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LAWS IN DEUTERONOMY**

OBSERVATIONS ON JUDAH'S SOCIAL AND ECONOMIC HISTORY AND THE DATING OF THE LAWS IN DEUTERONOMY

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Although social and economic history is best documented by archaeology, provided that it bears a sufficiently precise time frame, every code of law reflects, more or less closely, the kind of society—and the economy—for which it was designed.¹ Nadav Na'aman's recent dating of the Deuteronomistic Law by social history is methodologically seminal,² even if I disagree with the substance of his argument. In my opinion, the care of Deuteronomy for the 'displaced Judahite' (גֵּר) fits the 6th century much better than the 7th, as Na'aman argues.

THE DISPLACED PERSON

Deuteronomy invested a greater effort in the protection of the displaced person than the 'Book of the Covenant' did or the Laws in Leviticus would do. I do not see, though, that displacements in the course of Sennacherib's campaign of 701 caused a *permanent* problem that had still to be addressed in the 2nd half of the 7th century, as Na'aman proposes.

The reign of Manasseh saw a booming economy. The loss of land in the Shephelah was compensated by colonialization in the Negev and the Judean desert.³ Displaced people did not remain

¹ When I was in High School, German law still comprised a paragraph against speedy horse riding or carriage driving in public streets and places; but back then, pubs still received their deliveries of beer by horse-drawn brewery delivery wagons. I suppose the paragraph quoted has disappeared by now.

² N. Na'aman, "Sojourners and Levites in the Kingdom of Judah in the Seventh Century BCE," *ZAR* 14 (2008), 237–279.

³ I. Finkelstein, "The Archaeology of the Days of Manasseh," in M.D.

displaced, but had every chance to colonize land and became a 'citizen' at another place.⁴

The picture was quite different after 586 BCE. Judah and the Shephelah were in ruins. The survivors of hunger, plague and sword could only turn to Benjamin for protection from "the sword of the wilderness" (Lam 5:9). But they were many more of them than the relatively small Benjamin area could provide for. Availability of cheap labor was not enough. There was a need for capital, for the interest of capital owners to invest it, and for somebody to pay for the security infrastructure. None of these existed. The Babylonian province of Judah, which consisted basically of Benjamin, suffered a dramatic loss of population (to be explained by labor migration to the coast cities and to Egypt) which brought it down to ca. 15,000 people by 500 BCE.⁵

Thus Na'aman's argument for the dating of Deuteronomy 12–26* actually leads to the Babylonian province of Judah. A second observation supports this position.

THE DISTRIBUTION OF כסף

The ratio of occurrences of 'money' (כסף) in Exod 21:1–23:18, Deuteronomy 12–26 and Leviticus 17–27 shows a distribution very similar to the distribution of גר.⁶

	Verses	'money' (כסף)	Ratio 'money'/10verses
Ex 21:1–23:18	85	8	8/85 = 9.41
Deut 12–26	345	7 ⁷	7/345 = 2.03
Lev 17–25; 27	323	11	11/ 323 = 3.41

Coogan, J.C. Exum & L.F. Stager (eds), *Scripture and Other Artifacts: Essays on the Bible and Archaeology in Honor of Philip J. King* (Louisville, Ky.: Westminster John Knox, 1994), 169–187.

⁴ Likewise, Germany's economic surge after 1949 was partially due to the availability of qualified labor, provided by the several millions of displaced individuals from Imperial Germany's former eastern provinces. Both for these people and for the economy as a whole, displacement proved a blessing in disguise, insofar as labor was transferred from areas of low productivity and income (latifundial agriculture) into areas of high productivity and income (industry).

⁵ O. Lipschits, "Demographic Changes in Judah between the Seventh and Fifth Centuries B.C.E.," O. Lipschits & J. Blenkinsopp (eds), *Judah and the Judeans in the Neo-Babylonian Period* (Winona Lake, Ind.: Eisenbrauns, 2003), 323–376.

⁶ O. Lipschits, "Demographic Changes."

⁷ Including 17:17, which is, like all references in Deuteronomy 12–26 to a state of Israel/Judah, a deuteronomistic addition from the early Persian period.

Exodus 21–23 reflects a prosperous, ‘monetarized’ society and fits well the (early) 7th century, when these examples of Israelite ‘common law’ presumably were collected.⁸ The society of Deuteronomy 12–26 is largely ‘demonetarized.’ It does not fit within the late 7th century; but its situation rather matches what is to be expected given the depth of the socio-economic depression in Judah under Babylonian rule.

Leviticus 17–25; 27, on the other side, and particularly when it is compared to Deuteronomy 12–26, seems to reflect the slow recovery of Judah’s economy after 450 BCE. This becomes all the more evident, as 4 of the 11 references to כֹּסֶף belong to Leviticus 17–25 (289 verses, ratio 1.38), but 7 to Leviticus 27 (55 verses, ratio 12.73). Leviticus 27 forms an appendix to Leviticus 17–25.

THE RULE OF LAW

The available data from social and economic history render the ‘Josianic’ dating of Deuteronomy 12–26 untenable; the basic layer of these laws reacts to the situation at Mizpah and Bethel after 586 BCE. In monarchic Judah—as in Egypt, the king was the source of justice (cf. Ps 45:6; 72:1); he barely needed codified competition in this field.⁹

As long as there was a king in Jerusalem, he had no use for a codified law, for he was the king. The scribes, who did the actual ruling of the people, had no use for a codified law, for they had the authority of the king in whose name they ruled. They had, though, limited use for a collection of the common law (like the ‘Book of the Covenant’), because justice was meted out basically by the local community (with the possibility of appeal to the king, who would discuss the matter with his scribes).¹⁰ For the king, the existence of

⁸ H.-P. Mathys, “Zum Vergleich von Gesetzeskodizes: Einige allgemeine Überlegungen,” L. Burchhardt; K. Seybold & J. von Ungern-Sternberg (eds), *Gesetzgebung in antiken Gesellschaften: Israel, Griechenland, Rom* (Beiträge zur Altertumskunde, 247; Berlin/New York: de Gruyter, 2007), 68–75.

⁹ With R. G. Kratz, *Die Komposition der erzählenden Bücher des Alten Testaments*, Göttingen: Vandenhoeck & Ruprecht, 2000), 120–138; *pace* Kratz, the ‘centralization of the cult’ is deuteronomistic, not deuteronomic. In its core, Deuteronomy 12* contains a rule for ‘cultic legitimacy,’ which may form a heritage from the days of Manasseh; cf. E. A. Knauf, “The Glorious Days of Manasseh,” L. L. Grabbe (ed.), *Good Kings and Bad Kings* (LHBOTS, 393; ESHM, 5; London/New York: T & T Clark, 2005), 164–188 (184–188).

¹⁰ H. Niehr, *Rechtsprechung in Israel. Untersuchungen zur Geschichte der Gerichtsorganisation im Alten Testament* (SBS, 130; Stuttgart: Verlag Katholisches Bibelwerk, 1987). In the light of the present argument, the term שופט ‘ruler’ did not assume the notion of ‘judge’ prior to the fall of Jerusalem.

an authoritative 'law' besides him would have meant in infringement of his royal prerogative.¹¹

The popularity of what now should be called de Wette's error—the equation of the 'Book of the Law' presumably found in 622 BCE with Deuteronomy or parts of it—seems to be due to some specious attitudes towards the Bible and its world: the vain wish that the Bible could prove authoritative not only in the spiritual, but also in a literary-historical sense¹²; the assumption of more continuity than discontinuity between the cult, literature and theology of the First and Second Temples;¹³ the crypto-fundamentalist inability to realize that Israel and Judah could, and did, exist without Torah and Prophets for rather a long time. Especially in the case of German scholars these fallacies are exacerbated by an idealistic view of the scribes and their intentions¹⁴: they did not care for the people, they cared for the state, and *l'état, c'était eux*.

Did the situation change substantially with Babylonian rule? In the main, not at all. In royal ideology, the king was still the source of terrestrial justice.¹⁵ On the practical level, the Neo-Babylonians

¹¹ J. Assmann, *Herrschaft und Heil. Politische Theologie in Ägypten, Israel und Europa* (Munich: Carl Hanser Verlag, 2000). Following the majority of biblical scholars, he dates his so-called 'Mosaic distinction' (which describes, in fact, a 'Greek distinction,' absent in the pre-Hellenistic Bible) 200 years too early, but he got the mechanism of the process fairly right. On this line, P. R. Davies reasons against the Josianic date of Deuteronomy* in his "Josiah and the Law Book," in L. L. Grabbe (ed.), *Good Kings*, 65–77, notably 73–75; the same argument—is a 'covenant' between God and Israel that leaves the king out thinkable in monarchic times (or was Deut 17:16–20 not part of the original text or served no clear function)—was advanced by E. Aurelius, *Zukunft jenseits des Gerichts. Eine redaktionsgeschichtliche Studie zum Enneateuch* (BZAW, 319; Berlin/New York: de Gruyter, 2003) 41 note 77. Cf. most recently P. R. Davies, "The Place of Deuteronomy in the Development of Judean Society and Religion," M. Liverani (ed.), *Recenti tendenze nella ricostruzione della storia antica d'Israele: convegno internazionale : Roma, 6-7 marzo 2003* (Contributi del Centro linceo interdisciplinare "Beniamino Segre," 110; Rome: Accademia nazionale dei Lincei, 2005), 139–155.

¹² This is not to deny that the Bible contains a rich store of material relevant for the modern historian, but this was not the purpose for which it was written, nor is 'historical information' the reason for its reading in Synagogue and Church.

¹³ For the contrary, cf. R.G. Kratz, "The Second Temple of Jeb and of Jerusalem," M. Oeming & O. Lipschits (eds), *Judah and the Judeans in the Persian period* (Winona Lake, Ind.: Eisenbrauns, 2006), 247–264.

¹⁴ Notably in the case of E. Otto, *Das Gesetz des Mose* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2007), 118–246.

¹⁵ Cf. the Eamashkugar-Cylinder of Nabonidus, I 24–25: "to whom Shamash and Aya opened wide the ways of justice;" the Ebabbar-Cylinder I 5: "the shepherd of numerous people, who loves justice;" Larsa-Cylinder I 11–12. 24–26: "the considerate shepherd, who leads the people of the

followed their own common law with judgment by local juries to a degree that even the king pleaded his cases in front of such courts.¹⁶ All this suggests that Benjaminite common law remained in use under the Babylonian kings, a ‘codified law’ was not yet called for, and the collection of traditional law known as the ‘Book of the Covenant’ remained in use by the scribes for scribal training and to be consulted in cases of appeal (now to the governor and his staff). The adaptation of the received law to the present diminished circumstances, however, is likely to have started the scribal process of accumulating a ‘second law’ as commentary to the received law.¹⁷

The ‘final edition’ of Deuteronomy, which was then promulgated together with Exodus 20–23 and Leviticus 17–25(27) as codified law for the Persian province of Judah, had to wait for Ezra and his Persian authorization to do so. There was no ‘Torah’ before the Torah, at least not as a ‘law’ obliging all Jews. What did happen before in the production of the Torah? An affair of scribal circles at Mizpah/Bethel and Jerusalem, in which the nascent Deuteronomy from Mizpah was hijacked by the ‘returnees’ of Jerusalem in the first half of the 5th centuries, the so-called deuteronomists.

AH, ASSYRIA...

This proposal is not meant to deny the obvious: Deuteronomy 5–28 was formulated under the impact of Assyrian law and ideology. The Assyrian influence was formative for the development of Judahite literature and theology, and this is why there is no reason to assume that it disappeared, all on a sudden, in 609 BCE. Cultural history does not react that quickly to political developments, especially not in the remote periphery of empires. Franciscan Architects in Mexico were perfectly capable to build baroque churches until the beginning of the 19th century (and no historical revivalism involved: it still was their current style). The Assyrian ideological

land in/to justice ... to whom Shamash and Aya opened ways of justice widely.” See H. Schaudig, *Die Inschriften Nabonids von Babylon und Kyros’ des Grossen samt den in ihrem Umfeld entstandenen Tendenzschriften: Textausgabe und Grammatik* (AOAT, 256; Münster: Ugarit Verlag; 2001), 371–72; 385/391; 399/406.

¹⁶ A striking example for this practice was brought to the author’s attention by N. Na’aman, “Naboth’s Vineyard and the Foundation of Jezreel,” *JOT* 33 (2008), 197–218 (203).

¹⁷ The question of whether the divine legitimization of the received law already started in the Neo-Babylonian period or had to wait for the 5th century is hardly decidable. In any case it served the purpose of making the ‘laws,’ i.e. the rule of Babylonians and Persians more palpable to the Judahite population by demonstrating that the order imposed by the empire coincided with the Will of YHWH. Again, there is neither reason nor place for that intellectual operation during the reign of Josiah.

impact was at work when the first draft of the story of Joshua was written (shortly before 600 BCE), and went still strong when the deuteronomistic redaction of this work began its work (first half of the 5th century).¹⁸ Assyrian prophecy still provided the template for Isaiah 40–48*.¹⁹ Babylonian cultural impact can be observed on the misnamed ‘deuteronomistic frame’ of Kings, which is neither dependent on Deuteronomy, nor originally a ‘frame’;²⁰ it is rather a series of chronicle entries on Israelite and Judahite kings in Babylonian chronicle style. Its writers worked in Babylonia, and presumably not before Nabonidus, but possibly shortly after him.²¹ They constituted the progressive group which was on the brink of the ‘monotheistic revolution’ and the ‘Second Temple project.’ We have all reason to assume²² that the people in Benjamin were as

¹⁸ E. A. Knauf, *Josua* (Zürcher Bibelkommentare AT, 6; Zürich: Theologischer Verlag Zürich, 2008), 17–19. Cf. for the ‘first draft’ of Joshua (as the last chapter of an exodus narrative), K. Schmid, *Literaturgeschichte des Alten Testaments. Eine Einführung* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2008), 86–89 rather than T. Römer, *The So-Called Deuteronomistic History* (London/New York: T & T Clark, 2005), 81–90. All agree, though, on its date.

¹⁹ M. Weippert, “‘Ich bin Jahwe’ — ‘Ich bin Ishtar von Arbela.’ Deuteronesaja im Lichte der neuassyrischen Prophetie,” B. Huwyler & al. (eds), *Prophetie und Psalmen. FS K. Seybold* (AOAT, 280; Münster: Ugarit Verlag, 2001), 31–59. ‘Deutero-Isaiah’ were the drummers and fifers of the recruiting party that hired (or pressed) the Persian garrison for the rebuilding of the fortress Jerusalem among the deportees shortly before 520 BCE —cf. now the magisterial commentary by U. Berges, *Jesaja 40–48* (HThKAT; Freiburg im Breisgau: Herder, 2008).

²⁰ L. L. Grabbe, “Mighty oaks from (genetically manipulated?) acorns grow: ‘The chronicle of the kings of Judah’ as a source of the deuteronomistic history,” R. Rezetko, T. H. Lim, and W. B. Aucker (eds), *Reflection and Refraction. Studies in Biblical Historiography in Honour of A. Graeme Auld* (VTSup, 113; Leiden/Boston: Brill, 2004), 155–173; M.Z. Brettler, “Method in Application of Biblical Source Material to Historical Writing,” H. G. M. Williamson (ed.), *Understanding the History of Ancient Israel* (Proceedings of the British Academy, 143; Oxford/New York: Oxford University Press, 2007), 305–336; M. Köhlmoos, “‘Die übrige Geschichte.’ Das ‘Rahmenwerk’ als Grunderzählung der Königebücher,” S. Lubs & al. (eds), *Bebutsames Lesen. Alttestamentliche Exegese im interdisziplinären Methoden-diskurs* (FS Ch. Hardmeier; Arbeiten zur Bibel und ihrer Geschichte, 28; Leipzig: Evangelische Verlagsanstalt, 2007), 216–231.

²¹ F. B. Wissmann, “‘Er tat das Rechte ...’ Beurteilungskriterien und Deuteronomismus in 1 Kön 12 – 2 Kön 25 (AThANT, 93; Zürich: Theologischer Verlag, 2009).

²² More than an assumption if Isaiah 40–48 were produced there in the 5th century and not in Babylonia ca. 525 BCE, as proposed by P. R. Davies, “God of Cyrus, God of Israel: Some Religio-Historical Reflections on Isaiah 40–55” in id. et al. (ed.), *Words Remembered, Texts Renewed: Essays in Honour of John F. A. Sanyers* (JSOTSup, 195; Sheffield: Sheffield

conservative in their literary style, as they were, from the point of view of the leaders of the *golah*, in their religious attitudes, which, according to the evidence from Ezek 33:25²³ and Elephantine, were still polytheistic and iconic.

Academic Press, 1995), 207–225.

²³ According to R. Albertz, *A History of Israelite Religion in the Old Testament Period* vol. 1 (OTL; Louisville, Ky: Westminster John Knox, 1994), 199–200, this verse could not exist, because Ezekiel and Jeremiah presuppose the centralization of the cult — Jer 41:5 and 48:13 refer to the cult of Bethel. That the Bethel sanctuary functioned well beyond the reign of Josiah, is now even conceded by R. Albertz, “Why a Reform like Josiah’s Must Have Happened,” in L. L. Grabbe, *Good Kings*, 27–46, 36, but in my opinion, he still misinterprets Haggai (2:14 refers implicitly to the Benjaminites and the cult of Bethel; not the Samaritans, which did not yet exist, cf. I. Willi-Plein, *Haggai, Sacharja, Maleachi* [Zürcher Bibelkommentare AT, 24.4; Zürich: Theologischer Verlag, 2007] 43) and overlooks Zech 7:2, which explicitly refers to the priesthood of Bethel and is dated to December 7, 518 BCE (Willi-Plein, *Haggai, Sacharja, Maleachi*, 123).