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The Founding of Israel’s Judicial System

Even before Israel receives laws at Sinai, Exodus tells how Jethro the Midianite advises Moses to establish judges, a unique origin story for the judicial system with no parallel in ancient Near Eastern law collections. Deuteronomy revises the story to credit Moses with this idea after the revelation at Horeb.

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Jethro advises Moses (detail),Jan Luyken, 1708. Rijksmuseum.nl

While visiting the Israelite camp in the wilderness, Jethro grows puzzled as he observes Moses, his son-in-law, spending his entire day judging the people:

שׁמות יח:יג וַיְהִי מִמָּחֳרָת וַיֵּשֶׁב מֹשֶׁה לִשְׁפֹּט אֶת־הָעָם וַיַּעֲמֹד הָעָם עַל־מֹשֶׁה מִן־הַבֹּקֶר עַד־הָעָרֶב.

Exod 18:13 Moses sat as judge for the people, as the people stood about Moses from dawn to dusk.[1]

Jethro asks Moses to explain why he is required to spend the entire day working, surrounded by a milling crowd. Upon hearing Moses’s reply that the situation persists because the people keep bringing their issues to Moses to decide, Jethro responds sharply:

שׁמות יח:יז …לֹא־טוֹב הַדָּבָר אֲשֶׁר אַתָּה עֹשֶׂה.יח:יח נָבֹל תִּבֹּל גַּם־אַתָּה גַּם־הָעָם הַזֶּה אֲשֶׁר עִמָּךְ כִּי־כָבֵד מִמְּךָ הַדָּבָר לֹא־תוּכַל עֲשֹׂהוּ לְבַדֶּךָ.

Exod 18:17b …What you are doing is not right. 18:18 You will surely wear yourself out; and these people as well. For the task is too heavy for you; you cannot do it alone.

Jethro continues by offering Moses advice about how to deal with the problem:

שמות יח:כא וְאַתָּה תֶחֱזֶה מִכָּל־הָעָם אַנְשֵׁי־חַיִל יִרְאֵי אֱלֹהִים אַנְשֵׁי אֱמֶת שֹׂנְאֵי בָצַע וְשַׂמְתָּ עֲלֵהֶם שָׂרֵי אֲלָפִים שָׂרֵי מֵאוֹת שָׂרֵי חֲמִשִּׁים וְשָׂרֵי עֲשָׂרֹת. יח:כב וְשָׁפְטוּ אֶת־הָעָם בְּכָל עֵת וְהָיָה כָּל־הַדָּבָר הַגָּדֹל יָבִיאוּ אֵלֶיךָ וְכָל הַדָּבָר הַקָּטֹן יִשְׁפְּטוּ־הֵם וְהָקֵל מֵעָלֶיךָ וְנָשְׂאוּ אִתָּךְ.

Exod 18:21 Seek out from among all the people capable men who are god-fearing, trustworthy men who refuse bribes. Set these over them as officers of thousands, officers of hundreds, officers of fifties, and officers of tens. 18:22 Let them sit as judges for the people at all times. Have them bring every major case to you, but let them decide every minor case themselves. Make it easier for yourself by letting them share the burden with you.

Taking Jethro’s advice to heart, Moses immediately implements his ideas for delegating judicial authority to dispense justice more efficiently (vv. 24–26).

Textual Order as a Statement of Cultural Values

Notably, the story of the establishment of the judicial system comes before the account of God’s revelation of law to Israel at Sinai in chapters 19–24. This narrative sequence created implications for later readers of the text, already within ancient Israel.

Biblical law closely corresponds to the great cuneiform legal collections of the ancient Near East in form, technical terminology, topics and themes, and range of sanctions. So close is the connection between the two systems of law that even techniques of legal ordering seem to have been carried over, although implemented in different ways to reflect different cultural values.

In Israelite law, just as in cuneiform law, formal matters like textual sequence can amount to meta-legal reflections on the priorities of the legal system.[2]

Laws of Hammurabi

For example, the prologue to the Laws of Hammurabi attributes it to Hammurabi, King of Babylon (ca. 1792–1750 B.C.E.), as its first-person speaker and royal author.[3] There, the monarch repeatedly affirms his devotion to the cosmic ideals of *kittum u mīšarum*, “truth and justice.”

To drive that royal boast home, laws devoted to due process (requiring integrity in the testimony of witnesses in court and accountability of judges) appear at the very beginning of the monument (§§1–5). The sequence and arrangement of the laws thus underscores Hammurabi’s pious commitment to justice by establishing judicial probity as “the first priority” of the legal collection: as the cardinal principle of its organization.[4]

Covenant Collection

Biblical law collections also employ this technique of using the initial law in a legal composition to signify the priorities of the subsequent text. This ordering principle was already recognized in medieval biblical exegesis. Nachmanides (1194–1270 C.E.) observed that the Covenant Collection in Exodus 21–23 places laws about the manumission of slaves (Exod 21:2–11) at its very beginning, even before a series of laws that govern capital cases (Exod 21:12–17).[5]

He accurately recognized as anomalous how this structure prioritizes slave or property law over capital law.[6] He concluded that the placement of the manumission laws reflects the first verse of the Decalogue (Exod 20:2–14):

שׁמות כ:ב אָנֹכִי יְ־הוָה אֱלֹהֶיךָ אֲשֶׁר הוֹצֵאתִיךָ מֵאֶרֶץ מִצְרַיִם מִבֵּית עֲבָדִים׃

Exod 20:2 I, YHWH your God, led you out of Egypt, out of the house of bondage.

The importance of manumission in the Covenant Collection thus follows from the collective manumission of Israel from slavery in Egypt. In effect, the textual sequence affirms that the priority of the lawgiver (and thus of the legal system in this case) is freedom. Although he could not use the language of “redactor,” Nachmanides nonetheless recognized that the order of the laws makes a statement of value and is a source of meaning.[7]

A Controversial Origin Myth for Israel’s Court System

For a later reader of the Exodus narrative, that Exodus 18’s origin myth of the judicial administration comes first, before the revelation of the law, could well have been perceived as preempting the status of divine revelation in chapters 19–24 as the culturally more important origin myth for Israel’s Torah. This perception would have been disturbing because of two assumptions implicit in the narrative:

**1. The judiciary is not Israelite** – Verse 1 indicates that Jethro is Midianite, not Israelite. Since Moses follows Jethro’s suggestions about founding the judiciary, the narrative thus directly concedes that Israel’s judicial organization is foreign in conception and inspiration.

**2. The judiciary is not Sinaitic** –According to this episode, Moses creates the system for administering justice before YHWH reveals the law at Sinai and establishes His covenant with Israel, the account of which immediately follows in the narrative (Exod 19–24).

It is highly problematic to imagine that such ideas could be aligned with the more fundamental Israelite claim for the origin of her laws in divine revelation at Mount Sinai. Conceding the foreign origins and prior creation of the judicial administration would imply that the Sinaitic revelation—central to which is law—is nonetheless incomplete: it is reliant upon something external and extrinsic for its implementation.

Some rabbinic interpreters were so bothered by this issue that they suggested that יתרו אחר מתן תורה היה “Jethro came after the Torah was given” (b. Zevahim 116a), ostensibly relying on the midrashic principle of אין מוקדם ומאוחר בתורה “the sequence of narratives in the Torah is not determinative.”[8] While this rabbinic approach does not follow the simple reading of the text, it highlights the problem these sages had with the story, and they were hardly the first.

Deuteronomy 1 Corrects Exodus 18

The Pentateuch itself provides the best evidence that the difficulties identified here concerning the dignity and autonomy of the legal system are not merely hypothetical but were already a concern in ancient Israel itself. The narrative of Deuteronomy 1 systematically addresses and deftly corrects the two sources of consternation in Exodus 18 that Moses’s reliance upon Jethro prior to the revelation at Sinai triggers.

Re-Chronologizing Events

Although presented as a straightforward retelling of the story of the Israelites’ journey from Egypt, Deuteronomy 1 in fact derives from a later historical period than Exodus 18 and revises the earlier account in two important ways.[9] First, the retold account significantly alters the original sequence of events so that the revelation of law at Mount Sinai occurs first. The narrative of Deuteronomy begins with the divine command to depart from the mount where revelation has taken place:[10]

דברים א:ויְ־הוָה אֱלֹהֵינוּ דִּבֶּר אֵלֵינוּ בְּחֹרֵב לֵאמֹר רַב־לָכֶם שֶׁבֶת בָּהָר הַזֶּה.

Deut 1:6 YHWH our God spoke to us at Horeb, saying, “You have stayed long enough at this mountain. Resume your journey….”

In this retelling, the divine revelation of law at Horeb (Deuteronomy’s term for Sinai) precedes the creation of the judicial system, which the chapter recounts in verses 9–18. Deuteronomy’s authors have “re-chronologized” the narrative sequence of Exodus to ensure the dignity and prestige of revelation itself. Deuteronomy 1 now grants divine revelation of law its proper chronological priority over the judicial apparatus; by extension, the revised account also affirms that revelation of the law is more important than its administration.

Claiming an Israelite Origin for the Judiciary

The authors of Deuteronomy 1 also correct the second major difficulty raised by Exodus 18: the Midianite initiative and inspiration for the system of judges. Deuteronomy rejects that foreign derivation by omitting it:

דברים א:ט וָאֹמַר אֲלֵכֶם בָּעֵת הַהִוא לֵאמֹר לֹא־אוּכַל לְבַדִּי שְׂאֵת אֶתְכֶם. א:י יְ־הוָה אֱלֹהֵיכֶם הִרְבָּה אֶתְכֶם וְהִנְּכֶם הַיּוֹם כְּכוֹכְבֵי הַשָּׁמַיִם לָרֹב…. א:יב אֵיכָה אֶשָּׂא לְבַדִּי טָרְחֲכֶם וּמַשַּׂאֲכֶם וְרִיבְכֶם. א:יג הָבוּ לָכֶם אֲנָשִׁים חֲכָמִים וּנְבֹנִים וִידֻעִים לְשִׁבְטֵיכֶם וַאֲשִׂימֵם בְּרָאשֵׁיכֶם. א:יד וַתַּעֲנוּ אֹתִי וַתֹּאמְרוּ טוֹב־הַדָּבָר אֲשֶׁר־דִּבַּרְתָּ לַעֲשׂוֹת.

Deut 1:9 At that time I said to you, “I am unable by myself to bear you. 1:10 YHWH your God has multiplied you, so that today you are as numerous as the stars of heaven…. 1:12 But how can I bear the heavy burden of your disputes all by myself? 1:13 Choose for each of your tribes individuals who are wise, discerning, and reputable so that I may appoint them to be your leaders.” 1:14 You answered me, “The plan you have proposed is a good one.”

Rather brazenly, Moses here claims that the initiative to delegate responsibility for justice is his alone. His appropriation of Jethro’s ideas continues in the next verse:

דברים א:טו וָאֶקַּח אֶת־רָאשֵׁי שִׁבְטֵיכֶם אֲנָשִׁים חֲכָמִים וִידֻעִים וָאֶתֵּן אֹתָם רָאשִׁים עֲלֵיכֶם **שָׂרֵי אֲלָפִים וְשָׂרֵי מֵאוֹת וְשָׂרֵי חֲמִשִּׁים וְשָׂרֵי עֲשָׂרֹת** וְשֹׁטְרִים לְשִׁבְטֵיכֶם.

Deut 1:15 So I took your tribal leaders, wise and experienced men, and appointed them heads over you: **officers of thousands, officers of hundreds, officers of fifties, and officers of tens**, and officials for your tribes.[11]

The bolded terms in Deuteronomy 1:15 highlight how the composer of this narrative has redeployed Midianite Jethro’s specific formula for the judicial administration, hierarchically organized like a chain of military command: שָׂרֵי אֲלָפִים שָׂרֵי מֵאוֹת שָׂרֵי חֲמִשִּׁים וְשָׂרֵי עֲשָׂרֹת “officers of thousands, officers of hundreds, officers of fifties, and officers of tens” (Exod 18:21).[12] Deuteronomy 1 attributes that formula to Israelite Moses. Jethro has been completely “air-brushed” out of the retold, now sanitized, narrative, as if to remove even the possibility of the Israelite system of justice having any foreign derivation.[13]

Redefining the Qualifications for Judicial Appointment

A subtle but telling change of language underscores Deuteronomy’s reworking of Exodus 18. In the original account, Jethro defines the attributes required for appointment to judicial office thus: אַנְשֵׁי־חַיִל יִרְאֵי אֱלֹהִים אַנְשֵׁי אֱמֶת שֹׂנְאֵי בָצַע “capable men who are god-fearing, trustworthy men who refuse bribes” (Exod 18:21). These prerequisites—pragmatism, piety, and moral probity—were gained in and through life experience, were accessible to all, and did not presuppose formal training.

As Moses specifies the qualifications for judicial office in the structurally similar list in Deuteronomy 1, he departs from Jethro’s pragmatic and democratic model. The new list places an unprecedented three-fold emphasis upon a different kind of acumen: אֲנָשִׁים חֲכָמִים וּנְבֹנִים וִידֻעִים “men who are wise, discerning, and knowledgeable” (Deut 1:13).[14] The thrice-articulated, sole condition of office in the new context—“wisdom”—appears disconnected from any particular realm of practical life experience. It is rather a product of professional study and training, as the formal competence associated with entry into a guild or school.[15]

In Deuteronomy, the judicial system’s foundation narrative has clearly been restructured from a later vantage point, one that elevates the distinctly scribal virtue of “wisdom” into the essential qualification for judicial office. With that substitution, the scribal authors of Deuteronomy reveal both their revisionist hand in the composition of this narrative and their own professional training and commitments.

The Originality of Israel’s Account of the Origins of the Judicial System

Scholars have long noted detailed points of contact between biblical and ANE texts, which suggest that Israelite scribes had direct or indirect access to certain key components of the cuneiform curriculum of the Mesopotamian scribal school,[16] the eduba (é.dub.ba.a) in Sumerian or *bīt ṭuppi* in Akkadian (both terms literally mean “tablet house”).[17] The interest of ancient Israel’s scribes in origin myths[18] and in the prestigious genre of law almost certainly reflects this curriculum.

Just at this point of greatest reliance upon Mesopotamian precedent, however, the Israelite authors exhibit their independence by departing from any precedent in Near Eastern literature known to me: they repeatedly concern themselves with providing an “origin myth” for the institutions that administer the law.

No Origin Story for the Judicial System in Hammurabi

To sharpen the contrast, the prologue to the Laws of Hammurabi affirms that both the monarch’s appointment to office and the right of his city-state, Babylon, to hegemony over Mesopotamia were jointly destined at the beginning of time by the fate-decree of the god Enlil. Both monarchy and hegemony are thus assigned primordial status and cosmic origin. They are hardwired into the universe itself.

The scribes responsible for the Laws of Hammurabi are equally concerned to authorize the laws and assign them the highest possible authority. But there is no notion of divine revelation. Although the laws embody the cosmic principles of *kittum u mīšarum*, “truth and justice,” the laws themselves are presented as the royal speech of King Hammurabi. Speaking in the first person in the literary frame of the legal corpus, he repeatedly insists that the laws are, *awâtīya ša ina narîya ašṭuru*, “my words, which I have inscribed on my stela,” and *awâtīya šūqurātim*, “my precious words.”[19]

Despite this concerted effort to attach a myth of origins to both the monarch’s authority and to the laws themselves, there is a striking logical omission. The key institutions of justice—the office of judge and the organization of the judicial system—are simply presupposed as self-evident. Their origin is nowhere addressed in the Laws of Hammurabi.

In contrast, Exodus 18 and Deuteronomy 1 locate the origins of ancient Israel’s judicial system in human time and space: in the realm of morality.[20] Both foundation accounts associate the establishment of Israel’s judiciary with the redemptive events of the exodus. That there should be any attempt at all to reflect on the origins of the system for administering justice represents a distinctively Israelite concern. Justice itself must have its own creation account and become part of covenantal history.

At the same time, the survival of both origin myths—Exodus 18 and Deuteronomy 1—requires explanation.

Deuteronomy 1: A Later Correction Presented as an Ancient Original

While not unanimous, the scholarly consensus is that this chapter of Deuteronomy represents a stage in Israelite history when later writers were systematically reshaping earlier traditions.[21] Moreover, it is telling that Deuteronomy’s retold version happens to depart from the Exodus version precisely at each of the two points—non-Israelite origin and pre-Sinaitic status—where that version could cause most chagrin for later readers.

The authors of Deuteronomy 1 countered that challenge by creating their own origin myth that reorders, reinterprets, and re-chronologize Exodus 18 to reflect the later authors’ perspective on the origins of the judiciary.[22] That fact alone constitutes prima facie evidence that Deuteronomy here responds to and strategically corrects the Exodus account.[23]

Perhaps most strikingly, the authors of Deuteronomy 1 solved the theological and hermeneutical problem they confronted without even marking their revision as an explicit departure from the original in Exodus 18.[24] They do not claim to be rewriting Exodus 18. Nor do they take the midrashic approach of supplementing the original text with formal commentary or exegesis. Instead, the changes introduced by the authors of Deuteronomy 1 are not obvious because, like many later biblical and Second Temple period works, Deuteronomy has been stylized as an “ancient original” rather than as an explicit “later correction.”[25]

The composers’ decision to place their revision of tradition quite literally in the mouth of Moses, the very spokesman of tradition, lends authority to their version of the narrative. The attribution of a text to a prestigious speaker from the past, technically called “pseudepigraphy” (false writing), is a literary device well attested in antiquity.[26] In this case, the reinterpretation of tradition and the transformation of the status quo are effectively garbed in the voice of authoritative legal tradition.[27]

As Deuteronomy came to be accepted by the community, it was incorporated into the Bible along with the works with which it was originally in dialogue. As a result, subsequent generations inevitably began to read both the earlier work and the later response to it together, ahistorically, as if both had always been part of the same continuous story.

In the final form of the Torah, the Jethro story appears first and provides the lens through which the reader encounters Deuteronomy’s retelling and correction. On the one hand, everything is topsy turvy: The present textual order now obscures the effort of Deuteronomy 1 to “fix” the perceived problems of Exodus 18. On the other hand, this more inclusive approach to textual order also represents a statement about the cultural values of the compiler of the Pentateuch. The composite nature of the Torah suggests a desire to form a social community that includes divergent voices associated with the different documents that were compiled together.

Perhaps more important, the retention of the two different accounts of the formation of the judicial administration that are inconsistent with one another (in their idea of its chronology, its ethnic origins, the qualification for judicial appointment), while privileging neither to the exclusion of the other, represents an important affirmation of the priority of active interpretation and debate as the goal of reading and learning within the community. The complex interplay of the pentateuchal narratives concerning the founding of the judiciary thereby ultimately creates readers who, like those judicial officials, become active and questioning: חֲכָמִים וּנְבֹנִים וִידֻעִים “wise, discerning, and knowledgeable.”

[View Footnotes](https://www.thetorah.com/article/the-founding-of-israels-judicial-system)

1. Unless otherwise indicated, all Bible translations are my own.
2. For a defense of this position, see Jacob J. Finkelstein, *The Ox That Gored*,Transactions of the American Philosophical Society 71:2 (Philadelphia: American Philosophical Society, 1981). Finkelstein provides a powerful reading of the systematics of the Covenant Code (Exod 21–23) as a transformation of the values and ordering systems evident in the Laws of Hammurabi and the Laws of Eshnunna. There are difficulties, however, in his dating of biblical material to the second millennium and in his failure to consider the possibility that the final form of the text may include reordering by a later editor.
3. The more familiar term, “Hammurabi’s Code,” is a misnomer, since it is unlikely that this ancient text ever had statutory force or was even written with that intention. Moreover, as has been long noted, the text does not constitute a comprehensive “code” of laws. See the edition by Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, 2nd ed., SBLWAW 6 (Atlanta: Scholars Press, 1997), 4–7, and for “The Laws of Hammurabi,” ibid., 71–142.
4. For the argument of the statement of value implicit in the first five laws, and their link to the literary frame, see Herbert Petschow, “Zur Systematik und Gesetzestechnik im Codex Hammurabi,” *ZA* 57 (1965): 146–172 (at 148–149). From another point of view, however, the systematics of the legal corpus entrench class privilege and rigid social stratification. They thus completely undercut the affective rhetoric of the frame, which repeatedly asserts royal solicitude for the socially marginalized (the widow, the orphan, and the poor). Identifying that ideological inconsistency, see Eckart Otto, “Soziale Restitution und Vertragsrecht: *Mīšaru*(*m), (an)durāru*(*m*), *kirenzi*, *parā tarnumar*, *šemiṭṭa und derôr*in Mesopotamien, Syrien, in der Hebräischen Bibel und die Frage des Rechtstransfers im Alten Orient,” *RA* 92 (1998): 125–160 (at 140n64).
5. The superscription in Exodus 21:1 (in which YHWH states, וְאֵלֶּה הַמִּשְׁפָּטִים אֲשֶׁר תָּשִׂים לִפְנֵיהֶם, “Now these are the ordinances which you shall set before them”) marks the beginning of the Covenant Collection (also commonly called the Covenant Code). Though some scholars argue that the Covenant Collection begins with Exodus 20:19–23, it is more likely that the regulations regarding idols and altars in these verses belong to the conclusion of the Decalogue. Marvin A. Sweeney takes a similar position in [“The Bible’s Evolving Effort to Humanize Debt Slavery,”](https://www.thetorah.com/article/the-bibles-evolving-effort-to-humanize-debt-slavery) *TheTorah* (2016), n. 3.
6. In fact, such an arrangement is also inconsistent with the norms of cuneiform law (which he could not have known, of course).
7. For further discussion, see Bernard M. Levinson, “Deuteronomy’s Conception of Law as an ‘Ideal Type’: A Missing Chapter in the History of Constitutional Law,” in idem,*“The Right Chorale”: Studies in Biblical Law and Interpretation*, FAT 54 (Winona Lake, IN: Eisenbrauns, 2011; paperback repr. of, Tübingen: Mohr Siebeck, 2008), 52–88 (at 59 n. 23). See also Nachmanides (R. Moses ben Nachman), *Commentary on the Torah*, ed. Charles B. Chavel, 2 vols. (Jerusalem: Rav Kook Institute, 1959), 1:412–413 (Hebrew; translated in 5 vols., New York: Shilo, 1971). Nachmanides was preceded in his analysis by *Midraš Exodus Rabbah* 30:15, which may have served as his source. The best edition of this text is *Midrash rabbah ha-mevuʾar*, vol. 2, *Shemot rabbah*, 2 vols. (Jerusalem: Makhon ha-midrash ha-mevuʾar, 1983), 2:90 (Hebrew). For a translation, see *Midrash Rabbah Exodus*, trans. Simon Maurice Lehrman (London: Soncino, 1983), 363. On the evidence for this ordering technique in cuneiform law collections, see Petschow, “Codex Hammurabi.”
8. For a fine study of this principle, see Isaac Gottlieb[, “Highlighting Juxtaposition in the Torah,”](https://www.thetorah.com/article/highlighting-juxtaposition-in-the-torah) *TheTorah* (2015).
9. See Marc Z. Brettler, *The Creation of History in Ancient Israel* (London: Routledge, 1995), 65–70; and Bernard M. Levinson, “Textual Reformulation and Resequencing by the Deuteronomistic Historian,” *The Hermeneutics of Innovation: The Impact of Centralization upon the Structure, Sequence, and Reformulation of Legal Material in Deuteronomy* (Ann Arbor: UMI, 1991) 424–432. There is an immense amount of recent work on and debate about the formation of the Pentateuch and the sequence and relation of its sources to one another. Among the questions is, of course, the relative role of Numbers 11 in the evolution of the narrative discussed here. It goes beyond the scope of this article to do full justice to that debate. For a recent study with an excellent summary of the issues and full bibliography, see Jeffrey Stackert, *A Prophet like Moses: Prophecy, Law, and Israelite Religion* (New York: Oxford University Press, 2014), 137–165.
10. See the careful analysis provided by Norbert Lohfink, “Dtn 1,9–18: Gerichtsverfassung und Militär,” in idem, *Studien zum Deuteronomium und zur deuteronomistischen Literatur V*, SBAB 38 (Stuttgart: Katholisches Bibelwerk, 2005), 253–272. He addresses narratological issues as well as the relationship of this unit to Exodus 18.
11. Moses continues:

דברים א:טז וָאֲצַוֶּה אֶת־שֹׁפְטֵיכֶם בָּעֵת הַהִוא לֵאמֹר שָׁמֹעַ בֵּין־אֲחֵיכֶם וּשְׁפַטְתֶּם צֶדֶק בֵּין־אִישׁ וּבֵין־אָחִיו וּבֵין גֵּרוֹ. א:יז לֹא־תַכִּירוּ פָנִים בַּמִּשְׁפָּט כַּקָּטֹן כַּגָּדֹל תִּשְׁמָעוּן לֹא תָגוּרוּ מִפְּנֵי־אִישׁ כִּי הַמִּשְׁפָּט לֵאלֹהִים הוּא וְהַדָּבָר אֲשֶׁר יִקְשֶׁה מִכֶּם תַּקְרִבוּן אֵלַי וּשְׁמַעְתִּיו.

Deut 1:16 I further charged your magistrates as follows: “Hear out your fellow men: You must adjudicate justly between any man and a fellow Israelite or a stranger. 1:17 You shall not be partial in judgment: hear out low and high alike. Fear no man, for judgment is God’s. And any case that is too difficult for you, you shall bring to me and I will hear it.”

1. The two passages differ only in the presence of the conjunction וְ “and” before each element in the list in Deuteronomy 1:15; Exodus 18:21 includes only one such conjunctive *waw*, before the final element in the list. These variations tell us little about the relationship between the two texts, however. Both types of lists, with a *waw* before each element and with a *waw*only before the last element, are attested in Biblical Hebrew. Moreover, the texts and versions of Exodus 18:21 are themselves not consistent, meaning we cannot be certain that the version of Exodus 18 to which the authors of Deuteronomy 1 respond lacked the conjunctions. (The use of conjunctionsin the Septuagint, Peshitta, Vulgate, Targum, Samaritan Pentateuch, and various other Hebrew manuscripts, including one from Qumran, all differ in one way or another from the biblical Masoretic text of Exodus 18:21. See William H. C. Propp, *Exodus 1–18*, Anchor Bible 2 [New York: Doubleday, 1999], 626.)
2. Editor’s note: For another approach to this problem, see David Frankel, [“Deuteronomy’s Jewish Democratic and Egalitarian Agenda,”](https://www.thetorah.com/article/deuteronomys-jewish-democratic-and-egalitarian-agenda) *TheTorah* (2014).
3. See Moshe Weinfeld, *Deuteronomy and the Deuteronomic School* (Oxford: Clarendon, 1972), 244–245. The volumeremains the single best study of the scribal background of Deuteronomy, opening a new perspective on the analysis of Deuteronomy as the work of literati familiar with a wide range of both Near Eastern and Israelite literature. The NJPS translation of the final term of Deuteronomy 1:13 as an active participle (“knowing”) requires a slight emendation of the received Hebrew (Masoretic) text, וִידֻעִים, which instead has the passive participle (“experienced”). The change makes the word consistent with the first two terms of the list and requires an adjustment only of the vowels (normally regarded as a later stage of the textual tradition), while leaving the consonantal text intact (ibid., 244n2).
4. For a fine study of the role of wisdom literature in Deuteronomy, see Ethan Schwartz, [“Torah: Deuteronomy’s Version of Wisdom for Israel,”](https://www.thetorah.com/article/torah-deuteronomys-version-of-wisdom-for-israel) *TheTorah* (2015).
5. For evidence of the reception of the legal component of this curriculum, see Bernard M. Levinson and Molly M. Zahn, “Revelation Regained: The Hermeneutics of כי and אם in the Temple Scroll,” *DSD* 9 (2002): 295–346 (at 301–302; 314–317); and David P. Wright, *Inventing God’s Law: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi*(New York: Oxford University Press, 2009); *idem*, [“How Exodus Revises the Laws of Hammurabi,”](https://www.thetorah.com/article/how-exodus-revises-the-laws-of-hammurabi) *TheTorah* (2018).
6. See Andrew R. George, “In Search of the é.dub.ba.a: The Ancient Mesopotamian School in Literature and Reality,” in *“An Experienced Scribe Who Neglects Nothing”: Ancient Near Eastern Studies in Honor of Jacob Klein*, ed. Yitzhak [Yitschak] Sefati et al. (Bethesda, MD: CDL, 2005), 127–137; and Niek Veldhuis, *Religion, Literature, and Scholarship*:*The Sumerian Composition “Nanše and the Birds,” with a Catalogue of Sumerian Bird Names*, Cuneiform Monographs 22 (Leiden: E. J. Brill, 2004). Editor’s note: For a discussion of scribal practices, but in the context of the Priestly school, see Martha Himmelfarb, [“Scribal Features That Helped the Priestly Text Survive,”](https://www.thetorah.com/article/scribal-features-that-helped-the-priestly-text-survive) *TheTorah* (2020). For a discussion of Mesopotamian scribal education in the context of Ezekiel, see Laurie Pearce, [“Ezekiel: A Jewish Priest and a Babylonian Intellectual,”](https://www.thetorah.com/article/ezekiel-a-jewish-priest-and-a-babylonian-intellectual) *TheTorah* (2017).
7. Many of the myths of origin found in the Hebrew Bible contain elements and ideas also present in the cuneiform literature of the ancient Near East: accounts of the creation of the universe, of a battle between a Storm God and Sea, of a primordial flood, of the origins of humanity, and of the mythic significance of the Temple.
8. These repeated affirmations derive from the epilogue of the legal corpus: col. xlix, lines 3–4, 19–21; and col. xlviii, lines 12–13; see Roth, *Law Collections,* 134–136. Israelite authors will later develop the concept of the royal speaker of a legal corpus and apply it to YHWH as the highest authority, thereby introducing the notion of divine revelation of law into the ancient world. See Bernard M. Levinson, *Legal Revision and Religious Renewal in Ancient Israel*(Cambridge: Cambridge University Press, 2010).
9. Here excluded from consideration is the Chronicler’s programmatic narrative of Jehoshaphat’s judicial reform, with its account of the creation of a system of judicial officials (2 Chr 19). That account serves less as an origin myth than as the Chronicler’s vision for a reconstruction in the Persian Age. See Alexander Rofé, “The Organization of the Judiciary in Deuteronomy,” in *The World of the Aramaeans: Festschrift P. E. Dion*, ed. P. M. Michèle Daviau, John W. Wevers, and Michael Weigl, 3 vols., JSOTSup 324–326 (Sheffield: Sheffield Academic Press, 2001), 1:92–112; and, most extensively, Gary N. Knoppers, “Jehoshaphat’s Judiciary and ‘the Scroll of YHWH’s Torah,’” *JBL* 113 (1994): 59–80.
10. See Thomas Römer, “The Book of Deuteronomy,” in *The History of Israel’s Traditions: The Heritage of Martin Noth*, ed. Steven L. McKenzie and M. Patrick Graham, JSOTSup 181 (Sheffield: Sheffield Academic Press, 1994), 178–212. Evidence that the chapter integrates material from other biblical sources as well only lends added weight to the argument that the authors of Deuteronomy 1 were conscious of and responded to earlier Israelite texts. For example, the reason for Moses’s need for assistance—the onerous “burden” he must bear singlehandedly (Deut 1:12)—echoes the similar rationale and terminology of Numbers 11:11, 14, 17. See A. D. H. Mayes, *Deuteronomy*, New Century Bible Commentary (London: Marshall, Morgan & Scott, 1979), 122.
11. On the Temple Scroll's further interpretation of these narratives, see Steven D. Fraade, “‘If a Case is Too Baffling for You to Decide…’ (Deut 17:8–13): Between Constraining and Expanding Judicial Autonomy in the Temple Scroll and Early Rabbinic Scriptural Interpretation,” in vol. 1 of *Sibyls, Scriptures, and Scrolls: John Collins at Seventy*, ed. Joel Baden, Hindy Najman, and Eibert Tigchelaar, Journal for the Study of Judaism Supplements 175 (Leiden: Brill, 2017), 409–431 (originally published in Hebrew in *Meghillot*11–12 [2014–2015]: 199–218).
12. The differences do not seem simply free or arbitrary, as might properly be expected in the case of two independent traditions that bear no literary connection. The highly selective, point-for-point adjustment both of the chronology and the inspiration of the judicial administration can only be explained in terms of the authors of Deuteronomy 1 consciously seeking to revise and correct the narrative of Exodus 18. Moreover, it is all but inconceivable that Exodus 18 revises and corrects Deuteronomy 1. The move from a problem-free to a problematic text is most unlikely, especially since the two specific issues identified here involve substantive matters of Israelite theology and national identity, where the pious desire to “correct the record” may readily be imagined. For that reason, John Van Seters’s claim that Deuteronomy 1 was composed prior to Exodus 18 cannot be defended. For full set of references to his work and an extended response, see Bernard M. Levinson, “Is the Covenant Code an Exilic Composition? A Response to John Van Seters,” in idem,*“The Right Chorale”: Studies in Biblical Law and Interpretation*, FAT 54 (Winona Lake, IN: Eisenbrauns, 2011; paperback repr. of, Tübingen: Mohr Siebeck, 2008), 276–330.
13. For a contrasting example, a Hittite law governing personal assault provides an explicitly marked revision in a legal text:

If anyone blinds a free person or knocks his teeth out, *formerly* (*karū*) they would pay 40 sheqels of silver, *but now* (*kinuna*) one pays 20 sheqels of silver . . . (my translation).

The legal speaker makes a clear distinction between what would have been done in the past and what is currently the practice. Nearly twelve percent of the Hittite Laws include this type of revision, either to reduce fines or to shift from corporal punishments to financial damages. The changes derive from the legal reforms of King Telipinu (ca. 1525–1500 B.C.E.). For a critical edition of these laws, see Henry Angier Hoffner, Jr*., The Laws of the Hittites: A Critical Edition*, Documenta et Monumenta Orientis Antiqui 23 (Leiden: Brill, 1997), 221. Hoffner also contains an alternate translation of the text cited here (p. 21). For a larger study of the contrasting ways that legal change is handled in Near Eastern and biblical traditions, see Bernard M. Levinson, *Legal Revision and Religious Renewal in Ancient Israel*(Cambridge: Cambridge University Press, 2010).

1. One of the more important developments within biblical scholarship is the recognition that interpretive issues may be reflected in the biblical text itself. Indeed, such issues may also have contributed to the composition of new texts in ancient Israel as later authors responded to and sought to correct difficulties that they perceived in earlier texts. In some cases, the later texts were incorporated into the Bible along with the works to which they originally responded. For this perspective of “inner-biblical exegesis,” see Michael Fishbane, *Biblical Interpretation in Ancient Israel*, 2nd ed. (Oxford: Clarendon, 1988); James L. Kugel and Rowan A. Greer, eds., *Early Biblical Interpretation* (Philadelphia: Westminster, 1986); and James L. Kugel, *Traditions of the Bible: A Guide to the Bible as It Was at the Start of the Common Era* (Cambridge, MA: Harvard University Press, 1998). For an annotated bibliography of this approach, see Levinson, *Legal Revision and Religious Renewal in Ancient Israel*, 95–181.
2. These insights into the compositional techniques and strategies of the biblical authors also encourage us to consider whether other elements of Deuteronomy’s retold past may be a corrected past, one structured in light of the authors’ priorities in the present. That revisionist voice reveals itself in narrative form in the case of Deuteronomy 1. It assumes legal form within the laws of Deuteronomy (chapters 12–26). The interpretive richness of these laws could easily escape the casual eye. The issues that they raise emerge indirectly, as much from what they omit as from what they assert. See Bernard M. Levinson, [“The Hermeneutics of Tradition in Deuteronomy,”](https://www.academia.edu/218249/_The_Hermeneutics_of_Tradition_in_Deuteronomy_) *JBL* 119 (2000): 269–286.
3. For an illuminating study of this device, see Morton Smith, “Pseudepigraphy in the Israelite Literary Tradition,” in *Pseudepigrapha I: Pseudopythagorica, Lettres de Platon, Littérature pseudépigraphique juive*, ed. Kurt von Fritz, Entretiens sur l’antiquité classique 18 (Vandoeuvres, Geneva: Fondation Hardt, 1972), 191–215 (with ensuing panel discussion). On its function in Deuteronomy, see Bernard M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (New York: Oxford University Press, 1997); and Hindy Najman, [“The Ancient Practice of Attributing Texts and Ideas to Moses,”](https://www.thetorah.com/article/the-ancient-practice-of-attributing-texts-and-ideas-to-moses) *TheTorah* (2016). For its use in the Dead Sea Scrolls, see Moshe J. Bernstein, “Pseudepigraphy in the Qumran Scrolls: Categories and Functions,”*Pseudepigraphic Perspectives: The Apocrypha and Pseudepigrapha in Light of the Dead Sea Scrolls*,ed. Esther G. Chazon and Michael Stone, STDJ 31 (Leiden: E. J. Brill, 1999), 1–26. On the theological issues raised by false attribution, see the somewhat apologetic approach by David G. Meade, *Pseudonymity and Canon: An Investigation into the Relationship of Authorship and Authority in Jewish and Earliest Christian Tradition*,WUNT 39 (Tübingen: J. C. B. Mohr-Siebeck, 1986; Grand Rapids: Eerdmans, 1987).