to “one” does not appear in the current passage, and the hierarchical administration like that described in v. 15 could hardly have been filled by only twelve people. These details aside, Weinfeld’s position does point toward tribal representation among those selected. See also Lundbom, *Deuteronomy*, 173.

⁹¹ While the judges in Deut 1:16 may be distinct from the chiefs in v. 15, the conflation of these roles in the E passage may imply a connection between the two roles here, if not pointing to a similar conflation. On this, see Nelson, *Deuteronomy*, 20. The textual variant in the LXX that “for your tribes” as “for your judges” (see above) supports this connection/conflation. For others who see the passage as entirely concerned with the appointment of judges, see Weinfeld, *Deuteronomy 1–11*, 138; Lundbom, *Deuteronomy*, 165.

⁹² See S. R. Driver, *A Critical and Exegetical Commentary on Deuteronomy*, ICC (Edinburgh: T&T Clark, 1902), 19; Weinfeld, *Deuteronomy 1–11*, 138; Lundbom, *Deuteronomy*, 175; de Vaux, *Ancient Israel*, 152; Stackert, *A Prophet Like Moses*, 158–60. Some qualification can be placed upon Moses’s activity in the E narrative, where he is instructed by Jethro to take cases to God (Exod 18:19). Although not explicitly addressed here, the passage in D may implicitly understand the difficult cases resolved by Moses to have undergone the process explicated in the supporting E material. See Weinfeld, *Deuteronomy and the Deuteronomistic School*, 233.

vision of the ancient Israelite judiciary. However, some differences between the two accounts introduce nuances that create a distinction between the two sources' perception of the judiciary.

The differences between the two accounts of the judiciary are several.⁹³ In the first place, the two sources disagree on when the establishment of the judiciary occurred. The account in E occurs at the mountain of the deity (i.e. Horeb) but before the major events that occur there in that source.⁹⁴ Deut 1:7–9, 19, on the other hand, suggest that the innovative expansion of Israel's leadership took place at the final stages of the encampment at Horeb.⁹⁵ The figure responsible for the innovations of leadership is another difference between the two accounts—in E, Jethro is clearly the mastermind behind the developments (cf. Exod 18:17–23), while in D the changes in the leadership seem to originate with Moses (cf. Deut 1:12–13).⁹⁶ Another distinction, perhaps with more significance than those listed above, regards who appoints those tasked to fill the new and expanded Israelite administration; in E, Jethro instructs Moses to select the leaders (cf. Exod 18:21, 24–25), while, in a similar fashion, D depicts Moses instructing the Israelites to choose the leaders (cf. Deut 1:1, 13–14).⁹⁷ In Exod 18:21, prerequisite

⁹³ For treatments on the differences between these two passages, see the enumerated list by Weinfeld, *Deuteronomy 1–11*, 139–40; Nelson, *Deuteronomy*, 20.

⁹⁴ Exod 18:5 reports that Moses, and apparently the rest of the Israelites as well, was already “encamped there, at the mountain of God” by the time of the events detailed in vv. 13–27. See also the closing clause of Exod 19:2. The following portions of the E narrative contained in subsequent chapters describe Moses's receipt of the Covenant Code (Exod 21–23) and his venture up the mountain (Exod 24:9–15). On the source attribution of these passages to E, see Friedman, *Bible with Sources Revealed*, 154–61. For scholars who see the E judiciary as emerging before the encampment at the mountain of the deity, see Weinfeld, *Deuteronomy 1–11*, 137 (whose position probably emerges from a reading that sees Exod 18:13–27 continuous with Exod 19:1–2); Lundbom, *Deuteronomy*, 171. For an example of situating Exod 18 at the mountain of the deity, see Nelson, *Deuteronomy*, 19.

⁹⁵ On this distinction in chronology, see Weinfeld, *Deuteronomy 1–11*, 137; Stackert, *A Prophet Like Moses*, 161. Indeed, Stackert understands Deut 1:9–18 as primarily dependent on the account of the elders in Num 11 because the chronological situation of the judiciary's establishment in Deut 1 does not align with the timing of the judiciary's establishment in Exod 18. In doing so, he places greater weight on the chronological details of narrative events than on what takes place during the narratives themselves.

⁹⁶ On this, see Weinfeld, *Deuteronomy and the Deuteronomistic School*, 244; Stackert, *A Prophet Like Moses*, 161.

⁹⁷ See Lundbom, *Deuteronomy*, 172; Nelson, *Deuteronomy*, 19–20.

characteristics for prospective leaders are provided, namely those of an ethical-religious nature, while the parallel requirements for leaders in Deut 1:13 are all of a sapiential nature.⁹⁸ Lastly, Deut 1:16–17 records Moses giving ethical prescriptions to judges, whereas there is no comparable instruction given to the leaders in Exod 18:13–27.⁹⁹ For the purposes of the current analysis, none of these differences negate the data in Deut 1:9–18 that support reading the passage as dealing with D’s judiciary of ancient Israel.

The details in Deut 1:9–18 do imply, though, that the passage depicts an expansion of Israelite leadership comparable to, but not meticulously following, E’s account of Exod 18:13–27. Both seem to point to a representative judiciary, with judges selected from across the entirety of the multi-tribal collective. D’s account possibly elevates Moses relative to Exod 18, given that Moses is the originator of the expansion and that there is no figure comparable to Jethro from whom Moses receives counsel. On the other hand, Moses does not wield authority over the Israelite community by directly selecting the new leaders himself, but rather delegates these decisions to the people. Thus, in summary, it appears that Deut 1:9–18 makes clear reference to a judiciary in the wilderness and shows awareness of the comparable account in Exod 18:13–27. Only through the additional analysis of passages in D below, however, can the nuances that distinguish Deut 1:9–18 from its parallel in E be determined as solely isolated to this passage or as typical of D’s vision of the judiciary.¹⁰⁰

⁹⁸ On the distinctions between the two sets of qualifications, see Christensen, *Deuteronomy 1:1–21:9*, 22; Lundbom, *Deuteronomy*, 172–73; Weinfeld, *Deuteronomy and the Deuteronomistic School*, 244–45.

⁹⁹ A comparable ethic of judgment is found in the P passage of Lev 19:15–16. For the source attribution of that passage, see Friedman, *Bible with Sources Revealed*, 221. The comparison is more conceptual than lexical, with widely varying vocabulary between the two passages. In addition, the directives in Lev 19 are addressed to the congregation at large (Lev 19:1–2), not to any specific body of leaders.

¹⁰⁰ Weinfeld, in his commentary on the passage, notes that the deviations in Deut 1:9–18 from earlier source materials are deliberate, intending to “make them conform to his [i.e., the author of Deuteronomy] own views.” See Weinfeld, *Deuteronomy 1–11*, 140.

Deuteronomy 16:18–20:

Instructions for the Establishment of a Judiciary in Canaan

In Deut 12–26, the corpus of legal material in D with explicit applicability for the Israelites once they arrive in the “God-given land” (cf. Deut 11:31–12:1),¹⁰¹ Deut 16:18–20 is the first passage dealing with the judiciary.¹⁰² Within this broad legal corpus, this passage also marks the beginning of another distinct collection of material that deals with the office and duties of various officials, including judges.¹⁰³ Although dealing with different temporal and geographic locations than those in Deut 1:9–18,¹⁰⁴ Deut 16:18–20 shares much with this preceding locus of juridical details.¹⁰⁵ Of these similarities, the most important details toward understanding D’s vision of adjudication are the involvement of the people in the selection and appointment of these figures, the representative nature of the judiciary as it regards the multi-tribal collective of Israel, and the concern for ethical judgment.

By way of overview, the unit begins with the people being told to appoint judges and officers (שפטים ושטרִים) for their tribal communities throughout all their municipal settlements (16:18). These judges, and possibly the officers as well, are to judge the

¹⁰¹ On this unit, termed “the code of special laws” (Driver) or “the Deuteronomistic Code” (Lundbom), see Driver, *Deuteronomy*, 135–36 (text and outline); Lundbom, *Deuteronomy*, 416–22 (text and outline); Christensen, *Deuteronomy 1:1–21:9*, 353 (text and outline). For the source attribution of Deut 12:1–26:15, see Friedman, *Bible with Sources Revealed*, 330–49.

¹⁰² For the attribution of Deut 16:18–20 to D, see Friedman, *Bible with Sources Revealed*, 336; Stackert, *A Prophet Like Moses*, 162–63.

¹⁰³ On this subunit, termed an “ideal national constitution” (Weinfeld) or a “sort of constitutional proposal” (Nelson), see Driver, *Deuteronomy*, 135, 199; Weinfeld, *Deuteronomy and the Deuteronomistic School*, 168; Nelson, *Deuteronomy*, 213; Lundbom, *Deuteronomy*, 519; Levinson, *Deuteronomy and the Hermeneutics*, 98–99. Unlike the other legal codes of the Pentateuch (i.e., E’s Covenant Code [Exod 21–23] and P’s Holiness Code [Lev 17–26]), the Deuteronomistic law code, in part through passages like Deut 16:18–20, places references to systems of justice and mentions of judicial officials together. On this matter, see Driver, *Deuteronomy*, 199. De Vaux agrees with Driver and also notes that these judges were “professional.” De Vaux, *Ancient Israel*, 153. On the specialized nature of these judges, as opposed to the patriarchal-societal tradition of assigning adjudicative roles to experienced local elders, see also Driver, *Deuteronomy*, 199–200; Lundbom, *Deuteronomy*, 520.

¹⁰⁴ On the specific application of this passage’s directive to the post-settlement period in Canaan and the relation of this passage to Deut 1:9–18, see Lundbom, *Deuteronomy*, 520; Stackert, *A Prophet Like Moses*, 162–63.

¹⁰⁵ However, also compare לא־תטה משפט (Deut 16:18) with לא־תטה משפט (Exod 23:6 [E]).

people righteously (16:18). The following verse consists of directives in the second person—“you will not set aside justice;” “you will be not be biased;” and “you will not receive a bribe, for the bribe renders blind the eyes of the wise and obfuscates the cases of the righteous” (16:19).¹⁰⁶ The passage closes with an ethical prescription connecting the pursuit of righteousness with the continued possession of the God-given land (16:20). As this overview depicts, the passage clearly calls for the establishment of a judiciary, namely one with connections to the judiciary described in Deut 1:9–18.

One such connection between the current passage and Deut 1:9–18 is the depiction of Moses telling the people to select their own judges. In the context of historical review, Deut 1:13 describes Moses reminding the Israelites that he previously instructed them to select wise men whom he subsequently appointed as their leaders.¹⁰⁷ What Moses recounts as a historical event in Deut 1:13, he gives as a present command in Deut 16:18, telling them to appoint judges in their “gates,” a possible synecdoche for their settlements.¹⁰⁸ This localizing of the judiciary is important to note, especially in light of the motif of centralization prevalent in D.¹⁰⁹ The language of appointment in this verse, from the root גָּתַן, with silence to the contrary, suggests the incorporation of the selection process as well. Moses is not to oversee the appointment himself, nor is any other figure of authority.¹¹⁰ Thus, the language of this passage, with the corroboration of

¹⁰⁶ In the LXX, the directives of v. 19 are all in the third plural, presumably referring to שֹׁפְטִים and/or שְׁטָרִים (v. 18).

¹⁰⁷ As mentioned in the analysis of Deut 1:9–18 above, these leaders (רָאשִׁים), given the greater context of the passage and the allusions to Exod 18:13–27, are likely judicial figures, even if not expressly termed as such.

¹⁰⁸ See Lundbom, *Deuteronomy*, 521. The LXX has “in your cities” for MT שְׁעָרֶיךָ. Alternatively (or simultaneously), the reference to gates may be literal, seeing that gates and the public areas connected with them are associated with adjudication in the Hebrew Bible. See Nelson, *Deuteronomy*, 217; Lundbom, *Deuteronomy*, 521. Levinson also mentions that the establishment of a professional judiciary throughout the gates of Israel in this passage displaces the elders who hold adjudicative authority there according to other passages. Levinson, *Deuteronomy and the Hermeneutics*, 124–26. Despite my efforts, I was unable to find Levinson’s views on the joint activities of elders and judges in Deut 21:2 in his monograph.

¹⁰⁹ On the localization of the judiciary in this passage, see Driver, *Deuteronomy*, 200. The issues of localization and centralization bears on the judiciary throughout D. On this, see Levinson, *Deuteronomy and the Hermeneutics*, 131, and in the analyses below.

¹¹⁰ On this, see Nelson, *Deuteronomy*, 217.

Deut 1:13, underscores the possibility that D envisioned a democratized involvement in the appointment of the judiciary.¹¹¹

Likewise, the current passage supports the notion, also found in Deut 1:9–18, that the judiciary consisted of individuals representative of the tribal plurality of the Israelites. Deut 1:13 reports that the people were to select prospective leaders “for their tribes” (לשבטיכם). This language may imply that such leaders were selected from each of the tribes, or that each tribe selected its own respective judicial heads.¹¹² Deuteronomy 16:18 depicts Moses instructing the people to appoint judges and officers once they settle in the territories given to the multi-tribal collective by the Lord.¹¹³ D refers to the eventual conquest and/or inhabitation of Canaan in both unambiguous language (cf. Deut 7:1–6)¹¹⁴ and in periphrastic phraseology, such as by the stock expression “the land which the Lord your God gives to you” (cf. Deut 16:20).¹¹⁵ These mentions, together with references to the Transjordanian tribal inheritances in Deut 3:12–17 and the division of Canaan in the book of Joshua (cf. chs. 13–21), allude to the geographic division of Canaan on the basis of tribal affiliation. It follows, then, that if the Israelites are to establish judges in all their gates, such appointments would likely reflect the distribution of the tribes across the land. Thus, Deut 16:18 seems to support the notion of a representative judiciary also present in Deut 1:9–18 and thus also reflected in E.

¹¹¹ On this democratization, see Levinson, *Deuteronomy and the Hermeneutics*, 127.

¹¹² See Lundbom, *Deuteronomy*, 521. Alternatively, Christensen posits the possibility that such judges were selected from among the local Levites. Christensen, *Deuteronomy 1:1–21:9*, 363.

¹¹³ Weinfeld situates this passage in a sociohistorical context where rural courts coterminous with sites of worship were abolished in a centralizing reform and where judges were appointed to fill the “judicial vacuum.” Weinfeld, *Deuteronomy and the Deuteronomistic School*, 234. While direct engagement with the social context behind pentateuchal sources lies beyond the scope of this thesis, Weinfeld’s position raises interesting implications for the connection between judgment and the ritual officiants who operated at these loci of ritual and adjudication. In support of Weinfeld here, see also Levinson, *Deuteronomy and the Hermeneutics*, 117. Nelson concludes that “kings and priests are downgraded in favor of judges and prophets” in the constitutional unit of Deut 16:18–18:22. He follows: “The threat of monolithic tyranny inherent in centralization is anticipated and countered by retaining local, citizen-based jurisprudence.” Nelson, *Deuteronomy*, 214.

¹¹⁴ On the source attribution of Deut 7:1–6, see Friedman, *Bible with Sources Revealed*, 322.

¹¹⁵ On this expression, see Weinfeld, *Deuteronomy and the Deuteronomistic School*, 341.

The final point of comparative analysis here between Deut 16:18–20 and Deut 1:9–18 is their similarities in ethical prescriptions. In Deut 18:19, a directive is given which, rendered literally, states “you will not recognize faces” (לֹא תִכִּיר פָּנִים). The same language is found in Deut 1:17, albeit with a plural subject (לֹא-תִכִּירוּ פָּנִים).¹¹⁶ Deuteronomy 1:16–17 depicts Moses giving explicit instructions to judges, quite possibly the leaders selected by the people and appointed by Moses in the preceding verses (cf. Deut 1:13–15). The audience of the directives in Deut 16:19, however, is more ambiguous. It is possible, however, that the directives are addressed to the judges from the preceding verse.¹¹⁷ Both the LXX variant of the MT here and this verse’s connection to Deut 1:16–17, where the leaders are charged with directives by Moses, support this understanding.

The prescriptive parts of both passages also share the theme of wisdom. In addition to the abovementioned dictum, Deut 16:19 also contains an additional proscription: “you will not take a bribe.” The basis for this prohibition follows: “for the bribe blinds the eyes of the wise and obfuscates the cases of the righteous.”¹¹⁸ In part, then, the ban of bribery in what seems to be an adjudicative context aims to prevent any force from interfering with the possessed qualities of the wise. The mention of the “wise” (חֲכָמִים) here is a possible reference to the figures selected in Deut 1:13. There, Moses tells the people to select “wise, understanding, and informed men” (אֲנָשִׁים חֲכָמִים וְנִבְנִים)

¹¹⁶ Driver notes that the principle behind this directive can also be found in Exod 23:3 (E) and Lev 19:15 (P). Driver, *Deuteronomy*, 201. Weinfeld notes that the only other places where the collation of the roots נָכַר and פָּנָה occur outside of these two verses are in Proverbs (24:23; 28:81). In light of Proverbs belonging to a tradition of sapiential literature, the shared phraseology strengthens the Deuteronomistic emphasis on wisdom. Weinfeld, *Deuteronomy and the Deuteronomistic School*, 245. See also Lundbom, *Deuteronomy*, 523.

¹¹⁷ Conversely, for a view seeing the directives addressed to the collective community, see Nelson, *Deuteronomy*, 218. Lundbom strikes a centrist (or ambivalent) position: “These instructions [i.e., all of v. 19] are addressed to the people as a whole, who can then repeat them to judicial appointees at the time of their installation.” Lundbom, *Deuteronomy*, 522.

¹¹⁸ The fact that the only difference between this passage and its parallel in Exod 23:8 is its revision in favor of sapiential themes strengthens the emphasis on this motif here. See Driver, *Deuteronomy*, 201; Weinfeld, *Deuteronomy and the Deuteronomistic School*, 245, 273, 279; Nelson, *Deuteronomy*, 218; Lundbom, *Deuteronomy*, 524.

וידעים) as their leaders. As discussed above, these sapiential leaders are likely judicial figures, given the contextual proximity of this verse with vv. 16–17, and it may very well be these judicial leaders who are mentioned in the proscription in Deut 16:19. Although the mention of wisdom in Deut 1:13 does not lie in the unit of directives given by Moses to the judges mentioned in Deut 1:16–17, the very fact that Moses requests the people to select individuals of a sapiential nature as their leaders shows his concern for such qualities.¹¹⁹

Both passages also deal with the theme of righteousness. The Hebrew root for righteousness (צדק) appears in each verse of Deut 16:18–20. The judges and officers appointed by the people are to “judge the people with righteous judgment” (Deut 16:18, וּשְׁפֹטוּ אֶת-הָעָם מִשְׁפָּט-צֶדֶק).¹²⁰ As mentioned above, bribes are not to be taken, since they not only interfere with the judgment of the wise, but they also “obfuscate the cases of the righteous” (Deut 16:19, וַיְסַלֵּף דְּבַר־יָדִיקָם). Deuteronomy 16:20 states that the people (or alternatively the judges and officers, v. 18) must pursue righteousness (צֶדֶק צֶדֶק תִּרְדֹּף)¹²¹ if they are to live and to inherit the God-given land.¹²² In his directives in Deut 1:16–17, Moses instructs the judges to “judge righteously” (v. 16, וּשְׁפֹטְתֶם צֶדֶק). In short, Deut

¹¹⁹ Such an emphasis on wisdom in D may be concomitant with its relatively secularized outlook relative to its ideological predecessors. On this, see Weinfeld, *Deuteronomy and the Deuteronomistic School*, 188. Levinson cogently argues that the legal innovations in Deuteronomy take on a dialectical nature where all cultic activity becomes centralized and all local centers are stripped of cultic activity through a program of secularization. An emphasis on requisite sapiential qualities for Deuteronomistic judges rather than ethical or moral qualities (cf. Exod 18:21), per his argument, could anticipate the limiting of local adjudication to empirically and rationally tried cases, as opposed to the suprarational means that could be employed in adjudication at the cultic center only. Levinson, *Deuteronomy and the Hermeneutics*, 130–31.

¹²⁰ Driver understands such “righteous judgment” as the “primary and paramount duty” of the judges. Driver, *Deuteronomy*, 200.

¹²¹ The doubling of צֶדֶק here indicates emphasis, and the emphasis on righteousness here is particularly important as an aim of adjudication. See Driver, *Deuteronomy*, 201; Nelson, *Deuteronomy*, 218; Lundbom, *Deuteronomy*, 525.

¹²² On the connection between justice and the preservation of life, see Weinfeld, *Deuteronomy and the Deuteronomistic School*, 273, 307. On the atypical use of יִרְשׁ אֶרֶץ here, relative to its more common connotations of conquering and dispossession in Deuteronomy, see Weinfeld, *Deuteronomy and the Deuteronomistic School*, 315. Nelson incorrectly posits the contrary on this matter, failing to see that the application of the Deuteronomistic law code is to commence after the hypothesized conquest. Nelson, *Deuteronomy*, 218.

16:18–20 reflects in large part the ethical prescriptions aimed toward judicial figures in Deut 1:9–18.

Deuteronomy 16:18–20 is the first passage in Deuteronomy to go beyond the material of Deut 1:9–18 as it pertains adjudication by providing direction on the selection and operations of the judiciary once the Israelites arrive at their long-awaited destination in the God-given land. Despite addressing the judiciary in a later time and place, the details in Deut 16:18–20 hold much in common with Deut 1:9–18. Both seem to point to a democratization of power in the selection of judges. Both also possibly point to a tribally representative makeup of the judiciary, with adjudicators from each of the Israelite tribes—but it is here first that the judiciary is described as geographically dispersed. Lastly, both units share similar ethical prescriptions, with particular emphases on wisdom and righteousness. Although two literary units do not an ideology make, the similarities between these two passages do much in providing an initial sketch of D’s vision of the Israelite judiciary, which, thus far, seems to resemble the representative vision of E’s judicial model with no explicit integration of priests.

Deuteronomy 17:8–13:

Priests as Judges in the Deuteronomistic High Court

Deuteronomy 17:8–13 is the next passage of importance in D with regards to adjudication and priests.¹²³ Of all the passages analyzed across the pentateuchal sources in this thesis so far, this one is the most explicit about the judicial role of priests. This passage’s express locating of priests in a judicial context may indicate D’s integration of P’s exclusively sacerdotal judicial model, if D’s awareness of P can be posited. Deut 17:8–13 also significantly contributes to D’s vision of the judiciary and legal systems

¹²³ On the source attribution of Deut 17:8–13, see Friedman, *Bible with Sources Revealed*, 337; Stackert, *A Prophet Like Moses*, 162–63.

through its depiction of legal categorization, the eminence of the high court described here both in terms of legal authority and centralization, the intersection of instruction and judgment as duties of priests, and the connection of priestly adjudication with capital punishment.

The passage begins by stating that if a certain legal case is too difficult to define as one type of crime as opposed to another, then a representative of the case will arise and go up to the “God-chosen place” (17:8).¹²⁴ Once there, said representative will come to the Levitical priests and to the judge who is there at that time and will inquire of them regarding the case until they communicate a ruling on the matter (17:9). The recipient of the ruling at the God-chosen place must act in accordance with the ruling, observing to do all that the high court instructs (17:10). Whether a taught instruction or a pronounced judgment, the recipient must do it—the recipient is prohibited from deviating at all from the uttered ruling (17:11). Those who decide to act according to their own presumption and to disregard either the priest, stationed there to minister to the Lord, or the judge will be put to death (17:12). Through these standards, apparently, wickedness will be removed from Israel (17:12) and those who hear the fatal fate of these insubordinate individuals will become afraid and will not act arrogantly any longer (17:13). As this overview indicates, Deut 17:8–13 has many significant details regarding the judicial system of ancient Israel according to D.

The most important detail of this passage is that, in a manner perhaps reflective of P, it depicts priests operating in a judicial role. Deuteronomy 17:9 reads literally: “And you will come to the priests, the Levites, and to the judge who is such in those days, and you will inquire, and they will tell you the matter of judgment.” Additionally, Deut 17:12 states that those who do not obey the priest (or the judge) are to be executed, both to root

¹²⁴ Although a historical-critical reading of this “God-chosen place,” in light of D’s provenance, would likely understand it to denote Jerusalem, if not its temple precinct specifically, introducing such an understanding in the forward-looking literary context of Deuteronomy would be anachronistic. Thus this literary expression will be utilized throughout the rest of this analysis.

out wickedness from Israel and to make an example before the people of those who defy such rulings (cf. v. 13). For the purposes of this thesis, it is significant that these verses represent the first text to explicitly assign a judicial role to priests, notwithstanding P's probable conception of priests as judicial functionaries. These priests do not appear to have exclusive control of the juridical assembly mentioned in this passage; Deuteronomy 17:9 depicts priests working in tandem with a judge, likely of the appointed professional sort described in Deut 16:18–20 (see above).¹²⁵ Nevertheless, in light of the above analyses considering potential connections between priestly figures and adjudicative functions, this passage in D is the first to cast priests as legal officiants in no uncertain

¹²⁵ On the heterogeneous composition of the court described here, see Driver, *Deuteronomy*, 206–7. Driver also correctly points out that the text gives no instruction on the creation of this “supreme tribunal,” that “it is represented as already existing” (cf. p. 207). With no such provision, the presence of priests in the God-chosen place is likely accounted for in the statutes regarding cultic centralization, whereas the judge mentioned in vv. 9, 12 may be the adjudicator anticipated to be appointed in that place per the instructions of Deut 16:18. Although the identification of the judge in this verse as connected with the provision for judicial appointments in Deut 16:18–20 is possible, the conclusion that this judge is not a priest (cf. Driver, *Deuteronomy*, 208) is tendentious. If the judges in Deut 1 and Deut 16 are to be appointed from across the tribes of Israel, then certainly there would have been some of Levite or Aaronide stock. The way in which the appointment of a priest as a judge creates a doubling of roles is not unfounded in D either, seeing that tribal leaders were designated with additional judicial responsibilities, at least according to the implicit context of Deut 1:9–18. If the judge mentioned in Deut 17:9 was a priest, distinguished from the other Levitical priests by his appointed judicial title, then this may also explain part of v. 12, where singular mentions of a priest and a judge are located. The phrase “or to the judge” (או אל־השפט) may function as an appositive qualifying the sole priest mentioned here.

In partial agreement with this understanding is Christensen, who understands the judge as not necessarily being a layperson in this context, since the judge is at the cultic center, which he understands as one of the designated Levitical cities. Christensen, *Deuteronomy 1:1–21:9*, 375.

Alternative proposals include Driver's grand tribunal comprised of priests and lay judges, each headed by a single “president” and which may have divided cases according to their nature (Driver, *Deuteronomy*, 209); Weinfeld's position, which essentially agrees with Driver's, but with no mention of “presidents” (Weinfeld, *Deuteronomy and the Deuteronomistic School*, 235); and Nelson's “civil and priestly mix that gives the central courts a double function” (Nelson, *Deuteronomy*, 221).

terms.¹²⁶ Aside from this most important detail and given the scope of this thesis, this passage abounds with other significant issues regarding D's vision of the ancient Israelite legal system.

The first issue, located entirely in v. 8, is D's conceptualization of legal categories. Deuteronomy 17:8 states: "If a case is too difficult for you, namely the ruling between one bloodshed and another, between one claim and another, and between one blow and another—cases of dispute in your gates—then you will arise and go up to the place that the Lord your God will choose." The sense of this verse depicts legal difficulty not in determining the guilt of an accused party, or the punishment to be dispensed upon a condemned individual, but rather the categorical distinctions between different crimes.¹²⁷ Such a reading would understand the terms "bloodshed" (דם), "claim" (דִּין), and "blow" (נֶגַע) to each represent a different category of criminal behavior on one

¹²⁶ Driver interjects into his commentary on this passage a concise excursus on the legal expertise of priests, attributing it to a "hereditary knowledge of civil and criminal law" transmitted through generations in a manner duplicable by neither local elders nor local judges. Driver, *Deuteronomy*, 207; see also de Vaux, *Ancient Israel*, 154–55; Lundbom, *Deuteronomy*, 535. With D's vision of the centralization of the cult and the abolishment of local shrines, such hereditary priestly legal expertise would have been consolidated in the God-chosen place, thus necessitating that this place become the center of justice as well. Weinfeld comes to a similar conclusion. Weinfeld, *Deuteronomy and the Deuteronomistic School*, 235–36. Conversely, Nelson places the priests in this passage at the head of "ritual justice" and the use of means such as "oaths, ordeals, lots, and oracles" to determine cases where witnesses and/or evidence are insufficient or lacking, while locating "special legal expertise" with the lay judge mentioned in this passage. Nelson, *Deuteronomy*, 215, 221. Nelson's position, however, ignores the secularization of legal affairs in D relative to other pentateuchal sources and their legal corpora (cf. Weinfeld, *Deuteronomy and the Deuteronomistic School*, 233; Lundbom, *Deuteronomy*, 534).

¹²⁷ See Driver, *Deuteronomy*, 207. Nelson takes the issues in Deut 17:8 of a legal matter being "too wonderful" (פלא מִמֶּךָ) and of distinctions between crimes (בין דם לדם, etc.) and separates these into two types of legal difficulties. On the other hand, the lack of a conjunction between these elements in v. 8 may signify their connection, as indicated in the translation provided above. Christensen understands the issue requiring appeal to the high court here as mere legal difficulty, namely with issues indicated by the terms דם, דִּין, and נֶגַע, and not as difficulties in distinguishing between them. Christensen, *Deuteronomy 1:1–21:9*, 374. Also see Levinson, *Deuteronomy and the Hermeneutics*, 109, 124, where he argues that the presence of a high court that deals with indeterminable cases is incidental to the Deuteronomist author(s) program of centralizing cultic activity and concomitantly secularizing local cultic centers. Levinson's argument implies that indeterminable cases were solved through suprarational means, means which were considered sufficiently cultic to be addressed by D's centralizing reforms. Thus, his position sees the determining factor of where a case is adjudicated based on whether or not there is sufficient empirical evidence upon which said case can be tried without needing to appeal to suprarational means.

taxonomic level, with each consisting of further subcategories of specific crimes.¹²⁸ An anachronistic but helpful example for understanding, say, “between one bloodshed and another” would be the inclusive category of homicide, with distinctive subtypes varying from premeditated murder to unintentional manslaughter.¹²⁹ A paraphrase of the verse could read, “If the compiled evidence of a criminal act does not clearly distinguish it as a specific type of crime, then you will arise...” The taxonomy of criminal acts implied by this verse seems to point to a corpus of casuistic laws, since in most instances, there is insufficient precision and diversity in apodictic laws to create the juridical difficulties noted here.¹³⁰ Thus, this verse possibly depicts a taxonomic casuistic legislation known by adjudicators throughout the land, at least in the legal ideology of D. The text, however, takes these categories for granted and focuses more particularly on the difficulty in determining the specific wrong. This raises the following issues—the process of appeals and legal centralization.¹³¹

Following the difficulties in the distinction between crimes and travel to the God-chosen place raised in v. 8, Deut 17:9 fills out the rest of the details regarding the appeals

¹²⁸ See Nelson, *Deuteronomy*, 221, where he calls these “case definitions.” See also Lundbom, *Deuteronomy*, 533–34, where he summarizes the findings of both pre-modern exegetes and modern scholars regarding what these Hebrew technical terms refer to. Levinson understands the distinction that exist in each “...ל...בִּי” clause as reflecting “whether a particular case belongs in the category of a culpable or nonculpable offense.” Levinson, *Deuteronomy and the Hermeneutics*, 128.

¹²⁹ Interestingly, the Deuteronomic law code (cf. Deut 19:1–13) notes the distinction between these two acts and prescribes different consequences for each. See Driver, *Deuteronomy*, 207, where he also mentions the distinction between murder and manslaughter along with additional examples of potentially difficult legal determinations. Also see Levinson, *Deuteronomy and the Hermeneutics*, 128, where he adds that this differentiation between murder and manslaughter is also found in the Covenant Code and in P.

¹³⁰ For example, in the Deuteronomic Decalogue, killing is proscribed (Deut 5:17). While the semantic range of רָצַח could provide some limits on its meaning, the specific use of the term here, without the surrounding context frequently found in casuistic legal passages, leaves its precise meaning in this context, and thus the range of actions the command proscribes, ambiguous.

¹³¹ In this analysis, the use of the term “appeal” is used to reflect the relationship of and interaction between local judges and the high court implied by the language of v. 9; the term “referral” could just as well be used. Any depiction of legal parties initiating a challenge to a legal ruling also connected to the term’s typical usage is not suggested here. On this distinction, see Nelson, *Deuteronomy*, 221; Levinson, *Deuteronomy and the Hermeneutics*, 127–28.

process. At this site of cultic centralization (cf. Deut 12:5, 11, 21),¹³² Levitical priests and a judge comprise a court where others come to inquire and receive rulings regarding legal difficulties such as those described in v. 8.¹³³ Although the three passages use different language, Deut 17:8–9 shares with parts of Exod 18:13–27 and Deut 1:9–18 the conceptual theme of appealing to a higher juridical authority in the event of legal difficulties.¹³⁴ Exod 18:22, 26 uses גדל, קשה, and קטן to describe various levels of adjudicative difficulty, while Deut 1:17 uses קשה. Deut 17:8, on the other hand, uses the root פלא, unattested in these earlier judicial passages. These differences in terminology, however, do not conceal the shared conceptual issue of difficulties in legal decisions.

In both Exod 18:22, 26 and Deut 1:17, difficult legal issues are to be brought by judicial figures apparently dispersed throughout Israel's tribes to Moses for resolution. Since these passages take for granted the unsettled and traveling status of the Israelites, there is no reference to geographic centralization of judgment. Rather, in both passages, Moses is the central judicial authority to whom lesser judges are to bring complex cases.¹³⁵ The only possible exception to this would be the possible cultic element of

¹³² Christensen interestingly places the high court of Levitical priests and the judge at “one of the Levitical cities.” Christensen, *Deuteronomy 1:1–21:9*, 375.

¹³³ The intended audience in this passage is ambiguous throughout. The addressees in vv. 8–9 seem to be judicial figures, since it is in the event of legal difficulties during cases they would have primary responsibility for that the need for appeal arises. See Driver, *Deuteronomy*, 208. De Vaux sees these local judicial figures in need of the high court's legal assistance to consist of both lay judges and judicial elders. De Vaux, *Ancient Israel*, 153. In vv. 10–13, however, the context seems to point to the legal parties, since the focus is on compliance with the ruling given by this high court; see Lundbom, *Deuteronomy*, 536. Levinson uses historical comparanda from Mesopotamian law and elsewhere in Deuteronomy (e.g., Deut 19:17) to argue that it is the litigants who must come to the court. Levinson, *Deuteronomy and the Hermeneutics*, 129. Understanding an appealing judge as the addressee of vv. 10–13 would be difficult, seeing that they came to the high court for a resolution of the case they were officiating in the first place, and would thus have no reason to challenge the final ruling. Certain legal parties in a given case, however, would have much to lose in the event that the official determination of the high court did not fall in their favor—thus the directives in vv. 10–11 and the capital punishment attached to insubordination regarding the final ruling in v. 12. Conversely, Lundbom states that local judges and officers made referrals, apparently for legal parties to bring respective cases before the high court themselves. Lundbom, *Deuteronomy*, 534.

¹³⁴ On the similarities between these passages, see Driver, *Deuteronomy*, 207; Lundbom, *Deuteronomy*, 533.

¹³⁵ For a discussion of this in contrast with the model established in Deut 17:8–13, see Lundbom, *Deuteronomy*, 533.

Moses's legal activity mentioned in Exod 18:19. If Jethro's counsel in this verse can be conflated with the details in Exod 18:22, then part of Moses's procedure for dealing with complex cases included bringing such cases before God. As discussed above, this may imply divinatory practices at the central sanctuary which symbolized the dwelling place or presence of the deity. Deuteronomy 17:8–9 may reflect some of these notions regarding the central theme of the sanctuary in adjudication, albeit that the sanctuary has a (future) fixed location in the perspective of D.

These two passages also share common language regarding legal inquiry. In Exod 18:15, Moses says that the people come to him to inquire (שָׁאַל) of God, while Deut 17:9 describes the perplexed local judges as going to the priests and the judge of the high court to inquire (שָׁאַל) regarding solutions for the cases in question. Both also locate ultimate judicial authority with Levitical figures. The details in Exod 18:13–27, found in E, are informed by Exod 4:14, also found in E, that Moses was a Levite. Apparently in anticipation of his parting from the Israelites before the conquest, Moses's premier judicial authority is delegated in part to priests, who are qualified in this passage and elsewhere in Deuteronomy (cf. Deut 17:18; 18:1; 24:8; 27:9) as Levites.¹³⁶ Although, as noted above, there is no indication that E understood Levitical heritage to be priestly in nature, this exact understanding in D (see below) may have resulted in the imputation of priestly significance to Moses's heritage in D's integration of earlier source material, including E's account of the judiciary. Thus, the language of inquiry and Levitical legal authority aligns with the theme of legal appeal at a central location shared by both Exod 18:13–27 and Deut 17:8–13. Following the language of the initial appeal, however, the passage continues on to discuss teachings provided at the God-chosen place.

In its directives regarding the rulings of the high court described in vv. 8–9, Deut 17:10–11 alludes to didactic activity. The verses read: “And you will do according to the

¹³⁶ On the equation of Levites and priests in Deuteronomy, see de Vaux, *Ancient Israel*, 362; Lundbom, *Deuteronomy*, 535.

ruling of the case that they will tell you from that place that the Lord will choose. You will observe to do according to all that they will instruct you. Whether according to the ruling of the instruction by which they will instruct you, or by the ruling of the judgment which they will say to you, you will do it. You will not turn aside from the matter that they will tell you, neither right nor left.” In these verses the verb “to instruct” (יִרְה) appears twice. Both instances are plural, conveying that the subjects of both instances include the priests mentioned in v. 9, if not also the judge mentioned there as well. The didactic activity of priestly figures in an adjudicative context is not unique to D.¹³⁷ As mentioned above in the analysis of P, Lev 10:11 assigns to the Aaronides the instructing of the Israelites in legal statutes (חֻקִּים) conveyed by the Lord through Moses. It is possible that the depiction of priests giving instruction in Deut 17:10–11 alludes to this priestly intersection of didactic activity and judicial activity.¹³⁸ Perhaps the “instruction” (תּוֹרָה) mentioned in v. 11 is related to this legal corpus attributed to Moses, albeit with different terminology. Deut 17:10 states: “and you will observe to do according to all that they will instruct you” (וּשְׁמַרְתָּ לַעֲשׂוֹת כְּכֹל אֲשֶׁר יֹרֶדְךָ) and the following verse connects this act of instructing with “instruction” (Deut 17:11, הַתּוֹרָה).¹³⁹ Soon after the close of the Pentateuch, in the opening work of the Deuteronomistic History, language similar to that in Deut 17:10 is found in Josh 1:7: “and be very courageous, to *observe to do according to the whole instruction* that Moses my servant commanded you” (וְאַמֵּץ מֵאֵד) (לְשַׁמֵּר לַעֲשׂוֹת כְּכֹל-הַתּוֹרָה אֲשֶׁר צִוָּךְ מֹשֶׁה עַבְדִּי, my emphasis). Additionally, as mentioned above, Exod 18:16, 20 also place Moses in a didactic context. Although he does not instruct (יִרְה) per se, Moses “makes known the statutes of God” (Exod 18:16), “warns ... regarding the statutes and the *instructions*” (Exod 18:20, my emphasis), and “makes

¹³⁷ For an example that connects the instructional and judicial roles of priests in this passage with these functions of priests elsewhere in the Hebrew Bible, see Lundbom, *Deuteronomy*, 535.

¹³⁸ Weinfeld cites this passage when discussing the “field of ritual-judicial (oral) instruction” in which priests had authority. Weinfeld, *Deuteronomy and the Deuteronomistic School*, 163.

¹³⁹ On this, see Driver, *Deuteronomy*, 208–9.

known to them ... the deeds that they should *do*” (Exod 18:20, my emphasis). In summary, it is quite possible that the instructing to be given by the Levitical priests described in Deut 17:10–11 is intended to be read as connected with, if not as a continuation of, the didactic activities of priestly figures mentioned elsewhere in the Pentateuch, namely Moses and those of Aaronide descent. The didactic activity mentioned here in D and its possible connections to didactic activity in E and P may strengthen claims of D’s awareness of P and its integration of these earlier sources in its judicial ideology.

An additional issue of importance raised in Deut 17:12–13 regards the connection between adjudication and execution. These verses state that those individuals who spurn the ruling of the high court are to be executed,¹⁴⁰ both as an effort to root out wickedness from among the people and to serve as an example to the people of what happens to those who disobey these leading adjudicators,¹⁴¹ whether priest or judge. Such a concept corresponds well with other pentateuchal passages where legal activity is placed together with executions and capital punishment, including the accounts in J of Moses’s actions in Exod 2:11–15 and Moses’s purging at Baal Peor in Num 25:1–5, as well as the accounts in P of Phinehas’s zeal in Num 25:6–19 and the oracular adjudication scenes dealing with criminal acts as typified by Num 15:32–36. In v. 12, the crime of defying the ruling handed down by either the priest or the judge is punishable by death.¹⁴² Thus, Deut 17:12–13 represents an example of the intersection of judicial activity and righteous executions which also appears in some of the other pentateuchal sources of which D seems to be aware.

¹⁴⁰ Weinfeld underscores the uniqueness of qualifying this offense as deserving of death among the pentateuchal legal corpora. Weinfeld, *Deuteronomy and the Deuteronomistic School*, 241.

¹⁴¹ Weinfeld notes the theme of Deut 17:13 as an example of didacticism at work even in the legal sections of Deuteronomy. Weinfeld, *Deuteronomy and the Deuteronomistic School*, 298.

¹⁴² Conversely, see Nelson, *Deuteronomy*, 222, where he argues that the death penalty mentioned here arises from defiance of the deity, on account of the fact that the ruling was obtained through ritual means at the hand of priestly adjudicators.

Of the passages analyzed thus far in this thesis, Deut 17:8–13 provides the clearest indication of priestly involvement in the judiciary of ancient Israel. In doing so, this passage anticipates the presence of priests at the cultic center—the “God-chosen place”—as part of a high court with considerable adjudicative authority. These judicial priests are to be primarily responsible for assisting local subordinate judges in determining what category of law respective cases should be tried under. These legal categories, also significant elsewhere in D (see below), allude to the sophisticated legislation reflective of the complex judicial structure expressly described in this passage, noted especially in the relationship between local judges and the juridical authorities at the God-chosen place and the corresponding relationship of local legal jurisdictions with the centralized high court. Although these details and innovations in this passage are unprecedented in the passages analyzed above, Deut 17:8–13 also draws upon J, E, and P with regards to the intersections of adjudication with both didactic activity and capital punishment. The judicial priests described in Deut 17:8–13 can also be found in a very similar legal context elsewhere in D—the case of the false witness.

Deuteronomy 19:15–21:

The Case of the False Witness and the Deuteronomistic High Court

Deuteronomy 19:15–21 is a literary unit in D containing laws dealing with witnesses in legal cases.¹⁴³ The passage is significant for the current investigation due to its mention of priests as part of the high court, a mention supported by its similarities to Deut 17:8–13 (see above) in both content and literary structure.

Although the passage is predominantly concerned in content with the uncorroborated testimony of contentious individuals, it opens with a proscription on lone

¹⁴³ On the attribution of Deut 19:15–21 to D, see Friedman, *Bible with Sources Revealed*, 340.

witnesses accusing others of wrongdoing, requiring the testimony of two or three witnesses in order to formally commence legal proceedings (19:15). The passage then addresses its main concern beginning with a conditional circumstance: if a contentious witness arises to falsely accuse another person (19:16), then the two individuals with the dispute will present themselves before the priests and the judges installed at the cultic center (19:17). The judges will thoroughly investigate the matter (19:18), and if they determine that the deceitful witness is indeed deceitful (19:18), then this witness will have done unto him what would have befallen his legal adversary had his false testimony been accepted as true (19:19).¹⁴⁴ This high penalty for false testimony is designed to remove wickedness from the midst of the Israelites (19:19), to instill fear in them, and to discourage them from engaging in such wickedness (19:20). The unit closes with a reminder to adjudicators that they are not to show pity in their enactment of this law, with the punishment of the false witness predicated on endorsed talionic principles (19:21). As this overview shows, this passage resonates with Deut 17:8–13 regarding some details relevant to the topic of priestly adjudication.

First and foremost, this passage places priests in proximity to judges who rule on legal matters.¹⁴⁵ Deut 19:16–17 reads: “If a contentious witness arises against a man to falsely accuse him, then the two men who have the dispute will stand before the Lord, before the priests and the judges who will be such in those days.” The similar presentation of priests together with judges connects this passage with Deut 17:9.¹⁴⁶ In Deut 17:8–13, the grammatical number of the plural priests and the singular judge, in

¹⁴⁴ For ancient Near Eastern comparanda, see §§1–3 in “The Laws of Hammurabi,” trans. Martha Roth (*COS* 2.131:335–53) and §17 in “The Laws of Lipit-Ishtar,” trans. Martha Roth (*COS* 2.154:410–14). On the connection of the punishment formula here with the law of talion in v. 21, see Levinson, *Deuteronomy and the Hermeneutics*, 121.

¹⁴⁵ On references of priestly proximity to lay judges in adjudicative contexts, see de Vaux, *Ancient Israel*, 154.

¹⁴⁶ Compare especially אל־הכהנים (Deut 19:17) with אל־הכהנים (Deut 17:9). On the connection between these two passages, see Driver, *Deuteronomy*, 235–36.

light of the plural verbs conveying judicial activity in the passage (הגידו, v. 9; יגידו, vv. 10, 11; יורו, vv. 10, 11; יאמרו, v. 11), secures the role of priests as judicial figures.¹⁴⁷ In Deut 19:15–21, however, the function of the priests is less secure, since the plural verb of adjudication in v. 18 (דרשו) has the plural “judges” as its subject. Thus, the context of the passage leaves the function of the priests ambiguous. One possible purpose of mentioning the priests in this passage is to identify the locus of judgment as the central sanctuary.¹⁴⁸ Deuteronomy 19:17 states that the disputing legal parties are to stand “before the Lord, before the priests and the judges” (לפני יהוה לפני הכהנים והשפטים). Given the centralization of ritual in D, the presence of authorized priests may be equated with the God-chosen place, identified as the locus of adjudication in Deut 17:8.¹⁴⁹

Another possibility is that the use of שפטים in Deut 19:18, if not also its use in v. 17, refers to judges representative of all tribal demographics in ancient Israel, including priestly demographics.¹⁵⁰ From this perspective, שפטים in Deut 19:17, 18 would denote judicial appointees from across all of Israel’s diverse identities. Such representation in appointment would have likely integrated some proportional number of priests, if not a higher number than in local contexts, given the numbers of priests that probably coalesced at the God-chosen place in response to D’s program of cultic centralization. This position would not see the priests as such in Deut 19:17 involved with the adjudicative process detailed in v. 18 while entertaining the possibility that the שפטים

¹⁴⁷ That is to say, “the judge,” indicated by a singular substantive (השפט), cannot alone represent the plural subject indicated by the forms of these verbs, and so “the priests” (הכהנים) must also function as part of the subject reflected by these adjudicative verbs.

¹⁴⁸ For an example of others who place the adjudication described here at the Deuteronomistic cultic center, see Driver, *Deuteronomy*, 235–36.

¹⁴⁹ The mention of priests here as equated with the location of the cultic center should be understood as working in tandem with the phrase לפני יהוה (“before the Lord”), which here also likely serves to indicate the cultic center. On this, see Nelson, *Deuteronomy*, 242; Lundbom, *Deuteronomy*, 573. Alternatively, Christensen argues that לפני יהוה in this case does not refer to the cultic center, but rather the site of public assembly in a given settlement or as a qualification of the priests and judges as representatives of the Lord in their adjudication. Christensen, *Deuteronomy 1:1–21:9*, 430.

¹⁵⁰ See the argument for priests potentially comprising part of the appointed lay judiciary in D above in n. 118.

acting in v. 18 may have included some number of priestly judicial appointees. Alternatively, שפטים may be referring to a different demographic in Deut 19:18 than in v. 17. With the juxtaposition of הכהנים and השפטים in v. 17, the text here is likely referring to two separate occupational demographics. However, the use of השפטים in v. 18 may not only include the figures denoted by the same term in the preceding verse, but also the priests mentioned there as well.¹⁵¹ This argument is primarily dependent on understanding this passage's awareness of Deut 17:9–12, which securely depicts priests as such in judicial roles, involved in all legal matters brought before the high court.

A possible counter-argument to this position is that D envisioned the priests and judges of the high court as dividing legal issues brought before them according to their respective expertise and/or the nature of respective cases.¹⁵² This position of divided responsibilities would understand Deut 19:15–21 as a legal issue of enough complexity (as per Deut 17:8) to merit going before the high court, particularly under the purview of the non-priestly judges there.¹⁵³ The passage as a whole deals with the uncorroborated testimony of lone witnesses, with vv. 16–19 consisting of a casuistic presentation framed by apodictic material in vv. 15, 20–21.¹⁵⁴ The necessity of the high court is in determining whether a sole witness is honest or deceitful. Apparently, it is through the thorough investigation of judges (דרשו השפטים היטב, v. 18) that the character of the

¹⁵¹ De Vaux seems to suggest that both the judges and the priests are involved judicially in the case of the (potentially) false witness. De Vaux, *Ancient Israel*, 153. Regarding Deut 21:18, Nelson states: “It is now the judges who ‘investigate thoroughly,’ although the presence of priests makes it likely that both secular inquiry and ritual methods ... are intended.” Nelson, *Deuteronomy*, 243. See also Lundbom, *Deuteronomy*, 520, where he alludes to the joint involvement of priests and lay judges on the matter of the false witness.

¹⁵² On this, see Driver, *Deuteronomy*, 209. Conversely, de Vaux states that “there was no distinction between civil and religious law.” De Vaux, *Ancient Israel*, 154. Weinfeld also reaches a similar conclusion as de Vaux against the division of legal issues. Weinfeld, *Deuteronomy and the Deuteronomistic School*, 235 n. 6.

¹⁵³ On this passage as an example of the legal complexities brought before the high court at the God-chosen place as described in Deut 17:8, see Driver, *Deuteronomy*, 207, 236; Nelson, *Deuteronomy*, 242.

¹⁵⁴ On the apodictic and casuistic nature of various parts of this passage, see Nelson, *Deuteronomy*, 239.

witness in question is decided. This is all to say that the degree to which priests as such function as adjudicators in this passage is dependent on whether or not they comprise those referred to by השפטים in Deut 19:18.

The degree to which the priests mentioned in Deut 19:15–21 are understood as adjudicators, whether actively involved in the present case of the passage or not, may also be strengthened by the similarities the passage has to Deut 17:8–13 in structure and content. Setting aside the framing apodictic material in Deut 19:15, both passages begin with the protasis of a conditional statement (indicated in these cases by כי with an imperfect verb) which introduces a legal issue—complex legal categorization in Deut 17:8, and the testimony of a sole witness against another in Deut 19:16. Both passages then move immediately into the apodosis of the law (indicated in these cases by ו with a perfect verb),¹⁵⁵ calling for the respective legal parties to appear at the central sanctuary before a body of priests and judge(s) (Deut 17:8–9; 19:17).¹⁵⁶ The passages move from the near-verbatim language describing the priests and the judges to the initial depictions of adjudication in Deut 17:9 and Deut 19:18. Both of these depictions use דרש to depict adjudication,¹⁵⁷ although it seems that the subject of the verb in Deut 17:9 is the legal party, while in Deut 19:18 it is the judges. From this point, both passages progress to the judicial conclusions of each respective case. Deuteronomy 17:9 concludes with the judicial figures apparently reaching a decision about how a specific criminal act should be defined and thus punished. Verses 10–11 instruct the legal party that the ruling of these judicial figures and the concomitant sentence should be carried out with exactness,

¹⁵⁵ Nelson agrees with the commencement of the apodosis here; see his discussion on this in Nelson, *Deuteronomy*, 238.

¹⁵⁶ On these similarities, see Driver, *Deuteronomy*, 235–36; Nelson, *Deuteronomy*, 242; Lundbom, *Deuteronomy*, 573. The language of traveling to the cultic center is more explicit in Deut 17:8 than in Deut 19:17. The use of עמד here, however, can be understood in a legal technical sense as “to appear in court.” De Vaux, *Ancient Israel*, 156.

¹⁵⁷ On this similarity, see Driver, *Deuteronomy*, 236.

with v. 12 prescribing death for those who elect to disobey the determination of a respective judicial figure.

Deuteronomy 19:18 discusses the judicial decision in a conditional statement, the protasis of which is marked by הנה. In the event that the deceitful witness who accuses his kinsman is determined to actually be a deceitful witness, he is to be punished according to the consequence he was attempting to bring upon said kinsman (Deut 19:18–19).¹⁵⁸ Thus, Deut 17:9–11 determines that insubordination to judicial authority is a capital crime, while Deut 19:18–19 provides a specific, proportional pattern for punishing deceitful witnesses. Both passages proceed from rulings and sentencing to very similar statements regarding the impact of the respective laws on Israel’s morality—“you will remove wickedness from Israel” (Deut 17:12) and “you will remove wickedness from your midst” (Deut 19:19)—both using the verb בער.¹⁵⁹ Both passages close with a concluding statement about how the justice dispensed in each case will be heard by and will instill fear in the people, thus abating future crime (cf. Deut 17:13; 19:20).¹⁶⁰ In review, the strong similarities between Deut 17:8–13 and 19:15–21 in structure and material suggest an equally strong ideological connection between the two on adjudication and priestly involvement in it.

Irrespective of whether or not the priests of Deut 19:17 are acting as adjudicators over the specific legal case expounded in vv. 15–21, they may still be understood as figures with judicial authority based on the way their presence here alludes to the role and activity of priests in Deut 17:8–13. Thus, Deut 19:15–21 stands as a literary witness

¹⁵⁸ On this, see Driver, *Deuteronomy*, 236; de Vaux, *Ancient Israel*, 156.

¹⁵⁹ On the בער clause in Deuteronomy, see Driver, *Deuteronomy*, 236; Weinfeld, *Deuteronomy and the Deuteronomistic School*, 355; Nelson, *Deuteronomy*, 242; Lundbom, *Deuteronomy*, 570–71, 574; Levinson, *Deuteronomy and the Hermeneutics*, 104 n. 9.

¹⁶⁰ On clauses with a similar function as this elsewhere in Deuteronomy, see Driver, *Deuteronomy*, 236; Weinfeld, *Deuteronomy and the Deuteronomistic School*, 356; Nelson, *Deuteronomy*, 242; Lundbom, *Deuteronomy*, 574.

corroborating the depiction of judicial priests in Deut 17:8–13. Another passage also explicitly attests to the adjudicative authority of priests in D—Deut 21:1–9.

Deuteronomy 21:1–9:

Priests in the Case of the Unsolved Homicide

In this pericope of D, the last to be analyzed in this section and in this thesis, Deut 21:1–9 expounds on the proper legal procedure to follow in the case of an unsolved homicide.¹⁶¹ The passage has relevance for the current investigation because it places priests in an adjudicative context with other judging parties. Additionally, the treatment of priests here has some similarities with the description of priests elsewhere in D where judgment also takes place. Lastly, Deut 21:5 uniquely invests priests with an exclusive authority over certain legal issues that may be reflective of D’s integration of P’s exclusively sacerdotal judicial model.

Deuteronomy 21:1–9 places priests together with other adjudicating demographics in the context of a legal issue. By way of overview, in the event that the corpse of a slain person whose killer is unknown is found in a field in the God-given land (21:1), the resulting procedure dictates that elders¹⁶² and judges¹⁶³ are to measure the

¹⁶¹ On the attribution of Deut 21:1–9 to D, see Friedman, *Bible with Sources Revealed*, 341–42.

¹⁶² On the adjudicative role of זקנים (“elders”), especially in local contexts, see de Vaux, *Ancient Israel*, 138, 152–53; Weinfeld, *Deuteronomy and the Deuteronomistic School*, 234.

¹⁶³ Exactly where the elders and judges mentioned in Deut 21:2 come from or have primary jurisdiction is unclear. Driver understands them as coming from the cities immediately surrounding the site of the corpse, the same which are measured out to in v. 2. Such origins would connect the judges mentioned here with those appointed in Deut 16:18. Driver, *Deuteronomy*, 241. Weinfeld calls the judges “representatives of the state central authorities” and “state functionaries,” but stops short of saying whether or not the ones in this case emerge from the central sanctuary or from the cities proximate to the crime scene. Weinfeld, *Deuteronomy and the Deuteronomistic School*, 234. Christensen believes that the elders and judges come “from throughout the region.” Christensen, *Deuteronomy 1:1–21:9*, 457. In commenting on this passage, Nelson states that “[j]udges from the central court would guarantee impartiality,” while describing the elders as “some centralized official group or the elders of the nearby towns.” Nelson, *Deuteronomy*, 256–57. Lundbom understands the judges and elders as coming from the cities surrounding the crime scene. Lundbom, *Deuteronomy*, 592.

distance from the corpse to the closest cities surrounding it (21:2). Once the closest city to the corpse has been identified through the official measuring, its elders (21:3, 4, 5) become the primary active agents in the rest of the passage. These elders are to take a heifer meeting certain qualifications to the banks of a running stream, which are also subject to certain qualifications, and there they are to break the heifer's neck (21:4), apparently as the beginning of a ritual related to the discovered corpse. The priests are mentioned in this passage only in 21:5,¹⁶⁴ where their sole action in the narrative is entering the scene (וַיָּגִשׁוּ).¹⁶⁵ The priests are qualified, however, as people with the exclusive responsibility to minister to the deity, to bless the name of the Lord, and to rule on all cases of dispute and assault (21:5). Following the entrance of the priests, the elders continue the ritual, washing their hands over the dispatched heifer (21:6), declaring their lack of direct or complicit involvement in the death of the slain person (21:7). This declaration is followed by a petition: "Absolve your people Israel, whom you, Lord, have redeemed, and do not place the bloodguilt of the innocent in the midst of your people Israel" (21:8). Following the petition, the people are apparently absolved of the bloodguilt (21:8). The passage closes by stating that through this rite, bloodguilt will be removed from the midst of the people, since it is a righteous act in the eyes of the Lord (21:9). Since Deut 21:1–9 is similar to other passages in D analyzed above, in that it

¹⁶⁴ Consideration and discussion regarding the late date of Deut 21:5 are beyond the scope of this thesis. On this issue, however, see Weinfeld, *Deuteronomy and the Deuteronomistic School*, 210 n. 6; Lundbom, *Deuteronomy*, 594.

¹⁶⁵ See Driver, *Deuteronomy*, 243, where he understands the priests as uninvolved in the rite and as functioning in a strictly supervisory role. See also Weinfeld, *Deuteronomy and the Deuteronomistic School*, 210–11. De Vaux, on the other hand, sees the rite around which Deut 21:1–9 is centered as an indication of the involvement priests had in adjudication. De Vaux, *Ancient Israel*, 154. Christensen first clarifies that the text offers no specification as to the priests' function, but then supposes that they are involved with the pronouncements in vv. 7–8a. Christensen, *Deuteronomy 1:1–21:9*, 457. Nelson assigns the presence the priests in this passage as related to the prescribed prerogatives "to minister, bless, and judge" given in v. 5, also acknowledging that the context does not explicitly support such an understanding. He also proposes that the priests are present to perhaps supervise or witness the oath uttered by the elders and/or to "declare the effectiveness of the atonement at the close of the ceremony." Nelson, *Deuteronomy*, 256. Lundbom posits that the priests, aside from their mention in v. 5, also "direct the proceedings" and offer the prayer in Deut 21:8, the latter being mentioned in targumic variants. Lundbom, *Deuteronomy*, 594–95.

places priests together with judicial figures, and since the role of priests in those other passages are likely judicial, the role of priests in this passage is also likely legal, at least to some degree.

Beyond placing priests in mere proximity to judicial figures, this passage also describes the priests in a manner similar to other passages in Deuteronomy where priests are placed in a legal context. In Deut 21:5, the priests are qualified specifically as “the priests, the sons of Levi” (הכהנים בני לוי). The only other time that this phrase appears in D is in Deut 31:9,¹⁶⁶ which introduces the responsibility placed upon the priests (and the elders) to read the Torah to the people every seven years. The purpose of this septennial recitation before the people is “in order that they might hear, and in order that they might learn, that they might fear the Lord [their] God, and that they might observe to do all the words of this instruction” (Deut 31:12). The reading of instruction noted here fits well with the didactic activity mentioned above in connection with priestly adjudication (cf. Deut 17:11).¹⁶⁷ A semantic cognate of “the priests, the sons of Levi” can be understood in “the Levitical priests” (הכהנים הלויים, Deut 17:9),¹⁶⁸ noted above as the description of priests in the adjudicative passage of Deut 17:8–13.¹⁶⁹ The cultic responsibilities of priests mentioned in adjudicative contexts also connect the reference to priests in Deut 21:5 with adjudicating priests elsewhere in Deuteronomy. Deuteronomy 21:5 describes

¹⁶⁶ On the attribution of this passage to D, see Friedman, *Bible with Sources Revealed*, 358. On the phrase shared by the two passages, see Driver, *Deuteronomy*, 242; de Vaux, *Ancient Israel*, 362–63.

¹⁶⁷ On the didactic and adjudicative function of priests in Deuteronomy, see Lundbom, *Deuteronomy*, 594.

¹⁶⁸ On the essential equivalence of these phrases in Deuteronomy, see Lundbom, *Deuteronomy*, 594.

¹⁶⁹ Driver entertains that the priests in Deut 21:5 may be those from the central sanctuary mentioned in Deut 17:8–9, but rather connects them to local priests because of the “inexactness of language” used to qualify them here. Driver, *Deuteronomy*, 242. De Vaux likewise agrees with Driver, but based on his reading, explicitly unsupported by the text, that the priests came from the towns surrounding the corpse. De Vaux, *Ancient Israel*, 363. However, the same phrase used to describe the priests in Deut 21:5 is used to describe the priests whom Moses invests with the Torah and its septennial reading. Such a reading is to take place during the Feast of Booths, specifically at the God-chosen place (cf. Deut 31:10–11). This would suggest that “the priests, the sons of Levi” mentioned both in Deut 21:5 and 31:9 are indeed those housed at the cultic-legal center mentioned in Deut 17:8–13.

priests as those whom the deity has chosen to minister to him (כי בם בחר יהוה אלהיך). Similarly, a priest is described in Deut 17:12, where priests are otherwise invested with judicial authority, as “the one who stands to minister to the Lord your God there [i.e., at the cultic center]” (העמד לשרת שם את־יהוה אלהיך). The similar descriptions of the priests noted here in Deut 21:5 and in other adjudicative contexts in Deuteronomy strengthen the understanding of priests being integrated into the judiciary in Deut 21:5.

Lastly, Deut 21:5 also grants priests total judicial authority over certain legal matters. The verse reads, in part, “and every dispute and every assault will be determined by them,” i.e. the priests (ועל־פיהם יהיה כל־ריב וכל־נגע; lit. “according to their mouth will be every dispute and every blow”).¹⁷⁰ In the above discussion of Deut 17:8, the terms “dispute” (ריב) and “blow” (נגע) are described as possible categories of crimes. With the basic idea of נגע being a physical blow or a strike, the technical use of the term may represent a category of crime including assault, battery, and other physical altercations. Likewise, ריב could represent a legal category dealing with certain civil crimes, as captured by the basic gloss of the term as “dispute,” including debates over property, land, commercial transactions, and so on. In Deut 21:5, ריב and נגע are set in similar syntactical structures (כל־ריב וכל־נגע), suggesting that they represent categories on the same taxonomic level of criminal law. In Deut 17:8, however, ריב is used in a phrase that encompasses the three possible criminal categories mentioned there (i.e., דם, דין, and נגע) preceding it—דברי ריבת, “cases of dispute.” In any event, Deut 21:5 states that it is by the ruling of priests that every dispute and every blow will be determined. The broader passage offers no clarification as to whether or not the present issue of the unsolved homicide falls within the purview of the priests, that is, as falling under ריב or נגע.¹⁷¹ The investiture of priests with such exclusive adjudicative authority is unmatched in D. In

¹⁷⁰ On this phrase and its relation to the judicial authority of priests, see de Vaux, *Ancient Israel*, 155.

¹⁷¹ See Lundbom, *Deuteronomy*, 596, where he implies that the case does fall under the prerogatives of the priests mentioned in v. 5.

fact, it moves beyond the authority that priests wield together with non-priestly judges, according to Deut 17:8–9, over the defining of crimes falling possibly within the categories of דם, דין, and נגע, if not also having authority to pass rulings on crimes within these categories as well.¹⁷² In short, while Deut 21:5 has little explicit connection with the legal case within which it is situated, it invests priests with a significant amount of exclusive legal authority that supports the depiction of priests as powerful judicial figures elsewhere in Deuteronomy.

As part of D, Deut 21:1–9 plays an important role in filling out this pentateuchal source’s vision of priestly involvement in the judiciary of ancient Israel. Like Deut 17:8–13 and 19:15–21, this passage associates priests with adjudication by placing them in proximity to other judicial figures, namely non-priestly judges and elders. This combination of priestly and non-priestly judicial figures may reflect the blending of the representative judicial composition envisioned in J and E with P’s strictly sacerdotal judiciary. The qualification of priests in this passage as Levitical and as cultic ministers also connects them to the priests in Deut 17:8–13, where they are additionally characterized with juridical duties. Perhaps most importantly, Deut 21:5 invests priests with exclusive authority to rule on certain legal issues, reflecting the clearest expression of sacerdotal adjudication in D. Such an explicit bestowal of legal authority to priests may build upon and even exceed the vision of P, given that adjudication is only implied to throughout that source. Perhaps the best way to understand the impact of this passage on D’s vision of priestly adjudication is to draw its contributions together with those of the other four passages analyzed above in this section.

¹⁷² On the contrary, Driver understands כל־יָדִים וכל־נֶגַע as an expression inclusive of all legal decisions. He also does not read Deut 21:5 as granting to priests exclusive control over the legal categories named here, but rather partial legal authority, as in line with Deut 17:8–9. Driver, *Deuteronomy*, 242–43.

Traditions of Priestly Judges in the Deuteronomist Source

As the above analyses of Deut 1:9–18; 16:18–20; 17:8–13; 19:15–21; and 21:1–9 indicate, D has the most developed ideology of the four major pentateuchal sources regarding adjudication. Deuteronomy 1:9–18, set as a historical reflection, represents a Deuteronomistic paraphrase of Exod 18:13–27 (E), carrying over from this earlier source the establishment of a representative judiciary and Moses’s premier legal authority while also revising the account in E by enfranchising the people in the selection of the judges and emphasizing wisdom over religious ethics as qualities requisite for prospective judges. Deuteronomy 16:18–20 continues the basic concept of a representative judiciary into the futurity of a settled Israel without Moses, adding to the source’s vision the democratization of power to directly appoint judicial figures and the resounding emphasis on righteousness first introduced in Deut 1:16. While the representative judiciary envisioned in Deut 1:9–18 and 16:18–20 means that priestly integration was an implicit proportional possibility, Deut 17:8–13 moves well beyond these passages by not only making explicit the incorporation of priests into D’s judiciary, but by also specifically situating them in the highest court of the land with authority to pass legal rulings to be exactly enacted under pain of death. The mention of possible difficulty in determining between various categories of law in 17:8 also suggests the presence of a developed casuistic legislation in the judicial system reflected in D. Deuteronomy 19:15–21 corroborates the inclusion of priests in the high court described in Deut 17:8–13, while Deut 21:1–9 grants to priests exclusive judicial authority over certain types of legal cases.

When taken together, these five passages demonstrate that D envisions the judicial structure of ancient Israel as highly structured, with local judges portrayed as having legal authority over the Israelites according to varying jurisdictions (cf. Deut 1:15), and with local judges answerable to the authority of legal functionaries comprising the high court at the cultic and legal center of the land (cf. Deut 17:8–9). While the representative nature of the judiciary in local legal circuits (cf. Deut 1:13; 16:18) suggests

that Levites and priests made up some portion of the judicial majority, D makes clear that priests played a major role in the premier high court of the God-given land. As mentioned in the analyses above, adjudication in D appears secularized relative to the judicial systems of the other pentateuchal sources, as noted in its preference of sapiential qualities in its judges over ethical-religious qualities. Whether related to such secularization or not, the adjudicative system in this source also seems to anticipate the coming departure of Moses, with safeguards including the transferal of ultimate legal authority from an individual (i.e., Moses) to a committee (i.e., the high court) as well as the inclusion of a number of ethical prescriptions (cf. Deut 1:16–17; 16:19–20). In these ways, D depicts the judiciary of ancient Israel and the involvement of priests within it in a way distinctive from other sources in the Pentateuch. Although arguing for a particular sequencing of pentateuchal sources is not within the scope of this thesis, it may be useful to note here that if D, as dated by Friedman, follows P and incorporates its material, then D creates its distinctive judicial outlook by synthesizing P's exclusive sacerdotal control of adjudication with J's and E's representative distribution of legal authority. On the other hand, if P postdates D, then D's mixed judicial model of representative appointees and adjudicatory priests represents something of a midway point in the transformation of J's and E's early representative judiciary into P's reservation of legal authority for Aaronide priests alone.

CONCLUSION

With the analysis of adjudication in D complete, perhaps the best way to close this thesis is with a review of what this work has attempted to address. A diachronic view of modern critical scholarship on the priests of ancient Israel shows that attention to the non-sacrificial roles of such priests has increased over time. This work has analyzed the literary data on the intersection of priests and judicial systems recorded in the Pentateuch from a source-critical perspective as a way to contribute to that larger discussion. The use of Friedman's division of the Pentateuch into its hypothesized source documents in his *The Bible with Sources Revealed* allowed this thesis to take pentateuchal passages of evidentiary value, to group them according to their source attributions, and to understand how these passages portray the varying views of the pentateuchal sources on the issues of adjudicative systems and priestly involvement within them.

Although organizationally grouped together in this thesis, J, E, and P are indeed separate documents with separate ideologies, and the distinctions of these ideologies are also discernable with regards to adjudication. Represented here by only Exod 2:11–15 and Num 25:1–5, the juridical system in J is not well detailed. Although nominal reference to judges (שפטים) appears in both of these passages, judicial systems are hardly at the forefront of their narratives. What can be gathered from these passages with regards to judgment, however, is similar—both highlight Moses's legal activity and the motif of execution. Executions also arise in the judicial contexts of P and D, and not surprisingly so, since it would seem natural that power over life and death, if not located solely with the deity, would be carefully protected by laws and exercised by recognized judicial figures like Moses. However, regarding more nuanced details of the judiciary—when and how it emerged, by what processes it is staffed, and who comprises it—J is essentially silent.

These glaring gaps appear to be exactly addressed in E, represented in this thesis by Exod 18:13–27 alone, a source that has gaps opposite of J, namely with an absence of narrational depictions of judges in action. Exodus 18:13–27 places the formation of the judiciary geographically at the mountain of the deity and temporally before the revelation of the Covenant Code. Following the proposal by his father-in-law, Moses personally selects judges, using a list of religious and ethical qualities as his measure. With the pool of prospective judges consisting of the entirety of Israel, the degree of priestly involvement in the judiciary of E would be coincidental. Language suggesting representation of the tribal plurality of Israel in the judiciary found in this passage, however, increases the inclusion of priests among selected judges from the reflection of mere chance to a number proportional to their constituency among the Israelites.

P, represented in this thesis by Exod 28:15–30; Lev 10:8–11; Num 15:32–36; Num 25:6–19; and Num 27:15–23, is quite different from its preceding sources. With no nominal references to judges or descriptions of a judiciary, understanding the vision of adjudication in this source can be obtained only through careful gleaning. Taking for granted the theocratic vision of P seemingly executed through a hierocratic society, however, the demographic among which to start looking for judicial activity is clearly the priests. Exodus 28:15–30 provides initial confirmation of this hunch, identifying the breastpiece and the Urim and Thummim attached to the concept of judgment in this passage as an exclusive prerogative of Aaron and his priestly heirs. Leviticus 10:8–11 furthers the association of Aaron and his clan with their judicial responsibilities by separating them from their fellow Israelites through a prohibition of alcohol connected to their function in sacred space and by depicting them as representatives of God in maintaining cosmic order by officiating over legal-ritual separation. The didactic responsibilities additionally assigned to Aaronides in this passage is an example of the intersection of instruction and judgment also found in E and D. Numbers 15:32–36, as understood in this thesis, is one example of how P, likely written by an Aaronide or by

someone with extensive knowledge of the Aaronide priesthood, simultaneously engaged in the promulgation of legal narratives associated with Moses and the establishment of new legislation that perhaps became precedent for future criminal cases. Num 25:6–19 shows Phinehas engaged in zealous activity that, when understood in light of preceding material with respect to both source and literary context, can be interpreted as adjudicative in nature. This is especially the case when Phinehas's identification as an Aaronide is considered in this context and within the greater context of P. Numbers 27:15–23, near the end of P, resonates with much of D in that it addresses the future of Israel without Moses. While focusing primarily on Joshua's succession of Moses, this passage secondarily mentions details that connect Aaron's son and priestly successor Eleazar with adjudication, especially his control over the divinatory Urim and Thummim. In short, P, well-known for its assigning of cultic authority entirely to the Aaronides, also appears to identify judicial authority with Aaron and his descendants—that is, with priests.

Lastly, D, represented by Deut 1:9–18; Deut 16:18–20; Deut 17:8–13; Deut 19:15–21; and Deut 21:1–9, has the opposite characterization of P's allusive approach to priestly adjudication—it is filled with explicit references to judges, priests, and the judiciary. As a Deuteronomistic paraphrase of Exod 18:13–27, Deut 1:9–18 makes explicit historical reference to the creation of the early Israelite judiciary while emphasizing the role of Moses, the Israelite community, and themes of wisdom not found in the original account. The representative composition of the judiciary carried over from the account in E to Deut 1:9–18 finds continuity in Deut 16:18–20, implying that Levites and priests likely comprised some portion of the local judiciary. In a manner without express precedent in the other pentateuchal sources, however, Deut 17:8–13 assigns priests to the highest legal body of the judicial system in D. Deuteronomy 19:15–21 corroborates this assignment of priests to the central high court, while Deut 21:1–9 assigns priests the exclusive prerogative to pass judgment on cases of dispute and assault.

In summary, this thesis concludes the following regarding priestly adjudication:

- 1) The representation of priests acting as judges can be divided between the earlier and the later pentateuchal sources.
- 2) Both J and E make no explicit reference to priests acting as judges. The judiciary in both sources can be understood as representative of the tribal plurality of Israel in nature, and thus priestly inclusion in it would be proportional and not exclusive.
- 3) Both P and D suggest that priests made up an important part of the judiciary of ancient Israel, but in different ways. P, with no evidence to the contrary, implies that, aside from Moses, adjudication was entirely assigned to Aaron and his priestly descendants. Thus, in P, judges are priests, and priests are judges. In D, however, the judiciary is divided into a dispersed majority and a central minority. The judiciary at large, as described by Deut 1:9–18 and 16:18–20, was representative in composition, and thus would have likely included some Levitical and priestly judges in a manner similarly figured with J and E. However, Levitical priests are given authority disproportional to their numerical representation in their assignment to the high court, the most powerful legal body in the judiciary of Israel. In this source, priests are not only explicitly placed in judicial roles unprecedented in the other sources, but specifically in powerful legal positions.

Given these conclusions and the limited space in this thesis, the implications of this study for further research and the application of its method and approach to related issues must be deferred to future inquiry. Through the attempt of this thesis to provide a synchronic literary analysis of evidence pointing to the integration of priests into judicial structures across the Pentateuch's sources, it is my hope that readers will better understand the important ideologies regarding Israel's ancient judiciary intertwined in the

Pentateuch that likely impacted the structure and operation of the judiciary in the periods following its compilation and promulgation, including priestly integration into this judiciary. An important datum in the consideration of judicial institutions and functionaries in the early postexilic period is the correspondence of the lack of explicit mention regarding royal adjudication in passages reflecting pentateuchal judicial ideologies with the historical lack of a Jewish monarch in the postexilic period until the Hasmonean dynasty. Regardless of the reason for this silence regarding royal adjudication, such silence likely correlated with the need to invest other functionaries with legal authority, as this thesis has defended regarding priests at the literary level of the Pentateuch.

It would be short-sighted, however, to believe that the Pentateuch is the only corpus in the Hebrew Bible that has relevance for understanding the social realia of the early postexilic period and the implications of that time and its history for the rest of the Second Temple period. For example, representations of judicial structures and activities in the Deuteronomistic History could be analyzed to understand if they are simply reflective of the judicial outlooks located in pentateuchal sources or if they represent a subsequent point in ideological development. The likelihood of such a study on the Deuteronomistic History bearing important implications for sociohistorical research on the postexilic period is relatively small, however, considering that this corpus was likely not as authoritative and impactful on postexilic society as was the Pentateuch.

An additional set of texts with reference to priestly involvement in judicial institutions and adjudication to be investigated in tandem with the findings of this thesis is the literature dated to the early postexilic period. The fruit of studying such texts would not be found in their supposed impact on the administrative realia coterminous with their composition, but rather in how they reflect such realia and the way that authoritative ideologies like those in the Pentateuch shaped and governed them. For example, Persian-

period texts that reflect priests with judicial authority include Ezra 7;¹⁷³ Ezra 9–10;¹⁷⁴ Neh 8–9;¹⁷⁵ 2 Chr 19;¹⁷⁶ Ezek 44;¹⁷⁷ and Hag 2.¹⁷⁸ The data in these passages could be scrutinized to determine if they possibly reflect either the realia of judicial institutions in Persian-period Yehud and/or traces of the varied ideologies of the Pentateuch on the integration and function of priests in the judiciary. An example of this suggestion would be the collection of data in Ezra 7 relating to priestly adjudication, including Ezra's qualification as a priest, his knowledge of and passion for teaching Torah, and the legal authority vested in him to appoint judges in Yehud, and to then determine if such data are aligned with one, some, or none of the pentateuchal sources' adjudicative ideologies.

¹⁷³ In this and the following references to Persian-period texts, I provide a brief summary of details possibly suggestive of sociohistorical realia regarding the integration of priests into judicial activity and the impact of pentateuchal ideologies on such realia. Ezra 7 reports the introduction of Ezra as a priest, notably through a genealogy that specifically designates important Aaronide priests, including Eleazar, Phinehas, and Zadok (vv. 1–5). Ezra is described as being knowledgeable in the Torah (v. 6) and being desirous to teach it (v. 10). The language in the following section of the chapter, including the announcement of a king's approval for Ezra to lead willing individuals away from the land of their exilic captivity back to their fatherland, together with assets dedicated to the cultus (vv. 11–24), strongly evokes events from the narrative of Moses and the exodus. The subsequent section records the authorization of Ezra to appoint judges (v. 25), to teach the Torah (v. 26a), and to determine legislation (v. 26b).

¹⁷⁴ Ezra 9 describes the report given to Ezra that the people of Yehud have failed to separate (*niphal* of בָּדַל) themselves from neighboring peoples and have instead began intermarrying with them (vv. 1–4), the illicit sense of which is derived from pentateuchal law. The rest of Ezra 9 is dedicated to his interaction with the deity, wherein he admits to the people's wrongdoing, reflects penance, and asks for direction on addressing the errors of the community (vv. 5–15). Ezra 10 reflects the people's open admission of wrongdoing to Ezra (vv. 1–5), a summons of all returned exiles throughout the land to gather for a hearing at Jerusalem (vv. 7–8), Ezra's preliminary adjudication on the intermarriages (vv. 9–15), and Ezra's selection of ad hoc judicial committees comprised of *patresfamilias* to finalize the legal proceedings regarding the intermarriages (v. 16).

¹⁷⁵ Nehemiah 8 records Ezra's officiation over the reading and exposition of the Torah to the people (vv. 1–9) and over a historic observance of the Festival of Booths by the community (vv. 13–18), with Ezra in both cases providing explicit instruction to the people based on pentateuchal material. Nehemiah 9 reports Ezra's involvement with the observance of a communal fast of penance, during which he offers a lengthy historical reflection in the form of a prayer that reflects his strong familiarity with the narratives of the Pentateuch.

¹⁷⁶ 2 Chronicles 19 describes Jehoshaphat's peripatetic appointment of judicial functionaries throughout the land (vv. 4–7) and his appointment of priests, Levites, and *patresfamilias* to judicial positions in Jerusalem (v. 8). This latter judiciary had the primary responsibility of providing legal clarity on cases brought by individuals from the local level (v. 10) and was headed by a priest over cultic affairs and an official over royal affairs (v. 11).

¹⁷⁷ Ezekiel 44 collates the issues of abstinence from alcohol in cultic settings (v. 21), cultic-legal differentiation (v. 23), and the authority to adjudicate disputes (v. 24a) in a broader context regarding the prerogatives and duties of Zadokite priests.

¹⁷⁸ Haggai 2 reports the Lord instructing Haggai to receive instruction from priests on a cultic-legal matter (v. 11) and Haggai's execution of this charge (vv. 12–13).

Through this process, the influence of the Pentateuch and its comprising sources on the judiciary of the postexilic period generally, and the inclusion and function of priests in said judiciary specifically, may be ascertained.

Additional opportunities for further study of the integration of early Jewish priests into their contemporary social structures can be found through the application of the approach found in this thesis and in the suggested study of Persian-period texts above to other non-sacrificial offices and roles of priests. Aside from the data for priestly adjudication in the Pentateuch addressed throughout this work and in Persian-period texts as addressed above, a similar two-fold investigation can be conducted on the other roles and functions priests are described as holding in the biblical text besides that of sacrifice, including those in the martial, didactic, economic, and scribal spheres.¹⁷⁹ A synthesis of this thesis on the legal authority and activity of priests in the Pentateuch together with future studies on the investigation of priestly adjudication in Persian-period texts and on the pentateuchal and Achaemenid data on other non-sacrificial priestly roles would produce a strong understanding of how early Jewish priests were incorporated into their contemporary communities through activities and offices other than those connected to sacrifice. Such an understanding would lay the groundwork for further sociohistorical work on the priesthood and its significance throughout the Second Temple period and perhaps even after the events of 70 CE.¹⁸⁰

¹⁷⁹ For an example of this type of approach, see n. 16 above

¹⁸⁰ This is to say that understanding the sociohistorical evidence for priestly integration into broader society through non-sacrificial roles in the Persian period and later in the Hellenistic and the beginning of the early Roman period would serve as an explanation for how priests were able to continue as an important demographic even after their severance from the altar of sacrifice following the destruction of the Jerusalem Temple in 70 CE. For examples of studies that have uncovered the continued sociohistorical significance of priests after the fall of the Second Temple, see Matthew J. Grey, "Jewish Priests and the Social History of Post-70 Palestine" (PhD diss., University of North Carolina at Chapel Hill, 2011); Oded Irshai, "Priesthood and Authority: Jewish Palestinian Leadership in Late Antiquity," in *Continuity and Renewal: Jews and Judaism in Byzantine-Christian Palestine*, ed. Lee I. Levine (Jerusalem: Yad Ben-Zvi, 2004), 67–106 (in Hebrew); Philip S. Alexander, "What Happened to the Jewish Priesthood after 70?" in *A Wandering Galilean: Essays in Honour of Seán Freyne*, ed. Zuleika Rodgers, Margaret Daly-Denton, and Anne Fitzpatrick McKinley, JSJSup 132 (Leiden: Brill, 2009), 5–33.

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