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Constitution, Class, and the Book of Deuteronomy



Abstract: The book of Deuteronomy has a dual agenda in its blueprint for the polity. First it rejects the exclusionary power strategies exhibited routinely in the monarchic systems of the ancient Near East, instead proposing a collective power strategy, in which power is not only shared, but is primarily invested in the community. Then Deuteronomy rejects the institutions and language of tribal patriarchy in favor of collective, national identity. Whereas earlier studies of Deuteronomy's plan for the regime focused on chapters 16–18, this study maintains that one must read the entire book as an integrated whole in order to fully perceive the intricacy of its plan for a society in the land.

Most discussions of Deuteronomy's constitutional elements focus upon Deuteronomy 16:18–18:22, the unit that broadly describes the powers of the judiciary, the priesthood, the monarchy, and the institution of prophecy. Moreover, these discussions routinely seek the historical setting within I–II Samuel and I–II Kings that ostensibly constitutes the pretext for the formulations at hand. The law of the king (*mishpat hamelech*), set out in Deuteronomy 17:14–20, is said to reflect the times of Samuel,¹

My thanks to Tamara Cohn Eskenazi, Daniel Doneson, Adam Ferziger, Edward Greenstein, Steven Grosby, Yoram Hazony, Rimón Kasher, and Baruch Levine, all of whom commented on earlier drafts of this study. An abridged version of this paper was presented at the 2006 annual meeting of the Society for Biblical Literature, in Washington, D.C. An expanded form will appear in my forthcoming *Biblical Revolutions: The Transformation of Social and Political Thought in the Ancient Near East*.

¹ See Baruch Halpern, "The Uneasy Compromise: Israel Between League and Monarchy," in Halpern and Jon D. Levenson, eds., *Traditions in Transformation: Turning Points in Biblical Faith* (Winona Lake, Ind.: Eisenbrauns, 1981), pp. 82–83; Halpern, *The Constitution of the Monarchy in Israel* (Chico, Calif.: Scholars Press, 1981), pp. 225–235.

Solomon,² Josiah,³ or the Babylonian exile.⁴ Deuteronomy's plan for the centralization of the cult reflects the time of Hezekiah,⁵ or Josiah. Deuteronomy reflects northern influence; witness its mention of Shechem, its concern for social justice, and its emphasis on Levitical and prophetic authority over that of the king. It reflects southern influence; witness its concern with the ark, a single sanctuary, and the idea of election. All scholarly attempts to address Deuteronomy's social and political agenda *in toto* have begun with a single axiom: because the text before us is multilayered, its politics can be explained only in terms of the tension between competing agendas throughout the history of its evolution and redaction.

Diachronic studies of this type are endowed with their own internal cogency and coherence. In this study I suggest a contrasting approach: one may read the *entirety* of Deuteronomy as a statement of the book's constitutional principles. I conduct this analysis through a synchronic reading of the text, in its present canonical position following the wilderness accounts of Exodus, Leviticus, and Numbers. Whatever theories may be adduced about the prehistory of Deuteronomy's various passages, its final form may be assessed and analyzed in this canonical position as an integral whole. By largely divorcing the analysis of Deuteronomy's politics from the books of the so-called Deuteronomistic History, we allow the text to speak in its own voice, the voice afforded us after the conclusion of the redactional process.

1. DEUTERONOMY'S DUAL POLITICAL AGENDA:

A THEORETICAL FRAMEWORK

I seek to read Deuteronomy as a statement of principles and the broad contours of an ideal regime. To animate and facilitate such an analysis, I will first lay out a theoretical framework of political thought. To read Deuteronomy politically is to discern two concomitant trends that cut

² See Marvin A. Sweeney, "The Critique of Solomon in the Josianic Edition of the Deuteronomistic History," *Journal of Biblical Literature* 114 (1995), pp. 609–622.

³ See Mark Leuchter, *Josiah's Reform and Jeremiah's Scroll*, Hebrew Bible Monographs 6 (Sheffield: Sheffield Phoenix Press, 2006), pp. 33–46.

⁴ See Norbert Lohfink, "Die Sicherung der Wirksamkeit des Gotteswortes durch das Prinzip der Schriftlichkeit der Tora und durch das Prinzip der Gewaltenteilung nach den Amtsgesetzen des Buches Deuteronomium (Dt. 16, 18–18, 22)," in Lohfink, *Studien zum Deuteronomium und zur deuteronomistischen Literatur I*, Stuttgarter biblische Aufsatzbände 8 (Stuttgart: Katholisches Bibelwerk, 1990), pp. 305–323.

⁵ See R.H. Lowery, *The Reforming Kings: Cult and Society in First-Temple Judah*, *Journal for the Study of the Old Testament Supplement* 120 (Sheffield: JSOT Press, 1991).

across its chapters. The first trend concerns that which Deuteronomy has to say about kingship. Observations that the limitations of the Israelite king in Deuteronomy 17:14–20 are without parallel in the ancient Near East are legion within the scholarly literature.⁶ Nowhere else do we find legal curbs on the size of the military, the treasury, and the harem. It is likewise commonplace within the scholarly literature to find discussions of kingship in relation to the other positions of authority listed alongside that of monarchy in Deuteronomy 16:18–18:20: the judiciary, the priesthood, and prophecy.⁷ More recently, Bernard Levinson has expanded the discussion of kingship in Deuteronomy by drawing our attention to the spheres of activity that were routine for kings in the ancient Near East. He notes that throughout many of its chapters, Deuteronomy discusses the laws governing these activities within the Israelite polity, yet without any mention of the Israelite king. Put differently, what Levinson has shown us is that it is insufficient to read what Deuteronomy *says* about kingship; you have to read the whole book and read between the lines for what it *doesn't say* about kingship in order to understand the full impact of the statement.

In this study I would like to take the approach of seeing the powers of governance within the broader context of the book as a whole yet one step further. To do so, I would like to take a page from anthropological studies of political power in premodern societies. The monarchies and tyrannies found in the ancient Near East, and rejected by Deuteronomy, employed a power strategy that we may call *exclusionary*. In an exclusionary power strategy, potentates design political systems through the monopolization of the sources of power. They seek to control economic resources, such as the trade and control of luxury

⁶ For comparative studies of kingship in the Hebrew Bible and the ancient Near East, see John Day, *King and Messiah in Israel and the Ancient Near East: Proceedings of the Oxford Old Testament Seminar* (Sheffield: Sheffield Academic Press, 1998); Dale Francis Launderville, *Piety and Politics: The Dynamics of Royal Authority in Homeric Greece, Biblical Israel, and Old Babylonian Mesopotamia* (Grand Rapids, Mich.: W.B. Eerdmans, 2003); Bernard M. Levinson, "The Reconceptualization of Kingship in Deuteronomy and the Deuteronomistic History's Transformation of Torah," *Vetus Testamentum* 51 (2001), pp. 511–534.

⁷ Moshe Greenberg, "Biblical Attitudes Toward Power," in Greenberg, *Studies in the Bible and Jewish Thought* (Philadelphia: Jewish Publication Society, 1995), pp. 51–62; Douglas Knight, "Political Rights and Powers in Monarchic Israel," *Semeia* 66 (1995), pp. 93–117. Norbert Lohfink, "Distribution of the Functions of Power: The Laws Concerning Public Offices in Deuteronomy 16:18–18:22," in Duane L. Christensen, ed., *A Song of Power and the Power of Song: Essays on the Book of Deuteronomy* (Winona Lake, Ind.: Eisenbrauns, 1993), pp. 336–355; Jean-Marie Carrière, *Théorie du politique dans le Deutéronome: analyse des unités, des structures et des concepts de Dt 16, 18–18, 22* (Frankfurt am Main: Peter Lang, 2001).

and prestige goods, as well as technological and military resources. They exploit ranked clan and descent groups and look to otherwise dominate networks of subordinates. They restrict access to the cult and the supernatural.⁸ Exclusionary power strategy is readily recognized as the most common political structure in premodern societies, but some eschewed this. Alternative power structures found in these cultures share several interrelated characteristics, and we may term these *collective* power strategies.

Collective power strategies divest a single ruler of the control of power. The various offices of power are subordinated to a bureaucracy determined by a code of law and formally established standards of conduct.⁹ Whereas the monopolization of power in a tyranny engenders a degree of cohesion within the polity through the use of force and the fear it produces, the decentralization of power in a collective system necessitates the creation of concepts and institutions to provide the basis for cohesion. Where collective power strategies predominate in archaic societies, it becomes essential that members of the society harbor a well-established and maintained notion of corporate solidarity as an integrated whole.¹⁰ Such a society will need to develop codes of conduct that not only determine what bodies rule and how, but also emphasize the immutable interdependence between subgroups and individuals generally. These codes of conduct will routinely receive manifest legitimation through ritual and numinous experiences.¹¹

From here we may return to our discussion of kingship in Deuteronomy. It is insufficient to note the spheres of royal power that are denied the Israelite king. Nor is it sufficient to note the other bodies to which various powers are shifted. Rather, these institutions must be seen within the broader context of the strong sense of citizenship that Deuteronomy looks to create throughout its thirty-four chapters: how it calls forth unity within the society, how it mediates the relationships between different parts of the society, and what collective institutions are granted ritual

⁸ The theoretical discussion here is based on Richard E. Blanton, "Beyond Centralization: Steps Toward a Theory of Egalitarian Behavior in Archaic States," in Gary M. Feinman and Joyce Marcus, eds., *Archaic States* (Santa Fe: School of American Research Press, 1998), p. 147; see in this regard Patricia Dutcher-Walls, "The Circumscription of the King: Deuteronomy 17:16–17 in Its Ancient Social Context," *Journal of Biblical Literature* 121 (2002), p. 607.

⁹ Blanton, "Beyond Centralization," pp. 146–147; Dutcher-Walls, "Circumscription of the King," p. 607.

¹⁰ Dutcher-Walls, "Circumscription of the King," p. 608.

¹¹ Blanton, "Beyond Centralization," pp. 150, 164.

legitimation. Most important, what are the competencies of citizenship, or what the Greeks would have called the specific set of virtues, that Deuteronomy seeks to foster within citizens? It is within this broader conceptual and institutional fabric that the institutions of the regime are embedded. In summation, then, the first trend we will be identifying in our assessment of Deuteronomy's politics is more than just the attenuation of kingship. Rather, this will be identified as part of a more expansive agenda of the establishment of a collective power strategy and a rejection of the classic exclusionary power strategy exhibited elsewhere in the ancient Near East.¹²

But the political blueprint of Deuteronomy reveals a second thrust: a rejection of tribal patriarchy as a primary structure of governance. Deuteronomy narrates the very end of the sojourn in the wilderness and assumes a familiarity with many events depicted in the books of Exodus, Leviticus, and Numbers. I will claim that Deuteronomy seeks to attenuate the role of the tribal and clan hierarchy, which had dominated leadership throughout that earlier period. To be sure, Deuteronomy does not eradicate the notion of tribes, just as it does not do away with the notion of kingship. But I argue that, in seeking to establish a collective power strategy, Deuteronomy sought to foster within Israel a more collective, national identity and a corresponding bureaucratic form.

The two great thrusts of Deuteronomical political thought—the rejection of the exclusionary power strategy and the concomitant rejection of the primacy of tribal hierarchy—are integrally related. The strength of the clan structure lies in its reliance upon familial qualities. In a classic clan or tribal administrative structure, succession to a given post is determined by a ranking based upon a classificatory system of relationships within the family. Power ties are based upon blood ties, which create great cohesiveness. There is no incentive for a junior member of the structure to revolt against the system, as his eventual advancement is systemically assured. The inherited positions mean that disloyalty and disruption are rarely seen within clan-structured power systems.¹³ Rank is ascribed rather than achieved.

Both ancient and modern social and political organizations have struggled to achieve the transfer of allegiances from kin-based groups to larger

¹² See comments in a similar if less developed vein in Norman Gottwald, *The Tribes of Yahweh* (Maryknoll, N.Y.: Orbis Press, 1979), p. 614.

¹³ Ronald M. Glassman, *Democracy and Despotism in Primitive Societies: A Neo-Weberian Approach to Political Theory* (Millwood, N.Y.: Associated Faculty Press, 1986), p. 120.

collective bodies,¹⁴ and it is easy to see why. A clan or tribe member could be assured of advancement simply by dint of his seniority within the tribal framework. But republican bureaucratic frameworks feature institutions that are instrumental: not a reward for patronage or seniority, but a means of achieving good governance.¹⁵ Thus, whereas extensive clan networks and patronage produce social capital that aids power brokers at the various levels of the tribal hierarchy, these very same networks emerge as a barrier to a more egalitarian, democratic, universalistic, and efficient regime. Yet in looking to create a collective power strategy, Deuteronomy seeks to create a regime with just these qualities. Intrinsic to the notion of citizenship is a proclivity to perceive the individual without reference to his or her narrow, parochial, familial roles.¹⁶ Deuteronomy's political agenda, then, contains two concomitant thrusts.

2. THE DIVESTITURE OF EXCLUSIONARY POWER IN DEUTERONOMY

My point of departure in discussing collective power strategy in Deuteronomy is a brief review of the manner in which the book strips kingship of many of the hallmarks of ancient Near Eastern monarchies. As Levinson has demonstrated, the powers granted to the king in a wide range of spheres elsewhere in the ancient Near East are vastly diluted in Deuteronomy with regard to the Israelite king. Deuteronomy nowhere depicts the king in any of the ritualized aspects of warfare depicted in the book, and indeed the only mention of the king in association with the military is where limits are imposed on the composition of his army.¹⁷ Though Deuteronomy refers to the ensuing conquest of Canaan time and again, the king is never mentioned in that context. He has no role in the cult whatever and is not brought up in conjunction with the establishment of the central shrine.¹⁸ Though Deuteronomy speaks of debt

¹⁴ See George E. Mendenhall, *The Tenth Generation: The Origins of the Biblical Tradition* (Baltimore: Johns Hopkins, 1973), p. 179.

¹⁵ Glassman, *Democracy and Despotism*, p. 120.

¹⁶ Ulrich K. Preuss, "Two Challenges to European Citizenship," *Political Studies* 44:3 (1996), p. 535.

¹⁷ Deuteronomy 17:16.

¹⁸ Deuteronomy 12. On this see Levinson, "Reconceptualization of Kingship," p. 523. The separation of monarchy and cult, however, is distinctly Deuteronomic. Many kings are seen offering sacrifices, most notably Solomon (I Kings 8:5). No protest is registered against kings anywhere in the prophetic literature for performing cultic activities, and this is noted only in II Chronicles 26:16–20, with reference to Uzziah.

remission,¹⁹ it makes no reference to the king as its benefactor.²⁰ The king is portrayed as *subject* to the law rather than as lawgiver.²¹

2.1 Deuteronomic Kingship Within a Collective Power Strategy

As stated, posts of authority within a collective power structure cannot be understood in isolation. Holders of such posts have responsibilities, limitations imposed on them, and interactions with each other and with the society they lead, all of which need to be understood in light of the virtues and ideals that are central to the society. The structures of the regimes in Athens and Sparta largely reflected what each society strived for and how each society perceived itself. In Sparta, for example, citizens were dedicated to a military life, and virtue was achieved on the battlefield. Hence, authority rested on a military oligarchy. Within Deuteronomy, three dominant virtues or characteristics shape and color the character of the various posts of authority. In this section I lay these out and seek to investigate how they inform the peculiar notion of kingship in Deuteronomy 17:14–20.

The first element is that Israel as a community stands in covenantal relation with God. Divine attention, in this relationship, is focused on the people as a whole and not on its leadership. From a literary standpoint, much of Deuteronomy is structured as a series of addresses to Israel as a collective “you”: “*You shall love the Lord your God with all your heart*” (6:5); “*you shall feast [in the Temple] before the Lord your God, happy in all the undertakings in which the Lord your God has blessed you*” (12:7).²² There is a fundamentally egalitarian streak at play here.²³ With

¹⁹ Deuteronomy 15:1–6. On the practice of *andurārum*, see Moshe Weinfeld, *Social Justice in Ancient Israel and in the Ancient Near East* (Jerusalem: Magnes Press, 1995), pp. 75–96; for a bibliography on this practice, see Richard D. Nelson, *Deuteronomy: A Commentary* (Louisville: Westminster John Knox Press, 2002), p. 192 n. 3.

²⁰ Levinson, “Reconceptualization of Kingship,” p. 529.

²¹ See *ibid.*, p. 514.

²² To be sure, “you” in Deuteronomy sometimes refers to individuals. But this does not preclude understanding much of the book’s message as being addressed to the polity as a whole. On the singular and plural addresses within Deuteronomy and their implications for both diachronic and synchronic readings, see Moshe Weinfeld, *Deuteronomy 1–11* (Anchor Bible Series) (New York: Doubleday, 1991), pp. 15–16.

²³ To be sure, Deuteronomy manifestly speaks of multiple classes within the Israelite polity, an order that may not be termed egalitarian in the full sense of the word. By “egalitarian,” I mean that among the free, non-priest/Levites of the Israelite polity, the Pentateuch eschews the divide between a class of tribute imposers, which controls economic and political power, and an even larger class of tribute bearers.

the exception of priests and Levites (to whom we shall return shortly), no group is granted preferred status. While Deuteronomy enumerates specific offices, this “you” constitutes a fraternal and egalitarian citizenry that is the foremost political body within the polity. Deuteronomy specifies no formal framework for appointing leaders or representatives of any kind. Rather, it is this collective “you”—the covenantal community—that bears ultimate responsibility for choosing a king and appointing judges.²⁴ Indeed, it is to the covenantal community that the land is given, and it is the community at large that bears responsibility for proper covenantal behavior.

The very installment of a king, then, is contingent upon the people’s (“you”) taking initiative and requesting one.²⁵ Much attention has been focused on the prerequisite of Deuteronomy 17:15 that the king not be an outsider,²⁶ but what seems no less informative is a second emphasis that stems from the wording of the injunction: “Be sure to set a king over yourself, *one of your own brethren*; you must not set a foreigner over you, one who is not *your brethren*.” The “brethren” requirement not only excludes non-Israelites, but it implicitly suggests that *any* Israelite male may be appointed for the task. Lineage is of no concern here, because the only social standing that counts is that the candidate be one who takes part in the covenant with the Almighty—which is to say, everybody. He need only be *your brethren*—that is, a citizen like everyone else—a phrase mentioned twice in this verse. Any citizen may potentially serve as king.

The egalitarian thrust of these laws is extended in the law restricting the number of wives the king may take.²⁷ The injunction against maintaining a large number of wives has often been understood in light of the phrase that follows it, “so that his heart does not go astray,” as a warning with reference to the corruptive cultural influence of non-Israelite wives.²⁸ Scripture, however, limits not the number of *foreign* wives, but that of *all* wives. It is to this point that the anthropological studies of

²⁴ Levinson, “Reconceptualization of Kingship,” p. 214.

²⁵ Deuteronomy 17:14.

²⁶ See discussions in Duane L. Christensen, *Deuteronomy 1:1–21:9*, World Biblical Commentary 6A (Nashville: Thomas Nelson, 2001); A.D.H. Mayes, *Deuteronomy* (Grand Rapids, Mich.: W.B. Eerdmans, 1981), p. 272; Peter C. Craigie, *The Book of Deuteronomy*, New International Commentary to the Old Testament (Grand Rapids, Mich.: W.B. Eerdmans, 1976), p. 254.

²⁷ Deuteronomy 17:17.

²⁸ Craigie, *Deuteronomy*, p. 256; Mayes, *Deuteronomy*, pp. 272–273; Christensen, *Deuteronomy*, p. 384.

exclusionary power strategies speak. In archaic societies, the king would routinely seek to consolidate his power by marriage into upper-class families and clans and the establishment of kinship networks. The influence of families of power would quickly eclipse that of the common families of Israel.²⁹ Thus, the injunction against marrying widely may be understood as seeking to prevent the influence of cronyism, “so that his heart does not go astray.”

Deuteronomy suggests a second element that is central to the newly forged citizenry: the ensuing military conquest of Canaan. For some republican thinkers, such as Montesquieu, the patriotism of a citizenry is achieved by the more noble concerns of social education, which is perceived to stand in opposition to martial discipline. It is only when virtue ebbs that attachment to the common good is promulgated through the common enterprise of war.³⁰ For Greek social theorists, however, the more sublime and contemplative virtues were not necessarily at odds with military ones. As Aristotle wrote:

For men must be able to engage in business and go to war, but leisure and peace are better; they must do what is necessary and indeed what is useful, but what is honorable is better. On such principles children and persons of every age which requires education should be trained.³¹

Deuteronomy focuses upon the importance of establishing a holy community in accordance with God’s laws and exhortations, yet for Deuteronomy, this does not stand in the way of establishing an order that is quite focused upon military conquest.

We saw above that Deuteronomy prescribes legal parameters for the conduct of war in the Holy Land, but war and conquest generally are ubiquitous themes in the text. The ideology of war, why it is being waged, and toward what ends are found in the sermons of Deuteronomy 7:1–2, 17–16; 9:1–3; and 31:3–8.³² In the opening frame of the book, Moses recounts various wilderness conquests. Martial discipline within Deuteronomy is not a substitute for the fraternal cohesion of a virtuous citizenry, but is rather complementary to it.

²⁹ Dutcher-Walls, “Circumscription of the King,” p. 609; Nelson, *Deuteronomy*, p. 224.

³⁰ Montesquieu, *Spirit of the Laws*, 11.13, 17; Thomas, L. Pangle, *Montesquieu’s Philosophy of Liberalism* (Chicago: University of Chicago Press, 1973), p. 121.

³¹ Aristotle, *Politics* 1333a41–1333b5.

³² Nelson, *Deuteronomy*, p. 245.

It is surely no coincidence, then, that the first law of the king is one that restricts the amassing of horses.³³ The proscription concerning horses continues the thread of egalitarian social considerations in the legislation of kingship in Deuteronomy. Were a royal chariot force to serve as the backbone of the nation's defense, it would inevitably emerge as an elite military class.³⁴ Indeed, the great jurist of Athens, Solon, extended preferred status to members of the cavalry over other citizens. But what confers status in Deuteronomy is citizenship in the covenantal community—and this is shared by all.³⁵

A third characteristic that animates the Israelite citizenry is that, like the Greek polis, it is law-based. All public institutions—the judiciary, the priesthood, the monarchy, the role and limitations of prophecy—are subordinated to it. No institution is self-legitimizing.³⁶ Moreover, the law is a public text,³⁷ which means that its dictates are meant to be widely known, thus making abuse of power more obvious.

The requirement that the king engage in the study of the law³⁸ further extends the egalitarian thrust of the laws of the king. It also reflects the transformation of an ancient Near Eastern practice of royal study, now in accordance with a collective power strategy. In ancient Egypt, in the Middle Kingdom especially, we find ethical wills that kings left their sons, wisdom teachings concerning the principles of good governance.³⁹ In Mesopotamia the king would be required to read texts concerning religion and cult, which, as we saw, was a sphere within his purview.⁴⁰ What is distinct in Deuteronomy is that the king must copy and read from “this Torah”⁴¹ about a wide range of issues, virtually none of which pertains to kingship per se. In fact the purpose of his study, “so that he may

³³ Deuteronomy 17:16.

³⁴ Nelson, *Deuteronomy*, p. 225; Gottwald, *Tribes of Yahweh*, p. 212.

³⁵ Note that v. 16 may forbid the king to sell Israelite slaves to Egypt for the purpose of amassing horses, as this would represent an undoing of the exodus and would reduce the “citizenry” of the community of Israel to slaves. See Jacob Liver, “King, Kingship,” in *Biblical Encyclopedia* (9 vols. 1950–1988), 4:1103. [Hebrew]

³⁶ Levinson, “Reconceptualization of Kingship,” p. 532.

³⁷ Deuteronomy 31:10–13.

³⁸ Deuteronomy 17:19–20.

³⁹ Moshe Weinfeld, “‘Temple Scroll’ or ‘King’s Law’?” *Shnaton: An Annual for Biblical and Ancient Near Eastern Studies* 3 (1978–1979), p. 224; texts in James Pritchard, *Ancient Near Eastern Texts Relating to the Old Testament* (Princeton: Princeton University Press, 1969), pp. 414–420.

⁴⁰ Weinfeld, “Temple Scroll,” p. 226.

⁴¹ Opinions vary as to which passages are subsumed under this phrase. See Jeffrey H. Tigay, *Deuteronomy* (Philadelphia: Jewish Publication Society, 1996), p. 5.

learn to revere the Lord his God, to observe faithfully every word of this Torah as well as these laws,” essentially places him on a par with the common citizen, whose responsibility in this regard is expressed elsewhere in Deuteronomy in identical terms.⁴² Indeed, unlike in Mesopotamia, where the king was responsible for the law, in Israel the entire community is the recipient of the law, and its upkeep is a responsibility shared by every member of society.⁴³

Deuteronomy 17:20 summarizes the purposes not only of the requirement to copy and study the Torah but of all the laws of the king. When read together with these laws, it leads to a single conclusion: the king’s responsibilities are essentially those required of every other Israelite citizen. We have already seen in 17:17 that the king must not let his heart sway, a term used with regard to compliance with God’s wishes by all members of the Israelite polity.⁴⁴ In 17:20, we see that the king must not “think himself high,” just as the common Israelite is warned in identical language in Deuteronomy 8:14. The king must not “stray from the commandments neither right nor left,” just as the Israelite citizen may not in Deuteronomy 5:29, 17:11, and 28:14. He is “to learn to revere,” “to do,” and “to perform” the commandments, just as the Israelite citizen is to do in Deuteronomy 6:2, 10:12, and 31:12. Even his reward is identical to that of the common Israelite: he should act in accordance with these precepts, “so that he will merit long days” in his rule, paralleling the longevity promised the Israelite for compliance with the commandments.⁴⁵ The prerequisite for being a good Israelite king is to be a good Israelite.

Viewing the laws of the king in a broader Deuteronomic context allows us to see how they are incorporated within the discourse of Deuteronomy’s overall collective power strategy. In many cultures of the ancient Near East the king was considered the son of God, implying adoption, or election. Deuteronomy, too, speaks of the sons of God—but these statements refer to Israel as a whole,⁴⁶ and pointedly not to the king, even though the *topos* of the Israelite king as the elected son of God appears elsewhere.⁴⁷ The royal ideology of the ancient Near East is here

⁴² Deuteronomy 5:1, 6:6–8, 11:18–19. On this, see Tigay, *Deuteronomy*, p. 168.

⁴³ Shalom M. Paul, *Studies in the Book of the Covenant in Light of Biblical and Cuneiform Law* (Leiden: Brill, 1970), p. 38.

⁴⁴ Deuteronomy 4:9.

⁴⁵ Deuteronomy 6:2.

⁴⁶ Deuteronomy 14:1; 32:6, 18.

⁴⁷ II Samuel 7:14–20; Psalms 2:7.

nationalized; as the “sons of God,” all Israelites have the status elsewhere accorded only to the king.⁴⁸

The narrative frame with which Deuteronomy opens similarly portrays national leadership within a collective power strategy. While Deuteronomy speaks of no specific king, it expressly speaks of one dominant national leader—Moses, who served as part-priest, part-judge, and part-prophet. Deuteronomy 17 says nothing about how the king is to interact with the people and their representatives as he leads them, but perhaps the book’s narrative frame suggests a clue, one very much in keeping with collective power strategy. It portrays the leader, Moses, as engaged in consultation with the people concerning national policy. In Deuteronomy 1:9–18, Moses recounts the need he felt to decentralize his regime. He notes explicitly that he did not take unilateral action, but rather described his feelings on the subject to the people, suggested a plan, and then sought and received their approval. Several verses later he tells of the converse situation: the people presented an initiative before him to send spies to scout out the land. Moses records that he was in favor of the idea and acquiesced. The picture that emerges is one of collective power par excellence. Moses underscores that, in spite of his stature and authority, the right way to rule is by discussion and consensus between the ruler and the ruled. When reading the laws of governance of Deuteronomy within the framework of the book as a whole and its agenda of collective power strategy, the two narratives of Moses’ leadership style are part of the message to any future leader: leadership according to Deuteronomy, even for a monarch, should be executed within a collective framework.

To summarize, Deuteronomy views kingship equivocally. Kingship is seen not as a necessary institution, but as one that comes into being only in the wake of popular desire. In fact, it is defined as an inherently foreign institution: “When you arrive in the land which the Lord your God will grant you, and you conquer it and settle it, and you request, ‘Anoint over me a king *like all the nations around me*,’ you shall surely appoint a king....”⁴⁹ The fifteenth-century Spanish rabbinic commentator Don Isaac Abravanel was correct in understanding that the entire institution of kingship is concessive in nature.⁵⁰ Deuteronomy has its ideal vision, one that apparently does not require kingship, yet it also incorporates flexibility

⁴⁸ Levinson, “Reconceptualization of Kingship,” pp. 513, 530–531.

⁴⁹ Deuteronomy 17:14–15.

⁵⁰ Don Isaac Abravanel, *Commentary to the Former Prophets* (Jerusalem, 1955), p. 208. [Hebrew]

in response to multiple sociopolitical needs. We turn now to investigate how the additional powers of the Deuteronomic regime play themselves out within the collective power strategy that the book employs.

2.2 *The Power of the Priests and Levites*

The power of the priesthood receives by far the most attention within Deuteronomy. Witness the book's numerous references to the priests and Levites and its reworked emphasis on the priesthood relative to that found in the other books of the Pentateuch.⁵¹

While Deuteronomy envisions specific cultic roles for the priests,⁵² it describes these roles for the most part in the broadest of terms: they "serve."⁵³ Deuteronomy may assume that the priests and Levites execute many functions outlined elsewhere in the Pentateuch, so that there is no need to repeat all these laws here.

I would like to suggest, however, that the dearth of cultic detail ascribed to the priests and Levites in Deuteronomy may reflect a transformation of the primary role of the priesthood in accordance with a collective power strategy. The priests emerge as the guardians of the law. This is apparent at a number of junctures. We have already seen that the king is to write a copy of the law preserved by the priests.⁵⁴ They also serve as members of the high tribunal of law and justice.⁵⁵ In other books of the Pentateuch, priests have no regular judicial function, and they become involved in the legal system only when cases need to be resolved by sacral means: oaths,⁵⁶ ritual ordeal,⁵⁷ or Urim

⁵¹ The differentiation within Deuteronomy between Levites and priests as a distinct group of Aaronic descendants is a complex question and has garnered much scholarly attention. Whereas in Leviticus and Numbers the priests are designated as the sons of Aaron in contradistinction to other members of the tribe of Levi, Deuteronomy never refers to the priests in this fashion and, in fact, often uses the phrase "Levitical priests." In this section, I address the role of the cultic personnel in Deuteronomy—the Levites as well as the priests—as a group distinguished from the rest of the people. Because I am addressing the general status and powers of this personnel, rather than the individual powers of priests as opposed to Levites, I will not review the issue, which is beyond the scope of this essay. For a summary of positions on this issue, see Christensen, *Deuteronomy*, pp. 389–390; Nelson, *Deuteronomy*, p. 231 n. 4.

⁵² Deuteronomy 21:5, 26:4, 33:10.

⁵³ With reference to the Levites in Deuteronomy 9:8 and 18:7; with reference to the priests in Deuteronomy 18:5, 21:5.

⁵⁴ Deuteronomy 17:18.

⁵⁵ Deuteronomy 17:8–13.

⁵⁶ Exodus 22:7–10.

⁵⁷ Numbers 5:11–31.

and Thummim.⁵⁸ Yet in Deuteronomy, priests play a local judicial role in civil and criminal cases.⁵⁹ Moses commands the priests to convene the septennial *Hakhel* gathering and read before the nation the law that he has vouchsafed to its members.⁶⁰ In addition to these ritually and legally sanctioned roles, the priests/Levites are given ad hoc responsibilities that center on the safeguarding of the law. It is the priests and Levites who join Moses in calling upon the people to demonstrate fidelity to the law in Deuteronomy 27:9–10. The Levites are given the law to place alongside the ark of the covenant.⁶¹ Deuteronomy 33:10 casts the Levites as either arbiters of the law, or its teachers.

Even as the priests are empowered as the guardians of the law, we may see within the priesthood of Deuteronomy four limitations that accord with a collective power strategy. In archaic states that practiced a collective power strategy, ritual sanctified and culturally reinforced an egalitarian spirit through numinous experience.⁶² Group-oriented chiefdoms featured large architectural spaces suitable for group ritual.⁶³ These emphases may be seen in Deuteronomy's presentation of the Temple, which focuses upon the people's role there. Deuteronomy 12 calls for the centralization and purification of the cult. Unlike elsewhere in the ancient Near East, it is not the king who is told to execute these activities. Nor is there any mention in that chapter of the cultic role of the priests. Rather, it is again "you" who are to build the Temple.⁶⁴ The "place that God chooses to establish his name" emerges as a place at which Israelites are to seek his presence, offer their sacrifices, and eat and rejoice before the Lord.⁶⁵ In this first mention of the Temple in Deuteronomy, the emphasis is entirely on the role of the people there. It is the people's shrine. Deuteronomy attends to cultic proceedings at several junctures.⁶⁶ The common threads among all of these are two: First, they address the people's participation in the cult. Second, these laws make no mention of

⁵⁸ Exodus 28:29–30.

⁵⁹ Deuteronomy 19:17, 21:5. On this, see Tigay, *Deuteronomy*, p. 164. The judicial role of priests is also reflected in Ezekiel 44:24 and possibly in Isaiah 28:7 and I Kings 8:31–32.

⁶⁰ Deuteronomy 31:9–13.

⁶¹ Deuteronomy 31:26.

⁶² Blanton, "Beyond Centralization," p. 164.

⁶³ *Ibid.*, p. 150.

⁶⁴ Deuteronomy 12:5–6.

⁶⁵ Deuteronomy 12:5, 6, and 7, respectively.

⁶⁶ Deuteronomy 12:4–28, 14:22–27, 15:19–23, 16:1–18, 26:1–15.

the cultic role of the priests or Levites, with the exception of a single instance.⁶⁷ The emphasis upon the role of the people in the cult is foreign to cultures where exclusionary power strategies prevail.

We may see collective power strategy with respect to the checked power of the priesthood in a second manner. We note that in Deuteronomy the priesthood is joined by another institution within the regime in nearly every sphere of its activity. We noted earlier that the lines between priests and Levites throughout Deuteronomy are blurred, whereas in the book of Numbers the descendants of Aaron have exclusive rights to the priesthood, while other Levites merely assist them. Deuteronomy always refers to the priests as "Levitical priests," or "the priests, the sons of Levi," never as "the priests, the sons of Aaron." This terminology reflects the priestly sharing of powers and responsibilities throughout Deuteronomy. The supreme tribunal is indeed located at the Temple and staffed by "the Levitical priests" (17:9, 12). But it is staffed as well by "the judge of that time" (17:9, 12). The administration of justice in 19:17 is likewise given over to priests and judges in concert. The pre-battle hortatory proclamations to soldiers are made by priests in conjunction with officers (20:1-9). The enactment of the festival of *Hakhel* is entrusted to the priests in conjunction with the elders (31:9-10).

The third manner in which collective power strategy checks the power of the priesthood concerns the role of the oracle and divination within Deuteronomy. Of all the cultic roles and tasks, the capacity to receive communication from the divine is the most sublime. Yet in Deuteronomy, the power to receive the oracle is mentioned with regard to the priest in 33:10. In more explicit fashion it is the domain of the prophet, who transmits God's commands and correctly foretells events (18:9-22). Some assume that the role of the priests as the members of the supreme tribunal in difficult matters of law (17:8-13) in fact rests upon their use of oracular means.⁶⁸ Yet this is nowhere stated outright, and, as we have seen, priests are not the sole members of the high tribunal; it comprises as well "the judge of that time."⁶⁹ There is an enormous difference between the priestly power to adjudicate on the basis of oracular divination, such

⁶⁷ Deuteronomy 26:5. I take the role ascribed to the priests in 21:5 to be of a judicial nature, as implied by the verse itself.

⁶⁸ Lohfink, "Distribution of the Functions of Power," p. 349; Nelson, *Deuteronomy*, p. 221.

⁶⁹ Lohfink, "Distribution of the Functions of Power," p. 349; Levinson, "Reconceptualization of Kingship," p. 52; Robert Wilson, *Prophecy and Society in Ancient Israel* (Philadelphia: Fortress, 1980), p. 160; Christensen, *Deuteronomy*, p. 376; Mayes, *Deuteronomy*, p. 267.

as via the Urim and Thummim, and the priestly power in Deuteronomy to adjudicate on the basis of interpretation and application of the law. Divination by means of the Urim and Thummim is almost by definition a process that can have no control, no oversight, no inspection. Few will be the priests who learn this art, and fewer still the number of priests who have access to the breastplate. Divination has the potential to be an exclusionary source of power par excellence. By contrast, authority rooted in the interpretation of a public text written in a language accessible to a wide audience limits the capacity for domination by the priests, because their pronouncements may ultimately be measured against the spirit of the text itself. The public promulgation of the word of God at the septennial *Hakhel* ceremony serves a like purpose. The fact that the law is made public contravenes the partisan interest of the priests and Levites in monopolizing control over the sacred texts.⁷⁰

Collective power structure is exhibited, finally, in the allocation of land resources to priests and Levites. Chapter 17 exhibits an interesting wordplay that summarizes the issue at hand. Both the king and the priest are referred to as having been chosen by God (in 17:15 and 18:5, respectively). Recall that Scripture maintains that the king must be “one of your own brethren” (17:15). Yet the priest/Levite is described seven verses later as being “not among your brethren” (18:2). The priest/Levite is set apart, but not in status or entitlements. He is set apart from his brethren in his landlessness. Alone among Israelites, Levites receive no land allotment. Instead, Scripture underscores at several junctures that the Levites subsist upon the tithes and priestly gifts received from the people at large (12:12, 18–19; 14:22–29; 16:11, 14). It is instructive to note that the Levites were apparently so dependent upon others that Scripture saw fit to include this class among other categories of the underprivileged (14:28–29).

2.3 *Judicial Power*

Our assessment of the powers of the judiciary within Deuteronomy begins with theoretical statements made by Montesquieu. He saw the separation of judicial power as vital, as judicial power is “terrible among men,” for it is through the judiciary that the government and the law most directly affect the citizenry.⁷¹ He set down three postulates about the execution of justice that may be seen to animate Deuteronomy’s view

⁷⁰ Greenberg, *Studies in the Bible and Jewish Thought*, p. 56.

⁷¹ Montesquieu, *Spirit of the Laws*, 11.6; Pangle, *Montesquieu’s Philosophy of Liberalism*, p. 132; Judith N. Shklar, *Montesquieu* (Oxford: Oxford University Press, 1987), p. 88.

of the judiciary. First, adjudication must be based upon the application of written laws, not upon the arbitrary decision of the judge. Second, only when the judiciary is fully independent of the other branches of the government will the regime be deemed moderate as opposed to despotic.⁷² Third, the judiciary should be drawn from the people, without regard for rank or social standing.⁷³

These three principles may be seen at play within Deuteronomy. The justice executed by the judges must be based upon the law contained in the Torah (17:8–13). The supremacy of the law, however, is strikingly borne out in the procedures to be followed in the event that a legal issue proves too baffling. Deuteronomy here makes no mention of priestly lots, no Urim and Thummim upon the “breastplate of justice” (Exodus 27:15–30, Leviticus 8:8) or trial by ordeal (Numbers 5), no judicial oath before the divinity (cf. Exodus 22:7, 10). The emphasis in Deuteronomy is that justice is determined by the interpretation and application of law alone.⁷⁴

The appointment of judges as delineated in Deuteronomy 16:18 addresses the judiciary’s independence and its popular makeup. There is no indication that the king administers justice or appoints judges to their positions. Rather, “*You* shall appoint magistrates and clerks for your tribes in all the settlements that the Lord your God is giving you.” It would appear that anyone could be appointed a judge, without recourse to rank or social standing. More interesting is the fact that there is no precise mechanism prescribed for the appointment of judges. That is, Deuteronomy does not say anything about which representative bodies should make this decision, how many judges are to be appointed, or the hierarchy of the different levels of the judiciary. No doubt such apparatuses existed. But had Deuteronomy enshrined them in law, those bodies would have become the focus. In omitting the mechanisms, Deuteronomy retains its focus upon the citizenry as a whole—*you*. Even as representatives effect the appointment of judges, the ultimate authority and responsibility rest upon the people.

That this is so is evident from a textual peculiarity in 16:18–19. Verse 18 calls upon “you” to appoint magistrates and clerks. “You” here, as throughout Deuteronomy, refers to the collective of Israel. Even if the judges are chosen by a representative body, the very fact that the body is representative suggests that it is, in effect, the entire citizenry that is

⁷² Montesquieu, *Spirit of the Laws*, 11.6; Shklar, *Montesquieu*, p. 81.

⁷³ Montesquieu, *Spirit of the Laws*, 11.6.

⁷⁴ Levinson, “Reconceptualization of Kingship,” p. 522.

participating in the selection. Verse 19, however, reads: “You (s.) shall not judge unfairly: you (s.) shall show no partiality; you (s.) shall not take bribes,” etc. Ostensibly the verse would seem to be addressing each judge himself. After all, it is only the judge who is now invested with power, and it is only the judges who are in a position to be corrupted. Nonetheless, the verse addresses the same collective body of Israel, “you,” as it did in the previous verse, in its call to “you” to appoint magistrates and clerks. The Septuagint was sufficiently bothered by this that it changed the text such that the subject of the verse would refer to the appointed judges: “*They* shall not judge unfairly: *they* shall show no partiality; *they* shall not take bribes,” etc. Jeffrey Tigay, however, has defended our text of Deuteronomy. Since any Israelite may one day become a judge, all are forewarned: “*You* (s.) shall not judge unfairly,” etc. More compelling, however, is his suggestion that Scripture here addresses the entire polity, because it is the entire polity that is ultimately responsible for the administration of justice. If judges are corrupted, the people cannot hide behind a veil of innocence, wagging their fingers at the judges they themselves have appointed. The justice that the judges practice is practiced on behalf of and under the aegis of the entire people.⁷⁵ The emphasis here provides an interesting variation on the idea of civic participation that is so central to Greek and Roman political thought. For thinkers such as Plato and Aristotle, the ideal citizen is the one who participates in governance. Now Deuteronomy does not maintain that every citizen should strive to assist in public administration. Nonetheless, it does exhibit its own brand of civic participation: the collective is ultimately held responsible for the actions of its representatives, in this instance the judges, and hence, “*You* shall not judge unfairly, *you* shall show no partiality; *you* shall not take bribes.”

S. Dean McBride astutely comments that the emphasis in what Deuteronomy has to say about courts of law is less about legitimating the mechanisms of social control and more about assuring due process of law.⁷⁶ Scripture says little about the process by which judges are appointed, other than, “You shall appoint magistrates and clerks” (16:18). It has much to say, however, about the pitfalls of this position of power (16:18–20):

You shall appoint magistrates and clerks for your tribes in all the settlements that the Lord your God is giving you, and they shall

⁷⁵ Tigay, *Deuteronomy*, p. 160. See also S. Dean McBride, “The Polity of the Covenant People: The Book of Deuteronomy,” *Interpretation* 3 (1987), p. 240.

⁷⁶ McBride, “Polity of the Covenant People,” p. 238.

govern the people with due justice. You shall not judge unfairly: you shall show no partiality; you shall not take bribes, for bribes blind the eyes of the discerning and upset the plea of the just. Justice, justice shall you pursue.

Due process is the focus elsewhere as well: Capital crimes must be subject to scrupulous investigation (13:5, 17:4). Multiple witnesses are necessary to condemn an offender (17:6, 19:15). Procedures are laid down to identify and punish perjurers (19:15–21). The courts may not visit collective punishment upon the family of the guilty (24:16). The law may not be slanted against the disadvantaged (24:17). Abuse of the corporal punishment system is to be prevented (25:1–4). All of these laws are well understood within the framework of a collective power strategy, where the protection of the citizenry is the focus.

3. THE POWER OF THE PROPHET

The final jurisdiction is that of the prophet (18:15–22), and we may see how this institution, too, is delicately woven into Deuteronomy's collective power structure. On the one hand, the prophet may be seen as a check on the power of the priest. For although the priest serves the cult, divine communication to the people is primarily transmitted through the person of the prophet. The prophet may also be seen to check the power of the king. The king is to be he "whom God will choose" (17:15). Deuteronomy, however, is not explicit regarding how God makes his will known on this matter. Nonetheless, as several commentators have noted, the elections of Saul and David, respectively, by the prophet Samuel are narrated utilizing precisely this terminology of divine chosenness (I Samuel 10:24, 16:8–10).⁷⁷ By doing so, the author of Samuel implicitly suggests that God chooses candidates for kingship through the agency of the prophet.

At the same time, the prophet's own power is checked as well. Deuteronomy identifies the potential prophet by saying, "I will raise for you a prophet *from your midst, from your brethren, like myself,*" implying that he is not a member of any elite lineage, does not possess inherent powers, but is, rather, "an ordinary guy." Though the prophet receives divine communication, he never participates in any cultlike "communication" with the Lord. Nor does this inspired individual play any role whatever in the justice system. The emphasis on the citizenry as the

⁷⁷ Jacob Milgrom, "The Ideological and Historical Importance of the Office of the Judges in Deuteronomy," in Alexander Rofé and Yair Zakovitch, eds., *Isac Leo Seeligmann Volume: Essays on the Bible and the Ancient World*, 3 vols. (Jerusalem: E. Rubinstein, 1983), 3:134; Tigay, *Deuteronomy*, p. 166.

ultimate authoritative body is seen here as well, as the prophet's validation is determined by the people (18:20–22) and not by the priests, the king, the judges, the elders, or other prophets.

4. DEUTERONOMY AND THE REJECTION OF CLAN

We have thus far traced the contours of political thought in Deuteronomy that reject exclusionary power in favor of collective power. As noted, however, republics are susceptible to breakdown along lines of faction. A ubiquitous theme in the annals of political history is that of the attempt to dissolve entrenched kinship structures in an effort to forge a larger collective body. Speaking in the terms of the narrated world of Deuteronomy, the collective strategy could take hold only if there were an attendant weakening of the tribal hierarchy that had figured so prominently during the trek in the wilderness. Within biblical scholarship, the amalgamation of the tribes into a federated whole is usually addressed with reference to the formation of the monarchy under Saul and David and the consolidation of the tribes into a national collective. I would claim, however, that this dynamic is equally at play in the political theory that animates the sermons and laws of Deuteronomy.

Within the tribal hierarchy in the wilderness regime of Exodus, Leviticus, and Numbers, we find reference to the institutions of the tribal chieftains (*nesi'im*) and the "elders." Each group is mentioned numerous times, and at some junctures it seems that the two terms may be used interchangeably, while at other times not. On some occasions, a national political body called the *eda* convenes. Rather than defining and sorting their respective responsibilities,⁷⁸ let us note a series of moves that Deuteronomy makes to attenuate, if not eradicate, these institutions. There is no mention of the *nesi'im* at all in Deuteronomy, or of the ad hoc political body, the *eda*.⁷⁹ Moreover, we note the relatively lesser role granted to the notion of tribe within Deuteronomy. In presenting its federated bureaucratic structure, Deuteronomy seems to know of two units only: the nation and the city. The book has little to say about a rung of hierarchy along tribal lines. Deuteronomy 17:8 determines that if a matter

⁷⁸ See H. Reviv, *The Elders in Ancient Israel: A Study of a Biblical Institution* (Jerusalem: Magnes Press, 1989); Jacob Milgrom, "Priestly Terminology and the Political and Social Structure of Pre-Monarchic Israel," *Jewish Quarterly Review* 79 (1978), pp. 65–81.

⁷⁹ Within my synchronic reading of Deuteronomy as the fifth book of the Pentateuch, I have read this switch of terminology as reflecting an evolution of the structure of the regime. Diachronic readings of Deuteronomy generally consider these terms typical of the priestly vocabulary that dominates the preceding books, whereas Deuteronomy utilizes different words and concepts.

is too difficult for the court “in your gate,” that is, in your city or town, then remedy may be found at the central court at the central sanctuary. There is no middle level of “tribal” court.

The same two-tier, city-nation structure is exhibited in the law of the idolatrous city. Remedy of the situation devolves upon “you”—the collective of Israel, and not, as one might have expected, upon the tribe, to rein in its own.⁸⁰ Nor does Scripture discuss the possibility of an “idolatrous tribe,” akin to an idolatrous city but larger in scale. The laws of distribution of charity reveal the same bureaucratic structure of city and nation: “when there emerges in your midst an indigent person, from one of your brethren, in one of your gates, in your land which God has given you, you shall not harden your heart,” etc. (15:7). The implied “you” who is commanded to relieve his penury is the entirety of Israel, or alternatively, the residents of that particular city. Tribe members would appear to have no greater mandate than anyone else within this structure to extend assistance.

The emphasis upon the town over against the tribe is seen in the judicial realm as well. Various circumstances are recorded in which adjudication is carried out by town elders, not tribal elders: the case of the rebellious son (21:18–21), the case of the rape of the betrothed woman (22:21), and the case of the unidentified corpse (21:5). One could aver, in defense, that these issues are intrinsically local and that it is only fitting that they be adjudicated by town, as opposed to tribal, elders. Yet levirate marriage is likewise adjudicated by town elders (25:5–10) and not by a tribal court, even though such marriage bears direct consequences for the kinship structure of the tribe.

The attempt to dissipate tribal identity is seen in Deuteronomy’s rhetoric as well. We are witness in Deuteronomy to a transformation of the valence of the word “fathers.” In Numbers especially, the term is used in exclusive fashion (over forty times) to refer to the tribal patriarchy in the phrase “house of the fathers,” a reference to the kinship structure of the tribes. An examination of the sermons spoken to the people in Exodus, Leviticus, and Numbers reveals that the word “fathers” as a reference to the patriarchs—Abraham, Isaac, and Jacob—appears only a handful of times (Exodus 3:15; 13:5, 11; Leviticus 26:42). In Deuteronomy the trend is reversed. In the various sermons and laws, “your fathers” refers not to a tribal kinship structure but to the patriarchs (over thirty times). The social purpose of this is to educate for common ancestry and hence collective national identity, rather than identity fractured along clan and familial lines.

⁸⁰ As seen in Judges 20, when the tribes of Israel demand that the tribe of Benjamin discipline the inhabitants of Gibeah for their crime against the concubine.

The notion that each citizen is called upon to recognize a socioreligious identity that transcends kinship underlies the law of Deuteronomy 14:1–2:

You are sons of the Lord your God. You shall not gash yourselves or shave the front of your heads in mourning for the dead. For you are a people consecrated to the Lord your God: the Lord your God chose you from among all other peoples on earth to be his treasured people.

The implication here is that although every individual has bloodlines that dictate his genealogical identity, that identity is superseded by Israel's collective filial relation to God. The use of the trope of the son, or sons, of God in this fashion represents a further relocation of an ancient Near Eastern motif of royal theology within the covenantal theology of the Bible. As noted, throughout the ancient Near East, and indeed elsewhere in the Bible, kings were perceived as the adopted or elected "sons" of God. Deuteronomy makes no mention of the king in this capacity, and rather transfers this status of elected son to the collective polity of Israel. Laws elsewhere in the Pentateuch generally refer to a fellow member of the community as a *re'a* (for example, Exodus 22:6, 13; Leviticus 19:13, 16). The laws of Deuteronomy routinely substitute the word *ah*, brother, and in so doing appropriate the language of intimate and primary kinship to now refer to the bond of fellowship in the national community (for example, Deuteronomy 15:7, 11, 12; 22:1–4).⁸¹

The *ancien régime* of patriarchy, though, is not altogether expunged from Deuteronomy. As we noted regarding its equivocal treatment of kingship, Deuteronomy has its ideal vision. Yet it also incorporates flexibility to meet multiple sociopolitical needs. The same is true of the maintenance of some vestiges of the earlier kinship structures. Having served as the primary element of sociopolitical identity and bureaucratic structure since the days of slavery, tribal patriarchy could hardly be extirpated at once. Deuteronomy therefore limits it and redirects it in accordance with a collective power strategy.

This is evident in the most detailed way in Deuteronomy's presentation of the justice system and the hierarchy of its courts. Deuteronomy 1 opens by providing us with a baseline picture of the wilderness regime, conceived entirely along tribal, hierarchical lines. Moses relates that, unable to handle the burden alone, he established the body of tribal chiefs (1:13), then a system of tribal magistrates and officers. He then takes

⁸¹ *New International Dictionary of Old Testament Theology and Exegesis*, s.v. "āh."

these tribal officers and commands them, “Hear out your fellow men, and decide justly between any man and his brother, or a stranger” (1:16), implying that each tribe is to establish its own internal bureaucracy.⁸²

Some scholars have suggested that the tribal judicial hierarchy described in chapter 1 remains in place as an unstated yet assumed part of Deuteronomy’s vision of the judiciary, several elements of which we assessed above.⁸³ Yet there is a compelling reason to suspect otherwise. The kinship structures implicated in the offices of chiefs of thousands, hundreds, fifties, and tens that Moses recounts having established in the wilderness are nowhere else mentioned in Deuteronomy. As Richard D. Nelson points out, when Moses recalls the establishment of this bureaucracy, he tells the people, “*At that time* I said to you.... Pick from each of your tribe,” etc., implying the temporal circumstances of those events, at a distance from the “today” of Deuteronomy.⁸⁴

Many scholars, rightly in my view, see the judicial bureaucracy of Deuteronomy 16–17 as superseding the former structure, along the lines of what I have been describing as a collective power strategy. Here we find no references to the term *sarim* (officers or chiefs, as in “chiefs of thousands” [1:15]), or to the elders, but rather to *shofetim*, judges.⁸⁵ The structure described in Deuteronomy 1 is a reminiscence concerning the wilderness milieu of patriarchal-tribal hierarchy, where judicial powers were in the hands of tribal and family leaders.⁸⁶ The omission of the elders from much of the judicial bureaucracy in Deuteronomy’s blueprint for civic life in the land of Israel represents a shift in sociopolitical direction. Because they attained their position by dint of seniority within their respective kinship structures, the elders were neither appointed by

⁸² Notice that in the second episode he recounts the mission of the spies. Moses again highlights the prominence of the tribal hierarchy in the wilderness: “Then all of you came to me and said, ‘Let us send men ahead to explore the land for us and bring back word....’ I approved of the plan, and so I selected twelve of your men, one from each tribe” (Deuteronomy 1:22–23).

⁸³ Christensen, *Deuteronomy*, p. 22; Craigie, *Deuteronomy*, pp. 97–98; Tigay, *Deuteronomy*, pp. 11–12; Weinfeld, *Deuteronomy and the Deuteronomistic School* (Oxford: Clarendon Press, 1972), pp. 137ff.; J.G. McConville, *Deuteronomy*, Apollos Old Testament Commentary (Leicester: InterVarsity Press, 2002), p. 287.

⁸⁴ Nelson, *Deuteronomy*, p. 19.

⁸⁵ Milgrom notes that in eighth-century-B.C.E. texts, however (for example, Hosea 13:10; Isaiah 1:23, 26; 32:1), *sar* and *shofet* are interchangeable. See Milgrom, “Ideological and Historical Importance,” p. 133.

⁸⁶ Alexander Rofé, “The Law about the Organization of Justice in Deuteronomy (16:18–20, 17:8–13),” *Beit Miqra* 21 (1975), p. 200. [Hebrew] S.R. Driver also sees this group as superseded by the later structure of Deuteronomy. See Driver, *A Critical and Exegetical Commentary on Deuteronomy* (Edinburgh: T&T Clark, 1965), pp. 16, 18–19.

the emerging collective body of Israel nor answerable to it. Deuteronomy 16–17 breaks the link between the judiciary and the monarchy, on the one hand, and the judiciary and the tribal hierarchy, on the other.⁸⁷

The elders are not removed entirely, however, from the judicial process. They are retained in Deuteronomy to adjudicate matters naturally within their jurisdiction as senior members of the society once it had evolved from clan and family. Thus we find that town elders are ordained to adjudicate cases of the rebellious son (21:19–20), the suspected adulteress (22:15–18), the levirate marriage (25:7–9), and the blood redeemer (19:11–13).⁸⁸ The elders are absent from cases of idolatry (13:2ff., 18:20–22, and especially 17:2–7) and civil law (25:1–3).

The language and ideas of tribal hierarchy appear at several additional junctures throughout Deuteronomy. The thread that unites nearly all of these is that the tribal elders in these instances are assigned ad hoc roles alone, for the period of transition at hand and for the one that will follow Moses' demise. Virtually no permanent role—either in the political bureaucracy or through the sanction of ritual—is assigned either to the tribes qua tribes or to the tribal elders. The tribes as distinct structures are mentioned at two junctures: first, concerning the blessings and curses to be recited at Mount Ebal upon entry into the land (27:12–13); and second, as the recipients of Moses' blessings in Deuteronomy 33. The events are one-time affairs, however, for this period of transition. Neither receives the permanent sanction of ritual.⁸⁹

The tribal elders appear at several convocations in which Moses exhorts the nation to faithful service (27:1, 29:9–10, 31:28). The elders together with the priests would be the spiritual leaders after the death of Moses and are thus the natural candidates to ensure continued adherence to his exhortations.⁹⁰ It is only in this capacity of safeguarding the teaching of the law that the elders become enshrined in ritual law, the law of the septennial *Hakhel* gathering (31:9–13). Other than in connection

⁸⁷ Bernard Levinson, "The Transformation of Justice in Light of Centralization," in Levinson, ed., *Deuteronomy and the Hermeneutics of Legal Innovation* (New York: Oxford University Press, 1997), p. 126; Nelson, *Deuteronomy*, p. 215; cf., in a similar vein, Tigay, *Deuteronomy*, p. 160.

⁸⁸ Milgrom, "Ideological and Historical Importance," p. 136; Weinfeld, *Deuteronomy*, p. 234.

⁸⁹ Note also that while Moses blesses the tribes, much as Jacob had prior to his demise (Genesis 49:1–27), the blessings of Moses contain fundamental innovations: a prologue (33:1–5) and an epilogue (33:26–29) devoted to the federated and national character that these once disparate tribes have now assumed. See discussion in Nelson, *Deuteronomy*, p. 368.

⁹⁰ Tigay, *Deuteronomy*, p. 247; Craigie, *Deuteronomy*, p. 327. As several scholars have noted (Nelson, *Deuteronomy*, p. 341; Tigay, *Deuteronomy*, p. 277; Christensen,

with family law, they play no role in the judiciary. They have no stated role in the military or in the cult, as had been the case during the wilderness period. It is instructive that, upon the death of Moses, the mantle of leadership is assumed by Joshua with no reference to a role to be played by the elders (34:9). Thus we see that the collective power structure of Deuteronomy is achieved by attenuating, not eradicating, the rule of kingship on the one hand, and the rule of kinship on the other.

5. CONCLUSION

Central to many republican schemes—including that of Deuteronomy—is the notion of a mixed government and a degree of separation of powers. The idea that the effective division of power was predicated upon its distribution among preexisting societal seats of power, such as nobles and commoners, was one that would hold sway throughout most of the history of republican thought, from classical theorists through early modern thinkers as well. The balance of power was not a balance of institutions of government, as we are accustomed to today. Rather, the balance was achieved by allowing each of the socioeconomic factions a functioning role *within* each seat of government.⁹¹

It is precisely on this score of the relationship between the separation of powers and the question of class that Deuteronomy stands apart. To be sure, the cult is in the hands of the tribe of the Levites, even as they remain economically dependent upon the rest of the populace. At the same time, there is an egalitarian streak in the law of kingship, on two levels. On the one hand, anyone who is “one of your own brethren” may be appointed king. No less important, no tribe or other entity is sanctioned as the appointing body. The king is appointed by the collective “you.” How that selection occurs, apparently, is an issue that Deuteronomy deliberately left open, so as to imply that no body *a priori* has a greater divine imprimatur than any other. The tribal elders, we saw, no longer represent the people of the cult and seem to have no function outside of arranging the *Hakhel* convocation every seven years.

Most important is the statement Deuteronomy makes about judges and officers. For Montesquieu, what separates moderate from despotic

Deuteronomy 21:10–34:12, World Biblical Commentary 6B [Nashville: Thomas Nelson, 2002], p. 717), the convocation at Deuteronomy 29:9–10 serves to downplay the role of the elders. The elders are summoned along with everyone else, including women, children, and woodchoppers. The covenant is established with each individual member of Israel regardless of social rank.

⁹¹ Pangle, *Montesquieu's Philosophy of Liberalism*, pp. 118–120.

regimes more than anything else is the independence of the judiciary, whose members are drawn from the people.⁹² It is remarkable that Deuteronomy accords with this. The judiciary, unlike the other seats of power, is chosen exclusively by human agents: “*you* shall appoint magistrates and clerks for your tribes in all the settlements that the Lord your God is giving you, and they shall govern the people with due justice” (16:18). The egalitarian streak here is, as it was with the king, manifest in dual fashion. Anyone may be appointed judge, and no less important, anyone, in theory, is eligible to participate in the process of appointing judges. One could easily have imagined a dictate whereby any number of authoritative bodies could have had a hand in this appointment: the king, the priests, the elders, currently sitting judges, the prophet. The judiciary in Deuteronomy is radically independent. For the first time, public office is viewed as institutional and instrumental. The appointment of judges is mandated to execute justice rather than to perpetuate the standing of a noble class.

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⁹² Montesquieu, *Spirit of the Laws*, 11.6; Shklar, *Montesquieu*, p. 81.