

INTRODUCTION

Biblical laws are extraordinarily sophisticated. They connect to a storyline, the Primary History, Genesis through 2 Kings,¹ which is packed with incidents upon which each of the laws passes judgment. This combination of narrative, ethical, and legal texts constitutes a body of material that is interconnected in a much more detailed and coherent way than has been realized to date. The resulting product, the Primary History, is not just a legendary saga with its own built-in ethical and legal rules (as is true of any narrative writing), but also, and surprisingly, a saga that contains sequences of rules (in Genesis through Deuteronomy) with which it is integrally intertwined. Conveying historical, semi-historical, mythical, and legendary events, the overarching storyline incorporates over 400 laws. Once their details are unpacked in light of the storyline, a quite new understanding emerges of how profoundly, indeed, inseparably linked are the narrative and legal elements in the text. Down the centuries interpreters, treating the laws largely separate from the narratives, have attributed to many laws, especially those in Leviticus, strange, even mysterious and magical elements from a lost past beyond rational inquiry. In every instance, however, even these supposedly strange rules make good, graspable, and readily intelligible sense.²

¹ D. N. Freedman's term in "The Earlier Bible," *Backgrounds for the Bible*, eds. M. P. O'Connor and D. N. Freedman (Winona Lake, IN, 1987), 29–37.

² The common claim that biblical stories are characterized by brevity is misleading, for example more recently, Daniel Friedmann, *To Kill and Take Possession: Law, Morality, and Society in Biblical Stories* (Peabody, MA, 2002), 126. On account of their joint presentation, the judgments contained in the rules unpack to a considerable extent the stories' contents. Discussing the problem of coming upon collections of myths, Lévi-Strauss sees a comparison with the origin of biblical texts: "We have exactly the same problem, for instance, with the Bible, because it seems that its raw material was disconnected elements and that learned philosophers put them together in order to make a continuous story." See Claude Lévi-Strauss, *Myth and Meaning* (New York, 1979), 54. There is certainly some truth in this statement, but the Primary

2 Introduction

Al-Mas'udi, the Arabic writer of around 1000 CE, described four kinds of courts that functioned among the Khazars, who played, especially with the decline of the Muslim empire and the rise of Russia, a prominent role in the Byzantine state. The first, and most important, was the Islamic court where cases were judged according to the law of the Koran. Worthy but of a lower order were the Jewish court where cases were judged according to the law of the Old Testament and a Christian court where cases were judged according to the law of the Gospels. Lastly, but ultimately disparaged by Mas'udi, there was the heathen court where cases were judged according to the norms of reason! The commonly postulated gulf between religious systems of law and secular ones is much overdone.³ This book will concentrate on an analysis of the laws of Lev 1–10 as commentary on the Joseph story and argue that each of these laws is a wholly intelligible response to matters in that story (Gen 37–50). The analysis is a case study for understanding the overall integrated structure of the Pentateuch; how all the laws serve as legal and ethical commentary on the narratives. The choice of the Leviticus texts is important: on the face of it, the idea that all these, mainly sacrificial, texts in Lev 1–10 are pertinent to the story of Joseph might seem a stretch too far. Yet if correct, the results powerfully support the claim that we have a new paradigm for how to read the Pentateuch.

Another major aim of the book is to provide, from a surprising source within the biblical text itself, an appraisal of the patriarch Joseph that is quite different from the long-established positive portrait of him.⁴ The capacity to uncover the ways in which Joseph is viewed with a critical eye is possible because of the hypothesis that biblical laws respond directly to “cases” that are found in biblical narratives, in this instance, the many ethical and legal issues arising in the Joseph story. Once the intimate relationship between the laws and the narratives is recognized, we have the means of looking anew, through the eyes of the biblical lawgivers, at the behavior of this patriarch in the Book of Genesis.

History is so thoroughly integrated that its continuous story makes it almost impossible to separate any original elements that might lie behind it.

³ On the Khazars, see D. M. Dunlop, *The History of the Jewish Khazars* (Princeton, 1954), 206–07; on religious and secular legal systems, see Calum Carmichael, “The Ten Commandments: In What Sense Religious?” in *Law and Religion*, ed. Rex J. Ahdar (Aldershot, 2000), 21–49.

⁴ Just as the lawgiver does not approve what is sometimes relayed in Genesis, so the Chronicler often does not approve conduct depicted in Samuel–Kings.

The Joseph story is one of the most recognized sagas in world literature. Yet because of the long-standing inclination to idealize the figure of Joseph, the story's moral and psychological complexity, the implications of its subtle devices, its thrilling twists and turns are often overlooked. Bewildering to me is a long-standing claim among biblical scholars that the story has had little or no impact on the Bible outside the Book of Genesis. Maren Niehoff finds it astonishing that Joseph enjoyed great popularity among Jewish interpreters in contrast to the "rather insignificant role which Joseph plays in the shaping of Israelite religion." D. B. Redford speaks of the "virtually complete silence of the rest of scripture on the subject of the Joseph story." He continues, "The romanticized hero of the Genesis story almost never appears elsewhere in the Old Testament outside Genesis and the first chapter of Exodus." J. L. Kugel's comments also are curiously uncritical: Joseph "eschews revenge and hatred," yet Kugel refers to his "intrigue with their [the brothers'] grain sacks" and says that "if he does arrange things so as to give his brothers a scare or two along the way – well, a reader most likely feels that this is only justified in view of their earlier misconduct." Kugel very clearly lays out, however, midrashic elaborations in later Jewish exegesis about Joseph's guilt for youthful sins like telling tales about his brothers' misdeeds when shepherding, even for supposedly leading on Potiphar's wife to take a fancy to him. On the other hand, Ljubica Jovanović provides an excellent account of Jubilees' decidedly unenthusiastic view of Joseph, which is a feature of the later Levitical tradition, and also Philo's marked anti-Joseph evaluation. Philo has him as "an Egyptian, even from the time he lived with his family in Judea, and his dreams serve as the best testimony. He is concerned with the well-being of the body and outward things, showing a many-sided soul. He lives in dreamland, where things are obscure and enigmatic, having a variety of meanings and values."⁵

Interpreters who ignore or rationalize away Joseph's problematic behavior and assess him in an almost entirely positive light persist through the ages. The story shows up repeatedly in Jewish, Christian, Islamic, and later literary sources with Joseph depicted as a model

⁵ Maren Niehoff, "The Figure of Joseph in the Targums," *JJS* 39 (1988), 234–50; D. B. Redford, *A Study of the Biblical Story of Joseph (Genesis 37–50)* (Leiden, 1970), 249–50; James Kugel, *In Potiphar's House* (San Francisco, 1990), 13, 14, 22, and 79–93 for his discussion of Joseph's guilt for the brothers' offenses; Ljubica Jovanović, *The Joseph of Genesis as Hellenistic Scientist*, *HBM* 48 (Sheffield, 2013), 190–92, 202, 242–49, 252–60.

4 Introduction

of piety and virtue. Having suffered at the hands of his brothers, experienced oppression as a slave in Egypt, and then lauded for his role in saving the Egyptians and his fellow Hebrews from starvation, the biblical Joseph enjoys the highest standing. Bernhard Lang paraphrases the enduring view of the seventeenth-century Swiss writer Joseph Lavater: “The moral message implied in the Joseph story is one of obedience, duty, filial piety, forgiveness, and familial solidarity, all perfectly exemplified by Joseph. If the storyline obscures for a moment Joseph’s righteousness, Lavater is quick to defend and explain: treating his brothers harshly, playing evil tricks on them, and making them fear for their lives must not be misunderstood as Joseph’s (mild) revenge; instead Lavater would have his readers believe, his harshness is nothing but a pedagogical measure to test the extent and sincerity of his brothers’ repentance.” On a more critical note, talmudic and midrashic literature openly addresses the crime committed by the fathers of the nation against Joseph in causing him to be enslaved. There is even an attempt to recognize that Joseph may have deserved retribution for his bad report about his brothers to their father concerning their conduct in the wilderness.⁶ With a different patriarch in mind, Esther Menn focuses on Judah’s bad conduct in Gen 38 and shows how early Jewish interpreters struggled to “reform Judah’s character into a more or less ideal ancestral hero.” The same words could be said about the treatment of Joseph.⁷

In contrast to such views, I barely overstate by saying that the Joseph story has a dominant influence on biblical law and ethics. The misdoings both of the brothers and of Joseph greatly exercised the minds of the biblical lawgivers who formulated rule after rule in response to events that occurred in the story. The reason is not so surprising. The history of the first Israelite family (Jacob’s) receives

⁶ On the evaluation of Joseph in different traditions, see Bernhard Lang, *Joseph in Egypt. A Cultural Icon from Grotius to Goethe* (New Haven and London 2009), 75; on the brothers’ crime of kidnapping Joseph and its considerable influence on rabbinic martyrology, see Ra’anana Boustán, *From Martyr to Mystic. Rabbinic Martyrology and the Making of Merkavah Mysticism*, TSAJ 112 (Tübingen, 2005), 85–93; on later Jewish sources, see H. H. Hollander, *Joseph as an Ethical Model in the Testaments of the Twelve Martyrs* (Leiden, 1981); G. J. Gevaryahu and M. L. Wise, “Why does the Seder begin with *Karpas*?” *JBQ*, 27 (1999), 110 n 27 (citing a midrash in *y. Peah* 1:16 concerning Joseph’s bad report), and Andrei Orlov, *The Atoning Dyad: The Two Goats of Yom Kippur in the Apocalypse of Abraham*, SJ 8 (Leiden, 2016).

⁷ Esther Menn, *Judah and Tamar (Genesis 38) in ancient Jewish Exegesis* (Leiden, 1997), 41.

intense scrutiny precisely because a nation's beginnings attract attention. For one thing, unacceptable behavior of revered ancestors could inspire imitation in later generations and consequently moral and legal failings need correction and a proper order of things established. That very prerequisite underlies the quest of the biblical lawgivers to quarry such a foundational narrative as the Joseph story and render critical judgment on it. They had extraordinarily rich material in this one story. Turning to it again and again, looking at incidents and the participants' deficiencies, they examined plot twists from expected and unexpected angles and formulated rules about how things ought to be.

Why has the critical stance to Joseph within the biblical legal texts not been appreciated before? What might account for the gulf between the later positive evaluation of the figure of Joseph and the sharply analytical one that emerges in the biblical rules? Aside from the major matter of not realizing the fundamental link between the laws and the narratives, a universal phenomenon is at play, one that David Daube has articulated. The capacity to hold together admiration of excellence and admission of failings is rare in general; doubly so for some person or entity enjoying elevated status; triply so where the assessment passes through the hands of successive, ever more devout cultivators of tradition.⁸ Biblical lawgivers showed no such constraints. The Leviticus rules are prime examples of the lawgiver's interest in working with the negative aspects of Israelite ancestral behavior and formulating more positive albeit sometimes hypothetical alternatives for the future. O. S. Wintermute's comment about the Book of Jubilees in relation to the Book of Genesis captures well the aim of the biblical lawgivers: "Like most writers of history, the author of Jubilees was concerned to review critical events of the past in order to expose their significance for understanding his own contemporary political, social, or cultural situation." One problem, alas, is that we have little or no background documentary knowledge of the contemporary political, social, or cultural situation for Jubilees or for Leviticus.⁹

⁸ On this human trait in general, see David Daube, "Black Hole," *RJ*, 2 (1983), 183 [*EOW*, 4:50].

⁹ O. S. Wintermute, "Jubilees: A New Translation and Introduction," in *The Old Testament Pseudepigrapha*, ed. James H. Charlesworth (Garden City, NY, 1983), 2:37.

6 *Introduction*

**The Integration of Law and Narrative in
the Primary History**

In legal texts recounting Israel's priesthood and cult, the composers of Genesis through 2 Kings utilize a method unique and pervasive in the first five "books" of the Bible, Genesis through Deuteronomy. In the example discussed in my analysis the Leviticus scribe articulates rules in Leviticus about events that occurred in the time of Jacob and his descendants and then in the time of Moses, Aaron, and his descendants. Scholars have used these priestly rules to draw conclusions about how the cult was actually practiced. In contrast, I argue that these "practices" constitute a literary-critical mode of expression to communicate ideas about and reactions to what happened at various times in the Primary History and of promoting ideals in the form of hypothetical rules for proper practice and conduct in a future Israelite nation.

The compositional process at work throughout the Primary History wherein each law judges some issue in the narratives can be delineated clearly in Leviticus. The overall epic narrative relays a continuous story about origins: the beginnings of the world, of humanity, and of the Israelite nation; the latter's religious and legal set-up, its leadership by prophets to be followed by monarchical rule. Interspersed within the saga, bodies of rules appear and they too typically show the same focus on formative events. A key point about how laws and narratives are organized is that the placement of rules within the history is not random and repeated rules do not, as is commonly thought, represent an accretion of revisions over time. The positioning, contents, and order of rules are closely tied to the flow of events in the narrative. For example, the deity's rules about killing animals and humans appear at the fresh beginning to the world after the destruction of the Flood that came about because of endemic violence among both humans and animals (Gen 6:12; 9:3–6). Again, in response to troubling developments yet to occur regarding the wrongful worship of the Golden Calf, the Decalogue in Exod 20 begins with the reminder, "I am Yahweh your God, who brought you out of the land of Egypt, out of the house of slavery." The emphasis is on the proper identification of the deity, the hidden Yahweh, responsible for Israel's rescue.¹⁰ The body of rules in Exod 21–23 (the *Mishpatim*) turns to issues in

¹⁰ "The narrator stresses that God remains hidden (v. 20), even when most palpably present," *NOAB* on Exod 33:20, 132.

the life and times of the nation's first ancestor, Jacob, his experiences and those of his descendants with Laban his father-in-law, then with Canaanites, and then with Egyptians in Gen 28–Exod 12. The rules in Exod 24–31 go on to establish correct cultic practice and appear following the emergence of the Israelite nation after its enslavement in Egypt. The laws of Deut 12–26 anticipate future events when the Israelites start a new life in the land of Canaan (Deut 1:1–8), especially developments in the monarchical period. My hypothesis does not disprove the JEDP hypothesis, but it does indicate that JEDP does not help us to understand how law and narrative are woven together. Details shared by a rule and a narrative and the coherent way in which each rule relates to the one before and the one after point to a process of simultaneous composition that contributes to the unified, interrelated character of the Primary History.

My sense is that scholars increasingly give JEDP lip service only and recognize that it is on its way out. Its long history illustrates the not infrequent phenomenon of a critical theory perpetuating itself even when its *raison d'être* has been lost sight of. The fate of the approach may well turn out to be along the lines that David Johnston describes for scholarship on Roman law. Commenting on the notorious difficulties of using language to detect interpolations in Justinian's *Digest*, he notes that the problem led to the downfall of the interpolationist school early in the twentieth century: "The unsoundness of the method lay principally in the fact that its practitioners believed they could detect a style and in particular a vocabulary characteristic of the classical jurists."¹¹

While I do not set aside the achievements of the Wellhausen methodology – even if judgments about different strands of material might be off the mark, much illumination is often forthcoming – it is possible to so view the unity of the material as to cast serious doubts on many of the method's results. Even the major distinctions among the inferred sources, P, H, and D, turn out to be decidedly shaky because I believe that all the material in Genesis–2 Kings is a product of the same process of composition. Critics who have pursued and continue to pursue the approach are, in my view, like alchemists who attempt to make gold out of disparate elements without suspecting that they stand beside a gold mine.¹²

¹¹ David Johnston, *Roman Law in Context* (Cambridge, 1999), 20.

¹² Isaak Heinemann on Philo's work, *Schriften der Jüdisch-hellenistischen Literatur (Die Werke Philos von Alexandria in deutscher Übersetzung)*, ed. Leopold Cohn (Breslau, 1909), 2:8.

8 *Introduction*

It has been an axiom of biblical criticism that similar rules in the biblical codes are to be explained by developments over time – revisions of previous rules and additions to them. A rule in Lev 5:20–26 [6:1–7 ET] about false dealing is viewed as similar to one in Lev 19:11, 12 and similar again to one in Num 5:5–10. On account of the similarities and differences, Jacob Milgrom makes the bold claim: “That this law [in Num 5:5–10] assumes and supplements the law of Lev. 5:20–26 bears momentous weight in determining the redaction of the Book of Numbers. The fact that the redactor could not merely attach this supplement to the main body of the law on Leviticus can only mean that, for him at least, the text of Leviticus was already fixed. Thus, if this supplement was incorporated into the Book of Numbers, the only possible conclusion is that it was assembled after the Book of Leviticus had achieved its final form.” Much more circumspect is Bruce Wells who, working on the few texts about the role of testimony in biblical sources, thinks that it is unrealistic to make judgments about such rules in Israel’s judicial system. He asks more generally, “What is the relationship between the laws in the pentateuchal codes and the laws of ancient Israel and Judah? To say they are the same is highly problematic.” He further expresses a view that I very much share: “It is difficult to say anything with certainty concerning the laws of ancient Israel and Judah because scholars simply do not know what they were. Perhaps the pentateuchal laws yield some insight into the legal systems of ancient Israel and Judah, but is this really so?”¹³

It is not to be expected that such a profound invention as the body of laws attributed to Moses would include rules that contradict one another. For those critics who explain contradictions by claiming that rules were updated to adjust to changing societal circumstances, we might ask how the persons who fused the various texts were acquainted with the rules and practices already in place. S. E. Loewenstamm rightly points out that not only do we lack any evidence for the kind of updating of laws that critics

¹³ Jacob Milgrom, *Numbers*, JPSTC (Philadelphia, 1990), 302, n. 5; Bruce Wells, *The Law of Testimony in the Pentateuchal Codes* (Wiesbaden, 2004), 3, 5–6. The continual resort to postulating redactional activity is an expression of the difficulties interpreters encounter in making sense of the laws and their seeming lack of order in how they are set out.

suggest but also the process presupposes techniques and procedures that simply did not exist in antiquity.¹⁴ More likely, in my view, is that a group of thinkers used customary rules to commit to writing their judgments on the nation's past, perhaps also to present Israel's distinctive equivalent to other ancient Near Eastern legal traditions.

I propose that rules are similar not because they have undergone changes over time but because each is a response to a different issue involving similar matters arising in the nation's traditions. The fundamental link is between law and narrative tradition, not between law and changing perceptions about societal problems. As to the actual time of the composition of the Primary History, the period of the Babylonian exile and loss of kingship is the most likely. The problem of dating ancient documents is notoriously difficult. I find it more productive not to relate a rule to an inferred but unknown real-life event but to ask why a particular law or body of laws is set down at a certain point in the Primary History's chronological scheme. While the times and places described in this body of literature might be actual incidents, more often than not they are legendary or semi-legendary or mythical.

The fiction of Mosaic authorship of the laws is to be taken seriously, not because Moses did or did not exist, but because he is depicted as a seer, the authoritative communicator of law. In this capacity, he makes judgments not only on contemporary events, which he cites because he participated in them, but on past and future ones, which he had no part in. An example of an event in Moses' own time that produces a rule is the Passover ritual. The text openly explains the historical meaning of the strange actions behind its celebration, the unleavened bread to be eaten and the splashing of blood on the doorposts (Exod 1–12). The linking of the event to the rule is made explicit because the episode of the quick departure of the Israelite slaves from Egypt is one that Moses experienced.

Other rules and rituals do not cite the incidents to which they are responses because they occurred before or after Moses lived. These rules and rituals nonetheless also commemorate quite specific events; for example, an incident in Gen 38 explains every detail of the bitter water test of Num 5 about a husband who accuses his wife of adultery. Judah accuses Tamar of the offense when in fact, having to disguise

¹⁴ S. E. Loewenstamm, "Exodus xxi 22–25," *VT* 27 (1977), 355.

10 Introduction

herself as a prostitute, she was making him the family member who was to be the levirate “husband” responsible for fulfilling a sacred obligation.¹⁵ The events occur during a time before Moses. Hence the text about the bitter water test makes no mention of the tradition that inspired its formulation. A link between a rule and a past occurrence is, to be sure, often well-nigh unmistakable. A rule in Lev 18:18 prohibits marriages to two sisters and gives as the reason the avoidance of rivalry between them. Jacob’s marriages to Rachel and Leah are in the background. Their history is pre-Moses and hence no explicit attention is drawn to the actual problem in focus. An example of an underlying “future” event is a rule that regulates kingship, an institution not yet existing in Moses’ time when the Israelite nation is only just coming into being. Moses declares that a monarch is not to multiply horses, wives, silver, and gold. As seer, Moses anticipates well before the event King Solomon’s unacceptable actions, which portray the very details that the rule prohibits (Deut 17:14–20; 1 Kgs 10, 11). Solomon’s behavior is not cited because Moses did not live through those events.

The authors of the Primary History present the history of Israel’s priesthood and cult by formulating rules in response to how they understood what transpired at its establishment in the time of Moses and Aaron. Also incorporated in their purview is consideration of the interactions among Joseph, his brothers, and their father Jacob, the first family of the Israelite nation. The lawgiver’s response to them is of primary concern in this study of Lev 1–10. The rule in Lev 6:1–7 [HT 5:20–26] about deception in a transaction and the rule in Lev 7:11–21 about wellbeing or peace offerings are examples where the evidence is as good as one could ever hope for. These two rules are detailed responses to Joseph’s conduct at his grand meal for his brothers in Gen 43 (see Chapters 4 and 6 respectively). To repeat, a literary convention accounts for the lack of explicit references in the legal texts to the Joseph saga, namely, the fiction that Moses gave the laws in his lifetime. Rules where he openly cites historical incidents refer to events that occurred during that period.

When the fictional lawgiver (Moses) assesses issues, he formulates and expresses anew, in judging the narrative incidents, rules that would have been familiar, in some shape or form, to the anonymous composers of the Primary History and to their recipients. The

¹⁵ See Calum Carmichael, *The Book of Numbers: A Critique of Genesis* (New Haven and London, 2012), 26–32.