

SARAH J.K. PEARCE

The Words of Moses

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Sarah J. K. Pearce

The Words of Moses

Studies in the Reception of Deuteronomy
in the Second Temple Period

Mohr Siebeck

Sarah J. K. Pearce, born 1965, 1988 Bachelor of Divinity (University of London); 1995 DPhil. (Oriental Studies, University of Oxford); Ian Karten Professor of Jewish Studies, University of Southampton.

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For Geza Vermes (1924–2013)

מורה צדק

May his memory be for a blessing.

Acknowledgments

The main part of this book is a much revised, updated and expanded version of my Oxford DPhil thesis, supervised by Geza Vermes and Martin Goodman, and examined by Philip Alexander and Tessa Rajak. For their constant encouragement then and now, I owe them all a very great debt of gratitude. During that time and over the many years since, I have received guidance and advice on particular topics as they have developed. I would like to acknowledge, with deep gratitude, the generosity of Ellen Birnbaum, Julie Clague, Richard Coggins, Philip Davies, Jennifer Dines, Jörg Frey, Charlotte Hempel, Bernard Jackson, Robert Murray, Jane Rowlandson, Willem Smelik and Hugh Williamson. Finally, I am deeply appreciative of the encouragement of the editors and publishers at Mohr Siebeck to return to this work and to present it in this revised format.

Sarah J. K. Pearce

Preface

‘These are the words of Moses’ (Deut. 1:1).

Thus begins the book of Deuteronomy, the fifth book of the Pentateuch, with a bold claim to represent the final and unalterable statement of the divine revelation as mediated by Moses. With its origins in the Babylonian Exile and pre-exilic traditions, Deuteronomy acquires an unrivalled status in the Second Temple period as *the* Book of the Law par excellence. More than any other book of the Pentateuch, it is Deuteronomy’s ideology which stamps its character on the Judaism of this period: the insistence on one Temple, based in the holy ‘place’, Jerusalem; its relentless programme for the elimination of idolatry; the interpretation of past and present as determined by commitment to the Law of Moses; the centrality of the laws of Moses. From the beginning of the Second Temple period on, the fundamental place of Deuteronomy is attested across a wide spectrum of practice and belief: its profound influence at the inner-exegetical level on the development of Scripture, above all in the editing of the Prophets and the historical writings (Samuel-Kings; Chronicles); fragments of multiple copies of Deuteronomy texts from the caves of Qumran; the papyrus remains of Greek translations of Deuteronomy in Hellenistic Egypt; and the central place of Deuteronomy in the reinscriptions of Mosaic Law by the author of the Temple Scroll; the Torah scholar, Philo of Alexandria; and the Jerusalem priest, Flavius Josephus.

What all these sources point to is the fluid nature of the meaning of Deuteronomy in the Second Temple period. In this world, the ‘words of Moses’ are transformed by both speaker and audience.¹ When we think about the book of Deuteronomy in its ancient setting, and its place in Second Temple Judaism, the tendency is usually to think in terms of the Masoretic Text (MT) of Deuteronomy, a text not established in its final form until late antiquity. As students of Biblical Studies, this is the Deuteronomy we meet in the University; and it is this version of Deuteronomy that underlies most accounts of the Second Temple period for which, rightly, the Deuteronomistic tradition is regarded as a fundamental

¹ On the rich potential of Deuteronomy for transformation in new settings: B. M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation*, Oxford / New York, 1997.

influence. All the evidence indicates, however, that MT Deuteronomy was but one of several authoritative text traditions in this period.

For the historian, our most substantial physical evidence for the representation of Deuteronomy in the Second Temple period is found in a range of other sources: the Temple Scroll and other writings discovered in the caves of Qumran; LXX Deuteronomy, the earliest and best attested of all the ancient translations of the Greek Bible; the commentaries on the Greek Pentateuch by Philo of Alexandria; the rewritten Pentateuch in Books 1–4 of the *Jewish Antiquities* by Josephus; and the various citations and developments of Deuteronomy in the literature of Greek-speaking Judaism, including the New Testament. If we want to know how Jews understood ‘the words of Moses’ in the Second Temple period, this is where we must begin, with the diverse evidence for text and interpretation among the sources of the Second Temple period.² To that end, this book sets out to provide a detailed commentary on the laws of Deuteronomy in Second Temple period sources. The principal focus of the commentary is on letting the ancient sources speak for themselves, to understand the ancient interpreters of Deuteronomy, first and foremost, in their own terms and their own contexts. The approach to the translation of the sources is, for the most part, deliberately literal, so as to replicate as closely as possible the distinctive and peculiar character of the individual interpreter. In accordance with the guiding principle of letting the sources speak for themselves, careful consideration is given, in every case, to the type of text of Deuteronomy with which the interpreter worked. I do not work, in other words, with assumptions about the normative status of the Masoretic Text in the Second Temple period.

The commentary focuses on three examples of laws unique to Deuteronomy: the prohibition of single testimony; the appointment of a judiciary; and the law for the supreme-court. As the sources indicate, these were crucial areas of interest for the ancient interpreter, and generated a very rich body of interpretation. Their interpretation is also of great importance for historians of Jewish practice and belief in the Second Temple period. Generally speaking, modern histories tend to treat these sources as evidence for the actual administration of justice in Jewish communities; that when Philo, Josephus and others write about judges, witnesses and courts, they describe the way things were. The evidence, as I understand it, points to a very different picture, in which it becomes increasingly difficult to know whether any of this material goes beyond theoretical models. There is to date no systematic survey of biblical law in the Second Temple period. More than a hundred years ago, the German Jewish scholar Heinrich Weyl reiterated the hope expressed by Zacharias Frankel that such a project should be undertaken,

² This kind of approach is brilliantly embodied in the many works of James L. Kugel, including his monumental *Traditions of the Bible: a Guide to the Bible as it was at the Start of the Common Era*, Cambridge, MA, 1998.

so that we might better appreciate the context which gave birth to the rabbinic system of legal interpretation. One of the aims of this commentary is to make a modest contribution towards that much wider goal.³ The main part of this book is a revised version of my 1995 Oxford DPhil, supervised by Geza Vermes and Martin Goodman, and examined by Philip Alexander and Tessa Rajak. For their constant encouragement at that time and in the years since, I owe them all a very great debt of gratitude. I am also very appreciative of the encouragement of the editors and publishers at Mohr Siebeck to return to this work and to present it in this revised format.

³ H. Weyl, *Die jüdischen Strafgesetze bei Flavius Josephus in ihrem Verhältnis zu Schrift und Halacha*, Berlin, 1900, 6.

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Abbreviations

BASOR	<i>Bulletin of the American Schools of Oriental Research</i>
BDAG	<i>A Greek-English Lexicon of the New Testament and Other Early Christian Literature</i> , 3 rd edn, rev. and ed. F. W. Danker, Chicago, IL, 2000.
BDB	<i>A Hebrew and English Lexicon of the Old Testament with an Appendix Containing the Biblical Aramaic</i> , ed. F. Brown, S. R. Driver and C. A. Briggs, rev. edn, Oxford, 1957.
BGU	<i>Berliner griechische Urkunden</i>
CBQ	<i>The Catholic Biblical Quarterly</i>
DBI	<i>A Dictionary of Biblical Interpretation</i>
DOTTE	<i>New International Dictionary of Old Testament Theology</i> , Carlisle, 1986.
DSD	<i>Dead Sea Discoveries</i>
EDDS	<i>Encyclopedia of the Dead Sea Scrolls</i>
ETR	<i>Études Théologiques et Religieuses</i>
GRBS	<i>Greek, Roman and Byzantine Studies</i>
HALOT	<i>Hebrew and Aramaic Lexicon</i>
HAR	<i>Hebrew Annual Review</i>
HUCA	<i>Hebrew Union College Annual</i>
IEJ	<i>Israel Exploration Journal</i>
IOS	<i>Israel Oriental Studies</i>
JBL	<i>Journal of Biblical Literature</i>
JJS	<i>Journal of Jewish Studies</i>
JQR	<i>Jewish Quarterly Review</i>
JSJ	<i>Journal for the Study of Judaism</i>
JSP	<i>Journal for the Study of the Pseudepigrapha</i>
JTS	<i>Journal of Theological Studies</i>
LCL	Loeb Classical Library
LSJ	<i>Greek-English Lexicon</i> , compiled and edited by H. G. Liddell and R. Scott, revised and augmented throughout by H. S. Jones with the assistance of R. McKenzie, with a revised supplement, Oxford, 1996.
LXX	Septuagint
MGWJ	<i>Monatsschrift für Geschichte und Wissenschaft des Judentums</i>
MM	<i>The Vocabulary of the Greek Testament: Illustrated from the Papyri and Other Non-Literary Sources</i> , J. H. Moulton and G. Milligan, Grand Rapids, MI, 1930.
MT	Masoretic Text
NTS	<i>New Testament Studies</i>
OCD	<i>Oxford Classical Dictionary</i>
OLP	<i>Orientalia Lovaniensia Periodica</i>
OT	<i>Oudtestamentische Studien</i>
PAAJR	<i>Proceedings of the American Academy for Jewish Research</i>
RB	<i>Revue Biblique</i>
REA	<i>Revue des Études Anciennes</i>
REJ	<i>Revue des Études Juives</i>
RevQ	<i>Revue de Qumran</i>

RHR	<i>Revue de l'Histoire des Religions</i>
RIDA	<i>Revue Internationale des Droits de l'Antiquité</i>
RTL	<i>Revue Théologique de Louvain</i>
SCI	<i>Scripta Classica Israelica</i>
SIG	<i>Sylloge Inscriptionum Graecarum</i>
SPA	<i>Studia Philonica Annual</i>
TDNT	<i>Theological Dictionary of the New Testament</i>
TDOT	<i>Theological Dictionary of the Old Testament</i> , eds G. J. Botterweck and H. Ringgren, Grand Rapids, MI, 1977–
TLG	<i>Thesaurus Linguae Graecae</i>
TWAT	<i>Theologisches Wörterbuch zum Alten Testament</i> , eds G. J. Botterweck and H. Ringgren, Stuttgart, 1973–1995
VT	<i>Vetus Testamentum</i>
YCS	<i>Yale Classical Studies</i>
ZAW	<i>Zeitschrift für die alttestamentliche Wissenschaft</i>

Introduction

a) Deut. 16:18–17:13 and its ancient interpreters

MT Deut. 16:18–17:13

18 You shall appoint judges and officials for your tribes in all your towns that the Lord your God is giving to you, and they shall judge the people with just judgment. 19 You shall not pervert justice; you shall not show partiality; and you shall not take a bribe, because the bribe blinds the eyes of the wise, and subverts the cause of the just. 20 Justice, justice, shall you pursue, so that you may live and take possession of the land that the Lord your God is giving to you.

21 You shall not plant a sacred post (*asherah*), any wooden pole beside the altar of the Lord your God that you may make. 22 And you shall not set up a stone pillar – a thing that the Lord your God hates. 17:1 You shall not sacrifice to the Lord your God an ox or a sheep bearing any defect, anything seriously wrong; because that is an abomination to the Lord your God.

2 If there is found among you, in one of your gates which the Lord your God is giving you, a man or a woman who does what is evil in the eyes of the Lord your God, in transgressing his covenant, 3 by turning to worship other gods and bowing down to them – to the sun or the moon or any of the host of heaven, which I did not command. 4 And if it is told to you and you hear of it, you shall inquire carefully, and if the matter is truly established, that this abomination has been perpetrated in Israel, 5 then you shall take out to your gates that man or that woman who has done this evil thing, and you shall stone them with stones so that they die. 6 On the evidence of two witnesses or three witnesses he who is to die shall be put to death. He shall not be put to death on the evidence of only one witness. 7 The hands of the witnesses shall be upon him first to put him to death; and afterwards the hand of all the people. So shall you exterminate the evil from among you.

8 If a matter for judgment is too difficult for you, whether between one kind of bloodshed and another, between one kind of legal case and another, or between one kind of assault and another, matters of dispute in your towns, then you shall go straight up to the place that the Lord your God will choose, 9 where you shall come before the Levitical priests and the judge who will be in office in those days, and you shall present your question, and they shall declare to you the word of judgment. 10 And you shall act according to the word that they declare to you from that place that the Lord will choose, and you shall be careful to act in accordance with all that they teach you. 11 You shall act according to the law that they teach you and according to the judgment that they proclaim to you; you shall not deviate from the word that they declare to you either to the right or to the left. 12 And the man who acts presumptuously by not obeying the priest who is standing there to serve the Lord your God, or the judge, that man shall die. And you shall sweep away the evil from Israel. 13 And all the people will hear and be afraid and will not act presumptuously again.

(1) *MT Deut. 16:18–17:13: Introductory Remarks*

Deut. 16:18–17:13 forms the first part of a sequence of laws dealing with what S. R. Driver, in his classic commentary on the book of Deuteronomy, calls ‘The Office-bearers of the Theocracy’.¹ In Deut. 16:18–17:13, the main part of the laws deals with the subject of judges and judicial administration, followed by laws regulating the activities of the king (17:14–20), the priests (18:1–8) and prophets (18:9–22). It has long been recognized that, when read in the wider context of the traditions of the Hebrew Bible, there are a number of remarkable features about these laws and their presentation of the organization of justice in particular. According to the biblical traditions about the monarchy in ancient Israel and Judah, the king acted as supreme judge. In the laws of Deuteronomy, by contrast, the king is given no judicial role but instead is commanded to subject himself to ‘a copy of this law’ under the guidance of the Levitical priests (17:18–20).

In many other contexts in the Pentateuch and other biblical writings, those who have responsibility for the administration of justice in the local communities of the monarchic period are the assemblies of ‘the elders’, who typically give judgments at the ‘gate’ of a community.² In Deut. 16:18–20, the command to appoint local judiciaries refers only to the institution of judges and officials. What place then for ‘the elders’? The latter appear elsewhere in Deuteronomy as local judges, but not here as the authorities appointed to deliver local justice.

According to Deut. 17:8–13, the highest court of justice, the authority for deciding all legal matters which cannot be resolved at local level, is based at the central sanctuary, designated as ‘the place that the Lord your God will choose’ (Deut. 17:8). The final judgment rests with the verdict of the Levitical priests and ‘the judge’ at this sanctuary. The authority of their representatives must be obeyed on pain of death (Deut. 17:12–13). Not only is there no place here for the monarch, who is implicitly subject to the judgment of this court, but the possibility of obtaining a judgment in other sanctuaries is strictly off limits. This law embodies the fundamental preoccupation of the book of Deuteronomy with the centralization of the worship of Israel’s God. In the framework established by Deuteronomy, in which Moses proclaims the divine laws to the people as they stand on the brink of entering the promised land, their God wills to be worshipped only in ‘the place’ which God himself will choose (Deut. 12:5ff). All other places of worship in the land are to be closed down and destroyed (Deut. 12). However, both Deuteronomy and other books of the Pentateuch preserve laws of an earlier period which assume the role of local sanctuaries not only as a place of sacrifice but also as a place to which people would bring matters for judgment before God and his priestly representatives. Deut. 16:18–17:13

¹ S. R. Driver, *Deuteronomy*, Edinburgh, 3rd edn, 1902, 199.

² M. Weinfeld, ‘Judge and Officer in Ancient Israel and in the Ancient Near East’, *IOS 7* (1977), 65–88.

represents a radical new solution for the administration of justice. Local justice is now concentrated exclusively in the hands of a professional class of judges and officials, apparently replacing the traditional system of judgment by local elders (Deut. 16:18–20). Local judiciaries – in which there is no mention of a priestly role – also have responsibility for passing judgment on religious offences in their territory, exemplified by the case of suspected apostates, provided that sufficient testimony is given as proof of the crime (Deut. 17:2–7). In conformity with the principle of the centralization of worship, the resolution of all matters involving recourse to the judgment of priestly representatives is confined exclusively to the central sanctuary (Deut. 17:8–13).

There is wide agreement among scholars that this material is the product of a revisionary process, incorporating earlier traditions for a new age. At the same time, there is no consensus on the date of the final redaction which created this section in its present form. What part of this material belongs to the original laws of Deuteronomy, associated with King Josiah of Judah (c. 648–609 BCE)?³ And to what extent was it shaped by revisers of Deuteronomistic traditions in the period during and after the exile, as the community planned the way forward beyond the catastrophe of the destruction of the first Jerusalem Temple and the downfall of the Judaeen monarchy?⁴ While definitive conclusions remain elusive, the most plausible hypothesis is that the laws of Deut. 16:18–18:22 have their origins in the era of Josiah but were reworked by a new generation in the setting of the exile.⁵

(2) Deut. 16:18–18:22: the first constitution?

The last three decades of critical scholarship on Deuteronomy have witnessed the growth of a substantial body of studies on the laws of Deut. 16:18–18:22.⁶ The most influential thesis developed in these studies focuses on the idea that these

³ Udo Rüterswörden sets out the case for a pre-exilic Deuteronomistic ‘Grundschrift’ in a fundamental treatment of the subject: *Von der politischen Gemeinschaft zur Gemeinde: Studien zu Dt 16, 18–18, 22*, Frankfurt am Main, 1987. According to Rüterswörden, the pre-exilic foundations of Deut. 16:18–18:22 were reworked during the exilic period.

⁴ For detailed discussions of these issues: Rüterswörden, *Von der politischen Gemeinschaft*; J. C. Gertz, *Die Gerichtsorganisation Israels im deuteronomischen Gesetz*, Göttingen, 1993; E. Otto, ‘Von den Gerichtsordnung zum Verfassungsentwurf: Deuteronomische Gestaltung und deuteronomistische Interpretation im Ämtergesetz Dtn 16,18–18,22’, in I. Kottsieper et al, eds, *Wer ist wie Du Herr unter den Göttern?* FS O. Kaiser, Göttingen, 1994, 142–155; Levinson, *Deuteronomy and Hermeneutics*.

⁵ Cf. Rüterswörden, *Von der politischen Gemeinschaft*; Levinson, *Deuteronomy and Hermeneutics*.

⁶ On the state of Deuteronomy studies before and after the beginning of this development, see the following authoritative overviews: M. Weinfeld, ‘Deuteronomy: The Present State of Inquiry’, *JBL* 86 (1967), 249–262; A. D. H. Mayes, ‘On Describing the Purpose of Deuteronomy’, *JSOT* 58 (1993), 13–33, focusing on the debate over whether Deuteronomy represents constitutional law, rules to govern the life of the people of Israel in their land, or whether it is primarily teaching, not law.

laws were designed as a constitution for Israel, a charter for self-government in a future society, with the Torah as the central authority in the life of the community.

In a fundamental contribution to this development, first published in 1981, Norbert Lohfink sets out the case for a new interpretation of Deut. 16:18–18:22 as a ‘Deuteronomic draft constitution’.⁷ Lohfink argues that the redaction of earlier traditions that now makes up this ‘Constitution’ took place in the exile.⁸ It remained a ‘utopian theory’, however, because the monarchy was not restored. The guiding force of this theory, according to Lohfink, was ‘a genuine distribution of the functions of power’:

An earlier and greater concentration of power in monarchy and priesthood is scaled down and an attempt is made to create a balance of power between four different authorities: the judiciary, the king, the temple priesthood, and free charismatics. We may describe the distribution of functions of power as the guiding principle of this constitution for offices ...⁹

In the same decade, a further crucial intervention on this subject appeared in the form of S. Dean McBride’s article on the ‘Polity of the Covenant People: The Book of Deuteronomy’.¹⁰ McBride’s argument has its starting point in an appeal to ancient Jewish interpretation as the source for understanding Deuteronomy as an ideal constitution, based on Josephus’ paraphrase of Deuteronomy, in which he presents the words of Moses as an ancient ‘polity (πολιτεία)’ or ‘constitution’ (*Ant.* 4.176–331). On this view, modern scholars have a great deal to learn from the ancient commentators. According to McBride, Josephus’ decision to present Deuteronomy in these terms represents a provocative challenge, an assertion of ‘the case for Jewish priority in the history of civilized political thought and practice’ over against the super-power of Rome and the notion of Rome’s superiority in the exercise of rational government and the practice of social justice. The extent to which Josephus may be seen to have followed such an agenda in his interpretation of Deut. 16:18–17:13 is discussed in later chapters of this volume.¹¹

⁷ N. Lohfink, ‘Die Sicherung der Wirksamkeit des Gotteswortes durch das Prinzip der Schriftlichkeit der Tora und durch das Prinzip der Gewaltenteilung nach den Ämtergesetzen des Buches Deuteronomium (Dt 16,18–18,22)’, in H. Wolter, ed., *Testimonium Veritati: Festschrift Wilhelm Kempf*, Frankfurt, 1971, 143–155; = ‘Distribution of the Functions of Power: The Laws Concerning Public Offices in Deuteronomy 16:18–18:22’, tr. R. Walls, in D. L. Christensen, ed., *A Song of Power and the Power of Song: Essays on the Book of Deuteronomy*, Winona Lake, IND, 1993, 336–352 (339).

⁸ Cf. B. Halpern, *The Constitution of the Monarchy in Israel*, Chico, CA, 1981, 226–233; Rütterswörden, *Von der politischen Gemeinschaft*, 89–93.

⁹ Lohfink, ‘Distribution of the Functions of Power’, 348–349.

¹⁰ S. Dean McBride, Jr, ‘Polity of the Covenant People: The Book of Deuteronomy’, *Interpretation* 41 (1987), 229–244; reprinted in Christensen, ed., *A Song of Power*, 62–77; cf. McBride, ‘Deuteronomy’, in J. H. Hayes, ed., *Dictionary of Biblical Interpretation*, Vol. A–J, Nashville, TN, 1999, 273–294.

¹¹ On Josephus’ interpretation of the ‘constitution’: see now D. Lincicum, *Paul and the Early Jewish Encounter with Deuteronomy*, Tübingen, 2010, 169–183.

On the basis of his analysis of the structural design and the chief concerns of Deuteronomy, the main thrust of McBride's argument is

to support Josephus' identification of the Deuteronomic "Book of the Torah" as a social charter of extraordinary literary coherence and political sophistication, thereby also recognizing the work to be the archetype of modern western constitutionalism.¹²

In comparison with other biblical and ancient near eastern traditions of law, argues McBride, Deuteronomy offers something 'genuinely new', a 'charter for a constitutional theocracy', with the goal of empowering 'a broad constituency of the community whose integrity and political independence it seeks to protect'.¹³ With regard to Deut. 16:18–17:13, McBride argues for the crucial place of these laws in preserving the political stability of the community, emphasizing that 'this system is expressly grounded in the responsibility of the whole society to maintain justice'.¹⁴ Responsibility for the appointment of judges (Deut. 16:18) and leaders (17:15) is in the hands of the people. Selected by the people, the activities of any future king will be entirely constrained by his duty to ensure the faithful fulfillment of the terms of the constitution (17:18–20). The perspective expressed in these laws is rooted in the conviction that the ultimate authority behind this constitution is the God of Israel (Deut. 10:17), whose zeal for justice and the equal treatment of all in the performance of justice is the model to be emulated.

Twenty years on, the power of such explanations has proved enduring. In his introduction to the laws of Deut. 16:18–18:22 for the *Jewish Study Bible*, Bernard Levinson emphasizes the innovative design and democratizing impulse of this ancient 'constitution':

Although western political theory is normally traced back to ancient Athens, [Deut. 16:18–18:22] is remarkable for providing what seems to be the first blueprint for a constitutional system of government. The carefully-thought out plan is designed to ensure that no single branch of government and no single religious institution should have sole power. Each is

¹² McBride, 'Polity of the Covenant People', 77. On the influence of McBride's model of Deuteronomy, see P.D. Miller, 'Constitution or Instruction? The Purpose of Deuteronomy', in J. T. Strong and S. S. Tuell, eds, *Constituting the Community: Studies on the Polity of Ancient Israel in Honor of S. Dean McBride*, Winona Lake, 2005, 125–141; S. D. Fraade, 'Deuteronomy and Polity in the Early History of Jewish Interpretation', *Cardozo Law Review* 28/1 (2006), 245–258 (246). In his review of the reception of McBride's article, Patrick Miller (*ibid*, 125) observes that: 'Few studies of the book of Deuteronomy in the last twenty-five years have been as significant for or as influential on the study of the book as Dean McBride's sharply honed analysis of Deuteronomy as a kind of constitution or polity for Israel. His essay differs sharply with the more common reading of Deuteronomy as having a primarily instructive function, as being a form of proclamation and / or teaching'.

¹³ McBride, 'Polity of the Covenant People', 70–71; noting that the term 'theocracy' itself originates with Josephus: *Ap.* 2.165. Rütterswörden (see n. 5) compares the democratizing tendency of the Deuteronomic laws to the principles underlying the Greek polis.

¹⁴ *Ibid*, 74.

brought into relationship to the others and, more importantly, each is made subordinate to the one true authority: the Torah of Deuteronomy ... It is unlikely that the ambitious program envisioned by this draft constitution was ever fully implemented. Upon the return from exile, when Judah regained some measure of political autonomy under Persian rule, different religious and political priorities preempted this blue-print.¹⁵

Such interpretations are significant for the meaning of Deuteronomy and its laws in the post-exilic era of the Second Temple period. If the laws about public officials were a 'utopian draft constitution', what might Jews then think about the purpose of laws with such an ostensibly practical application as the laws for the organization of justice? What purpose did the laws of Deut. 16:18–17:13 serve?

(3) *Aim of this study*

My purpose in this collection of studies is to explore what Deuteronomy's laws on the administration of justice meant for Jews in the Second Temple period. The surviving corpus of Jewish exegetical sources provides rich resources for the interpretation of Deut. 16:18–17:13, of which the most important are the biblical books of Chronicles, the Greek translation of Deuteronomy (LXX), the Temple Scroll from the caves of Qumran, and the writings of Philo of Alexandria and Flavius Josephus.

To what extent were the laws of Deut. 16:18–17:13 already recognized in this period as laws for an ideal constitution? Did Jewish interpreters think that these laws should be put into practical effect, and if so how and by whom? How do the laws relate to existing judicial institutions? What aspects of these laws were seen as especially in need of explanation? What does the engagement of our interpreters with this material reveal about their distinctive concerns and their vision of the laws in Jewish society? In the Second Temple era, the majority of Jewish communities would increasingly be found in the Diaspora rather than in Jerusalem and its territory.¹⁶ How would Jews living in a Diaspora setting interpret the commands to organize the administration of local justice, or to send unresolved legal questions to judges based in the central sanctuary, which, as all Jews must have known, was to be identified with Jerusalem? What would the same commands mean for the Jerusalem-born priest Josephus, writing in Rome in the decades immediately following the destruction of that sanctuary?

¹⁵ B. M. Levinson, 'Deuteronomy', in A. Berlin and M. Z. Brettler, eds, *The Jewish Study Bible*, Oxford, 2004, 356–450 (403); cf. idem, 'The First Constitution: Rethinking the Origins of Rule of Law and Separation of Powers in Light of Deuteronomy', in *Cardozo Law Review* 27/4 (February 2006), 1853–1888; D. J. Elazar, 'Deuteronomy as Israel's Ancient Constitution: Some Preliminary Reflections', *Jewish Political Studies Review* 4:1 (Spring 1992), 3–39.

¹⁶ E. S. Gruen, *Diaspora: Jews amidst Greeks and Romans*, Cambridge, MA, 2002.

(4) Introduction to the structure of the commentary on Deut. 16:18–17:13

The commentary on Deut. 16:18–17:13 is divided into three large chapters, focusing on the following aspects of interpretation: (1) the appointment of judges, and commands and prohibitions concerning the administration of justice (Deut. 16:18–20); (2) the prohibition of single testimony (Deut. 17:6, taking into account the parallel formulations of this prohibition in Deut. 19:15 and Num. 35:30); and (3) the administration of justice at the central sanctuary, ‘the place that the Lord your God will choose’ (Deut. 17:8–13).

In each case, I offer a brief introduction to the laws in the Masoretic Text, which represents the earliest complete witness to the Hebrew Deuteronomy and is therefore the earliest of our sources. In the rare cases in which the Samaritan Pentateuch represents a variant reading in relation to MT Deut. 16:18–17:13, or where parallel texts survive in the Qumran fragments of Deuteronomy, the evidence of these sources for the text of Hebrew Deuteronomy will also be discussed. I make no claim to originality in the interpretation of MT Deuteronomy; the discussion of MT Deut. 16:18–17:13 is intended to serve as an introduction to the wider context in which the laws appear and as an opening to the main critical issues raised by modern scholars about the nature and significance of these laws.

After each introduction to the text(s) of Hebrew Deuteronomy, there follows a series of detailed commentaries on our Second Temple period sources for the interpretation of Deut. 16:18–20, 17:6par, and 17:8–13 respectively. Some sources are common to all chapters, and these constitute our major witnesses to the interpretation of the laws on the administration of justice in Deuteronomy: LXX Deuteronomy; the ‘Deuteronomic Paraphrase’ of the Temple Scroll; the *Special Laws* of Philo of Alexandria; and the *Jewish Antiquities* of Flavius Josephus. In addition to these sources, the biblical books of Chronicles form an important part of the discussion in relation to the interpretation of Deut. 16:18–20 and 17:8–13. An introduction to each of the major sources follows at the end of this chapter. In the case of the prohibition of single testimony (Deut. 17:6par.), our sources are substantially more wide-ranging, and include the Damascus Document, the apocryphal book of Susanna, the pseudepigraphic *Testament of Abraham*, and the exegesis of Jewish Scripture by New Testament authors including Paul, the authors of the gospels of Matthew and John, 1 Timothy, the Letter to the Hebrews and the Johannine epistles. Where relevant, the wider context of these works is discussed by way of introduction to the specific commentary on each text in Chapter Two. In each chapter, the focus of the commentary on the major sources is on reading these texts in their own right, rather than on producing a synthesis of interpretations. The aim throughout is to explore the diversity of interpretations that our authors bring to the laws, and to let the sources speak for themselves. Each commentary can be read, therefore, as a stand-alone study of a specific text.

b) Texts of Deuteronomy in the Second Temple period

(1) *The Masoretic Text (MT)*

The earliest complete Hebrew text of the book of Deuteronomy is a copy of the Masoretic Text preserved in the Leningrad Codex (c. 1008/1009 CE).¹⁷ The antiquity of the consonantal text of MT Deuteronomy is confirmed by the multiple fragments of Hebrew manuscripts of Deuteronomy at Qumran, some of which bear witness to a text identical with or very close to that of MT.¹⁸ Of the various text types of Qumran Deuteronomy, the 'proto-Masoretic' text exhibits the least tendency towards expansion of the text, in contrast to those Hebrew manuscripts most closely aligned with LXX Deuteronomy, which are the most expansionistic of the Qumran manuscripts of Deuteronomy.¹⁹ The text of LXX Deuteronomy, and its relationship to MT, is discussed in the second half of this chapter.

(2) *The Samaritan Pentateuch (SP)*

The Samaritan Pentateuch contains the text of the Pentateuch written in a form of the early Hebrew script used by the Samaritan community. As in the case of MT, the earliest complete copies of the Samaritan Pentateuch belong to the medieval period. Linguistically, the text of the Samaritan Pentateuch represents the Hebrew of the Second Temple period, comparable to that of the Dead Sea Scrolls.²⁰ The text of the Samaritan Pentateuch includes several distinctive ideological features, the most significant of which concerns the Samaritans' claim to the primacy of the sanctuary on Mount Gerizim.²¹ Where the traditional text of Deuteronomy refers to 'the place which God will choose' as his sanctuary, identified in ancient Jewish tradition with Jerusalem, the Samaritan Pentateuch asserts that God has already chosen Gerizim as the one and only place where he is to be worshipped.

¹⁷ For the text of MT Deuteronomy: C. McCarthy, *Biblia Hebraica: Deuteronomy*, 5th edn, Stuttgart, 2007. In the case of the key texts to be discussed in this volume, Deut. 16:18–20, 17:6, 19:15, and 17:8–13, the Hebrew text of this fifth critical edition of the Stuttgart Hebrew Bible is identical with that of the Leningrad Codex: A. Dotan, ed., *Biblia Hebraica Leningradensia: Prepared according to the Vocalization, Accents, and Masora of Aaron ben Moses ben Asher in the Leningrad Codex*, Leiden / Boston, 2001.

¹⁸ E.g. 4Q34 is almost identical with the consonantal text of MT. The 'Deuteronomic Paraphrase' of the Temple Scroll likewise preserves many passages of Deuteronomy identical with MT: see below, 25–31.

¹⁹ E.g. 4Q29; cf. J. A. Duncan, 'Deuteronomy, Book of', in L. H. Schiffman and J. C. Vanderkam, eds, *Encyclopedia of the Dead Sea Scrolls* Vol. 1, New York, 2000, 198–202 (199).

²⁰ Z. Ben-Hayyim, 'Traditions in the Hebrew Language, with Special Reference to the Dead Sea Scrolls', in C. Rabin and Y. Yadin, eds, *Aspects of the Dead Sea Scrolls*, Jerusalem, 1965, 200–214.

²¹ E.g. SP Exod. 20:14; Deut. 5:18.

The Qumran finds include ‘Pentateuchal fragments of similar structure’ to the text of the Samaritan Pentateuch.²² However, the Qumran fragments also exhibit similarities with other text-types, including LXX, and cannot be identified exclusively with the Samaritan Pentateuch.²³ The chief characteristic of those Qumran fragments showing agreements with the Samaritan Pentateuch is their tendency towards stylistic harmonization of the text in comparison with MT. Strictly speaking, none of these ‘proto-Samaritan’ manuscripts is either Samaritan or sectarian.²⁴

It is likely that the *Vorlage* of the Samaritan Pentateuch is a non-sectarian text similar to the ‘proto-Samaritan’ texts of Qumran. As for its final form, it is clear that this edition of the Hebrew text of the Pentateuch is both sectarian²⁵ and characterized by secondary elements, including harmonizing alterations and a tendency to replace difficult forms or to correct syntactical incongruities represented by MT.²⁶ In view of these facts, the Samaritan Pentateuch cannot be regarded with certainty as being of equal antiquity with MT and LXX.²⁷

(3) *Manuscripts of Deuteronomy from Qumran (Q)*

Between 1947 and 1956, the caves of Qumran yielded over thirty fragmentary manuscripts of Hebrew Deuteronomy.²⁸ The community responsible for preserving the biblical manuscripts found at Qumran possessed more copies of Deuteronomy than of any other book of the Pentateuch,²⁹ and the predominant place of Deuteronomy among Qumran copies of books of the Hebrew Bible is, on current evidence, only just exceeded by Psalms. The special prominence of

²² A. Crown, R. Pummer and A. Tal, eds, *A Companion to Samaritan Studies*, Tübingen, 1993, 178.

²³ For example, 4QpaleoExod^m has much in common also with LXX; see further, Crown et al, eds, *A Companion*, 182.

²⁴ M. Baillet, ‘Le texte samaritain de l’Exode dans les manuscrits de Qumran’, in A. Caquot and M. Philonenko, eds, *Hommages à André Dupont-Sommer*, Paris, 1971, 363–381; Z. Ben-Hayyim, ‘Comments on the Use of the Term “Proto-Samaritan”’, in *Language Studies V–VI*, Jerusalem, 1992, 13–23 (Hebrew).

²⁵ For example, the addition of a commandment to the Decalogue emphasizing the centrality of Mount Gerizim in the cult, SP Exod. 20:14, Deut. 5:18.

²⁶ E. Tov, ‘The Text of the Old Testament’, in A. van der Woude and M. Mulder, eds, *The World of the Bible*, Grand Rapids, MI, 1986, 156–190 (170); Crown et al (eds), *A Companion*, 180–181.

²⁷ For the text of the Samaritan Pentateuch: A. Tal and M. Florentin, *The Pentateuch: The Samaritan Version and the Masoretic Version*, Tel Aviv, 2010, representing a revised edition of the manuscript Shechem 6.

²⁸ For an overview of Qumran manuscripts of Deuteronomy: A. Lange, *Handbuch der Textfunde vom Toten Meer Band I: Die Handschriften biblischer Bücher von Qumran und den anderen Fundorten*, Tübingen, 2009, 83–106. Lange presents a total of 31 Deuteronomy manuscripts from Qumran caves.

²⁹ The numbers of Qumran manuscripts of other books of the Pentateuch are as follows: Genesis, 19; Exodus, 7; Leviticus, 12; Numbers, 6; cf. Duncan, ‘Deuteronomy, Book of’, 199.

Deuteronomy is also attested in other texts found at Qumran, including the Temple Scroll,³⁰ examples of 'Reworked Pentateuch', and the excerpted texts of Deuteronomy, which originally belonged to mezuzot and tefillin used at Qumran.³¹ Study of the significance of Qumran Deuteronomy remains at a relatively early stage, following the publication of critical editions of these fragments over a long period from 1955–1999.³² The majority of Deuteronomy fragments were found in Cave 4, and given their definitive critical editions in the 1990s. Single fragments of Deuteronomy manuscripts were also retrieved from other find-sites in the Dead Sea area, including the fortress at Masada.³³

The Qumran fragments confirm that the textual tradition of the book of Deuteronomy was well preserved by the late Hellenistic / early Roman period in which these manuscripts were copied and used.³⁴ As mentioned already, some fragments are aligned with the consonantal text of MT; others are closer

³⁰ See below, 25–31.

³¹ S. White Crawford, 'Reading Deuteronomy in the Second Temple Period', in K. de Troyer and A. Lange, eds, *Reading the Present in the Qumran Library: The Perception of the Contemporary by Means of Scriptural Interpretations*, Atlanta, GA, 2005, 127–140 (128–140). On the tefillin and mezuzot at Qumran: J. T. Milik, 'II. Tefillin, Mezuzot et Targums (4Q128–4Q157)', in R. de Vaux and J. T. Milik, *Qumran Grotte 4.II*, DJD 6; Oxford, 1977, 33–89; I. Himbaza, 'Le Décalogue du Papyrus Nash, Philon, 4Qphyl G, 8Qphyl 3 et 4Qmez A', *RevQ* 20 (2002), 411–428; G. J. Brooke, 'Deuteronomy 5–6 in the Phylacteries from Qumran Cave 4', in S. M. Paul, R. A. Kraft, L. H. Schiffman and W. W. Fields, eds, *Emanuel: Studies in the Hebrew Bible, Septuagint, and Dead Sea Scrolls in Honor of Emanuel Tov*, Leiden, 2003, 57–70.

³² For publication details of the fragments in the DJD editions, relating to Caves 1, 2, 4, 5, 6 and 11, see J. A. Fitzmyer, *A Guide to the Dead Sea Scrolls and Related Literature*, rev. edn, Grand Rapids, MI / Cambridge, 2008; Lange, op. cit. Other fragments of Qumran Deuteronomy have been identified since the publication of the critical editions in the Oxford *Discoveries in the Judaean Desert* (DJD) edition of the Deuteronomy manuscripts: see E. Puech, 'Identification de Nouveaux Manuscrits Bibliques: Deutéronome et Proverbes dans le Débris de la Grotte 4', *RevQ* 20 (2001), 121–128; E. J. C. Tigchelaar, 'A Forgotten Qumran Cave 4 Deuteronomy Fragment (4Q38d = 4QDeut u)', *RevQ* 23/4 (2008), 525–528; J. H. Charlesworth, 'What is a Fragment? Announcing a Dead Sea Scrolls Fragment of Deuteronomy', *MAARAV* 16/2 (2011), 201–212.

³³ In addition to the Qumran finds, a Deuteronomy manuscript was found at each of the following sites in the Dead Sea area: Wadi Murabba'at, Nahal Hever / Wadi Seiyal and Masada. (1) Wadi Murabba'at: D. Barthélemy, in P. Benoit, J. T. Milik and R. de Vaux, *Les Grottes de Murabba'at*, DJD 2/1, Oxford, 1961, 78; J. C. Greenfield, 'The Texts from Nahal Se'elim (Wadi Seiyal)', in J. Treballe Barrera and L. Vegas Montaner, eds, *The Madrid Qumran Congress: Proceedings of the International Congress on the Dead Sea Scrolls. Madrid 18–21 March 1991*, Vol. 2, Leiden, 1992, 661–665; (2) Masada: S. Talmon, 'Fragments of a Deuteronomy Scroll from Masada: Deuteronomy 33.17–34.6 (1043/A–D)', in M. Lubetski, C. G. Gottlieb and S. Keller, eds, *Boundaries of the Ancient Near Eastern World: A Tribute to Cyrus H. Gordon*, Sheffield, 1998, 150–161; (3) Nahal Hever and Wadi Seiyal: P. W. Flint, 'Biblical Scrolls from Nahal Hever and "Wadi Seiyal": Introduction', and '3. XHev / Se Deuteronomy', in J. H. Charlesworth et al, eds, *Miscellaneous Texts from the Judaean Desert*, DJD 38, Oxford, 2000, 133–135, 179–182.

³⁴ The earliest Qumran Deuteronomy manuscript is palaeo-Hebrew 4Q46, a small fragment of Deut. 26:14–15, dated on palaeographic grounds to the second half of the third century BCE. The earliest Qumran witness to Hebrew Deuteronomy copied in square script is 5Q1, representing fragments of Deut. 7, 8 and 9, with a date of copying in the first decades of the second century BCE: cf. Duncan, 'Deuteronomy', 199.

to the text traditions of the Samaritan Pentateuch or the Hebrew *Vorlage* of LXX Deuteronomy.³⁵ In most cases, however, the fragmentary nature of the remains means that it is not possible to align most texts with a specific text tradition. Together with SP, LXX, the Nash Papyrus and other sources,³⁶ the Qumran exemplars of Deuteronomy confirm several important conclusions about the state of the text of Deuteronomy in the Second Temple period:

The chief observation regarding the text of Deuteronomy in the Second Temple period is that it is expansionistic. This is not surprising given the repetitive nature of Deuteronomic prose ... However, it should be noted that most of the variants preserved in the textual tradition are minor and the result of scribal error rather than deliberate intervention into the text. Deuteronomy does not exist in two literary traditions, as does, for example, Jeremiah.³⁷

The tendency towards expansion of the Deuteronomy text is already present in some of the earliest Qumran Deuteronomy manuscripts, from the beginning of the second century BCE onwards.

Since the text of Deuteronomy circulated only in one literary edition in the Second Temple period, we can be confident that the order and shape of the material in the traditional text of Deuteronomy was what lay before our sources for the interpretation of Deuteronomy in the Second Temple period. LXX Deuteronomy is itself an ancient witness confirming the traditional order and shape of the Hebrew text in the early third century BCE. In other key sources, by contrast, – the Temple Scroll, Philo and Josephus – the authors exhibit a significant degree of freedom in reorganizing and changing the order of the contents of Deuteronomy.

Evidence for Deut. 16:18–20; 17:6/19:15; 17:8–13

Unfortunately, in the case of the key texts for this commentary, the Qumran manuscripts preserve very little parallel text. Indeed, altogether only six fragmentary words survive, comprising the traces of two words in Deut. 17:7;³⁸ fragments of three words in Deut. 19:15;³⁹ and the traces of just two letters of one word in

³⁵ See the summary evaluations by two of the leading experts on the Qumran text of Deuteronomy: Duncan, 'Deuteronomy'; White Crawford, 'Reading Deuteronomy'.

³⁶ On the Nash Papyrus: E. Würthwein, *The Text of the Old Testament, An Introduction to the Biblia Hebraica*, tr. E. F. Rhodes, 2nd edn, Grand Rapids, MI, 1995, 144–145.

³⁷ White Crawford, 'Reading Deuteronomy', 128; cf. Duncan, 'Deuteronomy', 199–200. On the text history of the Hebrew Deuteronomy: S. White Crawford, 'Textual Criticism of the Book of Deuteronomy and the "Oxford Hebrew Bible" Project', in R.L. Troxel, K.G. Friebel and D.R. Magary, eds, *Seeking Out the Wisdom of the Ancients: Essays Offered to Honor Michael V. Fox on the Occasion of His Sixty-Fifth Birthday*, Winona Lake, IND, 2005, 315–326. Among the books of the Pentateuch, Exodus and Numbers also circulated in this period in more than one literary edition.

³⁸ 4QDeut^c, Frg. 35, 1–2: S. White Crawford, '30. 4QDeut^c', DJD 14, 15–34.

³⁹ 4QDeut^{k2}, Frg. 1, 9: J. A. Duncan, '38a. 4QDeut^{k2}', DJD 14, 99–105.