

# LEGISLATING FOR JUSTICE - THE SOCIAL LEGISLATION OF THE COVENANT CODE AND DEUTERONOMY

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## Abstract

*This paper strives to show that the basic concerns and social legislation of the deuteronomic movement can serve as a helpful model for the South African process of reconstruction and reform. Starting point is a consideration of the Book of the Covenant. Following Halbe and Crüsemann the author claims that the document has to be dated to the late eighth, early seventh centuries. Two sources have been used by a redactor, Exodus 34:11-26, identified as a document of the resistance Yahweh-alone movement of the Northern Kingdom, and Exodus 21f, the law of the ruling class in Judah. In the dark years after the destruction of Samaria both groups combined and embarked on a process of reform with the intention of establishing greater justice, especially for the deprived and oppressed rural community. This process of reform is traced with regard to specific examples in the Book of the Covenant and in Deuteronomy.*

## 1 Introduction

South Africa has just come out of its first democratic election. We have witnessed how the people in their millions turned out at the polls and set South Africa irrevocably on a path of fundamental change.

The task of the new government is to reconcile two opposing groups, the white minority which has so far wielded power and the vast majority of black people, oppressed and marginalized by over 40 years of apartheid, and in this way to create a more just and humane society. Are there any models in the Bible to guide us? Models which could teach us the basic principles of a reform process which is geared to the establishment of justice?

In our urge to contextualize the biblical message we must be careful not to draw too many facile comparisons between the biblical world and our own. Many centuries separate us from ancient Israel, and our respective societies are very different. Yet I believe that careful biblical scholarship can uncover analogies which may prove helpful for us today. Ultimately human nature is the same and oppression, exploitation and injustice are not modern phenomena, just as the struggle for greater justice and equity is not restricted to modern liberation movements.

In this paper I want to look at the deuteronomic reform movement and in particular its social legislation. I propose to consider some of the basic concerns of this movement which are not merely directed at rectifying an unjust social situation but much more at giving expression to the basic theological conviction that Israel's God Yahweh is God alone. Absolute loyalty to him involves the obeying of His will and striving for justice in society.

Before I deal with the social legislation of the two important Old Testament law codes, the Covenant Code and Deuteronomy, I will make some introductory remarks

about the literary problems of the Covenant Code and the social background of the two sources which have been reworked in it. This will lay the groundwork for considering the social legislation itself.

## 2. Introductory remarks on the Covenant Code and its background

### 2.1 Literary problems

- ♦ Frank Crüsemann (1992:133), to whose seminal investigation of the Old Testament Torah I owe many of the insights presented in this paper, makes the pertinent observation that the understanding of the Covenant Code, Exodus 20:22-23:19, is crucial for a right understanding of the origin and the basic theological intention of Old Testament Law.

Up to now, most scholars have dated the Covenant Code to the pre-monarchical period or the early monarchy. Soggin (1976:109) for example, assigns it to the E source, though 'for purely conventional reasons'. Gottwald agrees that it 'was probably compiled in its present form in ninth-century northern Israel' (1985:207) as part of the E-source 'in an effort to stem the socio-economic and cultic abuses under the Omri dynasty' (1985:350). Dale Patrick (1985:63) denies that the Covenant Code was part of the early sources J and E. He accepts that dating the lawbook is difficult but thinks that the code must be several centuries older than D.

This would place it either in the period of the Judges (1200 -100 B.C.) or the monarchical period (1000-800 B.C.). By a process of elimination, the former can be inferred; a king would have seized the opportunity to promulgate the code to enhance his prestige (as ancient Near Eastern kings did) if it had been drawn up during his reign. Since the Book of the Covenant is silent regarding the monarchy, it is likely that there was no king at the time of its origin (Patrick 1985:65, cf. also Schmidt 1979:117, Neufeld 1955:367f).

Against this *argumentum e silentio* Crüsemann (1985:134) affirms that secure dating can only proceed from concepts and themes which are part of the basic structure of the Covenant Code and recur in the body of the text itself. He refers in particular to the law of slavery and the right of aliens, which point to a socio-economic situation which was not characteristic for the pre-monarchical Israelite segmentary society.<sup>1</sup> These were important issues only during the monarchy, especially in the eighth and seventh centuries. A more secure basis for dating can, however, only be found after some of the literary problem posed by the document have been solved.

- ♦ The most thoroughgoing literary analysis of the Covenant Code has been presented by Jörn Halbe (1975). Scholars previously had claimed that the Covenant Code contains very disparate elements, legal materials both cultic and secular followed by passages with a clear theological intent, with no obvious unity of construction both in style and subject matter (cf. Boecker 1980:137). In contrast, Halbe now (1975:413-423) recognizes that the Covenant Code is a literary unit carefully

1. According to Neufeld, internal slavery occurs only in societies with quasi-capitalistic practices of borrowing and lending. 'All this presupposes business traditions and shows an adaptation of a settled city population. These features of economic life are manifested on a small plane and on a small scale but sufficiently to confirm that the Book of the Covenant reflects a society of an advanced agricultural economy which is well acquainted with comparatively involved commercial transactions and relations'. (1955:371).

constructed according to a definite plan according to Hebrew rules of composition. It is an elaborate concentric structure consisting of three pairs of elements, arranged in a perfect concentric pattern around the climactic centre of Exodus:22:19 which demands sacrifices to Yahweh alone. It consists of the following parts:

- A Ex 20:22-26 Cultic Laws
- B Ex 21:1-11 Law of Release (7<sup>th</sup> Year)
- C Ex 21:12-22:19 Slaves, Property
- S Ex 22:20 Yahweh Alone
- c Ex 22:21-23:9 Aliens, Social Justice
- Ex 23:10-12 Sabbath (7<sup>th</sup> Day)
- a Ex 23:13-19 Cultic Laws

In his careful analysis Halbe has shown that the text as it is presently structured cuts across other divisions which demonstrate that two older sources have been used by the redactor. The first is a document containing cultic laws which is almost identical to Exodus 34:11-26 (Halbe 1975:449f). Exodus 34:11-26 is therefore one of the sources and it is older than the Covenant Code. This has important implications for the dating of the book. The second source is a body of casuistic laws, *mishpatim*, which have been included in Exodus 21:1-22:19 (1975:450-82).

Halbe's investigations have shown that the disparate nature of the material in the Book of the Covenant is due to a process of conscious composition not haphazard collection. A very clear theological understanding of the essentials of Yahwistic faith has guided the bringing together of a body of cultic and casuistic laws and ethical precepts into a new unity, the Torah.

In order to understand what lies behind this process we have, we have first of all, to consider the two source documents on their own (cf. Crüsemann 1992:138). Only then will we be able to ask the further question how the Covenant Code, and after it Deuteronomy, legislated for justice.

## 2.2 Exodus 34:11-26 a document of the resistance movement in the Northern Kingdom

### 2.2.1 The Text

According to Halbe's (1975:225) analysis we can subdivide Exodus 34:11-26 into two sections. The first, vss 11-16, dealing with the relationship of Israelites to their Canaanite neighbours, and vss 18-26 dealing with festivals and cultic offerings. V 17 prohibits the making of cast idols and seems to be an insertion linking Exodus 34 with its context, the narrative of the golden calf (Exodus 32-34)(Halbe 1975:122ff; Crüsemann 1992:144).

The overriding concern of both sections is the opposition to Baal worship. The first section, vss 12-16 prohibits the making of a treaty with the inhabitants of the country and orders the breaking down of their altars, sacred stones and Asheras on the basis of exclusive loyalty to Yahweh. Halbe (1975:225) notes that the cultic stipulations in the second section, without exception, are also clearly formulated in opposition to Baal. The ancient Canaanite festivals with their sacred times are claimed for the worship of Yahweh. Particularly interesting is the stipulation of a day of rest on the seventh day (Ex 34:21). Scholarship so far has not been able to trace the origin of the day of rest on

the seventh day to non-Israelite religions or cultures<sup>2</sup> (Halbe 1975:191; Kraus 1961:100-107; Kutsch 1961:1259). It expresses a peculiarity of Israel's faith. The weekly day of rest, which is made relevant also for the domain of agricultural activity, cuts across the rhythm of the agricultural year and orders time strictly in accordance with Yahweh's will (Halbe 1975:225; Crüsemann 1992:160).<sup>3</sup>

### 2.2.2 The Yahweh-alone movement

Exodus 34 obviously has a great significance for reconstructing the history of Israelite religion (Crüsemann 1992:148f). How old is Yahweh-alone worship? Can we assume that the tensions between Israelites and their Canaanite neighbours are characteristic for the early pre-monarchical era? Exodus 34:13 demands the destruction of Canaanite cultplaces. The closest parallel is found in Judg 6:25-32 which, according to the analysis of W. Richter, has to be dated to the time of Elijah (Halbe 1975:116). In the early period, when the Israelite tribes settled in the mountainous areas, the conflict was not between Canaanites and Israelites within one state but between the Israelite tribal groups and the Canaanites *without*. The treaty between the Gibeonites and Joshua recorded in Joshua 9 shows that treaties between Israelites and Canaanites were considered acceptable in this period (1975:345).

Morton Smith (1987:11-42) and B. Lang (1983) have claimed that Yahweh-alone worship, or what they call the monolatric idea, is not an early conception and cannot be assumed for the pre-monarchical period. They have given the following plausible reconstruction of the historical events. Lang, in an article dealing with the origin and development of Jewish monotheism, states the following:

Israel's religious history is not characterized by the fight for restoring the original, monolatric orthodoxy, but rather by the fluctuation fate of a minority Yahweh-alone movement, whose own presentation of the story in the Books of Kings should not mislead the modern scholar as it is the biased view of the victorious party (Lang1983:18f)

According to Smith and Lang the monolatric idea is attested for the first time in the 9<sup>th</sup> century B.C. by the prophets Elijah and Elisha in the northern kingdom in their opposition against the worship of Baal (Lang 1983:19). The key to the events seems to lie in the figure of Jezebel, daughter of Sidonian king Ethbaal, fervent worshiper of Baal, the god of her home town (1983:16). After her marriage to Ahab, her husband endows an altar for the Canaanite god. According to the biblical record this leads to the struggle between the worshipers of Baal and Yahweh.

Lang is rather at a loss in his attempts to explain the intensity of the conflict. He explores the main causes within the religious realm. He maintains that possibly the newly introduced cult was very popular leading to losses for the Yahwistic priesthood. 'Perhaps the adherents of Baal really try to make the Phoenician god into the national god of the northern kingdom, leaving only an inferior place for the traditional god in the country' (Lang 1983:27f). These were certainly important aspects but do not get to the root of the conflict.

2. Ex 34:21 does not yet speak of the Sabbath. This term was linked with the day of rest only at a later stage (cf. Robinson 1980).

3. Another good example is Ex 34:26 which prohibits the cooking of a kid in its mother's milk. Textual evidence from Ugarit shows that this custom was most probably a Canaanite fertility rite (cf. Halbe 1975:199).

Recent investigations by scholars like Gottwald (1980:460ff), Chaney (1986) and Coote and Coote (1990:45-52) have shown that with the establishment of monarchy a system of deposal of the once free Israelite peasantry was taking place and that the ancient system of patrimonial domain, typical for Israelite tribal society, was being replaced by a system of prebendal domain whereby all the wealth was being concentrated in the hands of a rich urban elite, typical for the Canaanite urban centres. The Naboth story is an illustration of the fact that under Ahab the Canaanite system was expanding and threatening the very social fabric of Israel. The story shows what was at stake in the battle between Yahweh, the God of liberation, and Baal the god of the Canaanite kings, and Ahab.

The resistance struggle initiated by Elijah and Elisha therefore was not simply a struggle against Canaanite polytheism mainly in the form of the worship of the Tyrian Baal, but it was at the same time a struggle against the Canaanite system of social stratification and autocracy legitimated by the ideology of divine kingship. Canaanite Baal religion was in essence religious legitimation of state power centering on the king.<sup>4</sup> In Tyre the earthly king is the representative of the heavenly king Baal, the god of the city state with its hierarchical social structure (cf Morgenstern 1960). For the opposition in Israel Baal therefore becomes the symbol for everything which is oppressive and exploitative. The embittered struggle against Baal worship cannot be understood without this socio-political dimension.

According to Lang the classical document of the Yahweh-alone movement is the Book of Hosea which he considers to be a reliable witness to the intentions of the Yahweh-alone movement (Lang 1983:30). In Hosea we find both condemnation of idolatry and a radical condemnation of the institution of kingship, in fact, the most radical in the whole of the Old Testament (cf. Schmidt 1971:450). Whereas earlier prophets such as Elijah attacked individual kings, Hosea condemned the institution of kingship as such. He charged that Israel had made their kings without God's knowledge and against his will and he linked the monarchy directly with idolatry (Hos 8:4). The official cult in Samaria, with its symbol the calf, was for Hosea nothing other than idolatry. God had given the monarchy, but only in his anger. The king was not a gift of God's grace (Hos 13:11).

In conclusion we may summarize as follows: The first source of the Book of the Covenant, Exodus 34, is a document of the resistance movement of the Northern Kingdom which originated in the time of Elijah and culminated in the prophecy of Hosea. Its main concern was the worship of Yahweh alone directed not only against the worship of other gods, but more importantly against the tendencies of idolizing the state found in the ancient Near Eastern ideology of divine kingship.

## 2.3 The law of the upper class in Judea, Exodus 21f - the *Mishpatim*.

### 2.3.1 The Text

According to Crüsemann's (1992:170) analysis, the other important source of the Book of the Covenant, Exodus 21:1-22:17 (MT 16), is a collection of judgements, or *mishpatim* which consist of a series of casuistic prohibitions introduced with the characteristic 'if' or 'and if' (1992:171). Using stylistic and form-critical criteria Otto (1988) has tried to determine different strata within the Covenant Code, but his attempt cannot be considered successful. The present text is a unity apart from two insertions,

4. For a more detailed discussion of this topic cf. Wittenberg 1991a:85-96.

one in 21:13.14 dealing with asylum (Crüsemann 1992:177) and another very important one, the *ius talionis* in Exodus 21:(23) 24,25 (cf. Crüsemann 1987, Crüsemann 1992:175f; Jackson 1975:94ff). The corpus now deals with three themes: slaves (21:2-11), personal injuries (21:12-36), and private property (22:1-17). According to Crüsemann (1992:179) Exodus 21:1-22:17 is, next to Exodus 34, the oldest written corpus of Israelite laws, in many ways very similar to other legal corpora of the ancient Near East (cf Jackson 1975:25-63).

### 2.3.2 The socio-economic context of the *Mishpatim*

The best starting point for establishing the socio-economic context of the *mishpatim* is the slave law in Exodus 21:2-11. We know from the prophetic books, particularly Amos, Micah and Isaiah, that the 8<sup>th</sup> century was marked by fierce social tensions. I have mentioned the socio-economic developments in the Northern Kingdom. Similar developments are characteristic for the Kingdom of Judah. A small rich class of landowners, grain merchants and king's officials was establishing itself at the expense the mass of impoverished peasants, who due to excessive dues, such as the tithe, and exorbitant interest rates on loans, often became so indebted that they had to sell their land and had to become wage earners on their own property. They could even be sold into slavery to meet their debt. Slavery for debt became a widespread phenomenon. According to Mendelsohn slavery for debt was 'the basic supply source for the ever-mounting number of slaves in the Ancient Near East' (Mendelsohn 1949:23).

The slave laws of the *mishpatim* are harsh and ruthless (Kippenberg 1988:139). Restraining the power of the slave owner was certainly the aim of the *mishpatim*, but Crüsemann has shown in detail that in the case of conflicting interests, the *mishpatim* invariably take the side of the slave owner. This is quite clear in Exodus 21:20f. If a slave owner beats his slave so that he dies, the law stipulates that he should be punished (v 20), but if the slave stays alive for a day or two, the slave owner goes free 'since the slave is his property' (v. 21). As Crüsemann points out, this law would be open to severe abuse. It could not give adequate protection to slaves (1992:182f).

A similar tendency can be detected in the stipulations of Exodus 21:1-6 which regulate the release of slaves. Crüsemann (1992:183-85) notes that they are not intended to facilitate the liberation of slaves but to enable their bondage to become permanent. A slave who received a wife from his master was almost forced to choose permanent slavery because the wife and their children remained the master's property and were not released with him.

The *mishpatim* are not concerned about the plight of the poor. Protection of property seems to be the overriding concern. This is shown by the harsh penalties meted out for theft, five heads of cattle for a stolen ox and four sheep for a stolen sheep (22:1). If the thief has no means to pay, he is to be sold into slavery (22:2). In a situation of growing disparities between the rich and the poor, these laws tended to aggravate the plight of the poor. Slavery becomes a punishment for theft which for many was the only means of survival (Crüsemann 1992:193). Crüsemann (1992:191.194) refers to the harsh indictments of the prophets condemning this practice:

Amos 2:6 They sell the righteous for silver  
and the needy for a pair of sandals.

Amos 2:7 They trample on the heads of the poor

Is 3:15 What do you mean by crushing my people,  
and grinding the faces of the poor?

Drawing on different observations Crüsemann comes to the conclusion that Exodus 22:1-22:17 is a lawcode of the Judean upper class from the time of the monarchy, originating most probably during the eighth century (1992:195).

Who had the authority to promulgate such a law?

It is one of the most remarkable peculiarities of the OT codes - remarkable, that is, in the context of ancient oriental legal texts - that none of them is ascribed to the authority of a king. In the ancient east the king's influence on legal practice was already little enough. In the OT, the king had no say whatever in legislation (Boecker 1980:143).

Because the *mishpatim* display no trace of royal influence scholars have maintained that this document must be dated to the pre-monarchical period. But we have now seen that such a dating is not in agreement with the internal evidence and that the time which is suggested by the text itself is the eighth century. Crüsemann (1992:195), following a suggestion by Knierim (1961), contends that the *mishpatim* is the law code of the High Court in Jerusalem established by the Judean King Jehoshaphat (2Chr 5:9ff) (cf also 1992:113ff). In support of this contention he refers to the woe oracle in Isaiah 10:1:2:

Woe to those who make unjust laws,  
to those who issue oppressive decrees,  
to deprive the poor of their rights  
and withhold justice from the oppressed.

This oracle shows that during the eighth century, in the time of Isaiah, a section of the rich upper class of Judah was able to legislate unjust and oppressive laws. These must have been similar to or even identical with the *mishpatim* in Exodus 21 and 22 (Crüsemann 1992:30-34). The most plausible setting for the *mishpatim*, the second important source of the Covenant Code, is therefore the High Court in Jerusalem, an institution which supported the interests of the ruling class and not the interests of the people as a whole.

### 3. Legislating for Justice

#### 3.1 The destruction of Samaria and its effects

In 722 the Assyrian king Sargon II destroyed Samaria and turned the Northern Kingdom into an Assyrian province.

A large section of the population fled to Judah among them also Levites and prophets, those who had been advocates of the Yahweh-alone movement. They brought with them the traditions of the resistance primarily the series of cultic laws in Exodus 34, now embedded in the narrative complex Exodus 32-34 which is a theological reflection on the disaster. It sees the idolatry of Northern Israel's state cult, symbolized in the erection of the golden calf, as the main reason for the destruction of the Northern Kingdom (Phillips 1982:227). The other books the Northern refugees brought along are the books of Hosea (cf. Jeremias 1983:18) and Amos (cf. Coote 1981:47ff) which are now both edited and reapplied to a Southern audience.

There are then basically two concerns which are brought by the prophetic movement from the North to Judah: the concern for absolute loyalty to Yahweh and rejection of all apostasy and idolatry, the heritage of the prophecy of Elijah and Hosea, and the emphasis on social justice in the prophecy of Amos. In Judah these combined with the prophecy of Micah and Isaiah which exhibited the same concern for humaneness and

righteousness and in a similar manner attacked the oppression of the poor and the perversion of justice (Phillips 1982:222). In the Covenant Code the two concerns come together and receive their expression in law.

### 3.2 Legislating for Justice in the Covenant Code

We have seen how the two main sources of the Covenant Code reflect the views of two opposing groups with a very different ethos: the views and traditions of the prophetic resistance and the views of the ruling class of Judah. The Covenant Code combines both views in one document (Crüsemann 1992:229). The laws of the High Court in Jerusalem are not abolished, but they are supplemented with additional material which places the *mishpatim* in a new light and gives them a new meaning.

We may surmise that the authority behind the promulgation of the Covenant Code is still the High Court in Jerusalem, but now, under the impact of the Assyrian disaster, we sense a new urgency and a recognition of the need for reform.

In contrast to the legal corpus of the ruling class in Exodus 21:12-22:17 (MT 22:16), with its specifications of precise legal offences and appropriate sanctions to be enforced through the courts, the Covenant Code now lays special emphasis on social justice. This is evident in its structure. Halbe (1975:421) has shown that the section 22:21 (MT 20)-23:12 forms the exact counterpart to the *mishpatim* in 21:12-22:19 and that both blocks, the slave law and the laws of justice and mercy are in turn framed by the regulations of the sabbath and the sabbatical year. The structure has important implications for understanding the content. The formal justice of the *mishpatim* is contrasted with a different kind of justice, which takes its cue from the poor and the disadvantaged of society (22:21-6). It is the justice of compassion, expressed programmatically in 22:27 as Yahweh's word: 'When he cries out to me, I will hear, for I am compassionate' (Crüsemann 1992:213).

Phillips (1982:222) has pointed out that the laws of the Covenant Code demanding social justice and compassion, which form the counterpoint to the *mishpatim*, 'are not, in a technical sense, laws at all, for they envisage no legal action for their breach and specify no penalties. Rather, they are addressed directly to the recipient and envisage unquestioning obedience. Their basis is an appeal to his sense of moral responsibility for those who are not in a position to protect themselves and to his sense of justice'.

The Covenant Code places its emphasis mainly in the following areas: the protection of aliens (Ex 22:21; 23:9), the poor (22-24), and justice in court proceedings (23:1-8). In addition, it modifies the slave law of the *mishpatim* by the insertion of the *ius talionis* (21:24f).

It is not possible to give you a detailed analysis of the social legislation of the Covenant Code. Let me highlight only a few points which are of particular relevance for us today.

- ♦ The first area which I want to consider is the modification of the slave law through the insertion of the *ius talionis* in 21:24f.

Crüsemann (1987; 1992:190f) has given a very plausible interpretation of this insertion. We have seen that the slave law of the *mishpatim* takes the side of the ruling class and that for heavy bodily injuries there was really no redress. The *mishpatim* do not give adequate protection against violence perpetrated against subordinates and even against pregnant women. Against a very lax principle of restitution which starts from the presupposition that the slave is his owner's



property (21:20), the *talion* affirms a different principle: 'Eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise' (21:24f). The law now protects the dignity of the human person, even of slaves and women. Aggression and violence against dependents cannot be condoned, because even an inflicted bruise violates the basic principle of justice demanded by the God of compassion.

- ◆ The second important topic of the Covenant Code is the treatment of aliens. The Assyrian wars and in particular the destruction of the Northern Kingdom led to a flood of refugees streaming into relatively peaceful Judah. The extent of this problem has been demonstrated by archaeological excavations which show a sudden large expansion of Jerusalem in the times of Hezekiah and Manasseh (Jeremias 1983:18; Crüsemann 1987:16). Crüsemann (1992:214) has pointed out that aliens and refugees were never a large-scale problem in the early history of Israel. It was different only after the destruction of Samaria in 722 B.C. The importance of this topic in the Book of the Covenant therefore gives a sure indication that the code must have been composed in the latter part of the 8<sup>th</sup> or the early 7<sup>th</sup> century. How important the just treatment of refugees is for the Covenant Code can be seen by the fact that the law for aliens now forms the framework for the whole block of laws dealing with social issues (22:22-27; 23:1-8). Exodus 22:21 (MT 20) is repeated almost exactly in Exodus 23:9 (Halbe 1975:418). It prohibits the oppression of aliens 'because you were aliens in Egypt.'
- ◆ The third area highlighted by the Covenant Code is the treatment of the poor. We have already seen that one of the main reasons for the growing impoverishment of the peasant community during the eighth century was the inherently unjust system of interest and pledges. Mendelsohn (1949:23) states that 'one of the chief factors leading to the foreclosure of man and property was unquestionably the exorbitant interest charged on loans.' The average rate of interest charged in Babylonia and Assyria was a quarter or a fifth for money loans, and a third for loans in kind. We do not know what the practice was in Israel, but we can assume that Israel was no exception to the rule (1949:26f). In order to ensure a more just economic system, one which is more in accordance with Yahweh's compassionate justice, the Covenant Code addresses the practice of taking interest and pledges. 22:25 demands that interest should not be charged in the case of a poor person. He should not be required to give pledges, particularly if such a pledge would involve handing over the last remaining cloak, a basic necessity of life. Yahweh wants justice to be done to the poor, and he listens to their cries (cf. Wittenberg 1986).
- ◆ The fourth major area for reform concerns court proceedings (23:1-9). We know from the prophetic writings that the perversion of justice in the law courts was one of the main areas of abuse in the social crisis of the eighth century. All the poor and the disadvantaged, including aliens, were particularly vulnerable in lawsuits conducted in the city gate (cf. Köhler 1973). The Covenant Code now forbids any false testimony in a court case (23:1). It also considers the more subtle danger of social pressure. It demands that the witness resist the temptation to go along with the majority in power and to bend his or her testimony to suit their desires (Patrick 1985:89).

In conclusion let me again summarize: Although the Covenant Code still includes the *mishpatim*, an upper class legal document based on ancient Near Eastern legal principles, it is determined by a different ethos, combining the basic convictions of the Yahweh-alone movement and the social concerns of the eighth century prophets. The central focal point of the whole Covenant Code, that Yahweh alone should be worshipped, is linked with demands for social justice. Yahweh becomes the patron of marginal persons, granting and guaranteeing the rights of those who are unable to help themselves (Patrick 1985:85f).

### 3.3 Legislating for Justice in Deuteronomy

The Covenant Code attempts to counteract the effects of the exploitation of the one-time free Israelite peasant community by the economic system favouring the Judean upper class. The attempt to ensure greater justice for the poor is taken even further by Deuteronomy.

Deuteronomy's social legislation is concerned with the plight of the Judean peasant population (cf. Wittenberg 1991:101-103). In a number of laws it seeks to alleviate or even to remove the burdens of the peasants (cf. esp. Crüsemann 1983) Just as the Covenant Code is dealing with the whole realm of loans and interest, Deuteronomy too tries to address the social evils at its roots. Deuteronomy usually quotes ancient legal practices which pertain to the rural economy. The sabbatical year originally referred to the practice of letting the land lie fallow every seven years to recuperate its fertility (Horst 1961:80) However, a certain reinterpretation is already found in the Book of the Covenant, Exodus 23:10f, which now reads: 'That the poor of your people may eat,' which makes the sabbatical year a welfare institution (Von Waldow 1970:198).

A much more radical reinterpretation has, however, taken place in Deuteronomy. The ancient law that the fields had to lie fallow is no longer even mentioned. Instead, the custom of release is applied to debts (Dt 15:1). Every seven years all debts are to be cancelled. In addition, those who had become slaves on account of debt are to be freed (15:18). Deuteronomy also addresses the widespread practice of usury. Whereas the Covenant Code only prohibits the taking of interests from the poor, Deuteronomy 23:19 is much more radical. It prohibits the taking of interest from all Israelite fellow citizens (cf. Neufeld 1955:358).

Of particular interest in this connection is Deuteronomy's modification of the law of slavery in the Covenant Code (Ex.21:2-11). We have seen that according to the slave law of the *mishpatim*, a Hebrew slave lost his basic rights of citizenship when he became a slave. Men could regain their freedom only with difficulty, women not at all. There is a marked change of this law in Deuteronomy. Phillips (1984:56f) has listed five significant differences, the main being that whereas the enactment in Exodus 21 is basically a law making slavery permanent, Deuteronomy is 'concerned to do all that it can to ensure that the slave seeks his freedom after six years' service' (1984:56). Deuteronomy also does not envisage that slaves undergo any reduction of their 'status as citizens. The debt slave is still a citizen, a 'brother' 'ah.<sup>5</sup> As a slave he is only

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5. The idea of 'brotherhood' is fundamental to Deuteronomy's vision of a new community under God (cf. Neufeld 1955:404f). It is remarkable how, in his modification of earlier laws, the Deuteronomist usually inserts the term 'brother'. Compare the following texts: Ex 21.2 with Dt 15.12; Ex 21.6 with Dt 23.7; Ex 23.10 with Dt 15.2. Ex 23.4 is expanded and modified in Dt 22.1-4. The word 'enemy' is replaced by 'brother'. "There are several laws in Deuteronomy where the words *thy brother* are used with emphasis. The concept of *brotherhood* within that theocracy is even emphasised in laws which deal with the poor. Thus while references are frequently made in Exodus to the poor, the needy and afflicted as *the poor of thy*

required to offer service to his master, but does not thereby lose his status as a member of the people of God. He can have a family. And the master is required to release him after six years and to equip him liberally with everything he needs to enable him to establish a new existence (15:13). These new stipulations are undergirded by the following religious motivation: 'Remember that you were slaves in Egypt and Yahweh your God redeemed you. That is why I give you this command today' (cf. Kippenberg 1991:150-153).

Deuteronomy is not only concerned with the excessive burdens of the peasant community, but this legislation also offers scope for affirmative action to support those who had become the victims of the deteriorating social situation. Certain legal provisions stipulate support for the weakest and poorest members of society. Loans are to be freely given (15:7ff), and after harvest the fields are not to be gleaned completely, nor those grapes picked which had been overlooked. They are to be left for the poor and the stranger (24:19) (cf Wittenberg 1991:102).

It is important to note that Deuteronomy's legislation really encroaches on the interests of the ruling class which figures so prominently in the prophecy of Amos, Isaiah, and Micah (cf Wittenberg 1991:102). Deuteronomy does not even hesitate to legislate in an area considered to be the traditional prerogative of the king, as can be seen in his ordinance concerning the *tithe* (14:22-29). The *tithe* had been introduced in the early monarchy as a combined state and temple tax (for details cf. especially Crüsemann 1985). Deuteronomy now in fact abolishes it. It stipulates that the tithe has to be brought to the central sanctuary. There the offerings of grain, wine and oil and the firstlings of the herd are not to be handed to the state or temple coffers, but are to be eaten by the people themselves (Dt 12:6.11.17; 14:22ff). In the third year, however, all the tithe of the produce is to be gathered together in the towns and rural villages and is to be distributed to the poor, the Levite, the foreigner, the fatherless, and the widow (14:28f; 26:12ff). The tax is therefore in part abolished, while a certain amount is still levied, but now for the support of the underprivileged of society.

#### 4. Conclusion

Let me try to summarize the main points of this paper. I hope the implications for our own South African process of reconstruction and renewal need no extra elaboration but will be immediately evident.

- ◆ We have seen that in the late eighth and early seventh centuries an economic system favouring a small minority of the population, the ruling elite in Judah, was threatening the whole fabric of society. The practice of taking high interest on loans was creating great disparities in wealth and was leading to impoverishment and even enslavement of the rural population.
- ◆ This system was buttressed by harsh and ruthless laws, the *mishpatim* in Exodus 21f. These laws were not aimed at establishing social justice but at safeguarding the interests of the ruling class as is evident in the slave laws and the property laws.
- ◆ The prophetic opposition, though representing the vast majority of people, was initially marginalized and, as we know, in some cases even persecuted. In the Northern kingdom they articulated two basic concerns: the supreme loyalty to

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*people or any of my people that is poor, the Deuteronomic legislator, with few exceptions, refers to thy brethren or thy poor brother" (405).*

Yahweh alone and the rejection of all forms of idolatry - particularly the idolatry of the absolute state - (Ex 34, and prophecy of Hosea), and secondly social justice (the prophecy of Amos). In this second concern they were supported by the prophetic opposition in Judah (Isaiah and Micah).

- ◆ In the dark years after the destruction of Samaria by the Assyrians, when many of the prophetic opposition had fled to Judah, both groups combined and agreed on a process of reform. The outcome of this reform movement is the Torah embodied in the legislation of the Book of the Covenant and Deuteronomy.
- ◆ Although the ruling elite still had dominant influence on reformulating and restructuring the Law<sup>6</sup> the guiding principle was no longer their own economic interest, but the supreme loyalty to Yahweh. The ruling class had become converted to the viewpoints and the basic religious convictions of the prophetic opposition. It accepted now that justice had to conform to Yahweh's justice of compassion.
- ◆ The Torah is therefore the outcome of the working together of both groups to establish greater justice. This greater justice meant abolishing or greatly altering existing laws with the clear intent to effect greater freedom for the vast majority of people.
- ◆ The ultimate principle is enunciated with the greatest clarity by Deuteronomy. It is the emphasis on the universal brother- and sisterhood of the people of God. All those who worship and love the one Yahweh, are brothers and sisters and need to be free to serve him joyfully, unhampered by any form of exploitation and oppression.

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6. Weinfeld (1972) believes that Deuteronomy was drafted by scribes at the Jerusalem court.

## BIBLIOGRAFIE

- Boecker, HJ 1980. *Law and the administration of justice*. Minneapolis: Augsburg, 21-49; 135-149.
- Chaney, ML 1986. *Systemic study of the Israelite monarchy*. Semeia 37, 53-76.
- Coote, RB 1981. *Amos among the prophets: Composition and theology*. Philadelphia: Fortress, 11-45; 46-109.
- Coote, RB, & Coote, MP 1990. *Power, politics and the making of the Bible*. Minneapolis: Fortress, 12-66.
- Crüsemann, F 1980. Tora und christliche Ethik. In R Rendtorff & E Stegemann (eds.), *Auschwitz - Krise der christlichen Theologie* Abhandlungen zum christlich-jüdischen Dialog. München: Kaiser, 159-177.
- Crüsemann, F 1983. '...damit er dich segne in allem Tun deiner Hand...' (Dtn 14,29) Die Produktionsverhältnisse der späten Königszeit, dargestellt am Ostrakon von Mesad Hashavjahu, und die sozialgesetzgebung des Deuteronomiums. In L Schottroff & W Schottroff (eds.), *Mitarbeiter der Schöpfung. Bibel und Arbeitswelt*. München: Kaiser, 72-103.
- Crüsemann, F 1985. Der Zehnte in der israelitischen Königszeit. *Wort und Dienst* 18, 21-47.
- Crüsemann, F 1987a. Auge um Auge...' (Ex 21,24f). Zum sozialgeschichtlichen Sinn des Talionsgesetzes im Bundesbuch. *EvTh* 47, 411-426.
- Crüsemann, F 1987b. Fremdenliebe und Identitätssicherung. Zum Verständnis der 'fremden'-Gesetze im Alten Testament. *Wort und Dienst Jahrbuch der Kirchlichen Hochschule Bethel Neue Folge* 19, 11-24.
- Crüsemann, F 1992. *Die Tora: Theologie und Sozialgeschichte des alttestamentlichen Gesetzes*. München:Kaiser.
- Gottwald, NK 1980. *The tribes of Yahweh: A sociology of the religion of liberated Israel, 1250-1050 B.C.E*. London: SCM Press.
- Gottwald NK 1985. *The Hebrew Bible - a socio-literary introduction*. Philadelphia: Fortress.
- Halbe, J 1975. *Das Privilegrecht Jahwes Ex 43,10-26: Gestalt und Wesen, Herkunft und Wirken in vordeuteronomischer Zeit*. Forschungen zur Religion und Literatur des Alten und Neuen Testaments, 114. Göttingen: Vandenhoeck & Ruprecht.
- Horst, F 1961. *Gottes Recht*. Theologische Bücherei. München: Kaiser.
- Jackson, BS 1975. *Essays in Jewish and comparative legal history*. Studies in Judaism in Late Antiquity. Leiden: Brill.
- Jeremias, J 1983. *Der Prophet Hosea*. Das Alte Testament Deutsch. Göttingen: Vandenhoeck & Ruprecht.
- Kippenberg, HG 1991. *Die vorderasiatischen Erlösungsreligionen in ihrem Zusammenhang mit der antiken Stadtherrschaft: Max-Weber-Vorlesungen 1988*. Suhrkamp Taschenbuch Wissenschaft, 917. Frankfurt: Suhrkamp.
- Knierim, R 1961. Exodus 18 und die Neuordnung der mosaïschen Gerichtsbarkeit. *ZAW* 73, 146-171.

- Köhler, L 1973 (1953). *Hebrew Man. Lectures delivered at the invitation of the University of Tübingen December 1-16, 1952 with an appendix on Justice in the Gate*. London: SCM.
- Kraus, H-J 1962. *Gottesdienst in Israel*. 2<sup>nd</sup> edition, München: Kaiser.
- Kutsch 1961. s.v. 'Sabbat'. *Die Religion in Geschichte und Gegenwart*, Vol. 5. Tübingen: Mohr, 1258-1260.
- Lang, B 1983. *Monotheism and the prophetic minority*. The Social World of Antiquity Series. Sheffield: Almond Press.
- Mendelsohn, I 1942. State slavery in ancient Palestine. *BASOR* 85, 14-17.
- Mendelsohn, I 1949. *Slavery in the ancient Near East: A comparative study of slavery in Babylonia, Assyria, Syria, and Palestine from the middle of the third millenium to the end of the first millenium*. New York: Oxford University Press.
- Morgenstern, J 1960. The King-God among the Western Semites and the meaning of Epiphanes. *VT* 10, 138-197.
- Neufeld, E 1955. The prohibition against loans at interest in ancient Hebrew laws. *HUCA* 26, 355-412.
- Otto, E 1988. *Wandel der Rechtsbegründungen in der Gesellschaftsgeschichte des antiken Israel: Eine Rechtsgeschichte des 'Bundesbuches' Ex XX 22 - III 13*. Studia Biblica. Leiden: E.J.Brill.
- Patrick, D 1985. *Old Testament Law*. London: SCM.
- Phillips, A 1982. Prophecy and law. In R. Coggins, A. Phillips & M. Knibb (eds.), *Israel's prophetic tradition: Essays in honour of Peter R. Ackroyd*. Cambridge: Cambridge University Press, 217-232.
- Phillips, Anthony 1984. The laws of slavery: Exodus 21.2-11. *JSOT* 30, 51-66.
- Robinson, G 1980. The idea of rest in the Old Testament and the search for the basic character of the Sabbath. *ZAW* 92, 32-42.
- Schmidt, WH 1971. Kritik am Königtum. In H. W. Wolff (ed.), *Probleme biblischer Theologie. Gerhard von Rad zum 70. Geburtstag* München: Kaiser, 440-461.
- Schmidt, WH 1979. *Einführung in das Alte Testament*. De Gruyter Lehrbuch. Berlin: De Gruyter.
- Smith, M 1987. *Palestinian parties and politics that shaped the Old Testament*. London: SCM.
- Soggin, JA 1976. *Introduction to the Old Testament: From its origins to the closing of the Alexandrian canon*. London: SCM.
- Von Waldow, HE 1970. Social responsibility and social structure in early Israel. *CBQ* 32, 182-204.
- Weinfeld, M 1972. *Deuteronomy and the deuteronomic school*. Oxford: Clarendon.
- Wittenberg, GH 1986. The lexical context of the terminonly for 'poor' in the Book of Proverbs. *Scriptura*, S 2, 40-96.
- Wittenberg, GH 1991. Old Testament perspectives on labour, in J. Cochrane & GO West (eds.), *The three-fold cord: theology, work and labour*. Pietermaritzburg: Cluster Publications, 91-108.