Biblical Law and Literature
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Collected Works of David Daube

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1: Law and Narrative

Biblical and Postbiblical Law 3

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, responsa, 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.

Law in the Narratives 27

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.

Concerning Methods of Bible-Criticism: Late Law in Early Narratives 79

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.

Rechtsgedanken in den Erzählungen des Pentateuchs 91

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).

The Exodus Pattern in the Bible 101

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.
Sons and Strangers

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”

The puzzling requirement in Deut 17:15 that the Israelites are not to appoint a king over them who is a foreigner is a reaction to the story of the half-foreigner Abimelech in the Book of Judges. He, not the native Saul, was the first “Hebrew” king.

Absalom and the Ideal King

There is much more to the write-up of Absalom’s life than has been hitherto recognized. One aim of the narrator is to depict Absalom as determined to usurp a ruler, his own father, David, because David leaves a terrible wrong (his daughter’s rape) unrepaired. Absalom, dedicated to justice, is to replace David, who is not. The origin of the term “widowhood” may be owing to circumstances where a wife can be without a husband even though he is still alive.

2: Aspects of Retaliation and Modes of Interpretation

Lex Talionis

The various aspects of ancient legal systems are interconnected and criminal law and civil law are not so readily separated. The principle of compensation, as the extreme instance, the formula of retaliation, demonstrates, is found in the earliest period of biblical legal history. Punishment constitutes compensation in two directions: the criminal, by suffering punishment, makes restitution to the offended party, and, suffering punishment, receives his due.

Summum Ius—Summa Iniuria

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.

Jacob’s Reception by Laban

When Laban declares to his nephew Jacob, “Surely thou art my bone and my flesh,” he is formally recognizing a tie of kinship. Later, however, when Laban says to Jacob who has come to stay with him, “Thou are not my brother, and therefore shouldst not serve me for nought,” Laban is disavowing the tie and voiding Jacob’s status in the family. As a result, Laban’s offering a wage for Jacob to serve him is a mark of degradation. Jacob is now a hireling.

Fraud on Law for Fraud on Law

That aspect of retaliatory punishment where an offender’s method of causing suffering is played back on him. Folk-literature, biblical and Greek sources provide examples of such analogies between crime and punishment.
Shimei and Örn: The Construction of a Restraint

The sophistic way in which King Solomon interprets his father's, David's, deathbed wish to get rid of a subject, Shimei, who had proved subversive at the time of Absalom's rebellion against King David. A parallel to such overly formalistic interpretation occurs in an Icelandic saga.

Conflicting Laws

Later Jewish interpreters mostly deal with two conflicting rules in Scripture by distinguishing their fields of application. There is, however, another mode of harmonization, the claim that the two rules really say the same thing.

“If So”

Examines the terse way (by use of the words “If so”) whereby in Jewish sources one authority makes another's position the premise of an inference or a question. The argument always concerns the relation of a position to a recognized teaching or practice—often Scriptural—thought, initially, to be in conflict with it. The one other application of the argument “If so” is the use of the *reductio ad absurdum*.

3: LAW AND LANGUAGE

Codes and Codas

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.

Some Forms of Old Testament Legislation

Discusses the formal distinction between laws, the setting in life of which is meticulous secular jurisdiction, and laws, the setting in life of which is the necessity of controlling those regions that earthly justice cannot reach—morality, for example. Why the catalogue of offenses in Deuteronomy 27 carries a curse attached to each. A medical form shows up in legal rules because the priests controlled both medicine and law. In pointing to the proper way to behave, post-biblical rulemakers use the participle—in contrast to the forceful imperatives and imperfects of the Old Testament that express the direct word of God.

“I” and “I and Thou”

Explicates the use in various legal systems of personal statements to express a legal rule or an argument.

A Note on a Jewish Dietary Law

If we assume that historically milk-offerings preceded meat-offerings, the puzzling prohibition against boiling a young animal in its mother's milk can be understood as a demand to do away with the remnants of milk-offerings in the interests of solely presenting living sacrifices. Addresses why the prohibition is a sacrificial rule in one code but a food rule in another.
Error and Accident in the Bible
Contrasts how acts performed in error receive enormous attention in ancient literary sources whereas accidental acts receive little. Notes the frequency of acts performed in error in real life, the checkered process by which lawgivers handle them, and why they receive more attention in rules involving sacred offenses.

Sin, Ignorance and Forgiveness in the Bible
Distinguishes between knowledge as information and knowledge as insight, and notes when ignorance or error excuses a wrong. Unwitting transgression of the sacred sphere presents peculiar problems. Tendency in the Bible is to pay more attention to lack of information as a mitigating factor in assessing wrongdoing. Where sin is thought of as due to a lack of understanding, the conclusion is rarely drawn that it be excused.

Error and Ignorance as Excuses in Crime
The ancients showed profound insight into mental states despite the fact that their laws often take account of externals alone. Traces the gradual opening up of the laws to mental states. Draws attention to the kind of ignorance indicated by a phrase like “they know not what they do,” and to the distinctive ways Socrates and Judeo-Christian tradition treat such ignorance.

Direct and Indirect Causation in Biblical Law
The ancients are not deficient in comprehending the complications surrounding indirect causation. Statutes do not go beyond the narrowest causality because when causation is indirect legislators are deliberately cautious on account of problems of evidence. There is a correlation between direct causation and presence of intent and between indirect causation and absence of intent. The earliest biblical private laws about damage to property exclusively contemplate damage indirectly caused. The role of the causative in language shows that the ancients were fully alert to the nature of causation. Excursus follows on the disquieting clause in Exod 21:13 that God caused a homicide.

Word-Formation in Indo-European and Semitic
The formation of words in Indo-European and Semitic languages reveal major differences. Indo-European languages allow, but Semitic languages do not, prefixing, suffixing, and compounding that prove useful in furthering analytical thought. Semitic languages go in for modifying the verb and this process lends itself to profundity of thought. The role of the causative in Hebrew reveals the latter development and it may be no accident that early biblical narratives are so taken up with indirect causation.

A Scholium on E.B.I.’s Towards an Indigenous Church
Examines the influence of contemporary American culture on modern translations of the Bible. The process of translation appears in a number of biblical narratives (accounts of Joseph, Hezekiah, and Esther). The problem with Moses’ speech is not that he had a special defect but was deficient in rhetorical accomplishment. Comments on the role of Aramaic in the Gospels; on problems of language at the trial of Jesus; on predicament of keeping alive an ancient work in a foreign language, and potentialities of African languages for the task.

Suddenness and Awe in Scripture
How a basically neutral word (qara’) for what comes someone’s way tends to take on an unfavorable sense. In the early parts of the Old Testament the adverb “suddenly” attaches to a
misfortune or the threat of it. When later, in the New Testament, for example, there is a loosening of the tie between suddenness and catastrophe, the sense of mystery and awe attaches to the term “sudden” and it can denote the miraculous. Examines the Greek concept of *peripeteia* (reversal of fortune).

**Perchance to Dream**

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

### Communal and Individual Responsibility

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.

### A Modern Synagogue Sermon

Examines the *Sidrah*, the portion of law to be read in the synagogue on the Sabbath, about Joseph’s conviction of Benjamin alone for the theft of his cup. Why the Rabbis liked to end an interpretation or a tractate on a happy note. Affirms the importance of the notion of individual as against communal responsibility.

### Wine in the Bible (Part I, Drunkenness)

Assesses cases of drunkenness from Genesis to Judith and notes that the drunk harms himself and not someone else. Wisdom texts are especially pertinent to understanding the attitudes revealed in some dozen instances of drunkenness.

### Death as a Release in the Bible

An individual’s death can be a release from an immediate, fearful threat of a dishonorable death; or come as a consolation when it is united with another’s death; or be a deliverance from a burdensome life on account of disease, misfortune or indifference to life’s pleasures.

### Ahab and Benhadad: A Municipal Directive in International Relations

A Deuteronomic rule about the need to preserve appearances in a relationship between a creditor and a debtor illumines the nature of the dishonor that an Israelite vassal, Ahab, experiences at the hands of King Benhadad. Benhadad switches from requiring Ahab to hand over objects as pledges plus members of his household as hostages to demanding that his officers themselves enter Ahab’s palace to choose the pledges and the hostages.

### What Price Equality? Some Historical Reflections

When women, slaves, plebeians, and children attain equality there are losses, added duties and restraints. Reflects on the phenomenon of unwanted salvation, the interaction between one who rescues against another’s wishes and the latter’s putting up with a painful benefit.
Unjust Enrichment: A Might-have-been

Biblical examples of objectionable withdrawal of an asset or unfair withholding of it occur in: Exodus 5 (forced labor); Exodus 21 (a rule about a concubine); Leviticus 27 (the gift of land to priests); Numbers 9 (a share in the Passover); and Numbers 27 and 36 (the passing on of a deceased’s name and property through a daughter). Unlike the biblical picture, commerce dominates the view of unjust enrichment in Roman private law. Aristotle’s thinking illuminates the language of the Septuagint on the topic.

5: Civil Disobedience and Coded Communication

Civil Disobedience in Antiquity

Surveys non-violent civil disobedience in Greek, Roman, and biblical sources with the aim of demonstrating that there is hardly a variety of civil disobedience today that is not anticipated by the ancients. Singles out disobedience by women, children, slaves, prophets, philosophers, religious minorities, and aspirants to statehood.

Enkidu

The story of Enkidu in the epic of Gilgamesh supports the interpretation of the story of Adam and Eve as a rise, via an act of disobedience in a higher cause, from a primitive animal state to a condition that characterizes humankind as gifted with understanding. Only the clash with the god(s) in Genesis is lacking in the Gilgamesh epic.

Three Footnotes on Civil Disobedience in Antiquity

Fables and Athenian comedy provide insight into civil disobedience by juniors, and the topic of unwanted salvation. Compares twentieth-century Jonestown massacre in Guyana with the nineteenth-century British action at Balaklava in the light of Philo’s defense of the Jews preparing for communal suicide in first-century Judaea.

Ancient Hebrew Fables

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.

Nathan’s Parable

Parable is not originally composed for David’s adultery with Bathsheba, but for Saul’s treatment of his daughter Michal.

More about Michal; or the Goose and the Peacock

The stories about Hippocliades (Herodotus), the Buddhist Jatakatthavannana, and Michal’s contempt for her husband (2 Samuel) share a common motif: a monarch, his daughter, and a gifted seducer who wins her hand but disgraces himself dancing.

A Quartet of Beasties in the Book of Proverbs

Links to matters relating to the court and the military in Genesis–2 Kings four proverbs about the ant and a regular supply of food, the safe domicile of the cony, the locust’s capacity for war, and the lizard’s triumph despite bodily shortcoming (Prov 30:24–27).
Ancestors in the Mist

Fundamental ideas about conflicting freedoms and diverse forms of government in Greek and Western sources (Aristotle, Plato, and the American Constitution) derive ultimately from Near Eastern and Mediterranean cultures. Similar ideas in the Bible (in the fables involving Gideon and Balaam) also owe much to these cultures, for example, the classic relationship between king and prophet. Terms for “covenant,” “pact,” and “bond” are pertinent to how theories of social contract developed.

Gideon’s Few

Addresses the puzzle in Judg 7:2–8 about the drinking test to identify the fiercest warriors. The 300 men who lap like dogs remain to fight because the test functions like an oracle anticipating victory over a foe. To lap like a dog symbolizes a lapping of the enemy’s blood.

Metaphor

How later Rabbinic authorities dealt with metaphorical phraseology in semi-legal biblical pronouncements.

Allegorizing

In interpreting biblical rules Aristeas, Philo, and the Rabbis use allegory to derive a deeper layer of meaning from them. The derived meaning does not form part of the legal edifice although it might convey a principle of conduct. Crucial to the enterprise is the belief that the biblical sources have a supernatural origin. Unlike re-interpretation allegorization does not, on the whole, reject the outer meaning of a precept.

Über die Umbildung biblischen Rechtsgutes

(1) The mark on the foreheads of those who will not be punished in Ezekiel’s vision mirrors the use of marking fugitives who are to be granted asylum. Ezekiel’s mark (taw), which is not original to him, has uses in other parts of the Old Testament, and may have influenced the writer of the Book of Revelation. The mark survives down through the centuries, and the Christian use of it has influenced the Cabalists. (2) At a pre-Mosaic stage, the penalty of kareth may have consisted in castration. In the Bible it means rejection by the community or by God. In later Jewish tradition it can mean childlessness, or shortening of the life span originally laid down by destiny, or exclusion from future life. (3) Discusses the relatively sophisticated arrangement of the rules in the tractate of the Mishnah, Baba Kamma.

6: Ideas in the Narratives

Two Jewish Prayers (Part I, Cain)

The first person to pray in the Bible is Cain. Addresses the puzzle why Cain who is condemned to a life of vagrancy becomes the founder of the first city. Compares the Gideon cycle of stories with the story of Cain.

The Last Chapter of Esther

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
Addresses the puzzle why, the biblical Ahasverus being a pagan, the Wandering Jew is called Ahasver.

Esther
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
The Book of Judith stands opposed to the Book of Esther in condemning a Jewess like Esther who, engaged in a higher cause, sleeps with an enemy leader. A Hebrew woman’s dignity is to be upheld at all costs even if other high values can be disregarded in times of national emergency. Judith radically opposes Israel’s foes and encourages unrestrained warfare. Conversion to Judaism, in the person of Achior, is a major element in the story of Judith whose portrait is sketched in response to previous biblical figures (Simeon, Rahab, Jael, Deborah, Barak, Ruth, and Esther).

Jonah: A Reminiscence
Praises the book’s universalistic character, its derivation of human rights from God’s treatment of the Gentiles, its sympathy for human beings’ fundamental lack of understanding, its handling of Jonah’s reversal of sacred values, its subtle feminine dimension, and its unique treatment of divine generosity.

“Zeig mir den Weg, den ich gehen soll”
Opposes expurgating the violence from the Psalter. The use of a psalm in the Book of Jonah does not change secular meaning into religious, as often occurs when a sacred work is re-interpreted, but metaphorical meaning into literal.

Reflections on Job and Greek Tragedy
Sophocles’ tragedy, *Philoctetes*, and the Book of Job share a community of ideas on ultimate questions. Addresses the view that Job was not Jewish.

Jehovah the Good
The Chronicler omits much of the story of Hezekiah’s illness in 2 Kings and Isaiah because of his aversion to medicine. He substitutes for Hezekiah’s illness and recovery the more elevated, spiritualized institution of a second Passover.

A Second Chance
The idea of a second chance shows up in a number of biblical rules (observance of the Passover, inheritance of daughters in the absence of a son, and an alternative to a standard cultic offering). The idea also appears in a number of biblical narratives (the new world after the flood, the tablets of the law, and Hezekiah’s reprieve).
7: SEXUAL RELATIONS AND SHAME

La Femme dans le Droit Biblique

Discusses a double standard in the treatment of Sarah’s and Bathsheba’s illicit unions; the position of women in a bilingual marriage; the role of Naomi as a foil for the author to introduce novel legal ideas in regard to marriage. Counters certain arguments about an incest rule involving Moses’ parents, about Samson’s marriage, about David’s to Michal, about the suspected adulteress, and about the levirate custom in Ruth.

Consortium in Roman and Hebrew Law

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.

Repudium in Deuteronomy

The role of shame in the biblical prohibition against renovating a marriage is reminiscent of the notion of repudium in Roman sources.

The Return of the Divorcee

Examines the unique prohibition against a woman’s returning to her first husband after being with a second husband who divorces her or dies. Looks at examples in history and literature of women who return to their first husband after a lapse of time.

Old Testament Prohibitions of Homosexuality

Unconcerned about other types of homosexual conduct, the biblical prohibition in Leviticus focuses on anal intercourse.

The Duty of Procreation

The Bible nowhere enunciates a duty to produce children. Sketches the history of the topic from the lack of a duty in biblical sources, to the development of the duty in classical antiquity, to its reception by the Rabbis and the Church Fathers. Raises the issue of when, and why, in the history of western civilization, benefits perceived to be blessings eventually turn into duties.

Bar Kappara

Insight into the refusal to grant Bar Kappara rabbinic ordination comes from his argument about Sarah’s view of Abraham’s impotence.

Embrace in the Old Testament

Takes stock of the nature of embrace in the Old Testament, and addresses the puzzling statement in Jer 31:22 about how in a new age a “female will enfold a man.”
Orpah
The negative assessment of Orpah in the Book of Ruth in both Jewish tradition and contemporary commentaries may be wide of the mark because her kiss may succinctly express depth of feeling. Compares the pair Ruth-Orpah with the Sophoclean pair of sisters Antigone-Ismene.

Addendum to God or Goddess
Points to female substitutes for a male God in the Jewish, Christian, and Islamic religions.

To Be Found Doing Wrong
That form of legislation in which the word “found” occurs in English statutes and notices points to offenses whose essence is their momentary character (trespassing, vagrancy). The quite different use of “found” in four statutes in Deuteronomy is due to that code’s concern with disgraceful appearance resulting from a crime.

The Culture of Deuteronomy
Brings out the shame-cultural dimension of Deuteronomy and sets it alongside the role of God as the internal voice of authority representing guilt. Links the emphasis on shame to a setting in which young men, receiving counsel in wisdom, seek to please upstanding members of society. Sets out two forms of legislation peculiar to Deuteronomy.