

DEUTERONOMY AS ISRAEL'S ANCIENT CONSTITUTION: SOME PRELIMINARY REFLECTIONS

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This article has the dual purpose of indicating how contemporary political science can approach the study of an ancient constitutional text and the examination of Deuteronomy as such a constitution. Ancient constitutions are distinguished from modern ones by devoting as much or more attention to the moral and socio-economic bases of the polity as to the frame of government. Deuteronomy is a classical example of that kind of ancient constitution, designed to adapt the Torah-as-constitution presented in the first four books of the Pentateuch to the Jewish polity once the people are established in Eretz Israel. As such it is both a repetition of what has been presented before and a modification of earlier constitutional teachings. The article begins by discussing the character of Deuteronomy and the structure of the constitutional elements within it. It raises the question as to whether or not Deuteronomy was actually in force as a constitution, and why Deuteronomy was necessary to complete the classic constitution of ancient Israel. The article includes a schematic presentation of the Deuteronomic constitution, divided by order, section and topic. It then proceeds to discuss how to read the text in its various parts — the preamble, the body of the constitution, its enactment and promulgation through a covenant renewal ceremony involving curses and blessings, its provisions for future covenant renewal ceremonies, a final word from Moses describing the constitution, and an epilogue describing Moses' passing of his authority and powers to Joshua. Each section of the constitution is discussed in some detail in light of general principles of constitution-making and those of the Jewish political tradition. The whole document is presented as a covenant in the spirit and format of Israelite constitutions.

Confronting an Ancient Constitution

It is not a new idea to suggest that the book of Deuteronomy, known in Hebrew as *Devarim* (words or utterances; here best translated as statements or stated laws), is Israel's ancient constitution. If it is indeed of Mosaic authorship as it is presented to be, it is certainly the oldest complete constitution in our possession, dating from the thirteenth or fourteenth century BCE. Even if it is younger than that, from as late as the time of Josiah (seventh century BCE), it still is a

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most venerable document. Those theories that claim an even later origin for it still place it in the period of the classic Greek constitutions.¹ Thus it, along with the Constitution of Athens, are the two oldest such documents available to students of government and politics.²

Deuteronomy has another distinction. Like the rest of the Torah, it is still deemed to be fully in force as a constitution by that portion of the Jewish people who accept the Torah as constitution. Granted, it has been so extensively interpreted in the intervening two and a half or three millennia that some parts of the text are understood in quite different constitutional terms today. Nevertheless, even more than some other parts of the Torah, it has retained its original meaning. In any case, it remains a vital and living constitutional document over which there are still arguments and discussions of political consequence. Like the rest of the Torah, it is read in its entirety in the synagogue every year and significant sections are read by Jews in their daily prayers.

Hence the study of Deuteronomy as a political constitution is generally important for the study of political science, particularly of constitutionalism and constitutional design, because of its character as an ancient constitution that is still in effect. It is further important to study by those for whom it is a living constitution or potentially so.

The study of the book of Deuteronomy constitutes an introduction to ancient constitutionalism which is at once more comprehensive and more limited than modern constitutionalism.³ It is more comprehensive in that ancient constitutionalism addresses the way of life of the polity as a whole, including matters no longer deemed to be of public concern, having to do with the behavior of individuals and families, as of critical importance to the body politic. The Torah, for example, is concerned with the holiness of the Israelites as foundation to the holy commonwealth. Because this holiness is both individual and collective; it is an important constitutional issue. Deuteronomy, however, focuses more on the collective constitutional dimension than earlier parts of the Torah, making it even more constitutional in the sense that the idea came to be understood.

At the same time this ancient constitution is limited in that it is more general in matters of government, i.e., it does not specify institutional structures or arrangements in the way of modern constitutions, allowing greater leeway for constitutional interpretation or what Europeans and Latin Americans refer to as organic laws — less-than-constitutional arrangements of more than normal statutory importance. These were later referred to in the Jewish law derived from this constitution as “ordinances of the time” (*takanot ha’shaah* — literally, of the hour), many of which acquired their own constitutional status as subsidiary constitutional expressions. In other

words, Deuteronomy, like other ancient constitutions, has to do with the ordering of the polity, not merely of its government.

Deuteronomy, like the rest of the Torah and, indeed, Scripture in general, is a very rich book. Its text is relatively spare, yet every word, sentence, and paragraph is filled with nuances of meaning. The order of words, sentences, and paragraphs carries meaning. The apparent repetitions with subtle differences carry meaning. Thus, a full exploration of the text requires an intensive effort. Indeed, over the centuries hundreds of thousands of words have been written to interpret this book of constitutional statements. Our task here is only to understand Deuteronomy as Israel's ancient constitution and to begin to expose its constitutional character, content, and ordering. This is not an interpretation of Deuteronomy, *per se*. It is far more limited than that. The reader should keep this caveat and limitation in mind.

Like the other four books of the Humash, the Five Books of Moses, Deuteronomy is presented as being of Divine or Mosaic authorship. In fact, Deuteronomy is distinct among the Five Books of Moses in that it is not presented anonymously with the implicit claim of Divine authorship, but is presented as a Mosaic work based upon the earlier Divine communications to him, the greatest of Israel's prophets. Deuteronomy is presented as an oration — a long and very grand farewell address by Moses summarizing all of his teaching. Knowing that he is about to die, Moses sets down his teaching in one final ordered form so that his people will have that teaching after he is gone. This step can be understood as parallel to an earlier, similar situation in Exodus. After Moses' father-in-law, Jethro, priest of Midian, convinces him to share the burden of judging the Israelites and Moses appoints judges to do so, Moses feels constrained to write down the basic laws in the Book of the Covenant, *Sefer Ha Brit*. Here the reference to Moses' pending demise suggests the reason for the presentation. The lesson here is a central one: even great leaders like Moses are human and hence must die; for their leadership to succeed it must be embodied in a teaching and they must be teachers. For their teaching to succeed it must be written — on the hearts of their followers (and) in a constitution that will pass the teaching from generation to generation.

Moses is referred to in the text as *eved adonai*, a title that should be understood as God's prime minister, that is to say, the head of God's government on earth. God was seen by the ancient Israelites as their king and one who was active in their affairs. Nevertheless, the daily governance of the *edah* (the Israelite republic) was in the hands of His prime minister and the other federal and republican institutions and officers of the polity.⁴

The term for constitution in ancient Israel is *torah*, literally teaching, in the sense of an important and in this case Divine teaching. In its most immediate sense, the Torah consists of those Five Books of Moses,

the first five books of the Hebrew Bible. The first four books together can be seen as a constitutional document with a long introduction establishing the historic and conceptual context (Genesis), a preamble, covenant, and fundamental set of laws (Exodus-Leviticus), and a historical epilogue (Numbers) that includes additional fundamental laws that grow out of the desert experience of *Adat Bnei Israel* (the Assembly of the Children of Israel/Jacob — the ancient name of the Jewish people reflecting both the familial and federal character of the political organization).

Deuteronomy is the restatement of the teachings of the other four books in more systematic and properly constitutional form, with final additions and modifications adapting the constitution to a settled life in the promised land. The systematic format of the book, the changes or variants on the original statement of certain constitutional laws and principles in the other four books, has suggested to many the theory that the book was actually compiled in the seventh century BCE at the time of Josiah's reign in Judah, the surviving kingdom of biblical Israel, and that it is the text referred to in II Kings 22:8. There it is referred to as the Book of the Covenant (II Kings 23:2) and is the basis for a covenant renewed (v. 3).

Others have suggested the book is somehow connected with the *mishpat hamelukhah* (law of the kingdom) promulgated by the prophet Samuel in God's name in the eleventh century BCE, when kingship was introduced into Israel against prophetic advice and it was necessary to provide a constitutional framework for it.⁵ Still others hold that at least the core of the book authentically dates back to the Mosaic period.⁶

From the internal evidence of the book it appears that the version we have before us has integrated several different texts. While the result is a coherent whole, there are some potential contradictions. Biblical scholars properly seek to identify these segments to understand how and when they were integrated. For our purposes, however, we can take the final product as a whole, for as such it was understood by those in subsequent generations who saw themselves as bound by it.

The Deuteronomic constitution is presented to the people of Israel as a covenant following the manner and form of biblical political theory and organization. It is referred to periodically throughout the text as a covenant, is so structured, and concludes with a covenant renewal ceremony, a full-fledged ceremony of covenanting. Moreover, it provides for a renewal of the covenant every seven years (31:10-13).

Deuteronomy's structure follows the model of ancient covenants, with 1) a historical prologue that explains the reasons for the covenant, 2) the covenant stipulations and, where it deems necessary, justifications for them, 3) provision for mutual pledging, 4) enforcement clauses and punishments for noncompliance with its terms, and 5) a

statement of blessings and curses, the former if the terms on constitutional provisions are hearkened to and the latter if they are not.⁷

The term "hearken" — *shamoa* in Hebrew — is routinely used to describe the expected human response to God's commandments, statutes and ordinances. Hearken is an archaism in English, featured in the King James translation of the Bible, hence *shamoa* is sometimes translated as "obey" in more modern English versions of Scripture. But they are not the same at all and abandonment of the older word represents the abandonment of a critical biblical concept that changes the whole meaning of the text and the whole biblical understanding of how humans act. To hearken is very different than to obey. Harkening is an active form of consent whereby the individual receives an instruction by hearing it and in the process of hearkening makes a decision to follow it. The act of hearkening is an act of hearing, considering, agreeing, and then acting. It is a sign of human freedom — of free will — whereby in order to act humans must consciously decide to do so, even in response to God.

Was Deuteronomy Actually in Force?

It is hard to know precisely how Deuteronomy served as the constitution of ancient Israel, how it was interpreted and applied. The only source of information is the Bible itself, which discusses the composition and acceptance of the book in a covenantal ceremony in the Plains of Moab toward the end of the generation of the Israelites' wandering in the desert and just before the death of Moses (28:69-30:20). The Bible also discusses the rediscovery of what seems to have been Deuteronomy in the days of Josiah and how Josiah, after reading the book, ordered that its provisions, at least with regard to the Jewish calendar and Jewish worship, be enforced. There may be some reference to the Deuteronomic constitution in the discussion of how King Hezekiah restored the central sanctuary for all Israel (II Chron. 29), but that is directed more toward the issue of the reunification of the kingdom of Judah with the remnants of Israelites from the shattered northern kingdom that had just been destroyed. Beyond that, we have no idea how the book was applied or interpreted, if at all, in biblical times.

We do know more about the fate of that constitution in the time of the Second Commonwealth, constitutionally known as Mishnaic times, when it formed the base for reinterpretation by the Anshei Knesset HaGedolah and the Tanim, the Sages of the Mishnah, who laid the foundations for a Judaism along *halakhic* lines. Their creation of *halakhah*, the *Torah she be'al peh*, or oral law, which they claimed as being equally Sinaitic in origin as the original Torah, the written law, was an outstanding achievement of constitutional reform. It was

undertaken in the spirit of ancient constitutionalism and indeed, at the end of that epoch, because of the objective conditions of the loss of Jewish political independence, focused even more on holiness, further reducing the political dimension of Deuteronomy by projecting its fulfillment onto messianic times.⁸

This in itself was a political act, perhaps designed to redirect Jewish energy into a concern for the minutae of holiness on a daily, indeed hourly, basis, and thus away from futile conspiracies to revolt against Rome which, after two major revolts and who knows how many smaller ones, threatened to destroy the Jewish people. In other words, rather than encourage or even allow the cutting edge of the Jewish people to pursue politically futile and self-destructive military efforts, Jews were encouraged, even commanded, to concentrate on the minutae of everyday life, which took so much psychic energy that they did not have time or strength for overt political activities.

The Pharisees who championed this constitutional reinterpretation succeeded because of the change in objective conditions, whereas their rivals lost their power bases in the wake of the failed Jewish revolts, leaving the field open to them. Even so, it took them generations to secure their victory.⁹ Formally, Deuteronomy remained in force as a constitution, but, where necessary, its provisions were substantially reinterpreted through the Mishnah and later the Gemarah, which together comprised the Talmud. Even so, much of the Deuteronomic constitution remains very close in its application to what it originally was, even today, for observant Jews.

For the most part, the directly political parts of Deuteronomy became the basis for discussions of what the ideal Jewish state should be like. These discussions formed the foundation of rabbinic and medieval Jewish political thought.¹⁰ They continued to have influence in the modern and postmodern epochs as well.¹¹

Constitutionally, they were important at two moments of Jewish history after the destruction of the Second Commonwealth. The first, in the second century of the common era, involved the constitution of the patriarchate in Eretz Israel and the exilarchate in Babylonia, as regimes that were organized in the spirit of the Deuteronomic political constitution.¹² The second came in the high middle ages, between the eleventh and fourteenth centuries, when a whole new constitutional architecture had to be erected to provide for the self-governing Jewish *kehillot* (communities) of Europe.¹³ In both cases the constitutional debates and decisions insofar as we have them (and we have more for the latter period than we have for the former) involve frequent recurrence to Deuteronomic first principles dealing with the relationship of kingship to Torah and people and the tasks and roles of judges, officers and elders.

At the beginning of the modern epoch there was a further recourse to the book of Deuteronomy, but here strictly in the realm of political thought as emancipationist Jewish apologists sought to present the ideal Jewish polity of the Bible in terms that were acceptable to the new modern ideas of statehood and self-government. In the postmodern epoch, the reestablishment of the State of Israel led certain groups of religious Jewish thinkers to return to Deuteronomy in an effort to find guidance for a proper Jewish state, thus generating a new literature based on Deuteronomy as a political constitution.¹⁴ Thus, what we have before us is a living tradition that, like any living tradition, has been filtered through different waves of interpretation, in this case going back perhaps 3,000 years. Here, however, it will be our task to try to recover the original structure of the constitution insofar as it is possible to do so.

Deuteronomy had a similar impact on the Christian world. Whenever Christian theologians, political philosophers or reformers sought biblical sources for political ideas, they turned to Deuteronomy as a major scriptural source.¹⁵ The use of Deuteronomy reached its apogee during the Protestant Reformation in the sixteenth and seventeenth centuries when the founders of the new Swiss, Huguenot, Rhineland, Dutch, Puritan, and Scottish commonwealths rested their polities on Deuteronomic foundations.¹⁶ The culmination of this trend came at the time of the American revolutionary polemical literature between 1765 and 1805. As Donald Lutz has pointed out, Deuteronomy was cited more frequently than all citations of European political philosophers combined, a major source for the myriad political sermons of the period.¹⁷

Why was Deuteronomy Necessary?

Why is there a need for a restatement of the constitution previously presented in the first four books of the Pentateuch. Two reasons are given in Deuteronomy itself: (1) the restatement of the constitution as applied to the Jews in their land, Eretz Israel, and (2) Moses' impending death, which required the writing down of his teachings in clear constitutional form.¹⁸ The original constitution was designed to serve a nomadic people, a people formed in the desert and moving around without a permanent abode. Thus it emphasized portability through a political structure based upon households (*batei av*) and tribes (*shevatim*) assembled around the portable tabernacle (*mishkan*) and tent of meeting (*ohel moed*) where the portable Ark of the Covenant (*Aron HaBrit*) containing the portable tablets of the covenant (*Lukhot HaBrit*) were kept, rather than on permanent territorial divisions and a fixed, central shrine.

The critical sections of the Deuteronomic constitutional restatement begin with some reference to the occupation and settlement of the land, usually phrased as follows:

4.1 Now, Israel, hearken to the statutes and to the ordinances which I teach you, to do them that you may live and go in and possess the land which the Lord, the God of your fathers, gives you.

6.1 Now these are the commandments, the statutes, and the ordinances which the Lord your God commanded to teach you, that you might do them in the land whither you go over to possess it.

7.1 When the Lord thy God shall bring thee into the land whither thou goest to possess it and shall cast out the many nations before thee...

8.1 All the commandments which I command you this day shall be observed that you may live and multiply and go in and possess the land which the Lord swore unto your fathers.

By and large Deuteronomy only deals with those constitutional laws that are extensions or modifications of the constitutional laws presented in the first four books. It does not seem to repeat constitutional laws unnecessarily. Thus in Deuteronomy's discussion of the land and its boundaries, the book does not repeat the division of the land presented in Numbers and in its discussion of governance does not repeat the basic structure of governance presented in Exodus. Rather it makes reference to both at the very beginning of the book.

The question may be raised as to whether all of the changes ostensibly needed to serve a settled population were indeed appropriate. Two examples stand out: the first, the commandment to centralize sacrifices and public religious ceremonies at one central place — the Temple — built by Solomon (tenth century BCE) and restored several times, the last time by Josiah (seventh century BCE). On one hand, it could be argued that, if anything, it was during nomadic days when presumably everyone was moving together that sacrifice was more appropriately centralized, while once people were settled it was reasonable to enable them to build permanent places of sacrifice and public worship near their dwellings. On the other hand, Deuteronomy gives as its good reason that local sacrifices would be likely to be made at the holy places of the pagan idolators and therefore lead to religious syncretism. For the Bible that is the same as idolatry. Indeed there is biblical and archeological evidence that this happened.¹⁹

To complicate matters further there was also the real reason of the kings of the Davidic house attempting to consolidate their power by centralizing public worship under their wing in a central sanctuary. David, the founder of the dynasty, was the first to try to do this by bringing the Ark of the Covenant to his city, Jerusalem, and designating a particular family, the Zadokites, as the high priests, all under his protection. Apparently, he was not powerful enough to actually build

the Temple in the face of what was no doubt great opposition to this aspect of royal centralization. It was left to his son Solomon to do so.²⁰

Even so, it is clear from the sources available to us that local sacrifice did continue, indeed with some of the negative results to which Deuteronomy referred, until the very end of the First Commonwealth in 586 BCE. Subsequently a compromise was reached whereby the Temple was rebuilt and was given sole jurisdiction over animal sacrifices, while normal public worship was detached from official and other ritual cults that could be shared by pagans and turned into prayer that could be performed in local houses of prayer that became known as synagogues, simultaneously with the Temple service.²¹

The institution of the kingship also reflected a shift from the earlier regime to a new one, presumably the federal monarchy introduced by Samuel, Saul and David.²² Here there is greater ambiguity since, as later commentators were forcefully to note, Deuteronomy does not clearly indicate whether the appointment of a king is mandatory or optional (17:14-20).²³ The rules for kingship can be read either way. The certain thing is that if a king is appointed, he is bound by the constitutional laws of kingship; he must be a constitutional monarch.

Another example of the change is that the judges and officers originally appointed to serve tribal and familial units are now to be territorially based at the city gates (16:18) — the seat of local government — to serve non-territorialized tribes.²⁴

The Structure and Contents of Deuteronomy

The Book of Deuteronomy is a restatement of the entire constitution in a more systematic fashion, cast in the form of Moses' farewell address to his people camped in the plains of Moab just before his death. It includes a description of the recovenanting in the plains of Moab prior to the Israelite embarkation on the conquest of Canaan. Within the text itself, the book is referred to as *Divrei HaBrit*, the Words of the Covenant (29:8). Indeed, the entire book is presented as a constitution which embodies and restates the original covenant. A parallel example of this device is to be found in the Massachusetts Constitution of 1780 which begins with a restatement of the covenant/compact which forms the Massachusetts body politic and continues to present the fundamental law of the commonwealth. The Deuteronomic constitution is presented as having been delivered before the assembly of Israel, the *edah*, all at one time.

The Constitution can be viewed schematically:

SCHEMATIC OF THE DEUTERONOMIC CONSTITUTION

Introduction	1:1-5	Presenter, time, place, and context.
Preamble	1:6-3:29	God recounts the institutional, spatial and historical basis.
	1:6-8	Time to take possession of the Promised Land. List of promised areas west of the Jordan River. Reiteration of historic promise.
	1:9-18	Description of the establishment of the institutions of federal governance. Charge to judges to provide equal justice.
	1:19-46	Recounting of Israel's sin when spying out the land in the initial attempt to enter it, with due attention to federal niceties.
	2:1-23	Specification of the allocation of central and southern transjordan to the descendants of Esau and Lot.
	2:23-3:2	Description of the conquest of Gilead and Bashan (the Golan) and God's grant of those territories (from the valley of Horon to Mt. Hermon) to the tribes of Reuben, Gad, and half of Manasseh.
	3:21-29	Moses to die outside of the promised land; Joshua reconfirmed as his successor.

The Body of the Constitution: "Statutes and Ordinances" 4:1-26:15

God and Fundamental Principles	4:1-40	<p>Call to Israel to hearken to the statutes and ordinances as God has commanded them.</p> <p>The statutes and ordinances are neither to be increased nor diminished (v. 2). Life comes to those who cleave to the Lord (vv. 3-4).</p> <p>They are to be observed in Eretz Israel (v. 5).</p> <p>This is a wise and understanding constitution that will win the admiration of all peoples (vv. 6-8).</p> <p>It was commanded to the assembled people through the theophany and</p>
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- covenant at Horeb (Sinai) with the ten commandments (vv. 9-14).
 No corporeality of God, hence no images to devote worship (vv. 15-24).
 Punishments for violation of this prohibition: conquest and exile (vv. 25-28).
 Possibility of repentance and promise of restoration — God's covenant and promise eternal (vv. 29-31).
 The uniqueness of the theophany and God's choosing of Israel (vv. 32-39).
 God's oneness, power and favor by virtue of Israel's forefathers and the reciprocal necessity for Israel to keep His statutes and commandments (vv. 35-40).
- 4:41-43 Moses sets aside three cities of refuge east of the Jordan to provide protection of persons committing manslaughter from lynching or a blood feud.
- 4:44-49 Summary.
- 5:1-30 Restatement of the Ten Commandments (comp. Exodus 20:1-14).
- 5:1 Call to Israel to hearken.
- 5:2-5 Recalling Horeb/Sinai covenant.
- 5:6-18 Ten Commandments.
 God identifies himself (v. 6).
 Monotheism and prohibition of images (vv. 7-10).
 Prohibition of taking the name of the Lord in vain (v. 11).
 Command to observe the Sabbath (vv. 12-15).
 Command to honor parents (v. 16).
 Prohibition of murder (v. 17).
 Prohibition of adultery (v. 17).
 Prohibition of theft (v. 17).
 Prohibition of false witness (v. 17).
 Prohibition of coveting (v. 18).
- 5:19-20 Reference to assembly of people and their leaders by tribes at Sinai.
- 5:21-30 Explanation of why other commandments and teachings come through Moses because people feared direct contact with God.

- 6:1-25 Restatement of Sh'ma Yisrael (Israel's confession of faith): Fearing God and Teaching His Commandments.
 Preamble: These statutes and ordinances are for Israel to do in the land they are to possess (v. 1).
 Subject: fearing the Lord and keeping His commandments (v. 2).
 Reward: long life and fertility in the land (v. 3).
 The confession — 1st part (vv. 4-9).
 Loving God; teaching Torah to descendents; binding signs of loyalty to God.
- 6:10-25 Elaboration of vv. 4-9.
- 7:1-26 Commandments to eliminate the Canaanites and their idolatry upon conquering the land.
 Destruction of the seven Canaanite nations commanded (vv. 1-2).
 Prohibition of covenants or marriages with them (vv. 2-4).
 Destruction of all signs of idolatry commanded (v. 5).
 Israel's chosenness reaffirmed and explained (vv. 6-8).
 The generational basis of God's rewards and punishments (vv. 9-10).
 Israel's responsibility to keep the covenant (v. 11).
 Its reward for doing so (vv. 12-16).
 God will help (vv. 17-24).
 Summary: Israel's responsibility to eliminate all idolatrous signs and images (vv. 25-26).
- 8:1-20 All sustenance comes from God and will be provided only if His covenant is kept. The fertility and principal products of the land listed [important for the observance of other commandments] and the commandment to bless God for them (vv. 7-10).
 Remember that prosperity comes from God, not from human power (vv. 11-18).

		God's punishment if he is forsaken (v. 19).
	9:1-29	Transfer of land to Israelites is because of wickedness of Canaanites, despite Israelite stiff-neckedness (vv. 1-6). Recounting examples of Israelite stiff-neckedness, esp. the Golden Calf (the other side of the Horeb/Sinai theophany) (vv. 7-29). Moses' successful interventions to save his people (vv. 18-20, 25-29).
	10:1-11	The making of the two stone tablets and the ark to hold them, and the organization of their care by priests and Levites.
	10:12-20	The fundamental principles of the constitution. Loving the Lord and walking in His ways (vv. 12, 20). Keeping His commandments (v. 13). Recognizing that heaven and earth belong to the Lord (v. 14). The chosenness of Israel (v. 15). Israel should cease to be stiff-necked (v. 16). God does equal justice, nor can he be bribed (v. 17). God's justice includes widows, orphans, and strangers (aliens); therefore yours should as well (vv. 18-19).
	10:21-11:7	Conclusion to this section recounting how God manifested His power in Egypt, the Exodus, and the desert.
the Land	11:8-25	On the promise of the land. The promise (vv. 8-9). The character and quality of the land (vv. 10-12). The conditional element in the promise (including the second paragraph of the Sh'ma — vv. 13-22). The extent of the land promised (vv. 23-25).
	11:26-32	The blessing and the curse set before the Israelites.

- 12:1-32 Commandment to establish a single place of sacrifice.
 Local places of sacrifice forbidden (vv. 4, 13-14).
 Central site to be chosen from tribal territories (v. 5).
 Forms of sacrifice to be regulated (vv. 6-11).
 Emphasis on change from system used in desert (vv. 8-11).
 Separation of sacrifices and slaughtering for food (vv. 15-18, 20-28).
 Exhortation to protect Levites who are disempowered (because they have no land and are not priests) (v. 19).
 Prohibition of infant sacrifice and other pagan abominations (vv. 29-32).
- 13:1-19 Rejection of enticements to serve false gods and punishment for enticers: by false prophets (vv. 2-6); by relatives and friends (vv. 7-12); by demagogues or popular movements (vv. 13-19).
- 14:1-2 Mutilation for purposes of mourning forbidden.
- 14:3-21 Laws of *kashrut* (permitted and prohibited foods).
- 14:22-29 Commandment to tithe.
 Tithe to be eaten at central place of sacrifice (vv. 23-26).
 Provision for continued support of Levites-in-residence (vv. 27-29).
 Tithe to be used for the needy (v. 29).
- 15:1-18 Laws of the sabbatical year.
 Release of debts (vv. 2-6).
 Commandment to assist needy every year (vv. 7-11).
 Release of Hebrew slaves (vv. 12-18).
- 15:19-23 Sanctification of the first-born to God.
- 16:1-17 Commandments to observe the pilgrimage festivals.
 Pesach (vv. 1-8), including centralization of pascal sacrifice.
 Shavuoth (vv. 9-12).
 Sukkoth (vv. 13-15).

		Summary: requirement for pilgrimage thrice yearly (vv. 16-17).
Government and Domains of Authority	16:18-20 16:21-17:13	Organization of national judiciary. Rules of judicial procedure. Prohibition of ritual abominations in worship (vv. 16:21-17:1). Punishment for idolatry (16:2-7). Rules of evidence (vv. 4-6). Rules of capital punishment (v. 7). Appeals (vv. 8-13).
Interpretation of Constitution		Priests and Levites as appellate court (vv. 9-13). Provision for constitutional interpretation in each generation (vv. 10-11).
<i>Malkhut</i>	17:14-20	Possible introduction of kingship. How introduced (v. 14). How chosen (v. 15). Must be an Israelite (v. 15). Restrictions on king (vv. 16-17). King must write out and keep with him a copy of this Torah (vv. 18-20).
<i>Kehunah</i>	18:1-8	Status and place of priests and Levites. Neither have territorial allocations (vv. 1-2). Both shall be supported by offerings to the Lord (vv. 1-8). Permanent grant of office to priests (v. 5). Responsibilities and rights of Levites (vv. 6-8).
<i>Torah</i>	18:9-22	On prophets and prophecy. Repetition of prohibitions on idolatrous behavior with addition of prohibition against sorcery and the like (vv. 9-14). God will raise up prophets to whom Israel should hearken (vv. 15-22). Prophets came in place of meeting God face-to-face which the people rejected at Sinai/Horeb (vv. 15-17).

		Punishment for false prophecy (v. 20). Distinguishing true and false prophecy (vv. 21-22).
Criminal Procedure and Bill of Rights (a) Laws of manslaughter and murder	19:1-13	Communal need to establish cities of refuge to solve the problems of the blood feud: three cities to serve three regions (vv. 1-3). Law of manslaughter (vv. 4-10). Law of murder (vv. 11-13).
Criminal Procedure and Bill of Rights: (b) Judicial procedures	19:14-21	Prohibition on removing boundary (v. 14). Requirement of at least two witnesses in capital crimes (v. 15). Punishment for false witness (vv. 16-20). Equal justice as measure for measure (v. 21).
	21:1-9, 22 24:7, 16	Determining responsibility for killing. Between local jurisdictions (21:1-9). Requirement to bury those executed on the same day (21:22). Laws against kidnapping (24:7). Every person punished only for his own crimes (24:16).
	20:1-19	Laws of warfare. Procedures for mobilization (vv. 1-9). Rules for conduct of warfare (vv. 10-19).
	21:10-22	Family law. Captured women (21:10-14). Inheritance in polygamous situations (24:15-17). Rebellious sons (21:18-21).
Covenant Obligations Beyond the Letter of the Law	22:1-4, 8	Commandment to neighborliness. Restoration of lost property (22:1-3). Rendering assistance (22:4). Building safety requirements (22:8).
	23:20-21, 25-26	Prohibition of lending at interest to Israelites; permission to do so with foreigners (23:20-21). Laws regarding enjoying neighbor's farm produce (23:25-26).

	22:5-11	Maintenance of distinctions. Men and women commanded to dress differently (v. 5). Mixed sowing prohibited (v. 9). Mixed plowing prohibited (v. 10). Mixed weaving prohibited (v. 11).
	22:6-7	Taking bird and eggs forbidden.
	22:13-23	Marriage laws.
	23:1	Laws regarding virginity and marriage (22:13-24).
	24:1-5	Prohibition of relations between stepmother and stepson (23:1). Divorce laws (24:1-4). Laws regarding new marriages (24:5).
	23:2-9	Naturalization laws. Prohibitions on products of sexual violations being members of the polity (vv. 2-7). Possibility for third generation Edomites and Egyptians to join polity (vv. 8-9).
	23:10-15	Personal hygiene laws.
	24:8-9	Disposal of human waste (23:10-15). Leprosy (24:8-9).
	23:16-17	Prohibition on returning fugitive slaves.
	23:18-19	Prohibition of harlotry and sodomy.
	23:22-24	Vows to the Lord to be paid.
	24:6, 10-13, 17-18	Laws of pledges: prohibition of taking necessities for collateral.
	24:14-15	Requirement of prompt payment of wages.
	24:19-22	Leftovers from harvest to be left for needy.
Local Government	25:1-3	Appointment of judges and officers in every township (v. 18). Basic rules for adjudication (v. 19). Goal of adjudication: justice (v. 20). Rules of corporal punishment.
	25:4	Kindness to animals: not to muzzle oxen when treading grain.
	25:5-10	Local responsibility for perpetration of family lines.
	25:11-12	Sexual modesty and domestic violence.
	25:13-16	Honest weights and measures.

	30:1-10	Promises of repentance and restoration. The greatness that God will do for Israel (30:3-10).
Final Word	30:11-20	Constitution is close, not distant (vv. 11-14). People are given choice between good and evil (vv. 15-18). Heaven and earth called upon to witness covenant (vv. 19-20).
Epilogue	31:1-29	Moses transfers power to Joshua. People reassured that God will be with Joshua (vv. 3-6). Public transfer made (vv. 7-8). Moses writes out Torah and delivers it to priests, Levites and elders (v. 9). Establishment of covenant renewal ceremony every seven years (vv. 10-13). God appears to ratify all of the above (vv. 14-23). Moses has newly written Torah placed in the Ark of the Covenant alongside the tablets (vv. 24-29).
	32:1-43	The Song of Moses.
	32:44-47	A final exhortation to the people to place the commandments in their hearts and keep the constitution.
	32:48-52	God instructs Moses to go up Mt. Nebo to die because of his transgressions.
	33:1-29	Moses blesses the Bnei Yisrael before his death, collectively and tribe by tribe.
	34	Moses' death; Joshua assumes power; Moses evaluated.

How to Read the Text

As the foregoing schematic of the form and structure of Deuteronomy suggests, the book consists of lists of statutes (*hukim*) and ordinances (*mishpatim*) set in historical and theological (or theo-historical) context. Here we have not examined the detail and character of most of the constitutional laws promulgated. That must await another occasion.

Emphasis is placed on the context. Not only does the book begin with a recital of the significant history of the Bnei Israel, but segments of that history are repeated on different occasions where relevant to introduce particular statutes and ordinances. Moreover, history and theology are mixed.

Some scholars have referred to this as sacred history, but while that is a partially accurate description, here we have history designed to support the validity of the commanded legislation both from the general sense of why God's commands deserve to be kept or observed (*shamor*: the other word for human response to God's commandments — after hearkening comes observance) by the people of Israel and the more specific sense, for example, in relationship to doing social justice because the Israelites were strangers in Egypt. The theology here is that of an omnipotent living God who intervenes in history, indeed directs it, who has chosen Israel to be His people for His reasons, not because of Israel's merit, and who has covenanted with Israel to require them to hearken to and keep a certain constitution so as to achieve a certain way of life, that he will hold them and their descendants accountable for the fulfillment of their side of that covenant, that He is a God who loves, seeks and does justice and expects His covenant partners to do the same.

There is much apparent repetition, especially in the historical-theological materials. Often it is just for emphasis. But in many cases the material has to be read very carefully to detect the nuances of difference which point to the different purposes or new adaptations of the constitutional laws involved. This takes on added significance in those sections which are apparently repetitions of basic laws which appeared earlier in the other four books of the Pentateuch. In those cases, the difference of a word or two reflects an adaptation of a basic law established for a nomadic population for use by a settled population.

A millennium later, in the effort to develop a systematic way of interpreting the biblical text, especially the Pentateuch, the sages of the Talmud developed a series of rules of interpretation which reflect this attention to nuance. They are:

1. Inference from minor to major, or from major to minor.
2. Inference from similarity of phrases in texts.

3. A comprehensive principle derived from one text, or from two related texts.
4. A general proposition followed by a specifying particular.
5. A particular term followed by a general proposition.
6. A general law limited by a specific application, and then treated again in general terms, must be interpreted according to the tenor of the specific limitation.
7. A general proposition requiring a particular or specific term to explain it, and conversely, a particular term requiring a general one to complement it.
8. When a subject included in a general proposition is afterwards particularly excepted to give information concerning it, the exception is made not for that one instance alone, but to apply to the general proposition as a whole.
9. Whenever anything is first included in a general proposition and is then excepted to prove another similar proposition, this specifying alleviates and does not aggravate the law's restriction.
10. But when anything is first included in a general proposition and is then excepted to state a case that is not a similar proposition, such specifying alleviates in some respects, and in others aggravates, the law's restriction.
11. Anything included in a general proposition and afterwards excepted to determine a new matter, cannot be applied to the general proposition unless this be expressly done in the text.
12. An interpretation deduced from the text or from subsequent terms of the text.
13. In like manner, when two texts contradict each other, the meaning can be determined only when a third text is found which harmonizes them.

The repetition here must be understood in another context as well. Even if the text we have before us was written down early, the number of copies would have had to be limited. Therefore, it was designed to be taught orally to people who did not have texts before them. Thus the repetition of critical concepts is a teaching device, a mnemonic, that the Israelite public could follow. In a sense that style is testimony to the fact that, as advertised in the text itself (cf., *inter alia*, 30:11-14), this is a public constitution. It was designed to be spoken, read and learned, understood by and interpreted for all Israel. This is another sign of the constitutional character of the document.

The people and their rulers had to know their constitution, had to learn and be familiar with its text and contents. One of the principal words for teaching, in Hebrew, is *leshanot*, to teach by repetition, and Deuteronomy was known from the first and is so referred to in the text (17:18) as *mishneh Torah*, that is to say, the repetition or restatement

of the Torah for learning purposes. This ties in to another dimension of Israelite constitutionalism. The style of the constitution is deliberately that of a teaching, not simply a code or a set of constitutional laws.

Teaching as *leshanot* is particularly appropriate to an oral tradition where repetition is critical to developing recognition if not memorization of texts. Not only that, but the repetition is done with formulas, so that the formulas themselves are mnemonic. Examples of such formulas can be found throughout the book. A few were presented earlier in connection with the land-related laws. The formulas are repeated as introductions to major sections of the constitution.

The Text in its Parts

The first five verses of the book are an *introduction* indicating who is presenting the constitution, when and where, and in what context. In a sense it is outside the constitution proper but, in the manner of the Torah as teaching, is needed to give us the appropriate framework.

Beginning with Chapter 1, Verse 6, and continuing until the end of Chapter 3, we have a *preamble*, a summary of the history of the Israelites and an indication that it is time to take possession of the Promised Land. The areas that constitute the land are listed and God's historic promise of the land to Israel is reiterated. The preamble also includes a description of the established institutions of federal governance, the institutions of the tribal federation, and the requirement that judges provide equal justice. The preamble concludes with the information that Moses is to die outside the Promised Land and Joshua is reconfirmed as his successor who will lead the Israelites across the Jordan.

The *body of the constitution*, referred to as the *hukim* and *mishpatim* (statutes and ordinances), is presented in Chapters 4 through 26:15. It is followed by a section describing the *enactment and promulgation* of the constitution, at first by presenting the *covenant curses and blessings* (21:16 to 28:68), then through a *covenant renewal* ceremony (28:69 to 30:20). The ceremony is concluded with a *final word* (30:11-20), emphasizing that the constitution is close to the people and not distant from them, that through it the people are given the choice between good and evil, and that heaven and earth are called upon to witness the covenant just made. The covenant ceremony is followed by an *epilogue* (Chapters 31-34) in which Moses transfers power to Joshua, summarizes his teaching in the Song of Moses, blesses the Bnei Israel, collectively and tribe by tribe, and then goes up Mt. Nebo to his death and Joshua assumes power.

The book describes how Moses assembled the people in the plains of Moab after they had conquered the east bank of the Jordan, to expound

(*ba'er*, 1:5) the Torah as constitution as a prelude to their occupying the land which God has designated as theirs (1:6-8). The constitution, then, is to apply to the Israelites in their land, first and foremost. The land is defined, albeit in the relatively vague way of the desert world, by listing the regions which constitute it (the Arava, the Har or hill country, the Shefela, the Negev, the seashore, the land of the Canaanites, and Lebanon as far as the Euphrates). The Euphrates is the only actual boundary mentioned and even it rather vaguely. In an oasis culture, space perceptions are based upon the identification of core areas whose outer limits remain somewhat vague. Along with the geographic description, God's promise of the land to Israel through Abraham, Isaac and Jacob and their descendants is reaffirmed (1:8).

The Preamble (1:9-18) sets forth the governmental framework of the Israelites under the Mosaic Constitution, namely, that of a tribal federation:

Get you, from each one of your tribes, wise men, and understanding, and full of knowledge, and I will make them heads over you. And ye answered me, and said: "The thing which thou hast spoken is good for us to do." So I took the heads of your tribes, wise men, and full of knowledge, and made them heads over you, captains of thousands, and captains of hundreds, and captains of fifties, and captains of tens, and officers, tribe by tribe. And I charged your judges at that time...the judgment is God's and the cause that is too hard for you, you shall bring unto me and I will hear it (13-17).

Moses reviews the history of Israel in terms of God's direct intervention on their behalf — militarily, demographically and economically. He specifies the structure of government as originally proposed by Jethro, his father-in-law, but with a major difference. Whereas Jethro suggests that Moses appoint subordinate officers (Exodus 18), when Moses writes the appropriate clauses into Israel's constitution, he provides that the tribes shall themselves elect their officers (1:13). Moses only appoints the judges to administer justice through the Torah. He also reviews the Israelites' failures, all within the context of the functioning tribal federation. He culminates with the Israelite acquisition of the territories east of the Jordan and its allocation among the tribes.

Moses repeats the history of their journey, Israel's sins of rebellion against God and their punishment, and the first conquests in the trans-jordan (1:19-3:29), giving careful attention to the constitutional niceties. For example, in spying out the land: "I took twelve men of you, one man from each tribe" (23). He explains the long wandering and the reason for the Israelite occupation of the east bank, concluding this section with God's denial of certain east bank territories to Israel, having granted them to related nations, and the allocation of others to the

tribes of Reuben, Gad, and half of Menasseh in return for their promise to participate in the conquest of the west bank.

In sum, the preamble sets forth the basic principles of the constitution, themselves paradigmatic of the covenantal polity:

- 1) That God is Israel's sovereign.
- 2) That Israel is to possess its promised land but no more than its promised land.
- 3) That the Israelite polity is to be a federal constitutional republic.
- 4) That the Israelite polity is to be committed to equal justice. The constitution that follows is organized around these four principles in that order.

Chapters 4 through 11:7 deal with the commandments to love, fear, worship, and hearken to God. Chapters 11:8 through 16:17 deal with the land and the commandments, statutes, and ordinances related to it. Chapters 16:18 through 21 deal with the system of government and domains of authority in the *edah*. Chapters 22 through 26:15 deal with the doing of justice. While there are some verses in these chapters that seem out of place, at this point in our analysis we cannot conclude whether they are indeed out of place or whether they require closer reading to understand why they are placed where they are.

The second section of the constitution, the restatement of the statutes (*hukim*) and ordinances (*mishpatim*), begins at the beginning of Chapter 4. The traditional formula is used calling upon Israel to hearken (*Yisrael shema*) unto those statutes and ordinances. The constitution is presented as necessary to sustain the very life of the Israelites and their claim to the land that God has given them. The statutes and ordinances are presented as complete and permanent and the constitution itself commands the Israelites not to add or diminish them (4:2) since they are God's commandments (*mitzvot*). However, this provision is modified later by another allowing, even commanding, interpretation by the judges and authorities of each generation (17:10-11). There is an emphasis on teaching (verses 1 and 5) as an essential element of the constitutional system, in essence that a constitution is not merely a written document but something that is taught to the entire people.

The statutes and ordinances are introduced as being those of a great nation and a wise and understanding people, that will be recognized as such by the other peoples of the world (4:6-8).

In Chapter 4, Moses reminds them of the Sinai Covenant (consistently referring to Sinai by its other name, Horeb) with a full description of the theophany that took place there (v. 10ff).²⁵ He presents his description in the context of praise for the genius of the Israelite constitution and appropriate warnings with regard to the Israelite propensity to violate it. Here Moses emphasizes that God de-

clared His covenant to them, commanded them, while at the same time demanding that he (Moses) "teach you (the Israelites) these statutes and ordinances." There is no discussion here of the elaborate negotiations and consent procedures described in the original description of the Sinai Covenant in Exodus.

This is the second great constitutional climax in the Torah, repeating as it does the Ten Commandments and the first paragraph of Sh'ma Yisrael. Let us recall that the commandments are referred to as *dibrot* (authoritative statements) and the book as a whole as *Devarim*. It is through *dibrot* that we reach *devarim*.

The Israelites are commanded to teach this constitution to their children. At this point Moses describes once again the covenant at Horeb/Sinai, the first commandment of which is to reject all idolatry. This is presented as a teaching for all generations. It is also presented as one that will be violated, leading to exile from the land, a further punishment, followed by repentance and ultimate redemption.

Then, as if to make a point about God's justice, Moses tends to a prosaic but vital detail of governing. He sets aside three cities of refuge east of the Jordan (4:41-43).

He then returns to the principal business at hand and restates the Ten Commandments. In describing the process of covenanting at Horeb/Sinai and explaining why it was the way it was, he summarizes the message in what Jews now use as the first paragraph of their most important confession of faith, the Sh'ma Yisrael (6:4-9) — literally, "Hearken Israel." The portion concludes by reiterating that the Israelites are an *am segula* (specially set aside people) who must know that their God is a faithful God, who maintains His covenant and its *hesed* (dynamic covenant love) for those who reciprocate by loving Him and observing His commandments unto the thousandth generation. *Hesed* is a critical covenant concept. It prevents the covenant from becoming a mere contract, narrowly interpreted by each partner for his benefit alone, by adding a dynamic dimension requiring the parties to act toward each other in such a way as to demonstrate their covenant love, i.e., beyond the letter of the law.²⁶

Chapters 6 through 11 deal essentially with remaining faithful to God, especially after settling in the land, where the temptations will be great to worship other gods (associated with local sites) and thereby violate God's commandments. Moses goes into great detail with regard to the temptations and what would be considered the violations. The conclusion to this section, verses 10:21 through 11:7, recount how God manifested his power in Egypt in the course of the Exodus and throughout the forty years in the desert in a final reiteration of how Israel witnessed God's power to reinforce the previous statutes and ordinances.

The second section, beginning with Chapter 11:8, deals with the land. It begins with a discussion of God's promise of the land to Israel. It describes the character and quality of the land, emphasizes the conditional element of the promise, and specifies the extent of the land promised. What follows thereon are the constitutional laws that are particularly related to the land including the commandment to establish a single place of sacrifice (Chapter 12), the commandment to reject local land-related idolatrous customs (13:1-14:21), the commandment to tithe from the produce of the land (14:22-29), the laws of the sabbatical year (Chapter 15:1-18), and the observance of the pilgrimage festivals (16:1-17). Chapter 14 also sets forth the dietary laws, combining them with the laws of tithing to insure that the entire population is not only kosher but is fed.

The third section deals with government and domains of authority. It begins (16:18-17:13) with the establishment of civil government whose principal function is adjudication. The constitution specifies the basic rules of adjudication, its goal of achieving justice, the rules of judicial procedure, the rules of evidence, rules for capital punishment, the establishment of an appellate system, and provisions for interpreting the Torah in each generation.

The text then turns to the three domains (*ketarim*) into which the Torah divides governing authority. The Israelite polity was one of separated but shared powers. It was so built that power never could be concentrated in a single human authority. Because the Jewish polity embraces a complete civilization including its religious dimension, even prior to the classic separation of powers into executive, legislative, and judicial, the *edah* separated spheres of authority, known classically in Hebrew as the three *ketarim* (literally: crowns). The clearest expression of that separation was to be presented a millennium later in the *Mishnah Pirkei Avot* (Sayings of the Fathers), Chapter 4, which designates them *keter torah* (the crown of Torah), *keter kehunah* (the crown of priesthood), and *keter malkhut* (the crown of kingship or civil rule). That verse assumes that Jews in the time of the Second Commonwealth understood that authority and power in their polity were divided among these three *ketarim*.²⁷ While the specific terms are post-biblical, the division was present from the days of the desert.²⁸ It is the basis of the discussion of governance in Deuteronomy where it is taken for granted.

The *keter torah* is responsible for the communication of God's will to the *edah*. In the Bible, Torah was communicated to the *edah* first through the *Eved Adonai* (God's Chief Minister, a title bestowed only on Moses and Joshua), then through the *ro'eh* (seer) and the *neviim* (prophets — singular, *navi*).

Understood from a political perspective, the *keter kehunah* is responsible for enabling the *edah* to communicate with God, whether

through sacrifices, prayer, or whatever. This domain is explicitly separated from the *keter torah* by a separate covenant with Aaron and his sons.

Oldest of them all is the *keter malkhut*, which deals with the civil dimension of the *edah* and which is responsible for the tasks of normal governance. Its first separately articulated representatives were the *zekenim* (elders), an institution that dates back at least to the Egyptian bondage (Exodus, Chap. 6), and their principal officers, the *nesiei haedah* (the magistrates) and continues through the *shofetim* (judges), and *melakhim* (kings). Each of these offices is recognized in the Bible.

Each of these *ketarim* is independent of the others, drawing its authority directly from Divine mandate, though both in theory and in practice the bearers of each *keter* must work with the others in order to govern the *edah*. The division appears without those convenient labels in the Torah itself and, in the manner of Scripture, the constitutional laws applicable to each of the domains are here presented with no explanation of general principles.

Malkhut, the domain of civil rule, is the first to be discussed and since the overall institutions of the *keter* have been discussed elsewhere, the discussion is confined to the possibility of introducing a king into Israel. Chapter 17:14-20 specifies that a king can only be introduced by popular demand and indeed somewhat tainted demand at that since it would be a popular demand to be "like all the nations that are around me" (v. 14). That is always considered a form of backsliding in the Bible. Nevertheless, permission is given to appoint a king, but that he must be chosen by God (v. 15) and he must be an Israelite, never a foreigner (v. 15).

This is followed by a list of restrictions, principally devoted to limiting the king's ability to accumulate wealth or to take many wives, which has a dual meaning, being both anti-hedonistic and anti-foreign alliances. As the Bible recounts subsequently and as we know from other sources, royal marriages were frequently part of the conclusion of alliances. Indeed, it has been suggested that Deuteronomic restrictions were introduced by the prophets in response to the problems of Solomon's kingship.

The king is commanded to write out a copy of "this Mishneh Torah," presumably the whole Book of Deuteronomy, apparently in the presence of the priests and Levites, so that he will have no excuse for not knowing the law. The character of Israelite constitutionalism is no better illustrated than here:

It shall be when he sitteth on the throne of his kingdom that he shall write a copy of this law in a book, out of that which is before the priests and the Levites. And it shall be with him and he shall

read therein all the days of his life that he may learn to fear the Lord his God, to keep all the words of His Constitution and statutes to do them. That his heart be not lifted up above his brethren, that he not turn aside from the commandments to the right or to the left, so that he may prolong his days in the kingdom, he and his children, in the midst of Israel (18-20).

It is clearly assumed that the tribal structure described earlier will continue to exist even if there is a king. Indeed, the only change made in it is that referred to in Chapter 16 assigning judges and officers to territorial settlements rather than households and nomadic tribes.

The covenant with David and his house is not the first covenant of the *keter malkhut*. At the very least, the *mishpat hamelekh* in Deuteronomy is the foundation of that *keter*, though, in fact, the foundation goes back earlier to the exodus itself. What is important about *mishpat hamelekh* is that the covenant of *keter malkhut* is not made with the king but is made with the people who are empowered to appoint a king if they so choose. Indeed, one can contrast the three covenants behind the three *ketarim*: the covenant for *keter torah* is made with the people through the mediation of the prophet Moses; the covenant with the priests is made with Aaron and his family and embraces the tribe of Levi in a subsidiary fashion; while the *keter malkhut* is made with the people without a king or equivalent leader being present. Only in a later epoch is an actual king introduced.

The issue of kingship is a controversial one in the Jewish political tradition. Does Deuteronomy mandate the appointment of a king once the *edah* is settled in its land or is it a discretionary matter? Biblical commentators and political thinkers from the Talmud to the present have divided on the issue. The text itself is ambiguous and can be read either way.

Aside from the ambiguous statement about placing a king at the head of the *keter malkhut*, the rest of the passage concerns itself with the constitutional restrictions to be imposed upon any such office should it be established. Later commentators juxtaposed this passage with I Samuel 8 where the Prophet Samuel warns the people of the arbitrary powers that a king is likely to take unto himself, most of which stand in violation of the Deuteronomic constitution. Some later commentators used I Samuel 8 as the basis for determining the scope of the king's powers, although the biblical text is plain. It is a warning against usurpations. Certainly it does not contradict the constitutional strictures of Deuteronomy 17.²⁹

From the positioning of the verses it is clear that *shofetim* (judges, in the sense of magistrates) and *shoterim* (civil officers) are more important than kings, or at least more basic. Indeed, when the sages divided the Torah into weekly portions they started the portions relat-

ing to the institutions of governance with the verse about *shofetim* and *shoterim*. Hence the portion is named *Shofetim*. Of course, *shofetim* and *shoterim*, while basic to any regime, represent the classic regime of the desert. Kingship, even federal kingship, is a step away from that classic regime to what became a contrasting classic model, but was not the original one.³⁰

Deuteronomy turns to the *keter kehunah* in Chapter 18 where in verses 1-8 the status, place, and perquisites of priests and Levites once Israel is settled in its land are adapted to the new situation and reaffirmed. Here, too, the only matters dealt with are changes from the basic constitutional laws of the first four books.

Verses 9-22 of Chapter 18 deal with the *keter torah*, specifically prophets and prophecy. In a way this is a new institution and is presented as such, that God will raise up prophets to whom Israel should hearken, that prophets were introduced in place of requiring the people to meet God face to face, since the people had rejected that possibility at Horeb/Sinai out of discomfort with that confrontation. Punishment for false prophecy is indicated, as is a way to distinguish between true and false prophecy.

Chapters 19 through 26 contain the body of the constitutional laws dealing with civil and criminal matters, family relations, warfare, citizenship and the like. This section begins by providing what is in effect a "bill of rights" for those accused of crimes (Chapter 19 plus sections of Chapters 21 and 24) with appropriate judicial procedures and the laws of warfare (Chapter 20) and family law (25:5-10).

This "bill of rights" offers extensive protections for individuals, aliens as well as Israelites. It has been properly celebrated as the founding cornerstone of the Western edifice of rights. At the same time it is an ancient rather than modern set of protections directed essentially to the people as a whole as a way to make them holy, rather than to individuals as a way to make them free. In other words, God commands the Israelites as a body and individually to behave with justice and fairness because that is the way for them to be holy, not because these are abstract individual or human rights. True, it is implicit that every human is entitled to such treatment because he or she is created in the image of God (Genesis 1:26-27). Nevertheless, the constitutional emphasis is on the holiness of the people obliged to conduct themselves in this manner. Indeed, for the Torah, rights are founded in the obligations that people have assumed through covenant. Clearly, for a holy people those obligations emphasize a certain standard of behavior toward other humans created in God's image.³¹

The discussion of how the *edah* is to make war (20:1-9) is an excellent example of the formal procedures required by the constitution if the Jewish polity is to function in a constitutional manner. When the

people assemble to go out to war, the priest, apparently the high priest, is to speak to them to remind them that God is with the people and will fight for them. Then the civil officers (*shoterim*) are to speak to the members of the mobilized force to formally proclaim the legitimate reasons for leaving the ranks specified in the constitution. Those who have just completed building a new house, planting a new vineyard, or taking a new wife and who have not yet had the opportunity of enjoying the fruits of their acts are excused from service. Also excused are the fearful and fainthearted. Each individual must declare himself to take advantage of these exemptions. Thus the wise exemption of those distracted or psychologically unfit for a military campaign is modified by the necessity for each man seeking exemption to do so publicly before his fellows.

This is done before civil officers. Only after they have offered the possibility to be exempted from service is the mobilized force turned over to army commanders who will then be appointed to command. In other words, most of the preparations are undertaken by civil authorities. Even where prophet and priests are not involved, civil officers are. The army is first prepared for battle psychologically before the army commanders are given authority, probably on the assumption that once the hierarchy of army command is established, whatever the nominal rights people have to leave, in hierarchical systems those rights are far more difficult to exercise.

The final section deals with the doing of justice, including commandments for neighborliness (*re'ut*), that is to say, how to show *hesed* (loving covenant obligation, the dynamic dimension of *brit*) to one's *re'im* or neighbors and to other living creatures, laws of marriage, personal hygiene, immoral sexual practices, commerce, and support for the poor and needy. In two places the laws of *hesed* are extended to animals.

Provisions are made for the local administration of justice under the new territorial organization (25:1-5). With the body of the constitution before the people, the document concludes with the *formal renewal of the covenant* between God and Israel. The act begins with the presentation before the people by representatives of all three domains: Moses, the elders, the priests and the Levites, of the curses and blessings associated with violating the constitutional covenant (curses) or keeping it (blessings) (26:16-28:68). Moses and the elders instruct the people to keep the commandments and to write the whole Torah on a public monument after entering the land so that it will be visibly accessible to all Israel. Then Moses, the priests and the Levites consecrate the people to God and require them to hearken to the commandments.

All this is in preparation for the covenant renewal ceremony on the plains of Moab (28:69-30:20). Covenant renewal takes place before the

assembly of the entire *edah* — men, women and children — and representatives of all three *ketarim*. The covenant reestablishes the people, affirms God as a partner to it, and requires the people to promise to be faithful partners on their part. The punishments for covenant violations, including exile from the land, are specified.

The conclusion of the covenant emphasizes that the constitution was openly given to the Israelites for them to live by. It is the opposite of those secret things that belong to God (29:28). At the conclusion of the covenant ceremony there is a final word reemphasizing that the constitution is close and not distant, that the people are given a choice between good and evil, and that heaven and earth witnessed the covenant, sealing the matter.

In an appropriate conclusion for a covenant, Chapter 27 provides for the writing down of the entire constitutional corpus once the Israelites are in their land and for a ceremony evoking curses on any violators of its provisions. The blessings and curses receive greater elaboration in Chapter 28 which concludes (v. 69): "These are the words of the Covenant which the Lord commanded Moses to make with the Israelites in the land of Moab beside the Covenant he made with them at Horeb." Moses then makes a concluding summation of the covenant with its promises and obligations (Ch. 29-31), concluding with the formal designation of Joshua as his successor, the writing of the constitution and its placement in the Ark of the Covenant, and the provision for a public ceremony to renew the covenant every seven years at the end of the sabbatical year during Succot (the Feast of Tabernacles):

And Moses commanded them saying: "At the end of every seven years, in the set time of the year of release, the feast of tabernacles, when all of Israel is come to appear before the Lord thy God in the place which He shall choose, thou shalt read this law before all Israel in their hearing. Assemble the people, the men and the women and the little ones, and thy stranger that is within thy gates, that they may hear, and that they may learn, and fear the Lord your God, and observe to do all the words of this law; and that their children, who have not known, may hear, and learn to fear the Lord your God, as long as ye live in the land whither ye go over the Jordan to possess it" (31:10-13).

The Epilogue

What follows in Chapters 31 through 34 is in the way of an *epilogue*. Moses transfers power to Joshua quickly; he writes out the Torah and delivers it to priests, Levites, and elders; he establishes a covenant renewal ceremony to take place every seven years; God ratifies all this

and the written Torah is placed in the Ark of the Covenant alongside of the commandments. Moses then presents his elaborate poem known as the Song of Moses, along with a final exhortation to the people to keep the commandments and to be faithful to their constitution (Chapter 32). In Chapter 33 he blesses the Bnei Israel before his death collectively and tribe by tribe. In Chapter 34 his death is described, as is Joshua's assumption of power. The book and the whole Pentateuch is closed with an evaluation of Moses' greatness and uniqueness as a prophet.

As he approaches death, God gives Moses a glimpse of the future retrogression of Israel and Moses delivers to them an eloquent poetic warning followed by his blessing, tribe by tribe, in a federal spirit, after which he goes up to Mount Nebo, dies, and is buried "where no man knoweth his sepulchre." In other words, the founder, prophet, and statesman remains to guide his people only through the covenant he has obtained from God and the constitution he has written in accordance with it.

The Book of *Devarim*, in sum, is presented as a covenant. The term itself is used in one-third (11 of 34) of its chapters and is implicitly present in virtually all of the others. It follows the standard formula: a historical prologue, a statement of responsibilities, specific provisions, blessings and curses with regard to its maintenance or violation, and a covenant ceremony accepting it with provisions for similar ceremonies for its periodic renewal.

Conclusion

The Pentateuch presents us with four paradigmatic covenants: with Noah, with Abraham, at Sinai, and on the plains of Moab. The first is a covenant with all mankind, the second a promise to generate a specific people to be holy and to give them a land, the third establishes the people prepared to receive a constitution, and the fourth is a covenant set within the constitution itself. The general thrust of these covenants was to bring the existing tribal system with its political structure into the framework of a national constitution, comprehensive in character and designed to sanctify all dimensions of human life, in order to build the holy commonwealth. While, in light of our knowledge of the role of covenants and covenant ideas in West Asia at the time, we can assume that the Israelite tribes were culturally attuned to this turn of events, nevertheless, the covenantal process brought about a certain redesign of the political structure itself and created a basis for further redesign in later epochs of Jewish history, biblical and post-biblical.

Students of the Bible are all too aware of the problems that have been raised regarding its textual construction, particularly in the Pentateuch. Here we have taken the Torah as an integrated work. However — and whenever — it was authored, its integral character as a teaching is its most important feature from a political perspective, particularly since, from that perspective, it makes good sense. The student of politics can leave extensive textual probings to others; the impact of the biblical teaching on human civilization comes not from such matters but from the magisterial and profound character of the work as a whole, of which the sequence of covenants is one excellent manifestation.

In the last analysis, the Pentateuch constitutes one comprehensive constitutional document in two parts. The first four books which include the two sets of basic covenants establishing Israel as a people, those with Abraham and that at Sinai, and its auxiliary additions, and the second, the summarization and restatement of the first under the changed conditions of permanent settlement in the Land of Israel. These two sections are profoundly the same and profoundly different. Together they present the foundations of the two classic regimes of the Jewish polity. The first is the classic *Adat Bnei Yisrael* (Assembly of the Children of Israel) instituted in the desert, a democratic federal republic directly governed by God through his *eved adonai* (the Lord's minister or prime minister). The second is the federal monarchy with a human king, albeit one chosen by God. In the first, sacrifices can, at least in principle, be performed in the tribes as well as before the common tabernacle. In the latter they are to be centralized at a common holy place.

On the other hand, these differences may not be as great as they seem at first blush. Under the constitution of the classic *edah*, was not God king? Was not the introduction of human kingship not merely a part of the transfer of God's direct rule to human agency, not only to kings but also to elders, priests and prophets? Was not there always a central place of sacrifice and worship, albeit a portable one in the days of the desert, so that the real change in Deuteronomy is the establishment of a fixed site now that Israel is in its own land, with certain precautions against idolatry in a land where every tree and rock could influence the superstitious? Moreover, there is no precise commandment to build the Temple, only to establish a central shrine.

Still, the actual consequences of the establishment of kingship and Temple went far beyond the original intent of the constitution to transform the simple tribal democracy of ancient Israel into something else again. Subsequent generations of Jews have struggled with the problem of synthesizing various manifestations of these two regimes. The results have been at times more hierarchical and at others more

egalitarian, at times more oligarchic and at others more democratic, at times more theocentric (in the original sense) and at others more civil.

These are questions which need to be explored in another context. This essay has undertaken a far more modest task. It has merely attempted to point out the constitutional character of one of the documents involved and how its study should be incorporated into the corpus of the political scientific study of constitutions.

Notes

1. For the various theories dating Deuteronomy, see G.R. Berry, "Date of Deuteronomy," *Journal of Biblical Literature and Exegesis*, LIX (1940): 133-139; George Dahl, "The Currently Accepted Date of Deuteronomy," *Journal of Biblical Literature*, XLVII (1928): 358-379; M. Margolis, *Hebrew Scriptures in the Making* (1922).
2. On the Constitution of Athens, see Ernest Barker, *Greek Political Theory: Plato and His Predecessors* (New York: Barnes and Noble, 1960); Aristotle, *The Athenian Constitution, the Eemian Ethics, on Virtues and Vices*. Translated by Harris Rackman (Cambridge, Mass.: Harvard University Press, 1981).
3. On ancient versus modern constitutionalism, see Leo Strauss, *Liberalism, Ancient and Modern* (Ithaca, N.Y.: Cornell University Press, 1989); *Natural Rights and History* (Chicago: University of Chicago Press, 1953); Charles MacIlwaine, *Constitutionalism, Ancient and Modern* (Ithaca, N.Y.: Cornell University Press, 1947).
4. On the government of biblical Israel, see Daniel J. Elazar and Stuart A. Cohen, *The Jewish Polity: Jewish Political Organization from Biblical Times to the Present* (Bloomington: Indiana University Press, 1985), especially Epoch 3; and Daniel J. Elazar, "The Polity in Biblical Israel," in Daniel J. Elazar, ed., *Authority, Power and Leadership in the Jewish Polity: Cases and Issues* (Lanham, Md.: Jerusalem Center for Public Affairs and University Press of America, 1990).
5. On *Mishpat HaMelukhah*, see Salo W. Baron, *A Social and Religious History of the Jews*, 2nd edition, vol. 1 (Philadelphia: Jewish Publication Society, 1952), pp. 63-101; Simon Federbush, *Mishpat HaMelukhah* (Jerusalem: Mossad HaRav Kook, 1973); *Encyclopedia Judaica*, 12 (Jerusalem: Keter, 1971), pp. 136-151. See also Daniel J. Elazar and Stuart A. Cohen, *The Jewish Polity*, Part I, Epoch IV; G.E. Mendenhall, "Ancient Oriental and Biblical Law," *The Biblical Archeologist*, 17:2 (1954): 26-46.
6. On the authorship of Deuteronomy, see Richard J. Clifford, *Deuteronomy; with an Excursus on Covenant and Law* (Wilmington, Del.: M. Glazier, 1982); G. von Rad, *Studies in Deuteronomy* (Eng. tr.; London: SCM Press, 1967).

7. On ancient covenants, see Delbert Hillers, *Covenant: The History of a Biblical Idea* (Baltimore: Johns Hopkins Press, 1969); George Mendenhall, *Law and Covenant in Israel and in the Near East* (The Biblical Colloquium, 1955) and "Covenant Forms in Israelite Tradition," *Biblical Archeologist*, XVII (1959): 50-76.
8. On the *halakhic* reinterpretation of the Torah, see Elazar and Cohen, Epoch 6; Salo Baron, *A Social and Religious History of the Jews* (Philadelphia: Jewish Publication Society, 1952), vol. VI.
9. On the Pharasaic shift, see Elazar and Cohen, Epochs 7 and 8; Louis Finkelstein, *The Pharisees: Their Origin and Their Philosophy* (Cambridge, Mass.: Harvard University Press, 1929); George Foote Moore, *Judaism in the First Centuries of the Christian Era, the Age of the Tannaim* (Cambridge: Harvard University Press, 1958); Jacob Neusner, *From Politics to Piety: the Emergence of Pharisaic Judaism* (Englewood Cliffs, N.J.: Prentice-Hall, 1973).
10. On medieval discussions of the ideal Jewish polity, see Gerald Blidstein, *Political Concept in Maimonidean Halakhah* (Ramat Gan: Bar-Ilan University Press, 1983) (Hebrew); Moses A. Maimonides, *Guide of the Perplexed in Medieval Political Philosophy*, edited by Ralph Lerner and Muhsin Mahdi (New York: The Free Press, 1963); David Polish, *The Rabbinic Views on Kingship — A Study of Jewish Sovereignty* (New York: Ktav, 1989); Martin Sicker, *The Judaic State: A Study in Rabbinic Political Theory* (New York: Praeger, 1988); Leo Strauss and Joseph Cropsey, *History of Political Philosophy*, 2nd ed. (Chicago: Rand McNally, 1963). See especially the chapters on Maimonides and Joseph Albo.
11. On modern and postmodern uses, see Moshe Hess, *Rome and Jerusalem: A Study in Jewish Nationalism*, trans. and with introduction by Meyer Waxman (New York: Bloch, 1943); Moses Mendlessohn, *Jerusalem, or, On Religious Power and Judaism*, trans. by Allen Arkush (Hanover: University Press of New England, 1983); Joseph Salvador, *Histoire des institutions de Moise et du peuple hebreu*, 3eme (Paris: M. Levy, 1862); Mayer Saltzberger, *The Am ha-Aretz, the Ancient Hebrew Parliament, a Chapter in the Constitutional History of Ancient Israel* (Philadelphia: J.H. Greenstone, 1910); Baruch Spinoza, *Theological-Political Tractate* (1670).
12. *The Jewish Polity*, Epoch 9, pp. 137-145; Moshe Beer, *The Amoraim of Babylonia: Their Economic and Social Structure*, 2nd ed. (Ramat Gan: Bar-Ilan University Press, 1982).
13. Menachem Elon, *Ha-Misphat ha-Ivri: Toldotav, Mekorotav, Ekronotav* (Jewish Law: History, Sources, Principles), vol. 1 (Jerusalem: Magnes Press, 1973); *The Jewish Polity*, Epoch 11, pp. 160-177.
14. Chaim Hershensohn, *Eleh Divrei HaBrit* (Hoboken, N.J.: 1918-1921), 3 vols., and *Malkhi BaKodesh* (Hoboken, N.J.: 1923-1928), 6 vols.; R. Shaul Yisraeli, *Ha-Torah ve-Ha-Medinah* (Rabbinic Council of Ha-Po'el Ha-Mizrachi, 1949, 1962).

15. Johannes Althusius, *Politics*, trans. Frederick Carney (Boston: Beacon Press, 1964); Champlain Burrage, *The Church Covenant Idea: Its Origins and Development* (Philadelphia, 1904); E. Brooks Holifield, *The Covenant Sealed: The Development of Puritan Sacramental Theology in Old and New England* (New Haven: Yale University Press, 1974); Jean Calvin, *Calvin: Commentaries*, trans. and ed. by Joseph Haroutunian, with Louise Pettibone Smith (Philadelphia: Westminster Press, 1958); Harro M. Hoepfl, *The Christian Polity of John Calvin* (Cambridge: Cambridge University Press, 1982).
16. John Kincaid and Daniel J. Elazar, eds. *The Covenant Connection* (Grenshaw: Carolina Academic Press, 1990).
17. Donald Lutz, "From Covenant to Constitution in American Political Thought." Paper presented at Seminar on Covenants and Constitutions of the Center for the Study of Federalism, Philadelphia, November 8-9, 1979.
18. Compare this recognition of reality with the biblical description of the writing down of *Adat Bnai Yisrael's* first constitution, *Sefer HaBrit* (The Book of the Covenant), in Exodus, Chapters 19-22, the concrete result of the Sinai experience with its covenant and covenantal constitution. That action comes after Jethro, the priest of Midian and Moses' father-in-law, convinces Moses that he cannot judge the whole people himself but must establish a judicial system with several levels of judges. Once Moses was no longer fully responsible for interpreting and applying the law in all cases, in order to have the rule of law there had to be a written source to which all or at least all judges could refer. Hence the Book of the Covenant.
19. S.H. Blank, "The Dissident Laity in Early Judaism," *Hebrew Union College Annual*, 19 (1945-1946): 1-42; J. Muilenberg, "The 'Office' of the Prophet in Ancient Israel," in J.P. Hyatt, ed., *The Bible in Modern Scholarship* (1966), pp. 79-97.
20. Cf. Daniel J. Elazar, "Dealing with Fundamental Regime Change: The Biblical Paradigm of the Transition from Tribal Federation to Federal Monarchy under David," in the Marvin Fox Festschrift, Jacob Neusner, et al., eds., *From Ancient Israel to Modern Judaism* (Atlanta, Georgia: Scholars Press, 1989), pp. 97-132.

On the effects to centralized worship by David and Solomon, see M.M. Cohen, "The Role of the Shilonite Priesthood in the United Monarchy of Ancient Israel," *Hebrew Union College Annual*, 36 (1965), pp. 59-98; G. Widengreen, "King and Covenant," *Journal of Semitic Studies*, 2 (i) (1957): 1-27.

This whole problem can be used as an aid in dating Deuteronomy and indeed the Pentateuch. The emphasis in the first four books on a polity and cult for the desert suggests a very early authorship for them or at least for the major portions of them. Most of the constitutional material within them becomes obsolete once Israel enters Canaan and must be reinterpreted by later generations to be relevant to, first, a settled people and then a non-pastoral one. The way in

which these issues are put in Deuteronomy, on the other hand, also suggests a relatively early authorship for it. For example, the prescription for centralized worship refers to a place "out of thy tribes" which the Lord shall select. When the Temple was built, it was built in separate royal territory, Jerusalem, that had remained in the hands of the Jebusites after the original conquest and was only conquered by David as part of his rise to the kingship, and hence became his and never part of any tribal territory.

21. On the emergence of the synagogue, see Salo W. Baron, *The Jewish Community* (Philadelphia: Jewish Publication Society, 1938-1942).
22. Elazar, "Fundamental Regime Change."
23. For a discussion of whether or not kingship is mandatory, see David Polish, *The Rabbinic Views on Kingship — A Study of Jewish Sovereignty* (New York: Ktav, 1990).
24. On "the city gates" as the seat of local government, see M. Weinfeld, "Judge and Officer in Ancient Israel and in the Ancient Near East," *Israel Oriental Studies*, 7 (1977): 65-88.
25. From a historical perspective, the Horeb/Sinai problem cannot be so easily dismissed. Some have argued that there were two traditions of theophany later synthesized. For our purposes, however, we can accept the synthesis as the thrust of the book.
26. Cf. Norman Snaith, "The Covenant-Love of God," in *The Distinctive Ideas of the Old Testament*, 2nd ed. (New York: Schocken Books, 1973), pp. 94-127; Nelson Glueck, *Hesed in the Bible* (New York: Ktav, 1975).
27. For a fuller discussion of the *ketarim*, see Stuart A. Cohen, *The Three Crowns: Structures of Communal Discourse in Early Rabbinic Society* (Cambridge: Cambridge University Press, 1990).
28. Elazar and Cohen, *The Jewish Polity*, traces the *ketarim* through every constitutional epoch in Jewish history.
29. Cf. Polish, *op. cit.*
30. For a discussion of the existence of two classic models, see Daniel J. Elazar, "The Polity in Biblical Israel," *op. cit.*
31. Haim Cohen, *Human Rights in Jewish Law* (New York: Ktav, 1984); Daniel J. Elazar, "Rights and Obligations in the Jewish Political Tradition," *Jewish Political Studies Review*, Vol. 3, Nos. 3-4 (Fall 1991).