

# DEUTERONOMY AND POLITY IN THE EARLY HISTORY OF JEWISH INTERPRETATION

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## INTRODUCTION

The Hebrew biblical Book of Deuteronomy presents itself as containing Moses' final exhortations and commands to the people of Israel just prior to his death and their entry into the holy land, in which he recapitulates and extends the previously-told history and laws of Israel from Horeb (Sinai) to Moab. For this reason it has acquired the name in English of Deuteronomy, or in Hebrew of *mishneh torah*, meaning a second or repeated *torah* (instruction).<sup>1</sup> However, it is abundantly clear that the Book of Deuteronomy puts into Moses' mouth major reworkings of and additions to the laws and narratives found in the preceding books of the Pentateuch (especially the JE strands), leaving scholars in disagreement as to whether Deuteronomy was originally intended as a free-standing substitute for or dependent accompaniment to the legal and narrative traditions upon which it innovates.<sup>2</sup> Of particular interest is the way in which Deuteronomy's reworking and amplification of the covenantal rules (chs. 5-28) provides for the first time the rudiments of a jurisprudential system of governance, or what Josephus terms in Greek a *politeia*, or what we might call a political "constitution," or what in more religious terms may be thought of as, in the words of one biblical scholar, "the divinely authorized social order that Israel must implement to secure its collective political existence as the people of

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<sup>1</sup> The former is from the Greek and Latin designation of the book as Deuteronomium. These are based on a misunderstanding of *Deuteronomy* 17:18, going back at least as far as the Septuagint translation of *mishneh hatorah hazo't* ("a copy of this teaching") as *deuteronomion touto* ("this second law").

<sup>2</sup> For example, there has long been disagreement how to understand *bē'er* in *Deuteronomy* 1:5: does it mean "set forth" or "clarify"? See JEFFREY H. TIGAY, *THE JPS TORAH COMMENTARY: DEUTERONOMY 5* (1996). On Deuteronomy's exegetical reworking of antecedent legal materials, see BERNARD M. LEVINSON, *DEUTERONOMY AND THE HERMENEUTICS OF LEGAL INNOVATION* (1997).

God."<sup>3</sup> In light of the narrative framework of the Book of Deuteronomy (chs. 1-4, 29-34), this innovation may be understood as having been necessitated by the end of Moses' prophetic leadership prior to his death and his anxious anticipation of the next phase in Israel's national existence as a settled society in its own land. However, critical scholarship has long understood Deuteronomy's innovations, within the much later historical context of its literary composition, as either a response to socio-political circumstances and/or a justification for religio-political reforms of the Seventh Century B.C.E.<sup>4</sup> What interests me here, however, is not such questions of Deuteronomic origins, but rather how Deuteronomic innovations provided the interpretive foundations for a variety of post-biblical Jewish reconceptions of Israel as a covenantal people with a divinely revealed polity, which would prove of central consequence to changing Jewish self-understandings in a variety of cultural and political settings. While it is tempting to ask about the role of Deuteronomy as a whole, that is, as a "book," in influencing or modeling broad reconceptions of covenantal polity through successive "rewritings" of Scripture,<sup>5</sup> I will focus presently on four specific aspects of this broader question, most of which I have treated in greater detail elsewhere.

<sup>3</sup> I am particularly dependent here upon S. Dean McBride, Jr., *Polity of the Covenant People: The Book of Deuteronomy*, in INTERPRETATION 41, at 229-244, 223 (1987), reprinted in CONSTITUTING THE COMMUNITY: STUDIES ON THE POLITY OF ANCIENT ISRAEL IN HONOR OF S. DEAN MCBRIDE, JR 62-77 (John T. Strong & Steven S. Tuell eds., 2005) (with responses to the original article). See especially Patrick D. Miller, *Constitution or Instruction? The Purpose of Deuteronomy*, in *id.* at 125. For Josephus's understanding of the Deuteronomic "torah" as "politeia," see McBride, *supra*, at 229. Although Josephus promises at several points to write a detailed treatment of the laws revealed to Moses at Mt. Sinai, under the title "Of Customs and Causes," he appears never to have done so. Instead, in Book 4 of his JEWISH ANTIQUITIES he digresses from his narrative history to present "these laws and this constitution (*politeia*) recorded in a book" by Moses, JOSEPHUS, JEWISH ANTIQUITIES 4.194 [hereinafter ANTIQUITIES], at his death, based mainly on the laws of *Deuteronomy* 12:26. Josephus modestly (but falsely) claims that he is simply passing on, without added embellishment, what Moses bequeathed to the people. However, he admits to having made one "innovation," so as to render the Mosaic "constitution" more readily accessible to his readers: "to classify the several subjects; for [Moses] left what he wrote in a scattered (*sporadēn*) condition, just as he received each several instruction from God." *Id.* at 4.197. For the possibility that Josephus modeled his own work on the Book of Deuteronomy, see my essay, Steven D. Fraade, *Nomos and Narrative Before Nomos and Narrative*, 17 YALE J.L. & HUMAN. 87, n. 20 (2005). For Philo of Alexandria's claim for the superiority of the Mosaic *politeia*, see Philo, *De Virtutibus*, 175.

<sup>4</sup> For a summary of scholarship on Deuteronomy's dating and provenance, see TIGAY, *supra* note 2, at xix-xxvi.

<sup>5</sup> For example, to what extent is the Book of Deuteronomy a model for the wholesale rewriting of Scripture as found in ANTIQUITIES 1-11; the Book of Jubilees; such Dead Sea Scrolls as the Damascus Document, 4QMMT, and the Temple Scroll; or even the Mishnah?

## I. FIRST EXAMPLE: "THIS TORAH"

The Book of Deuteronomy's frequent self-reference to "this *torah*"<sup>6</sup> or "this is the *torah*,"<sup>7</sup> or less frequently to "this book of the *torah*,"<sup>8</sup> or simply "this book,"<sup>9</sup> reveals a fundamental shift in the meaning of the word *torah* from the ways in which it is used earlier in the Pentateuch. Whereas previously it had been employed to reference particular cultic, ritual, or judicial directions and procedures, or a cluster thereof, in the Book of Deuteronomy it refers to the Deuteronomic "constitution" as a whole, or to some major section thereof, if not to the whole literary work. Thus, the legal core is provided with the following superscription, setting forth a *singular torah* that encompasses a *multiplicity* of laws: "This is the *torah* that Moses set before the Israelites: these are the decrees, laws, and rules that Moses addressed to the people of Israel, after they had left Egypt . . ." <sup>10</sup> This broadening of the meaning of *Torah* continues in the later books of the Hebrew Bible, first with reference to the Book of Deuteronomy itself, but eventually to the whole of the Pentateuch as *Torah*, especially as the "Torah of Moses," or the "Book of Moses," or the "Book of the Torah of Moses," or the "Book of Torah."<sup>11</sup> Thus, when in Nehemiah 8:1-8 Ezra reads the

<sup>6</sup> Deuteronomy 1:5; 4:8; 17:18, 19; 27:3, 8, 26; 28:58, 61; 29:28; 31:9, 11, 12, 24; 32:46. The only other place this phrase appears in the Hebrew Bible is in Numbers 5:30, where the reference is to the preceding ritual of the suspected adulteress.

<sup>7</sup> Deuteronomy 4:44. The same phrase in Leviticus 7:37; 14:54; and Numbers 19:14 refers to individual or clusters of priestly rituals and procedures.

<sup>8</sup> Deuteronomy 28:61; 29:20; 30:10; 31:26.

<sup>9</sup> *Id.* at 28:58; 29:19, 26.

<sup>10</sup> *Id.* at 4:44.

<sup>11</sup> For the first, see Joshua 8:32; 1 Kings 2:3; 2 Kings 23:25; Malachi 3:22; Daniel. 9:11, 13; Ezra 3:2; 7:6; 2 Chronicles 23:18; 30:16; for the second, see Ezra 6:18; Nehemiah 13:1; 2 Chronicles 25:4; 35:12; for the third, see Joshua 8:31; 23:6; 2 Kings 14:6; Nehemiah 8:1; for the last, see Joshua 1:8; 8:34; 2 Kings 22:8, 11; Nehemiah 8:3; 2 Chronicles 34:15. These expressions presumably arise under the influence of the Book of Deuteronomy. For a discussion of the developing nature of the conception of *Torah* within the Hebrew Bible, see Mordechai Cogan, *On the Borderline between Biblical Criticism and Hebrew Linguistics: The Emergence of the Term Sefer Mosheh* (Heb.), in TEHILLAH LE-MOSHE: BIBLICAL AND JUDAIC STUDIES IN HONOR OF MOSHE GREENBERG 37\*-43\* (Mordechai Cogan et. al. eds. 1997); Michael Fishbane, "Torah," in 8 'ENTSILOPEDYAH MIQRA'IT [ENCYCLOPEDIA BIBLICA] 469-83 (1982); Moshe Greenberg, *Three Conceptions of the Torah in Hebrew Scriptures*, in DIE HEBRÄISCHE BIBEL UND IHRE ZWEIFACHE NACHGESCHICHTE: FESTSCHRIFT FÜR ROLF RENDTORFF ZUM 65. GEBURSTAG 365-78, (Erhard Blum et al. eds., 1990), reprinted in MOSHE GREENBERG, STUDIES IN THE BIBLE AND JEWISH THOUGHT 11-24 (1995); JAMES L. KUGEL & ROWAN A. GREER, EARLY BIBLICAL INTERPRETATION 13-26 (1986); Barnabas Lindars, *Torah in Deuteronomy*, in WORDS AND MEANINGS 117-136 (Peter Ackroyd & Barnabas Lindars eds. 1968); Hindy Najman, "Authoritative Writing and Interpretation: A Study in the History of Scripture" (Ph.D. dissertation, Harvard University, 1998), ch. 2, "Torah of Moses: Reading, Interpretation, and Authority," 75-118; Jacob Neusner, *From Scroll to Symbol: The Meaning of the Word Torah*, in FORMATIVE JUDAISM: RELIGIOUS, HISTORICAL AND LITERARY STUDIES: THIRD SERIES: TORAH, PHARISEES AND RABBIS 35-57 (1983); as well as my own remarks in Fraade, *supra* note 3, at 83-85. Note that in later books the Book of Deuteronomy is referred to as "the book of the covenant," not to be con-

"Book of the Torah of Moses" to the assembled people, he is understood to have read something approximating what became the Torah as Pentateuch, even if in a truncated form. In the wisdom tradition, "Torah" becomes synonymous with wisdom (*hokhmah*), or *sophia*, even more broadly.<sup>12</sup>

The Dead Sea Scrolls continue this pattern of using the phrases "the Torah of Moses"<sup>13</sup> and "the Book of the Torah"<sup>14</sup> to refer to the Pentateuch, but "Torah" alone to refer to divine/scriptural teaching or wisdom more broadly. They also refer to a "Book of Hagu" (or "Hagi"), which some understand to be another designation for the "Book of the Torah," but others take to refer to a esoteric sectarian book of teachings.<sup>15</sup>

However, it is in early rabbinic literature that the scope of the word "Torah" is most radically expanded to include not just the words of Scripture (*miqra*'), but those of the Oral Tradition (*mishnah*) as well. Thus, for example, when *Mishnah 'Abot* 1:1 speaks of Moses' having received "Torah" from Sinai, and having passed it on to his successors, extending the "chain of tradition" down to and through the early rabbinic sages, it is generally understood to be speaking of Torah in the expanded rabbinic sense of written scripture and accompanying, yet ever expanding, oral teaching. Similarly, early rabbinic literature transmutes the Deuteronomic expression *divrei ha-torah ha-zo't* ("the words of this Torah"),<sup>16</sup> to simply *divrei torah* ("words of Torah"), as encompassing all forms of rabbinic learned discourse, and similarly sees other expressions for Moses' teachings as encompassing the fuller curriculum of rabbinic study. To give just one example, the *Sifre* commentary to Deuteronomy 17:19 interprets the king's reading of a "copy of this Torah" and his "guarding" of "all the words of this Torah" to encompass his study not just of written Scripture, but also of Targum (Aramaic translation of Scripture), Mishnah, and Talmud.<sup>17</sup> This often implicit, but nev-

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fused with the same expression in *Exodus* 24:7; *2 Kings* 23:2, 21; *2 Chronicles*. 34:30.

<sup>12</sup> For a detailed survey of the range of meanings of *torah* (and its Greek translation *nomos*), see 4 THE THEOLOGICAL DICTIONARY OF THE NEW TESTAMENT 1022-1091 (Gerhard Kittel & Gerhard Friedrich eds., Geoffrey W. Bromiley trans., 1967).

<sup>13</sup> 1QS 5.8; 8.22; CD 15.9, 12; 16.2, 5; 4QD<sup>a</sup> (4Q266) 11 6.

<sup>14</sup> CD 5.2; 4QD<sup>a</sup> (4Q266) 5 ii 2-3; 4QCat<sup>a</sup> (4Q177) 3.14; 4QMMT C10.

<sup>15</sup> See Steven D. Fraade, *Hagu, Book of*, in 1 ENCYCLOPEDIA OF THE DEAD SEA SCROLLS 327 (2000). For further discussion of the contested nature of "Torah" in the varieties of second temple Judaism, see Carol A. Newsom, *Torah, Knowledge, and Symbolic Power: Strategies of Discourse in Second Temple Judaism*, in THE SELF AS SYMBOLIC SPACE: CONSTRUCTING IDENTITY AND COMMUNITY AT QUMRAN 23 (2004).

<sup>16</sup> *Deuteronomy* 17:19; 27:3, 8, 26; 28:58; 29:28; 31:12; 32:46; cf. *Joshua* 8:34; *2 Kings* 23:24; *Nehemiah* 8:9, 13; *2 Chronicles* 34:19.

<sup>17</sup> SIFRE TO DEUTERONOMY 161 (Louis Finkelstein ed., 1939) [hereinafter SIFRE DEUT.]. For fuller discussion of this passage, see Steven D. Fraade, "The Torah of the King" (*Deut. 17:14-20*) in the Temple Scroll and Early Rabbinic Law, in THE DEAD SEA SCROLLS AS BACKGROUND TO POSTBIBLICAL JUDAISM AND EARLY CHRISTIANITY: PAPERS FROM AN INTERNATIONAL

ertheless unambiguous, claim that the words of the rabbinic sages are themselves "words of Torah," continuous with yet exegetically embedded within Scripture, represents a powerful claim to scripturally grounded authority for the rabbinic sages as teachers and adjudicators of Torah. The political implications of this claim, even if slow to be realized, would have profound ramifications for Jewish political history.

## II. SECOND EXAMPLE: TORAH WRITTEN AND READ<sup>18</sup>

The Deuteronomic innovation of referring repeatedly to Torah as a "book" emphasizes the importance of its having been recorded in writing, even if it also had been and was to be committed to memory.<sup>19</sup> Thus, Moses is explicitly said to have written "this Torah" at the end of his prophetic career.<sup>20</sup> However, the written Torah is not simply deposited for safe-keeping with its priestly guardians and interpreters (as might be assumed from Deuteronomy 31:9, 25-26), but is to be regularly and publicly read to Israel as a whole, as the constitutional grounding of their status and welfare as a covenantal people. This is consistent with Deuteronomy's pedagogic emphasis and insistence elsewhere<sup>21</sup> that its teachings are "not in the heavens," but "very close to you, in your mouth and in your heart, to observe it." Josephus would later expand hyperbolically and apologetically on this Deuteronomic emphasis:

Should anyone of our nation be questioned about the laws, he would repeat them all more readily than his own name. The result, then, of our thorough grounding in the laws from the first dawn of intelli-

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CONFERENCE AT ST. ANDREWS IN 2001 25 (James R. Davila ed., 2003). Compare SIFRE DEUT. 306, where Moses' "discourse" (*leqah*) of Deuteronomy 32:2 is midrashically transposed to "words of Torah," which comprise Scripture (*miqra*'), *mishnah*, *midrash*, laws, and narratives. For fuller discussion, see STEVEN D. FRAADE, FROM TRADITION TO COMMENTARY: TORAH AND ITS INTERPRETATION IN THE MIDRASH SIFRE TO DEUTERONOMY 96-99 (1991) [hereinafter TRADITION TO COMMENTARY], with notes referring to similar passages. Not only does the rabbinic phrase *divrei torah* derive from the Book of Deuteronomy, but its greatest concentration in a tannaitic (first two centuries) midrash is to be found in the *Sifre to Deuteronomy* (70 occurrences, compared to 15 in the *Mekhilta of Rabbi Ishmael*, 22 in the *Mekhilta of Rabbi Simeon bar Yoḥai*, 5 in the *Sifra*, 6 in the *Sifre to Numbers*, 1 in *Sifre Zuta' to Numbers*).

<sup>18</sup> See also TIGAY, *supra* note 3, at 498-502.

<sup>19</sup> Compare Exodus 24:4, 7, where Moses writes down what was revealed to him and reads it to the people for their ratification. Exodus 34:27 is understood in rabbinic literature (e.g. *b. Git.* 60b) to refer not just to Moses' writing of the Decalogue, but to all of the written Torah. Similarly, the Book of Deuteronomy places great stress on Moses' having written the "song" of Deuteronomy 32 and taught it to the people: 31:19, 22, 30; 32:44. For the "Song of Moses" understood as standing for the Torah as a whole, see TRADITION TO COMMENTARY, *supra* note 11, at 146-147, with notes. See also *supra* note 18. Deuteronomy also stresses the writing of the king's Torah in 17:18. For the role of writing in a covenantal ceremony, see also *Joshua* 24:25-28.

<sup>20</sup> Deuteronomy 31:9, 24.

<sup>21</sup> *Id.* at 30:11-14.

gence is that we have them, as it were, engraven on our souls.<sup>22</sup>

The Deuteronomic institution of a septennial reading of "this Torah" (referring initially to the Book of Deuteronomy) to the full constituency of Israel—men, women, children, and strangers<sup>23</sup>— is most likely the origin of the later practice of a public weekly reading of the complete Torah in the synagogue over a triennial (or three-and-a-half year, and later, annual) cycle.<sup>24</sup> The Deuteronomic instruction, however, is unclear as to who precisely is charged with reading "this Torah" to the people. In 31:10 Moses gives the written Torah to "the priests, the sons of Levi . . . and to all the elders of Israel." While in 31:10 Moses instructs "them" concerning the reading, in 31:11 he charges "you" (singular) to read "this teaching." Does the singular "you" refer to a specific individual or to a group?

This ambiguity enabled later interpreters to come to very different understandings of who was the designated Torah reader, a role that would carry significant political authorization. Josephus in his paraphrase says: "Let the high priest, standing upon a raised platform from which he may be heard, recite the laws to the whole assembly."<sup>25</sup> Josephus's assignment of the reader's role to the high priest is likely based on the mention of priests first in Deuteronomy 31:9 and of a singular addressee in 31:10, but it might also reflect Josephus's own priestly lineage and advocacy of priestly theocracy (or aristocracy) as he understood it to be mandated by the Mosaic constitution, and as he claimed it to be the superior form of government.<sup>26</sup> Other second tem-

<sup>22</sup> See JOSEPHUS, AGAINST APION 2.175-178 [hereinafter APION]. Josephus is referring specifically to the practice of reading the laws every Sabbath. Cf. ANTIQUITIES, *supra* note 3, at 16.143.

<sup>23</sup> Deuteronomy 31:9-13. For similar emphases on the inclusive nature of such gatherings, see Joshua 8:35; 2 Kings 23:2; Nehemiah 8:2; 2 Chronicles 34:30.

<sup>24</sup> For this link, see Shlomo Naeh, *The Torah Reading Cycle in Early Palestine: A Re-Examination* (Hebrew), 67 *TARBIZ* 167-187 (1998).

<sup>25</sup> ANTIQUITIES, *supra* note 3, at 4.209. The "raised platform" inserted by Josephus most likely reflects the influence of Nehemiah 8:4, where Ezra the priest-scribe, standing on a "wooden tower," reads the "Book of the Torah of Moses" to the assembled as a one time event, but possibly modeled after Deuteronomy 31:10-13. For the raised platform, compare *id.* with 2 Kings 23:3. If Ezra's reading is modeled after the Deuteronomic septennial reading, it amplifies it in yet another significant way: the public reading is accompanied by some form of simultaneous elucidation, Nehemiah 8:7-8:8, and is followed by days of more concentrated study of the Torah text, Nehemiah 8:13.

<sup>26</sup> See the following: JOSEPHUS, THE JEWISH WAR 1.169-170; ANTIQUITIES, *supra* note 3, at 5.233-34; 6.35-43; 6.83-85; 8.131; 11.111-112; 14.41, 78, 490-91; 20.229, 251; APION, *supra* note 22, at 2.164-65; 2.185-8, 193-95. Note in particular APION 2.164-165, where, after comparing different types of government (monarchy, oligarchy, democracy), he states: "Our lawgiver, however, was attracted by none of these forms of polity, but gave to his constitution the form of what—if forced expression be permitted—may be termed a 'theocracy,' placing all sovereignty and authority in the hands of God." Later, in APION 2.186, he states of the superiority of Israel's constitution: "Could there be a finer or more equitable polity than one which sets God at the head of the universe, which assigns the administration of its highest affairs to the whole body of priests, and entrusts to the supreme high-priest the direction of the other priests?" Compare

ple sources, including the Dead Sea Scrolls, would appear to support Josephus in viewing the public recitation of Scripture as the prerogative primarily of the priests, perhaps reflecting the dominant contemporary practice.<sup>27</sup>

By contrast, the Mishnah (*Soṭa* 7:8)<sup>28</sup> conflates the practice of septennial Torah reading with the "paragraph of the king,"<sup>29</sup> in which it is said that the king reads "a copy of this Torah," while "sitting on his throne." We may have in the mishnaic account a retrospective elevation of the king over the high priest in status,<sup>30</sup> something which would have suited the rabbis' own self-identification, as non-priestly religious authorities, with the Davidic line. Nevertheless, 2 Kings 23:2-3 provides a scriptural precedent of a king having read Torah, at least on one occasion.<sup>31</sup> Whether this difference, between assigning the role of Torah reader to the high priest or to the king, is a function of scriptural inter-

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Hecataeus of Abdera (*see infra* note 27), who states that "the Jews never have a king, and authority over the people is regularly vested in whichever priest is regarded as superior to his colleagues in wisdom and virtue. They call this man the high priest, and believe that he acts as a messenger to them of God's commandments." Josephus's language is so close to that of Hecataeus of Abdera that some scholars regard Josephus as being dependent on Hecataeus. But note the strong argument of DAVID GOODBLATT, *THE MONARCHIC PRINCIPLE: STUDIES IN JEWISH SELF-GOVERNMENT IN ANTIQUITY* 34 (1994) for their statements as being independent, and hence confirming, testimonies.

<sup>27</sup> See Philo's *Hypothetica*, in EUSEBIUS, *PRAEOPERATIO. EVANGELICA* 8.7.12-13; Hecataeus of Abdera, as excerpted by Diodorus of Sicily, *Bibliotheca Historica* 30.3.3-5, (F. R. Walton trans.), in *GREEK AND LATIN AUTHORS ON JEWS AND JUDAISM* 1:28 (Menahem Stern ed. 1976), with *id.* 26-27 for the Greek text and *id.* 31 for Stern's notes; and *Epistle of Aristeeas* 310; and, of course, *Nehemiah* 8:1-12. For priests as readers of Torah, see 4Q266 5 ii 1-3 (DJD 18 [1997]: 49-52); Joseph Baumgarten, *The Disqualifications of Priests in 4Q Fragments of the "Damascus Document," A Specimen of the Recovery of pre-Rabbinic Halakha*, in 2 *THE MADRID QUMRAN CONGRESS: PROCEEDINGS OF THE INTERNATIONAL CONGRESS ON THE DEAD SEA SCROLLS, MADRID 18-21 MARCH, 1991* (J. Treballe Barrera & L. Vegas Montaner eds. 1992) 503-513. Priests as communal readers and teachers of Torah may also be suggested by the fragmentary 4Q264a 1 4-5. See Eibert J. C. Tigchelaar, *Sabbath Halakha and Worship in 4Q Ways of Righteousness: 4Q421 11 and 13 + 2 + 8 Par 4Q264a 1-2*, 18 *REVUE DE QUMRAN* 359, 363-366 (1998).

<sup>28</sup> Cf. SIFRE DEUT., *supra* note 17, at 160.

<sup>29</sup> *Deuteronomy* 17:14-20.

<sup>30</sup> Cf. *m. Sanh. 2. Compare with t. Sanh. 4.*

<sup>31</sup> For the view that the septennial reading of Scripture was not practiced in late Second Temple times, and that the difference between Josephus and the Mishnah is one of differing exegeses of *Deuteronomy* 31:9-11, see David Goodblatt, *Agrippa I and Palestinian Judaism in the First Century*, in 2 *JEWISH HISTORY* 26-27, n. 31 (1987). Seth Schwartz similarly discounts the historical reliability of the mishnaic passage. SETH SCHWARTZ, *JOSEPHUS AND JUDEAN POLITICS* 162-164 (1990). For the subordination of the king to the authority of the high priest, also in the context of a retelling of *Deuteronomy* 17:14-20, see ANTIQUITIES, *supra* note 3, at 4.223-224; 11QTemp 56.12-57.15; as well as my more extensive studies of ancient interpretations of *Deuteronomy* 17:14-20: Steven D. Fraade, 'The Torah of the King' (*Deut. 17:14-20*) in the Temple Scroll and Early Rabbinic Law, in *THE DEAD SEA SCROLLS AS BACKGROUND TO POSTBIBLICAL JUDAISM AND EARLY CHRISTIANITY: PAPERS FROM AN INTERNATIONAL CONFERENCE AT ST. ANDREWS IN 2001* 25-60 (James R. Davila ed., 2003); Steven D. Fraade, *Priests, Kings, and Patriarchs: Yerushalmi Sanhedrin in its Exegetical and Cultural Settings*, in 3 *THE TALMUD YERUSHALMI AND GRAECO-ROMAN CULTURE* 315-333 (Peter Schäfer ed., 2002).

pretation or of the political self-interest of the scriptural interpreter (or a confluence of the two), it should be clear that the outcome is of significant consequence. The reader of Torah to the assembled people, in accord with what would be considered Mosaic instruction, represents a continuation of Moses' own role as divinely authorized intermediary between God and Israel in communicating and adjudicating the terms of the covenant to the people as the constitutional foundation of their existence and well-being.<sup>32</sup>

### III. THIRD EXAMPLE: RITUALS OF COVENANTAL RENEWAL

Whereas the sinaitic narrative in the Book of Exodus tells of a one-time covenantal ritual in conjunction with revelation,<sup>33</sup> the Book of Deuteronomy builds on that narrative to construct a series of such rituals. Indeed, the whole Book of Deuteronomy is narratively framed as a second, or renewed, covenant in the land of Moab, prior to Moses' death and the preparation of the generation that knew not Sinai for entry into the promised land, a covenantal renewal in which the two parties mutually recommit to one another.<sup>34</sup> Note especially Deuteronomy 28:69: "These are the terms of the covenant which the Lord commanded Moses to conclude with the Israelites in the land of Moab, in addition to the covenant which He had made with them at Horeb [Sinai]."<sup>35</sup> But the Book of Deuteronomy goes even further, in legislating that yet another ceremony, or set of ceremonies, of covenant reaffirmation will take place after the people have crossed the Jordan, entered the land, and arrived at Mts. Ebal and Gerizim.<sup>36</sup> In fact, this future ceremony brackets the entire corpus of legal stipulations of the Moab covenant in 11:29-30 and 27:1-26. The process of writing the stipulations of the covenant and the consequences for compliance and noncompliance with them, then reading and ratifying them in public, is conceived by the Book of Deuteronomy not as a one-time occurrence, but as requiring repeated reenactment and reaffirmation.

Deuteronomy 27:1-8 requires that the Israelites after crossing the Jordan erect plastered steles upon which they are to clearly inscribe "all

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<sup>32</sup> Note how, according to *m. Sotah* 7:8, the Torah scroll is be passed up the ranks from the minister of the synagogue, to the chief of the synagogue, to the prefect of the priests, to the high priest, and finally to the king, who then reads it, establishing or reinforcing thereby a hierarchy (in the non-literal sense) of status and authority.

<sup>33</sup> Exodus 24:1-18

<sup>34</sup> See *Deuteronomy* 26:16-19.

<sup>35</sup> See also *id.* at 1:5; 5:2.

<sup>36</sup> It is likely that several covenantal rituals, or versions of rituals, have been editorially merged or juxtaposed. See TIGAY, *supra* note 3, at 246-247, 486-497.



the words of this Torah."<sup>37</sup> In addition to building there an altar upon which sacrifices are to be offered,<sup>38</sup> Deuteronomy 11:29 and 27:11-13 describe a ceremony in which the twelve tribes of Israel are to proclaim the blessings and curses, divinely imposed respectively for obeying or disobeying the terms of the covenant: the twelve tribes are divided, six on Mt. Gerizim and six on Mt. Ebal, the former for the purpose of blessing, the latter for cursing. There are numerous difficulties with understanding the conduct of this ceremony—especially the respective roles of the priests, Levites, and tribes—in conjunction with the specific blessings and curses that follow in Deuteronomy 27:14-26; 28, with the earliest effort to narratively resolve them being found in Josh. 8:30-35.<sup>39</sup> However, for present purposes I wish to stress how the Deuteronomic innovation of *multiple* covenantal ceremonies is extended even further in several of the Dead Sea Scrolls from Qumran, in which the Deuteronomic one-time covenantal ceremony of blessings and curses upon entering the land in the time of Joshua becomes the model for an elaborate annual ceremony of covenantal renewal, or re-entering, during the festival of Shavu'ot (15th day of the third month according to the Qumran solar calendar).<sup>40</sup> While this more unified sectarian ceremony is the result of a reworking the Deuteronomic passage so as to resolve many of its textual difficulties, its significance is less strictly exegetical than performative.

The Qumran annual covenantal ceremony is most clearly described in the Community Rule 1:16-2:18, but is alluded to elsewhere in the scrolls. Each part of the community—priests, Levites, and laity—is assigned its proper role in a dramatic ceremony that both links the present community to its biblical covenantal forebears, but also prepares them for the eschatological consummation of the covenantal promises. The ceremony as described in the Community Rule has the following components:<sup>41</sup> 1. The priests and Levites recount God's praises, after which those entering the covenant respond, "Amen, amen." 2. The priests recount God's righteous and wondrous deeds and merciful acts towards Israel, while the Levites recount the iniquities of Israel "during the do-

<sup>37</sup> Deuteronomy 27:3.

<sup>38</sup> Cf. Exodus 24:4-8.

<sup>39</sup> See also Joshua 4.

<sup>40</sup> For fuller discussion, see my article, Steven D. Fraade, *Rhetoric and Hermeneutics in Miqṣat Ma'ase Ha-Torah (4QMMT): The Case of the Blessings and Curses*, 10 DEAD SEA DISCOVERIES 150-161 (2003).

<sup>41</sup> The following is lifted and slightly truncated from my article, *supra* note 40, at 158-159, 161, but without the footnotes. For discussion of the performative function of the Damascus Document, within an annual ceremony of covenant renewal, see my article, Steven D. Fraade, *Law, History, and Narrative in the Damascus Document*, MEGHILLOT (forthcoming 2007). For additional discussions of the rhetoric of the ceremony of blessings and curses at Qumran, see CAROL NEWSOM, *supra* note 15, at 117-127; DANIEK K. FALK, DAILY, SABBATH, AND FESTIVAL PRAYERS IN THE DEAD SEA SCROLLS 219-236 (1998).

minion of Belial," whereupon those entering the covenant confess having acted sinfully, justifying God's judgments against them and their ancestors and acknowledging his everlasting loving mercy towards them. 3. The priests bless "all the men of the lot of God who walk perfectly in all his ways," expansively paraphrasing the priestly blessing of Numbers 6:24-26 so as to emphasize the contrast between good and evil, God's bestowal of insight and knowledge, and the eternal duration of the blessing. The Levites next curse "all the men of the lot of Belial," emphasizing their total and eternal doom, without recourse to divine forgiveness or mercy or angelic intercession, being a negative expansion of the priestly blessing. Both the blessings and curses are followed by a collective response of "Amen, amen." 4. Finally, the priests and Levites together curse those who have entered the covenant insincerely: "May all the curses of this covenant stick to him. . . . May he put his lot among those who are cursed forever," to which again the assembled respond "Amen, amen." After all have entered according to their ranks, the community as a whole is confirmed as "a community of truth, virtuous humility, kindly love, and right intention towards one another in a holy council, and members of an eternal fellowship."

This annual renewal of community and covenant has at its core the biblical pronouncement of blessings and curses, or legal sanctions, and the people's collective affirmation thereof. The enhanced role of the priests and Levites at Qumran as the speakers of the blessings and curses, that is, as intermediaries in the divine-human covenantal relationship, should not be surprising given the hierocratic structure and ideology of the Qumran community. However, in the sectarian context the blessings and curses serve more than their biblical (and cross-cultural) role of providing divine sanctions to a body of rules to which the people oblige themselves through their assent. At Qumran the blessings and curses are designed, by their rewording but especially by their very juxtaposition, to give *performative* force to the dualistic ideology of the community (i.e., "sons of light" vs. "sons of darkness") in what it understood to be the "end of days." In other words, the blessings and curses ceremony at Qumran is not just about the consequences for individuals who obey or disobey the commandments, but about the *assignment* of individuals to the antithetical "lots" of good and evil, upon whom will collectively fall the full and final divine visitation. The reworked Qumran ceremony serves primarily to reinforce the antithetical, dualistic division between the sectarian "us" of God and the antithetical "them" of Belial, and the existential urgency for the text's auditors of being unambiguously counted among the former. In the sectarian context of late second temple times, when such groups vied with each other to define themselves alone as the true covenantal Israel, the performative impact of such an annual ceremony of covenantal re-

newal would have been a powerful medium for strengthening the bonds of communal membership in a hostile world.

#### IV. FOURTH EXAMPLE: JUDGES AND COURTS

Central to the credibility and functionality of any polity is the defining and assigning of the roles of those who would interpret its rules and judge its constituents thereby. Except for the role of priests in the cultic realm, the first four books of the Pentateuch provide very few provisions for such roles of legal interpreters and adjudicators beyond what appear to be temporary measures for the period of the wilderness journey. Thus, Exodus 18:13-27 has Moses' father-in-law Jethro recommend an administrative system of lay chiefs (*šarim*) to lighten Moses' burden of instructing the people and adjudicating their disputes. While Moses is still the prophetic intermediary between God and the people, he assigns the lesser disputes to the chiefs to handle. Only disputes which are too "difficult" (or "major") for them do they bring to Moses, who might in turn present them for a decision before God.<sup>42</sup> When the Book of Deuteronomy recapitulates this incident in 1:9-18, it does so with some important modifications,<sup>43</sup> but the arrangement is still presented as an ad hoc one intended to assist Moses during the wilderness journey, without necessarily suggesting the constitutional establishment of a permanent judicial structure.

By contrast, Deuteronomy 17:8-13, following rules for the appointment and conduct of local judges and magistrates, and part of a larger section on "office-holders of the theocracy,"<sup>44</sup> institutes a centralized high court of referral, to deal with cases too difficult for the local courts. From the Deuteronomic phrase "which will be in that time,"<sup>45</sup> it is clear that Deuteronomy is establishing not a one-time institution, but one that is intended as a permanent feature of the Israelite polity. Just as during the wilderness journey the lower chiefs brought difficult cases to Moses, so too, from here on, lower courts will bring difficult cases to

<sup>42</sup> Exodus 18:19. A gloss to Exodus 18:23 indicates divine approval for Jethro's plan. For another version of this tradition, see Numbers 11:10-17, where Moses complains directly to God who initiates a similar system of seventy elders. For examples of Moses' consulting with God on difficult cases or ones without precedent, see Leviticus 24:10-23; Numbers 9:1-14; 15:32-36; 27:1-11; 36:1-10.

<sup>43</sup> The plan is now presented as the product of Moses' own initiative; the lower judges are now tribal heads; their qualifications are ones of knowledge and experience, rather than character; and they are instructed not to show partiality in their judgments. Nor is there any indication that Moses would bring difficult cases before God.

<sup>44</sup> LEVINSON, *supra* note 2, at 98.

<sup>45</sup> Deuteronomy 17:9. Compare with Deuteronomy 19:17 (where the same phrase is used in establishing the procedure for dealing with false witnesses), and 26:3 (for the first-fruits ceremony).

a centralized court of referral. However, whereas Moses might in turn have brought difficult cases before God, the high court appears not to have had such a prophetic option but, rather, *was* the court of last resort, a true institutionalization of prophetic charisma. Perhaps for this reason it is necessary for Deuteronomy to stress with regard to this court that "You shall act in accordance with the *torah* handed down to you and the ruling (*mišpaṭ*) handed down to you; you must not deviate from the verdict that they announce to you either to the right or to the left,"<sup>46</sup> adding the penalty of death<sup>47</sup> as a deterrent to judicial subordination.<sup>48</sup>

However, there is significant textual ambiguity regarding the makeup of this high tribunal: "and you shall appear before the levitical priests, and/or before the judge in charge at the time, and inquire (of them)."<sup>49</sup> It is unclear whether the court must contain a plurality of priests as well as a single judge, and if so, what is the identity of the latter (priest or layman?), or whether the court need contain both priests and a judge at the same time in order to be duly authorized.<sup>50</sup> While Philo understands the single judge to be the High Priest,<sup>51</sup> Josephus substitutes *gerousia* (council of elders).<sup>52</sup> By contrast, the earliest rabbinic commentary to this passage is particularly radical and politically significant. After having redefined the sorts of arguments that would be brought to the high court as being not so much those between parties in a civil or criminal dispute as between those of sages differing in their legal interpretations, the *Sifre* continues:

"And you shall appear"<sup>53</sup>: [This is stated so as] to include the court at Yavneh. "Before the levitical priests": It is required that the court include priests and Levites.<sup>54</sup> This being the requirement, might we

<sup>46</sup> *Id.* at 17:11.

<sup>47</sup> *Id.* at 17:12.

<sup>48</sup> *Id.* at 17:13

<sup>49</sup> *Id.* at 17:9. The conjunctive *waw* between levitical priests could mean either "and" or "or." Cf. *Deuteronomy* 17:17, where 'o ("or") is used between the priest and the judge. The Temple Scroll (*Deuteronomy* 56:1, with Yadin's note ad loc.) has "or before the judges."

<sup>50</sup> This is further complicated by 17:12: "the priest (sing.) charged with serving there the Lord your God, or the judge." The same ambiguity appears in *Deuteronomy* 19:17, in a case of referral. Cf. 2 *Chronicles* 19:5-11, which seeks to solve this by assuming that the high courts has two components, one for ritual cases ("concerning the Lord") and one for civil or criminal cases ("concerning the king"), although this was unlikely to have been the meaning of our passage.

<sup>51</sup> Philo, *De Specialibus Legibus* 4.188-192.

<sup>52</sup> ANTIQUITIES, *supra* note 3, at 4.218. The Temple Scroll (11QTemp 56.1), most likely influenced by *Deuteronomy* 19:17, has (according to Yadin's reconstruction) "judges." For the combination of priests and laity on the courts of the Dead Sea Scrolls, and for the Scrolls' attribution of primary judicial authority to the priests, see: 1QS 5.1-3; 8.1; 9.7; CD 10.4-6; 11QTemp 57.11-15; 61.7-9; 4Q159 2-4 3-4; 4QpIsa<sup>d</sup> 1 2-4.

<sup>53</sup> *Deuteronomy* 17:9.

<sup>54</sup> The separation of "levitical priests" into "priests and Levites" can also be seen in the Temple Scroll (11QTemp 56.07, according to Yadin's reconstruction; and 11QTemp 61.8-9 to *Deuteronomy* 19:17); CD 3.21-4.1 citing Ezekiel 44:15 (as per *Vulgate* and *Pešitta*); ANTIQUITIES, *supra* note 3, at 4.218; *Targum Neofiti* and *Pešitta*, *Deuteronomy* 17:9 (as elsewhere); and ver-

infer that if it lacks priests and Levites it is disqualified? Therefore, Scripture says, "or the judge": Even though it lacks priests and Levites, it is [still] qualified. "In charge at that time": R. Jose the Galilean said: Might you have thought [that it refers to your going to] a judge who is not living in your time? Rather, [it refers to] a judge who is qualified and authorized [to serve] in your time. . . . Therefore it says, "Do not say, 'How is it that the former days were better than these?'"<sup>55</sup>

Space does not allow me to enter into the exegetical inner workings of this rabbinic commentary, especially as I have done so previously, but simply to summarize. A scriptural passage that would seem to limit the high court to "the place that the Lord your God will have chosen" (commonly understood as the temple mount in Jerusalem), and that would seem to stress its mainly priestly makeup, is understood to allow much more elasticity in its application to later times, that is, once the Jerusalem temple has been destroyed. In such later times (included in "at that time"), the referral functions of the high court could be fulfilled by the rabbinic court at Yavneh, which need not necessarily include priests or Levites among its members, the more important qualification for membership being expertise rather than pedigree.<sup>56</sup> Furthermore, quoting Qohelet, that later court should not nostalgically be considered inferior to the one that once stood on the temple mount. The nature, location, and makeup of the court has been exegetically transformed so as to authorize the rabbinic court at Yavneh, and by implied extension, later non-priestly, rabbinic courts in other locations as well.

#### CONCLUSION

Many more examples could be added to the above. Each would further demonstrate the ways in which Deuteronomic exegetical innovations contributed to the construction and conceptualization of an Israelite polity, far beyond that of its scriptural antecedents, and ways in which post-biblical Jewish interpretive communities extended that process of exegetical innovation into their own times and historical circumstances through their no-less-radical interpretations of the Book of Deu-

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sions to 2 *Chronicles* 5:5; 30:27.

<sup>55</sup> SIFRE DEUT., *supra* note 17, at 153. I have treated this and the surrounding commentary much more fully in TRADITION TO COMMENTARY, *supra* note 11, at 83-87, plus notes. The same interpretation is repeated, but without its dialectical question and answer, in the *Sifre's* interpretation of *Deuteronomy* 17:12. SIFRE DEUT., *supra* note 17, at 155. See also *Id.* at 190.

<sup>56</sup> Note also the opening comment of the *Sifre to Deuteronomy* 17:8: "If . . . too baffling (*yippālē*): This teaches that Scripture speaks of a *mīplā*' (senior legal authority)." See TRADITION TO COMMENTARY, *supra* note 11, at 236-237 n. 51.

teronomy. In each case, as I hope to have shown, the process of exegetical innovation reveals a responsiveness both to the textual exigencies of Deuteronomy and to the historical exigencies and political self-interests of the scriptural interpreters and their textual communities. How much of the interpretive process is propelled by the former and how much by the latter, as if they could be simply quantified and weighed on a balance, is largely unrecoverable, but, I would argue, neither is it of foremost importance. Rather, it is in recognizing the dialectical combination of these two horns of hermeneutical response, textual and historical, that we can more fully understand and appreciate the interpretive vitality and longevity of the Deuteronomic conception of a covenantal polity as it is repeatedly transformed throughout the history of its transmission.