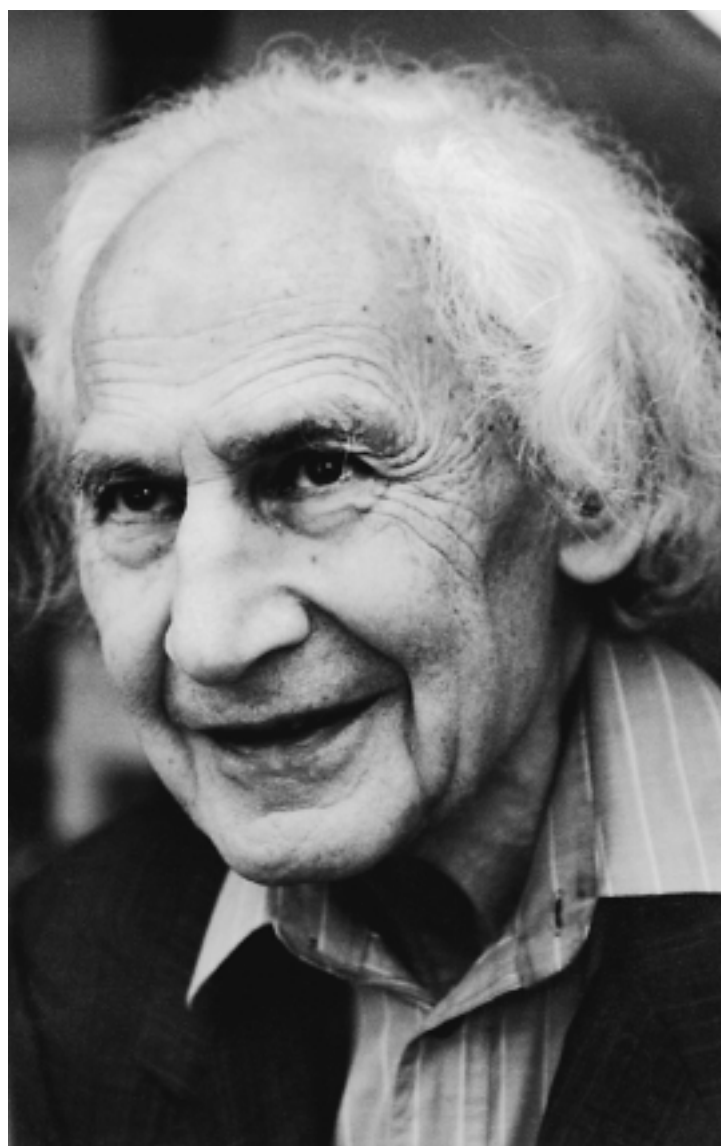


Biblical Law and Literature



STUDIES IN COMPARATIVE LEGAL HISTORY

Biblical Law and Literature

Collected Works of David Daube

Volume 3

Edited by
Calum Carmichael

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<p>From its beginnings to the contemporary world, Jewish Law is an amalgamation of statutory and para-statutory provisions, commentaries on biblical and later codes, translations, monographs, <i>responsa</i>, legal documents, and inscriptions on various artifacts. Insights about Jewish law come from different forms of writings, language, theology, other disciplines, non-Jewish observations and comparative law.</p>	
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<p>Explores issues about the relationship of law to religion. Assesses the history of some legal institutions and ideas by evaluating the role of law in biblical narratives (the brothers' deception in ridding themselves of Joseph, Jacob's service with Laban, Reuben's mandrakes, the failure of Moses to enter the promised land, and the story of the exodus). Distinguishes between law and legal thought in handling legal elements in sagas and legends.</p>	
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<p>Rules about the release of slaves, adultery, individual responsibility, and hire of an object appear in the law codes but are adumbrated in earlier narratives. Important to distinguish between a source as a whole (the Yahwist's or the Elohist's) and the diverse elements that comprise it.</p>	
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<p>Not only do the law codes reveal the law of the times of the biblical authors, so too do the narratives. The latter sometimes tell us about an institution not in the codes (Leah's hire of a person [Jacob] as an object) and clarify issues in the laws (Reuben's responsibility for Joseph, and the brothers' sale of him). Often the narratives make use of legal ideas (the separation of the Levites from family ties, Moses' seeing all of the land before he dies, and the redemption of the Israelites from Egypt). They may also reveal the limitations of the legal system or indicate how injustices are overcome (Jacob's acquisition of his father's blessing, his acquisition of a wife, Joseph's planting his cup in Benjamin's sack, Sarah's relationship with Abimelech, and Abraham's appealing the sentence on Sodom).</p>	
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<p>The story of the exodus became a prototype for other biblical and post-biblical stories of liberation. The author wove into the tale the social laws and customs of his time, which the pharaoh flouted and God enforced. The story in turn influenced biblical laws relating to slaves and oppressed members of Israelite society.</p>	

- Sons and Strangers 157
 As a result of the struggle between the old republican order and the new monarchical one, a transition from non-hereditary (Mosaic) to hereditary rule (Davidic) occurs. Three major figures, Eli, Samuel, and Saul, each shares a desire to pass on his role to his offspring, but fails because an outsider proves worthier and, in fact, becomes recognized as such by the replaced holder of office.
- “One From Among Your Brethren Shall You Set King Over You” 189
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- Summum Ius—Summa Iniuria 241
 Looks at the way in which the discrepancy between the letter and the spirit of the law comes to expression in some biblical narratives, when certain acts and words prove strictly binding irrespective of circumstances (Jacob receiving Esau’s blessing, Laban marrying off Leah instead of Rachel, Jacob securing Laban’s goats, his oath in the matter of Laban’s idols, and his acquisition of Esau’s birthright). In narratives that describe a resort to legalized self-help, in particular, the pursuit of a thief and the search of his house (Laban’s pursuit of Jacob, Joseph’s of Benjamin, and Micah’s of the Danites), one of the parties in the dispute sometimes takes advantage of a formalistic principle of law.
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3: LAW AND LANGUAGE

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The illogical arrangement of a code of laws can be due to a peculiar method of amendment. Those who add to an existing law place the addition not immediately after the law but as an appendix to an existing list. Five factors account for the process: inertia, undeveloped legal technique, writing on stone, oral transmission of the material, and respect for tradition. Those responsible for the additions treated various sections of the Book of the Covenant as complete units. Detectable in the additions is a tendency to move away from formalistic and rigid principles of evidence to more flexible ones.

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In Hebrew, “to have intercourse” is not among the meanings of “to sleep with.” That sense is found in Egyptian, from pre-Old Testament times. It is not in the *Iliad* but is in the *Odyssey*—and very much so in the Septuagint. And it is in Latin from the middle of the last century B.C.E.—ready for the Vulgate.

4: RESPONSIBILITY, DRUNKENNESS, DISHONOR,
EQUALITY AND UNJUST ENRICHMENT

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When a community is tainted by and answerable for an offence committed by one of its members; when a community is punished, not as responsible for an individual’s offence, but by way of punishing its ruler; when an individual is held solely responsible for an offence. Communal merit, not individual responsibility, sometimes replaces communal responsibility. Touches on the family curse in Greek literature and the concept of original sin in Christianity.

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What Price Equality? Some Historical Reflections 535

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- Ancient Hebrew Fables 699
 Fables in antiquity function as secret communication among the oppressed, or serve to communicate in an agreeable way a request to a superior. Assesses three fables in the Old Testament, the question why there are none in the New Testament, and looks at six of some three dozen in Rabbinic sources, which lack precursors in other literatures.
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- Über die Umbildung biblischen Rechtsgutes** 773
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6: IDEAS IN THE NARRATIVES

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- The Last Chapter of Esther** 797
 The levying of a tax in the last chapter of Esther, far from being an obscure, anti-climactic ending to the story, enshrines a profound and fitting conclusion. A government has more to gain from orderly taxation than by giving over the Jews to massacre and indiscriminate plunder.

- Ahasver 803
Addresses the puzzle why, the biblical Ahasverus being a pagan, the Wandering Jew is called Ahasver.
- Esther 805
The primary aim of the Book of Esther is to persuade the non-Jewish authority to grant a niche to the Jews in its constitution. The ubiquity of the Jews and their separateness serve to make them intelligence gatherers, trustful counselors, and good traders. The absence of religion from Esther is but skin-deep. The clue to the book's structure is found in 1 Esdras with its debate about what is the strongest force in the world. The element of mockery in Esther is consistent with a style of free speech cultivated in Oriental and Hellenistic life and letters. Touches on problems of the gulf between the canonical Esther and the later Additions, and how a work in Hebrew is intended to influence outsiders. Identifies negative aspects of the three women Vashti, Haman's wife, and Esther.
- Judith 849
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7: SEXUAL RELATIONS AND SHAME

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 The levirate marriage described in Deut 25:5–10 presupposes a situation where the father is not alive but brothers remain together to enjoy the inheritance in common. The Roman institution of *consortium* is comparable, and so too are the dwelling together for a while of Abraham and Lot and Jacob and Esau. Contrasts the punishment of disgrace imposed on the unfaithful *consors* with the use of infamy in Roman sources to control general moral conduct. The ingenious method of dividing joint property, *maior dividat minor elegat*, may have a history going back to the ancient Orient. The Talmud preserves a remnant of the ancient institution of the biblical *consortium* when each member of a certain kind of partnership is regarded as having full ownership of the joint property.
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- The Duty of Procreation 951
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- Embrace in the Old Testament 973
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