

## Chapter 12

# Village Law and the Book of the Covenant

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The settings in which by far the greatest population of ancient Israel was located are also the contexts about which we are least informed. That gap in our knowledge is being closed somewhat as archaeologists and historians attend increasingly to life in the numerous small villages, but too little remains from most of such settlements to cast significant light on their inhabitants' lives, circumstances, perspectives, and ideologies.<sup>1</sup> Their relative poverty meant that they could generally not afford to build with the durable materials employed in monumental urban structures or in the houses of the elite. As evidence of village layout, housing, everyday pottery pieces, tools, storage areas, and more comes to light, our picture fills out with details that provide us with a better sense of their terms of living than we might have expected. Nonetheless, there will always be distinct limits to the extent and depth of how much we can know about these

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<sup>1</sup> Among recent studies describing how details of daily living can be drawn from the archaeological record and other sources, see Paula M. McNutt, *Reconstructing the Society of Ancient Israel* (Library of Ancient Israel; Louisville: Westminster John Knox, 1999); S. Bendor, *The Social Structure of Ancient Israel: The Institution of the Family (beit 'ab) from the Settlement to the End of the Monarchy* (Jerusalem Biblical Studies 7; Jerusalem: Simor, 1996); Victor H. Matthews and Don C. Benjamin, *Social World of Ancient Israel 1250–587 BCE* (Peabody, Mass.: Hendrickson, 1993). For comparable recent portrayals of social life in Mesopotamia, see Karen Rhea Nemet-Nejat, *Daily Life in Ancient Mesopotamia* (Westport, Conn., and London: Greenwood, 1998); Daniel C. Snell, *Life in the Ancient Near East, 3100–332 B.C.E.* (New Haven and London: Yale Univ. Press, 1997); D. T. Potts, *Mesopotamian Civilization: The Material Foundations* (London: Athlone, 1997); and Marc van de Mieroop, *The Ancient Mesopotamian City* (Oxford: Clarendon; New York: Oxford Univ. Press, 1997).

villagers, especially because much of their everyday lives left little or no trace in the material record.

The Hebrew Bible is, in its own way, extremely problematic as a reliable resource for understanding customs in these innumerable hamlets scattered over the countryside. The biblical text stems immediately from groups and individuals who possessed a high level of literacy as well as the support, both financial and institutional, necessary for carrying out the tasks of writing and preserving such extensive literature. Neither this literacy nor support was normally to be found in the villages, but only in cities or in communities, such as Qumran, dedicated to sectarian interests. In all likelihood, the Hebrew Bible therefore emerged out of primarily urban settings. Prior to the final compositional stage, traditions—stories, proverbs, songs, laws, and the like—circulated in a variety of settings, including the rural districts, above all in the oral mode.<sup>2</sup> To the extent that any such materials reached written form, they most certainly underwent modification, if not even full transformation, in the process. Thus in the Hebrew Bible we do not read the direct expressions of village life, but at most only the city-dwellers' perceptions of village life.

This situation pertains especially for the laws. Let us take the Book of the Covenant (BC) as an example. The laws recorded in Exodus 21–23 are commonly held to represent the legal traditions of Israel before the monarchy. Since Israelite urbanization began in full force only during Iron Age II, that is, during the time of the centralized state, a pre-monarchic origin would place these laws squarely in the social period when villages served as virtually the only context of human settlement in the land, apart from the city-states in the coastal region and certain inland areas. The fact that many of these laws are preoccupied with agricultural matters, as well as the sparse evidence of centralized powers in BC, appears in the view of many to reinforce this notion of its rural provenance or roots. Even if one stipulates that BC was recorded after the advent of statehood and by persons living in the city of Jerusalem, it seems to be assumed—sometimes tacitly but often explicitly—that the laws it contains derive from communities located outside the cities.

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<sup>2</sup> Burke O. Long, the honoree of this volume, called early attention to the important contributions of anthropological field-work to our understanding of oral tradition in ancient Israel: "Recent Field Studies in Oral Literature and Their Bearing on OT Criticism," *VT* 26 (1976) 187–98; and "Recent Field Studies in Oral Literature and the Question of Sitz im Leben," *Semeia* 5 (1976) 35–49. See also the studies of Robert C. Culley, especially his *Oral Formulaic Language in the Biblical Psalms* (Near and Middle East Series 4; Toronto: Univ. of Toronto Press, 1967). For a recent discussion, see Susan Niditch, *Oral World and Written Word: Ancient Israelite Literature* (Library of Ancient Israel; Louisville: Westminster John Knox, 1996; London: SPCK, 1997).

Frankly, in my view the Deuteronomic laws are much more plausibly connected to cities than the BC laws are to villages and towns—certainly in their present form as a collected whole, but probably also as individual laws. How might the BC laws have been collected? The countryside contained many hundreds of tiny settlements. If we are to think of the BC laws as the laws of rural society, then we ought to be able to conceive of a plausible means whereby they became assembled. Yet it is hard to imagine that someone roamed over the land, asking villagers to recount their laws and recording them for the benefit of either the villagers themselves or others.

There is an intriguing analogy from nineteenth-century Germany—Jacob and Wilhelm Grimms' *Kinder- und Hausmärchen*, the collection of German fairy tales commonly held to be the world's (or just the West's?) most often translated and reprinted book second only to the Bible. There is a widespread notion concerning its origin, and I confess to sharing this view until only recently upon reading several current studies. According to the legendary account, the Brothers Grimm collected their fairy tales by painstakingly crisscrossing Germany, visiting out-of-the-way settlements and succeeding in getting the local peasants to recount their stories. In smoky cabins or in small outside gatherings of children and adults they heard storytellers, especially housewives, spin the tales that had existed only in oral form for generations and centuries, and Jacob and Wilhelm assiduously committed them to writing. Back in their homes, they collated the various renditions of each tale, producing eventually their classic of world literature in 1812–15.

Such a romantic legend is, however, "patently false."<sup>3</sup> Far from going out to find stories among the common folk, the two brothers largely heard the tales in their own setting. Rather than collecting them from unknown informants, they heard many of them from two groups of friends as well as other acquaintances. Their informants were not quaint, wizened specimens from another age, but generally younger persons in their teens, 20s, and 30s who were recalling stories from their own childhood. Instead of the image of illiterate, uncultured peasants, a scene with mainly middle- and upper-class, educated urbanites appears more appropriate. Furthermore, Jacob and Wilhelm searched through older written sources for tales that could be adjusted to conform to their notion of charming little narratives. The Grimm brothers did not intentionally deceive their readers con-

<sup>3</sup> Walter Scherf, "Jacob and Wilhelm Grimm: A Few Small Corrections to a Commonly Held Image," in *The Brothers Grimm and Folktale* (ed. James M. McGlathery; Urbana and Chicago: Univ. of Illinois Press, 1988) 187. For further discussion of the details of the Grimms' sources and methods, see other articles in this same volume, particularly Heinz Rölleke, "New Results of Research on Grimms' Fairy Tales," 101–11; and Linda Dégh, "What Did the Grimm Brothers Give to and Take from the Folk?" 66–90.

cerning their sources, though they left the impression that their folktales were to be found natively in rural, tradition-oriented settings. Scholars have only rather recently managed to cast doubt on their legendary activities through a careful analysis both of external records and indications and of internal comments made by the Grimms themselves.

Who in ancient Israel would have been motivated to assemble laws—whether in the legendary or the more probable manner of the Grimms—and then to write them down and preserve them? The villagers themselves, who hardly possessed literacy equal to such a task, had little reason to engage in such a painstaking process for their own benefit. Each community had its own legal customs, which were sufficient to get them through until some new conflict arose that required fresh adjudication by the villagers themselves. They had no need of, nor could have read, a written code of their laws, much less a compendium of laws from villages around the country.

Just as innumerable variations for most of the stories were identified by the Grimms, so also there could hardly have been full uniformity in the legal traditions of the multitudinous Israelite settlements, which had virtually no direct contact with any others than those closest at hand. What then do these BC laws represent? It strains credulity to propose that they reproduce or encapsulate rules that enjoyed widespread legal acceptance across the land. Who could have established for them such broad currency? With no central authority during the pre-state period, no legislative arm, no agreed-upon place to which the disparate villages might have sent representatives to form a grass-roots national assembly, these scattered communities had no means to settle upon a set of laws authoritative for all of them.<sup>4</sup> It is difficult to conceive of the hamlets in even just one region collaborating, whether out of necessity or desire, to compile such a legal code for themselves. Even during the later state period, the villages were largely independent and relatively isolated from each other, continuing their tightly knit, kinship-centered, tradition-oriented, subsistence-level existence. The state officials and the economic elite, centered largely in the cities, needed to employ strict measures if they hoped to extract anything from the villagers—taxes or tributes, military conscripts, labor gangs, resources and produce for an urban or national market. The people in the hamlets faced enough difficulties in surviving from one year to the next, and they had little use for those on the outside who sought to drain them of

<sup>4</sup> For all its suggestiveness and initial appeal, Martin Noth's famous hypothesis of a twelve-tribe amphictyony (*Das System der zwölf Stämme Israels* [BWANT 4/1; Stuttgart: W. Kohlhammer, 1930]) has for understandable reasons not survived more recent sociological and historical analysis. There is little chance that the land's population, as diverse and scattered as it was, could have organized itself into a quasi-political, ideologically driven confederacy prior to the existence of the conditions that prompted the rise of a state.

their meager holdings.<sup>5</sup> Similarly, there was no good reason for them to share their legal traditions with others, and they must certainly have been amused, if not suspicious, if a governmental authority or religious representative sought to record their laws.

Of one thing we can be sure: BC *in its present form* does not coincide with village law. We confront the text now as literature, the product of urbanites. Even if it reflects laws that are thought to be the result of legal traditions brought by rural persons who relocated into cities, we are still faced with questions of how, by whom, and for what purposes the legal norms of various villages became recorded in their new social contexts. To press further on the question of the relation between village law and the Book of the Covenant, we thus approach a double-blind situation: on the one hand, the paucity of information about village life in Israel; and on the other, the activity of city-dwelling elites and literate specialists in producing the text that worked its way down to us.

### Village Society

In order to provide a context for our following discussion of village law, I will provide here only the barest sketch of the distribution and character of these settlements during Israel's history, disregarding many of the differences among various areas of the land. The differences constitute, in fact, part of the argument I am offering: that entirely too wide a range of small, disparate, often isolated settlements persisted throughout ancient Israel's history for us to suppose that their legal customs could have been captured in the Book of the Covenant, or even in all of Pentateuchal law. Much the same, of course, could be said of the relation of villages to legal texts found elsewhere in ancient Southwest Asian cultures. At the same time, we should not suppose that we can facilely characterize "village society," which itself was likely as varied as were the settlements. Nonetheless, a certain typification of these settings can provide a basis for assessing whether or not the rural laws might have survived the transition to written record.

In terms of sheer numbers the villages occupied a remarkable position in Israel's social history. Although the evidence is and will remain incomplete, it would appear that the vast majority of the region's population—probably between 70 and 95 percent, depending on the period—resided in these villages, scattered by the hundreds over the entire countryside. The occasional cities and towns were not so populous in size as to amount to a total census of inhabitants even close to that of the rural population. However, the power wielded by these urban centers was disproportionate to their numbers, a sit-

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<sup>5</sup> For a description of attitudes in contemporary villages in the region on political and economic matters, see C. A. O. van Nieuwenhuijze, "The Near Eastern Village: A Profile," *The Middle East Journal* 16 (1961) 295–308.

uation quite common in cultures both ancient and modern, deriving in the main from the city's ability to act in concert in pressing its demands and interests onto those sectors of the population too diffuse to resist effectively or to exert a comparable set of influences. Even nomadic groups, less susceptible to urban controls, could bring villagers to their knees if that was their intent. Note the text in Ezek 38:11, speaking of Gog and his army:

You will say, "I will go up against a land of unwalled villages (פְּרִזוֹת); I will go against the undisturbed people dwelling in safety, all of them living where there are no walls or bars or gates."

An old adage has it that the city taxes the village and the nomad raids it. Although too generalized and simplified to serve as a historical summary, this observation amply describes the vulnerability of villages—as well as their frequent antagonism toward and suspicion of outsiders, which as it happened was often enough justified. Defenseless and exposed, they could scarcely resist anything larger than a small raiding party.

### *Distribution of Villages*

Archaeologists, particularly during recent decades, have conducted extensive surveys of the countryside on both sides of the Jordan River in an effort to find evidence of ancient settlements. The resulting picture indicates that villages in remarkable number were distributed throughout many regions of the land beginning early in the Iron I period and stretching down to the Greco-Roman period and beyond. To be sure, the process of sedentarization during the twelfth and eleventh centuries BCE has attracted the greatest attention due to modern interest in uncovering details about Israel's beginnings. But village life on the whole thrived unabated throughout the millennium even though individual villages disappeared and emerged with some frequency. To a great extent, these hamlets are the unseen and unsung actors in Israel's history.

The Iron I age saw a dramatic increase in the number of villages in the highland region, from ca. 30 villages in 1200 BCE to over 250 by the year 1000. Significant numbers have been identified in other regions of the country.<sup>6</sup> On average, there was an increase of approximately eight times

<sup>6</sup> According to recent counts, which in most cases have not yet been completed for the entirety of the respective territories and will eventually produce even higher numbers, 240 Iron I sites have been identified in the central highlands: 122 in the territory known by the tribal name of Ephraim, 96 in Manasseh, and 22 in Benjamin and Judah. This total number in the central hill country during Iron I had risen to 254 in a report by the end of 1992; see Israel Finkelstein, "The Emergence of Israel: A Phase in the Cyclic History of Canaan in the Third and Second Millennia BCE," in *From Nomadism to Monarchy: Archaeological and Historical Aspects of Early Israel* (ed. Israel Finkelstein and Nadav Na'aman; Jerusalem: Israel Exploration Society; Washington: Biblical Archaeology Society, 1994) 153–71. In addition, evidence of at least

the number of villages known from the end of the Late Bronze period. Moreover, roughly half of these villages were founded on sites where there had been no previous settlement. This relatively short period of only two centuries was thus witness to a major demographic shift that became decisive for the remainder of Israel's social history. While cities were later built in these same highland areas during Iron II, the proliferation of villages continued, although not at the same rate as had occurred in Iron I. In the traditional tribal territory of Ephraim alone, the number of villages nearly doubled in the course of Iron II, and at the same time their average size increased as well. Statistics for the distribution of village sites during Iron II and later periods are not yet as readily available as they are for Iron I, perhaps because archaeologists and historians have typically been much more intrigued by the processes of urbanization and statehood during this period. However, we can at least note that living in villages remained the option most exercised by Israelites throughout the people's entire history. War wreaked the greatest havoc on larger cities, while villages—though vastly less defensible—were as a group more likely to survive the invasion of foreign troops, such as occurred during the eighth and sixth centuries BCE. Passing armies could easily commandeer agricultural resources and compel villagers to join them as slaves or soldiers, and since a village could scarcely offer resistance there would be little reason to attack and destroy it. In this respect the formidably walled cities proved less resilient and more vulnerable than did the villages.

Settlements were normally not scattered indiscriminately over the landscape. Rather, several key factors affected the location of villages: permanent and reliable water supply, preferably within a distance of 1 km. but often further away;<sup>7</sup> habitable terrain; proximity to the means for subsistence,

another 68 villages from this period has emerged in the Galilee, upwards of 60 in the Jordan Valley, and some 73 in Transjordan (Finkelstein, "Emergence," 162, sets the number in Transjordan during Iron I at 218, as of 1992). The archaeological surveys on which these data are based are published in various reports; see especially the overviews and the bibliographies in Israel Finkelstein, *Archaeology of the Israelite Settlement* (Jerusalem: Israel Exploration Society, 1988); Lawrence E. Stager, "The Archaeology of the Family in Ancient Israel," *BASOR* 260 (1985) 1–35; and James A. Sauer, "Transjordan in the Bronze and Iron Ages: A Critique of Glueck's Synthesis," *BASOR* 263 (1986) 1–26. For historical, political, and social assessments in light of these findings, see Gösta Ahlström, *The History of Ancient Palestine* (Minneapolis: Fortress; Sheffield: Sheffield Academic Press, 1993); and Thomas E. Levy, ed., *The Archaeology of Society in the Holy Land* (New York: Facts on File, 1995).

<sup>7</sup> Finkelstein, *Archaeology*, 194–98. A number of village sites in the Ephraim area, for example, were 2 km. or more removed from water sources, especially in the highland areas with substantial rock formations. Cisterns as well as storage jars provided the inhabitants with the necessary means for procuring and maintaining a water supply.

usually pasturage or arable land; availability of materials suitable for building houses, making pottery, and meeting other common needs for implements and the like; and relative safety, probably less from military forces than from marauding raiders. One or more of these factors might be sacrificed if others proved more inviting. Quite clearly, the means for subsistence ranked as being of chief importance, and it should come as no surprise that villages situated themselves most frequently next to arable land. Yet one finds settlements in all types of terrain, from the desert fringe to very rocky regions. In periods when a centralized state and economy could dictate it, a village might specialize in the production of one or the other commodity, depending especially upon what was conducive in its environmental context. Villages were much less likely than were cities to be situated near the well-traveled roads; one can speculate that the reason lay in either the need for safety or the preference for isolation. Villagers sought a place where they could subsist and survive, as a rule by their own hand. Notable exceptions were the villages situated deliberately near larger cities in order to supply these urban centers with needed agricultural and pastoral produce. Known as the בנות ("daughters") of the cities, these outlying satellites represent either an accommodation of the typical village to the market potential provided by population centers, or a coercive move by the urban powerful in order to satisfy the needs of those in the city.<sup>8</sup>

Villages presumably associated most compatibly and congenially with other villages like themselves, however. Density figures alone are rather revealing.<sup>9</sup> The average for all types of topography throughout the entire central highlands of Israel by the latter part of Iron I was at least 1 village per 18 sq. km. (7 sq. mi.); as more villages are discovered, this number will rise even further. During Iron II density almost doubled, but then receded somewhat throughout later periods before rising to its greatest level in the Roman and Byzantine periods.<sup>10</sup> Considering only the Iron I ratio of 1:18

<sup>8</sup> Frank S. Frick (*The City in Ancient Israel* [SBLDS 36; Missoula, Mont.: Scholars Press, 1977]) has appropriately emphasized that an antagonism did not necessarily exist between city and countryside since the inhabitants of each needed the other for survival. There was, nonetheless, a difference between them in interests and powers; see my essay, "Political Rights and Powers in Monarchic Israel," *Semeia* 66 (1994) 93-117.

<sup>9</sup> In one study of the territory of Ephraim, Iron I villages in the central range occurred as frequently as one per ten sq. km. (3.9 sq. mi.), while in the western slopes the density thinned to one village for every 34 sq. km. (13.3 sq. mi.). Finkelstein, *Archaeology*, 190.

<sup>10</sup> Stager, "Archaeology," 4-5. On the process of ruralization during the Persian period, see Kenneth Hoglund, "The Achaemenid Context," in *Second Temple Studies*, vol. 1: *The Persian Period* (ed. Philip R. Davies; JSOTSup 117; Sheffield: Sheffield Academic Press, 1991) 54-72.

sq. km., the distance between villages would average a mere 4 km. (2.5 mi.). Of course, villages tended to cluster in hospitable terrain, and roughly 2 km. or less between them was not uncommon. In other words, quite typically two or more villages would be within eyesight of each other or a rather short walking distance apart. Such physical proximity suggests the need for some shared strategies and structures in the social, political, and economic—and thus also legal—arenas if the villages in a given area were to coexist and thrive.

It should be noted, however, that villages were by no means exclusively located in isolation from larger settlements. As indicated, cities usually had villages around them to help supply their needs for food and other products. Even in the absence of a city, a given region often had at least one town that was more populous than the other settlements and to which the smaller hamlets were subordinated, even if in only informal ways. Such a situation would suggest a hierarchy of interests and power, which could variously constitute or enhance the cooperative strategies within a village or among contiguous villages of similar size. If life for the majority of Israelites was lived out in the context of small villages, they normally were impacted by the presence of larger settlements—if not in their immediate vicinity, then at a further distance away but nonetheless powerful and demanding.

### *Size and Population*

The Israelite villages were generally small in size, on average only 0.75–1.5 acres (0.3–0.6 hectare) and very often not more than a cluster of just a few homes.<sup>11</sup> Settlements of 7–14 acres (3–6 hectares) qualify as regional towns, and larger than that would be a city (Megiddo: 25 acres; Jerusalem at the time of Josiah: 125 acres). On average, only about half of a village's total space was occupied by residences. Thus a settlement encompassing one acre, for example, contained roughly 20–30 houses, although individual villages could be more or less densely inhabited.

Calculating the population of settlements is fraught with difficulties, and several different methods have been proposed, each with inherent problems.<sup>12</sup> Best estimates indicate that village population typically comprised

<sup>11</sup> For the Iron I period in the territory of Ephraim, Finkelstein (*Archaeology*, 192) distinguishes among three sizes of villages: a large central village, covering at least 0.5–0.6 hectare (1.25–1.5 acres); a small village of some 0.3–0.4 hectare (0.75–1.0 acre); and a grouping of only a few houses (or tents?). For the area between Shechem and Ramallah, he indicates (“Emergence,” 162–63) that 23% of the sites during Iron I were over 0.5 hectare (1.25 acres) compared to 66% in Iron II, and 50% of the sites during Iron I were only 0.1–0.2 hectare (0.25–0.5 acre) compared to 34% in Iron II. Cf. Stager, “Archaeology,” 3.

<sup>12</sup> For a survey and critique of various methods of estimating the population of

75–150 people, but very frequently even less than 75. Sites with only a few houses clustered together were not uncommon; in fact, during times such as the Iron I period in the territory of Ephraim, virtually half of all the known sites were very small, embracing fewer than 50 souls each.<sup>13</sup> All villages taken together yield the following totals: ca. 21,000 sedentary Israelites living west of the Jordan about 1150 BCE, and ca. 51,000 at the close of the 11th century BCE.<sup>14</sup> During Iron II the total village population increased appreciably, as did the number and size of cities. One recent estimate<sup>15</sup> sets the total population in the eighth century at the time of the arrival of the Assyrians at about 460,000, of which 350,000 were in the North and 110,000 in the South. Of importance for our purposes, approximately 68% of the population in Cisjordanian Israel and 71% in Judah lived outside the larger settlements. All of these figures underscore the prevalence of village life throughout the country, but ironically not its dominance over the culture. We meet here a hidden world, all too frequently undervalued by students of antiquity.

Summarizing the social makeup, institutions, and traditions of so many tiny settlements disbursed over the landscape is a daunting and precarious enterprise. This very fact should caution us against assuming that the laws in a text such as the Book of the Covenant faithfully reflect the legal practices of Israelite village life. There were far too many villages, too little direct contact among them, too wide a territory, and too long a time period for us to assume that we can know them and their customs well. Any suggestions we make about village society must consequently be very general in scope and tentative in nature.

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ancient Israel, see especially Yigal Shiloh, "The Population of Iron Age Palestine in the Light of a Sample Analysis of Urban Plans, Areas, and Population Density," *BASOR* 239 (1980) 25–35. The main methods are: reasoning from water resources or agricultural potential of the area; applying a formula based on roofed living space (usually one inhabitant per 10 sq. m. [108 sq. ft.] of an enclosed dwelling), or a family coefficient (usually four persons per home); or calculating on the basis of a density coefficient per square meter of the whole settlement in question, a figure reached in light of multiple factors including the number and size of houses, the amount of public space, and the nature of the settlement. According to Finkelstein (*Archaeology*, 331–32), a reasonable, conservative density coefficient is 25 inhabitants per 1000 sq. m. (100 people per acre). Shiloh ("Population") works with a higher number, 40–50 persons per 1000 sq. m. (160–200 people per acre).

<sup>13</sup> Finkelstein, *Archaeology*, 192–93.

<sup>14</sup> *Ibid.*, 330–35.

<sup>15</sup> Magen Broshi and Israel Finkelstein, "The Population of Palestine in Iron Age II," *BASOR* 287 (1992) 47–60.

### Identifying Laws

To determine the legal traditions operative within the villages of ancient Israel requires attention to the specific characteristics of their society, about which we have little direct information. Three types of sources are available, each presenting its own special difficulties: a) the texts of the Hebrew Bible, which must be critically interpreted because they stem not immediately from the villages themselves but from people in the cities who purport to be writing in part about non-urban life; b) the material culture, the mute and circumstantial evidence uncovered by archaeologists and studied by historians interested in the life-styles and events of antiquity; and c) comparative information from other cultures, stemming from anthropologists or historians but not necessarily or always bearing directly on circumstances prevalent in ancient Israel.

Twelve criteria strike me as fitting in the effort to identify the laws or principles in the biblical texts that most likely reflect the legal controls at work in some—though, as mentioned, quite likely not in all—Israelite villages:

1. Village laws reflect and promote the social customs and traditions of the community. Representing what is often called customary law, they are developed and transmitted in oral form.
2. Village laws recognize the social and political hierarchy basic to village life and kinship groups, especially the patriarchal structure and local leadership.
3. Village laws rarely involve any formal institutions beyond kinship, at most only an *ad hoc* deliberative gathering of village elders.
4. Village laws seek to ensure cooperation and eliminate discord among members of the community. They attempt, as needed, to resolve conflicts, to remedy losses and injuries, and to clarify liability.
5. Village laws are especially concerned with matters affecting the family, kinship groups, marriage, and sexuality.
6. Village laws do not contemplate the more complex, layered society found in cities or at the national level.
7. Village laws tend to be oriented toward life on the land, i.e. toward agricultural or pastoral existence.
8. Village laws are sensitive to the priorities and perils inherent in a subsistence economy.
9. Village laws are more likely than urban or national laws to be responsive to conditions of vulnerability among the lower classes, as in the case of persons who suffer from hardships, death of a provider, or natural catastrophe.
10. Village laws foster the interests of the given village and, usually, those of nearby or similar villages as well, especially those with which there may be kinship ties.
11. Village laws do not support the diversion of the community's produce or resources to cities or other parts of the country, except insofar as a direct benefit (e.g., trade or security) can come to the villagers as a result.
12. Village laws tend to exclude or give limited protection to outsiders.

Not all of these criteria will be evident in each law, of course. However, I find it rather difficult to imagine any given law in a village running directly counter to these criteria. Again, for all the diversity presumably prevailing among the villages spread across the land of ancient Israel, the kinds of circumstances or orientations reflected in these criteria seem to be fundamental, and they also allow each separate community substantial latitude to develop its own customs. Villages with laws deviating significantly from these norms were most likely to be located close to cities and thus under their influence, or to be in existence during those monarchic or imperial times when overlords, large landowners, tax collectors, military and labor recruiters, and others representing outside interests interfered in village affairs to a greater extent than the villagers would have desired. Absolute economic and political equality within a given village cannot be expected, but much less of an imbalance prevailed than in larger settlements.

Admittedly, a considerable amount of speculation has contributed to this list of criteria, and others might construct a list quite different from this—or refrain altogether from even trying. In my view, however, the enterprise is warranted for four fundamental reasons: a) many hundreds of villages existed throughout the country and throughout Israel's history and contained the vast majority of the population, which should be reason enough for the historian to pay them attention; b) despite the variety among them, they must have shared much in terms of their social structure and social values because of similarities in their cultural backgrounds, their means of livelihood, their coping with outside pressures, and their response to the natural environment; c) enough information has now become available, especially from archaeology and anthropology, to give us a reasonable sense of issues and priorities in small-scale communities of this type; and d) customary laws develop quite naturally in such social groups in order to maintain order, resolve conflicts, and maximize the chances for survival. It therefore seems quite legitimate to inquire into the nature of village law, even in the absence of documents recording them explicitly. The above criteria do not spell out the content of the laws, but rather indicate their tendencies and their aversions.

### The Book of the Covenant

The Book of the Covenant, or Covenant Code, serves as a convenient test-case for examining the relation between village law and Pentateuchal law. On the face of it, a number of the topics in Exodus 21–23 fit quite plausibly in a village context, especially the laws dealing with liability, restitution, marriage, violence, judicial procedure, and more. Other topics and specific laws, however, betray more of an urban or national agenda.

Laws having to do with slavery could hardly have been commonplace

in villages, where subsistence needs were met only with considerable difficulty. To be sure, slaves in the ancient economy did not always denote luxury since persons could become enslaved through a variety of means, including capture, birth, or hardship. But in village contexts the average family did not have the means or the opportunity to acquire slaves; the greater danger was that these villagers would fall into debt and have no other recourse than to sell themselves into slavery. The impulse toward benign treatment of slaves and toward release of slaves after six years (Exod 21:2) conforms to the self-interests of villagers who could easily become indentured. Yet to have had teeth, the various laws detailing treatment (21:2–11, 20–21, 26–27, 32; 23:12) must have arisen in a context, such as a city, where slavery was an institution that could to some extent be regulated.

Exod 22:28 (Hebrew 22:27) contains an apodictic prohibition not to curse God or the leader of the people. This sudden reference to a “leader,” when no other similar mention appears in these chapters, is startling, all the more so by being coupled in the same sentence with the warning against cursing God. The word for leader, *šāḥ*, can well refer to a local or tribal leader, but just as easily to a king, which seems in this case especially likely because the person is identified as the “leader of your people.” The close connection between the king and God occurs often in the Hebrew Bible, serving as an effective legitimization of the authority and standing of the monarch. Such an elevation of the distant royal house undercut the self-interests of those residing in the villages, who would not have thought to mandate such respect except as a self-protective measure.

Certain of the laws regarding judicial procedure reflect circumstances at an urban or national level. The perversion of justice for the poor (23:6) occurred more commonly in such contexts; villages may have had certain vulnerable individuals, but not whole classes of poor—unless essentially the whole village population qualified as being poor. Similarly, bribing those who sit in judgment (23:8) is certainly possible in village contexts, but a group of elders hearing a case against a person who is a neighbor and perhaps even a relative is less likely to be turned through bribery than is a judge who can use the office for personal gain. Injunctions to give truthful witness (23:1–2, 7) can be expected in both village and urban settings.

Virtually all of the religious laws in the Book of the Covenant reflect the interests of a centralized cultic institution, such as existed in the capital city or other urban or even town centers. BC begins with (or is preceded by) the so-called altar law in Exod 20:22–26, which combines elements from both urban and rural culture. The first part prohibits making gods of silver or gold, a law that can realistically reflect only a culture in which discretionary wealth was available; rhetorically, of course, villagers might also have proscribed such use of silver or gold, but possessing no such resources themselves they would scarcely have ordained such restrictions for their

own cultic practices. The law continues, however, with an injunction to build altars only of earth or of undressed stone. With such a practice we seem to be in the village context, but it is also possible that this law in its present form reflects a reactionary or re-pristinizing impulse of priests at a central sanctuary who either sought to stop changes in cultic practices or aimed to cater to villagers coming to the city.

The other religious laws found in Exodus 21–23 seem to stem from the urban cult. The effort to prohibit sacrifices to other gods (22:20 [Hebrew 22:19]) expresses the interest in stamping out the pluralism of deities worshiped across the land, above all in the villages outside the reach of the central priesthood. Requirements for sacrificing the first-fruits (22:29–30 [Hebrew 22:28–29]) originated quite plausibly in the village contexts where the fertility of animals and crops was of immediate concern, but these laws have the flavor of commands to bring the hard-won harvest from the countryside into the cities. Similarly, the celebration of the three annual festivals (23:14–19) springs, we can imagine, from rural rites, especially the two timed for the harvest periods, but again these formulations suggest that the produce be brought to the central sanctuaries and offered as sacrifices there.

Most of the other laws present in the Book of the Covenant reflect conditions and norms conceivable in villages, although they are often formulated in a manner suggestive of urban or national interests as well. Issues of marriage and sexuality functioned as defining social indicators in villages, and controls arose to keep the lines clearly drawn. Remarkably, though, BC contains only the slightest references to marriage. One case focuses on marriage involving slaves (21:2–11), a social phenomenon reflecting a wealthier economy than villages typically managed; a slight hint of the vulnerability in such a marriage is expressed by this law, suggesting perhaps the viewpoint of the underclass, although the slave owner benefits as well if the male slave chooses to remain with his enslaved family. The only other marriage law (22:16–17 [Hebrew 15–16]) deals with the seduction of an unengaged virgin daughter; a bride-price is to be paid, and the man is to marry the woman unless her father forbids it. A prohibition against bestiality (22:19 [Hebrew 22:18]) is the sole law governing sexuality. For all the importance that marriage and family must have played in village society, the paucity of BC laws controlling their diverse aspects is a curiosity. Did the drafters of BC not understand the nuances of kinship laws within the villages, or was there too much variety from place to place to allow for a reasonable representation in this literature?

Laws touching directly on the primary means of livelihood in the villages, however, do occur, but again without much breadth of topic. Cultivation of fields figures as an issue of liability in the cases of a crop being destroyed due to negligence, either from grazing livestock or from fire

(22:5–6 [Hebrew 22:4–5]). The only other situation envisions not a case of legal conflict but rather a means for providing for the poor by letting the land lie fallow in the seventh year (23:10–11); as mentioned above regarding 23:6, this text with its acknowledgment of a class of poor people points to a stratified society, and the law may in fact issue from an urban group that seeks to use an agricultural practice as a means of offering relief to the poor, even though villagers as a whole were often not far from the poverty level themselves. Most of the laws regarding work animals and cattle (21:28–36; 22:1,3b–4 [Hebrew 21:37, 22:2b–3]) treat problems of liability or theft. Two other provisions, however, seem on the surface to speak of compassion and consideration: returning a donkey that has gone astray and helping up a donkey that has fallen under its burden (23:4–5); in both instances, however, property issues are also at stake. Work animals were certainly seen and used in towns and cities, so these laws may not be unique to rural contexts.

The legal constraints in BC against theft stem plausibly from villages; certainly, at least, some such provisions are to be expected there. However, these specific laws do not quite match the rural conditions where only 50–150 people are clustered in a community, everyone knowing well what others possess. It would be hard to get away with stealing animals (22:1, 3b–4 [Hebrew 21:37; 22:2b–3]), and breaking and entering is only slightly more thinkable among neighbors (22:2–3a [Hebrew 22:1–2a]). Either these laws were designed to specify punishments that would affect primarily only outsiders coming to the village, or they point to urban contexts where such theft stands a better chance of success. Liability for property held for another person (22:7–8, 10–15 [Hebrew 22:6–7, 9–14]) could also apply in both contexts; when animals are the property in question, the village is the most likely setting. On the other hand, if this property belongs in fact to a large landowner who has lent it to a tenant farmer, then these laws betray less a village ethos than a class division.

The legal terms for dealing with violence—murder, kidnapping, bodily injury (21:12–19, 22–25)—are quite conceivable as sanctions in village dealings. Specifying a place to which a manslayer could flee the blood-avenger suggests a national or, perhaps, territorial strategy that isolated villages could scarcely develop alone. All of these rules can also function in urban contexts.

Finally, the laws providing for the protection of the vulnerable—strangers, widows, orphans, and the poor (22:21–27 [Hebrew 22:20–26]; 23:9)—mirror the vulnerability of the village population itself. Such compassionate concern would be consistent with the people's values, although the text itself has the ring of rhetoric and exhortation, not of enforceable laws. Money-lending and the taking of collateral point to the presence of wealthier persons, such as were to be found in cities or large estates. None-

theless, the interests of villagers who were exposed to such oppression and exploitation are discernible in these laws.

### Conclusion

There is not much in the Book of the Covenant that can be traced unequivocally to the villages of ancient Israel. As a whole, this text is a literary artifact and does not necessarily bear resemblance to any actual legal formulations or practices of the period. Just because it takes the form of directives, restraints, prohibitions, and sanctions does not mean that we have in it a record of living laws, nor even of a promulgated code. To assume, as has traditionally been done by modern interpreters, that any of these statements reproduce legal controls actually at work in one or another social context of ancient Israel goes beyond the evidence we possess—and is just that: an assumption on our part.

The best we can manage in testing for correspondence between the text and social norms of the period is to apply a principle of plausibility, based on a mixture of textual, material, and comparative indications. On these terms, internal indications point toward an urban provenance for Exodus 21–23. The institution of slavery, the presence of both wealth and poverty, houses large enough to be burglarized while the residents sleep, a judge who can be bribed, a leader who should no more be reviled than should God, a formalized cult to which sacrifices are expected to be brought—all such phenomena are scarcely imaginable in villages averaging 50–150 inhabitants, most of them agriculturalists or pastoralists barely surviving in a subsistence economy. On the other hand, however, some vestiges of customs and values conceivable in such villages can perhaps be detected in our text: some theft controls, two marriage or sexuality customs, liability specifications, instructions on treatment of work animals, sanctions against violence, guidelines for religious veneration using simple materials and the fruits of rural production, and concern for the vulnerable, both slaves and poor. Yet in no case are these topics treated fully enough to count as adequate protections or provisions for the ordering of life in the villages. The writers of Exodus 21–23 have at most incorporated highly selected legal traditions that *may* have been operative in *certain* villages. Of course, there were also agriculturalists living in or just outside of the cities who could have served as a source for these notions of the laws of the land. The villagers did not produce this text, not even something amounting to a first draft. Too many indications of city interests and too few of the villagers' must lead us to conclude that the Book of the Covenant, from its first appearance onward as a literary document, was a product of the city.

For what reason is it even important to consider the terms of village life when Israel's most notable cultural remnants—the texts, the monumental

buildings and fortifications, the impact on history—stem from cities? Two compelling grounds suggest themselves. First, a social history seeking to appreciate the terms of living faced by the majority of the population, those who do not count among the powerful and influential, can round out our picture of that culture. Although our efforts at historical recovery are severely hampered because of the inadequacy of the sources, we should attempt to identify conditions and perspectives different from those dominating the relatively few cities of Israel—or at least question whether urban viewpoints coincide with the interests and customs of those living elsewhere. Second, this larger socio-historical picture can provide insight into the agenda of the writers of our texts, which were produced by, and in all likelihood mainly for, persons situated in the cities. The agricultural and pastoral economy depended on the work of all the villagers across the land, but as long as the persons at the center were able to control the economic and political systems, which a monarchic structure facilitated, it was not a high priority for them to cater overmuch to the interests of these villagers.

Both of these reasons should affect the way we think about the texts and culture of ancient Israel. Specifically, we can expect the legal literature to retain not much more than occasional traces of village practices and values, mediated always through the experiences and self-interests of urban, literate, largely upper-class or privileged groups. Nonetheless, the villagers themselves had to find order for their own social existence, which necessitated legal norms and structures for them to deal with disruptions and conflict. Contrary to conventional assumptions by modern interpreters, these villagers would have found little benefit in contributing to the production of the biblical legal texts, neither the Book of the Covenant nor any other Pentateuchal collection. Their primary interests lay not in texts but in their own traditions and in survival in the face of often extraordinary political, economic, and environmental odds.