

"Looking for Laws in the Covenant with Abraham" ©

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(1) In Gen 26:1–6 we read about God telling Isaac:

Gen 26:1 Now there was a famine in the land, besides the former famine that had occurred in the days of Abraham. And Isaac went to Gerar, to King Abimelech of the Philistines.

Gen 26:2 The LORD appeared to Isaac and said, "Do not go down to Egypt; settle in the land that I shall show you.

Gen 26:3a Reside in this land as an alien, and I will be with you,

*Gen 26:3b and will bless you; for to you and to your descendants I will give all these lands, and I will fulfill the oath that I swore to your father Abraham.*

*Gen 26:4 I will make your offspring as numerous as the stars of heaven, and will give to your offspring all these lands; and all the nations of the earth shall gain blessing for themselves through your offspring,*

*Gen 26:5 because Abraham obeyed my voice and kept my charge, my commandments, my statutes, and my laws (משמרתי מצותי חקותי ותורותי).*

Gen 26:6 So Isaac settled in Gerar. (NRSV)

The statement in Gen 26:3–4 echoes the divine covenant that God previously made with Abraham; it affirms Abraham's obedience to God, the promise of the land, and the universal blessings that will flow through him.<sup>2</sup> Gen 26:5 adds a further statement about Abraham's meritorious observance of God's "charge, commandments, statutes, and laws." The statement in Gen 26:5 raises two important issues that merit discussion.

The first issue relates to language, namely, the "heaping up" of terms describing various kinds of divine laws, apparently in order to convey completeness or totality as we see in Gen 26:5.

The second issue relates to history: how can we explain the assertion that Abraham had somehow managed to observe all of the divinely given laws that, according to the Bible's

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2. The promise of numberless offspring is given to Abraham in Gen 15:5, 17:6; the promise of the land is seen in Gen 15:7, 17:7; and his being a source of blessings to the peoples of the earth is found in Gen 12:3, 18:18, and 22:18.

narrative, were promulgated only centuries later in the wilderness before the Israelites entered the Promised Land? There appears to be some anachronism here; and this was in fact commented upon by Medieval rabbinic readers as well as more recently by modern critical scholars.

(2) Let us begin by looking more closely at the "heaping up" of terms for law. We have four terms: משמרת מצותי חקותי ותורותי. The first משמרת, is in the singular; the other three terms are in the plural (in LXX as well as in the Hebrew). A grouping of four terms, again with the sg. term משמרת, but with משפטים in place of תורות, appears together with the plural terms חקות and מצות in Deut 11:1;

ואהבת את יהוה אלהיך ושמרת משמרתו וחקתיו ומשפטי ומצותיו כל הימים.

"You shall love the LORD your God, therefore, and keep his charge, his decrees, his ordinances, and his commandments always." (NRSV)

Scholars have noted that this phenomenon of "heaping up" of terms for law is frequently found in Deuteronomy and in "Deuteronomistic" passages in Joshua—Kings.<sup>3</sup> Three element groupings occur with the terms חקות (חקים) and מצות in Deut 26:17, 30:16.<sup>4</sup> Deuteronomy also uses the pl. term *edot* alongside of חקים and משפטים in Deut 4:45, 6:20.<sup>5</sup> But "torah" in the pl. as we have it in Gen 26:5 does not occur in Deuteronomy or "Deuteronomistic" passages.<sup>6</sup>

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3. Cf. the list of examples in Moshe Weinfeld, *Deuteronomy and the Deuteronomistic School*, (1983; repr., Oxford: Oxford University Press, 1972), 337–339

4. The term מצוה in the sg. is used with חקים and משפטים in Deut 5:31, 6:1. In both of these instances LXX read a plural form. The three terms appear together in the plural in 1 Kings 6:12. These three terms occur together with *torah* in the sg. in 2Kings 17:34; but we should leave aside this evidence since the formulation of that verse appears to be corrupted.

5. The pl forms *'edvot*, *'edot* are both considered plural forms of *'edut* in HALOT, as in BDB. The sg. form *'edut* however does not appear in Deuteronomy; and when it does appear elsewhere in the Pentateuch, it is only with respect to the tablets and the covenant; cf. e.g., Exod 32:15. In Psalms, however, it is used in parallel with *torah*, cf. Pss 19:8, 78:5. The sg. form *'edah*, "witness," which occurs in Gen 21:30, 31:52, Josh 24:27 is treated separately in HALOT, despite its being so close in meaning and even though its expected (but unattested) pl. form would likewise have been *\*'edot*. Cf. also *'ed* "witness" in Gen 31:44 and perhaps Num 23:18 and LXX reading of Isa 33:9; see also Weinfeld, *Deuteronomy*, 111n1. There is no apparent distinction in meaning between *hoq*, *huqah*, and their forms whether sg. or pl. Three element groupings using *'edvot* with מצות חקים occurs in 1 Chron 29:19 and 2 Chron 34:31.

6. This is noted by Weinfeld, *Deuteronomy*, 338. Weinfeld, *ibid.* 7, sees Jeremiah as coming after the Deuteronomistic editing of Joshua–Kings but, nevertheless, he still places him in the

We do, however, have the sg. term "torah" with reference to a book (or books) being used in 1King 2:3, alongside of משמרת plus four additional "law terms:"

ושמרת את משמרת יהוה אלהיך ללכת בדרכיו לשמר חקתיו ומצותיו ועדותיו ככתוב בתורת  
משה למען תשכיל את כל אשר תעשה ואת כל אשר תפנה שם.

. . . and keep the charge of the LORD your God, walking in his ways and keeping his statutes, his commandments, his ordinances, and his testimonies, as it is written in the law [*torah*] of Moses, so that you may prosper in all that you do and wherever you turn. (NRSV)

The pl. form of "torah" clearly also appears in a grouping of three "law terms" in Lev 26:46:

אלה החקים והמשפטים והתורות אשר נתן יהוה בינו ובין בני ישראל בהר סיני ביד משה

These are the statutes and ordinances and laws [LXX: law] that the LORD established between himself and the people of Israel on Mount Sinai through Moses (NRSV).

Likewise in a grouping of four "law terms" in Neh 9:13:

ועל הר סיני ירדת ודבר עמהם משמים ותתן להם משפטים ישרים ותורות אמת חקים ומצות טובים.

You came down also upon Mount Sinai, and spoke with them from heaven, and gave them right ordinances and true laws, good statutes and commandments. (NRSV)<sup>7</sup>

This "heaping up" of "law terms" in Gen 26:6 and in these other passages appears to be a way of saying "all the laws of any sort or description."<sup>8</sup> The act of grouping brings together "law terms"

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"school" of Deuteronomic writers. The pl. *torot* occurs in the *Ketiv* of Jer 32:23; the *Qere* however reads this form as sg. There are sg. forms of *torah* in Jer 44:10, 23 which are juxtaposed with the pl. terms חקות, עדות, חקים. While there is no alternative *Ketiv* - *Qere* traditions preserved with these passages, the passages would offer equally sensible or certainly "smoother" readings if *torah* was re-pointed and read as pl. *torot*.

7. This usage is exceptional in Nehemiah; elsewhere, the book uses *torah* in the sg. as in Neh 9:14: "and you made known your holy sabbath to them and gave them commandments and statutes and a law [תורה] through your servant Moses." The pl. form *torot* is used in a grouping of two with חקים or מצוה in Exod 16:28, 18:16, 20. It is also found in Isa 24:5 and in Ps. 105:45; the use of this pl. form is exceptional in Psalms, where the sg. *torah* regularly is used. LXX reads it as sg. Cf. also Dan 9:10. The pl. form is used in a more restricted way, to refer to the prescribed building features of the future sanctuary, in Ezek 43:11, 44:5, 24.

8. A similar observation was made by Nahum M. Sarna, *The JPS Torah Commentary: Genesis*

that are also used individually to describe one specific legal practice presented in the Pentateuch and elsewhere.<sup>9</sup> The use of such groupings may have originated in a time when a sg. term like *torah* did not yet emerge as the term of choice to embrace or describe the totality of laws. Grouping, in any case, did not preempt the individual terms still being used in the plural, as we can see, e.g., in Dan 9:10, which is clearly a late passage:

וְלֹא שָׁמַעְנוּ בְּקוֹל יְהוָה אֱלֹהֵינוּ לִלְכֹת בְּתוֹרָתוֹ אֲשֶׁר נָתַן לִפְנֵינוּ בְּיַד עֲבָדָיו נְבִיאִים.

"and [we] have not obeyed the voice of the LORD our God by following his laws, which he set before us by his servants the prophets." (NRSV)<sup>10</sup>

The same seems likewise to be true with respect to plural use for the terms חֻק, חֻקָּה, מִשְׁפָּט, מִצְוָה, עֲדָה, עֲדוּת, and מִשְׁמֶרֶת; they can likewise be used to describe the totality of laws.<sup>11</sup> The sg. term *torah* is clearly used to describe the entire Pentateuch in later times; we find this usage already in the ancient colophon to Ben Sira (vs. 5) which speaks of "the Law and the Prophets." This usage continues on as one can see from passages in Josephus and the New Testament.<sup>12</sup> This "summary use" may already be evident in the phrases תּוֹרַת יְהוָה, תּוֹרַת אֱלֹהִים; the last of these is used once in the Pentateuch (Exod 13:9) but otherwise these terms occur only in Prophets and Writings.<sup>13</sup>

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(Philadelphia: The Jewish Publication Society, 1989), 184.

9. For examples showing the use of these law terms to describe a single, individual law, cf. for תּוֹרָה Lev 6:12, 7:18; for מִשְׁפָּט Exod 21:31, Deut 18:3; for חֻק Exod 12:24, Num 18:11; for חֻקָּה Exod 12:43, Lev 16:34; for מִשְׁמֶרֶת Num 1:53, Num 3:25, 3:31; for מִצְוָה Deut 26:13, 1 Sam 13:13.

10. This pl. form is exceptional in Daniel where otherwise sg. *torah* is used. LXX in fact reads it as sg. in Dan 9:10. Pl. form *torot* (alongside of *huqim*) also appears in Ps 105:45; this pl. form is exceptional in Psalms, where the sg. *torah* regularly is used. LXX in fact reads it as sg.

11. Cf. for עֲדָה Ps 119 passim, Neh 9:34; for עֲדוּת, חֻק, IIChron 34:31; for מִשְׁפָּט, מִצְוָה, Dan 9:5; for חֻקָּה, IIChron 7:19. The pl. of מִשְׁמֶרֶת is used only for priestly duties, e.g., Num 8:26, Neh 13:30.

12. Josephus, *Ant.* 1:12, Matt 5:17, Acts 28:23, and with addition of "Psalms" in Luke 24:44. For the predilection for translating תּוֹרָה into Greek as *nomos*, see Alan F. Segal, "Torah and *Nomos* in Recent Scholarly Discussion" in *The Other Judaism of Late Antiquity*. Brown Judaica Studies 127. (Atlanta: Scholars Press, 1987), 131–146.

13. An additional term "law of the Most High" is found in Ben Sira, e.g., 9:15, 19:17, as well as in 2Esdras 2:81; also at Qumran in 4Q 525 Frag 2, ii,4 and in "Psalm 154" xviii, 12; for these citations see Michael Wise, Martin Abegg Jr, and Edward Cook, *A New Translation of the Dead*

(3) Modern critical scholars, going back to the late 19th century, have taken Gen 26:3b–5 to be a later insertion into an earlier passage. (And thus it has been presented at the beginning of this paper.) There are many reasons for this judgment. First is the fact that one could omit this entire passage and read smoothly from Gen 26:3a to Gen 26:6. Second, of course is the anachronism about Abraham observing all of the laws, which we will discuss later on. Third, is the "heaping up" of the terms for law, that, as Delitzsch noted already in 1887, "klingt deuteronomisch." In other words, he recognized that this "heaping of terms" frequently appears in Deuteronomy and in the Deuteronomic histories. Delitzsch, however, also noted the absence of any pl. of *torah* in the Book of Deuteronomy. He therefore saw this insertion as coming from an unspecified "later hand."<sup>14</sup>

There are other scholars nevertheless who take Gen 26:3b–5 to be a Deuteronomic or Deuteronomistic addition within Gen 26:1-6.<sup>15</sup> But many others have argued that these verses, although added, are nevertheless older, belonging to the E or JE traditions.<sup>16</sup> And, perhaps not

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*Sea Scrolls* (San Francisco: Harper Collins, 2005) 534, 571.

14. Franz Delitzsch, *Neuer Commentar über Die Genesis*. (Leipzig: Dörffling und Franke, 1887), 361. Similar conclusions, without naming the later tradition, are presented in Noth, *A History of Pentateuchal Traditions*. Translated by Bernhard W. Anderson. (Englewood Cliffs New Jersey: Prentice–Hall, 1972), 29 and n. 9, 104n302; Gerhard von Rad, *Genesis, a Commentary*. Translated by John H. Marks. Rev. ed. (Philadelphia: Westminster Press, 1972), 270–71 (seeing the larger passage as J; Claus Westermann, *Biblischer Kommentar Altes Testament: Genesis*. (Neukirchen–Vluyn: Neukirchener Verlag, 1980), 360.

15. August Dillman, *Genesis Critically and Exegetically Expounded*. Translated by William B. Stevenson. 2 vols. (Edinburgh: T&T Clark, 1897), ii, 203 [p.323 in the original German edition]. This is taken as a possibility by Lothar Ruppert, *Genesis. Ein kritischer und theologischer Kommentar. 3. Teilband: Gen 25,19–36,43*. Forschung zur Bibel 106. (Würzburg: Echter Verlag, 2005), 101–2. He sees this as a possibility, although, overall, he assigns Gen 26:1-6 to the J or JE traditions. Bruce Vawter, *On Genesis*. (New York: Doubleday, 1977), 291 takes a similar position, as does Erhard Blum, *Die Komposition der Vätergeschichte*, WMANT 5. (Neukirchen–Vluyn: Neukirchener Verlag, 1984), 362–63. S.R. Driver, *An Introduction to the Literature of the Old Testament*. Reprint. Meridian Library. (New York: Meridian Books, 1956), 103 [p. 95 in the original edition] sees Deuteronomistic influence extending even to Neh 9:13 and Dan 9:10.

16. For JE, cf. Julius Wellhausen, *Die Composition des Hexateuchs und der Historischen Bücher des Alten Testaments*. 2nd rev ed. (Berlin: Georg Reimer, 1889, 22–3, 30n2; Driver, *Introduction*, 16 [p. 14 in the original ed.]; S. R. Driver, *A Critical and Exegetical Commentary on Deuteronomy*, 3rd ed. The International Critical Commentary. (1901 Reprint. Edinburgh: T. &T. Clark, 1986), xci, 127; John Skinner, *A Critical and Exegetical Commentary on Genesis*. The International Critical Commentary. (New York: Scribners, 1910), lvi; Weinfeld,

surprisingly, there is also the position that the addition is post-Deuteronomistic and represents a postexilic tradition.<sup>17</sup> It is not my purpose to debate the relative merits of these attributions; they are, overall, sufficient to attest a widely held recognition that Gen 26:3b–5 is a later addition to Gen 26. (I will have some further comments on dating at the conclusion of this paper.)

Let us return, rather, to the "heaping up" of legal terms; what is the reason for this phenomenon? In trying to explain the "heaping up" of legal terms, it is helpful to consider how the Pentateuch differs from other ancient Near Eastern law collections in that the Pentateuch contains ritual and cultic laws in addition to secular or "civil laws."<sup>18</sup> My thought is that the merging of these secular and religious categories is in fact the primary reason why there is a "heaping up" so many different terms for laws: תורה, עדות, דבר, מצוה, משמרת, חק, חקה, מצוה, משפט.<sup>19</sup> They derive from the merger of categories—secular and cultic—that took place in the formation of the Pentateuch as we have it now. Used altogether, these terms convey the idea of totality; but at the same time by "heaping them up together," the Pentateuch—I would say deliberately—works to "level out" the inherent differences between the various terms and puts their diverse origins and varying orbits into the background.<sup>20</sup>

But this was not always the case in ancient Israel; we are in fact told in the Bible that the

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*Deuteronomy*, 338. For E, cf. Ernst Sellin and Georg Fohrer, *Introduction to the Old Testament*. Translated by David E. Green. (Nashville: Abingdon, 1968), 147; Otto Eissfeldt, *The Old Testament: An Introduction: The History of the Formation of the Old Testament*. Translated by Peter R. Ackroyd. Reprint. (New York: Harper and Row, 1966), 201.

17. David Carr, *Reading the Fractures of Genesis: Historical and Literary Approaches*. (Louisville: Westminster John Knox Press, 1996), 152–61.

18. This is a well-recognized point; there are only a few exceptions, e.g., in Hittite Laws §§ 166–67; cf. Samuel Greengus, *Laws in the Bible and in Early Rabbinic Collections*. Cascade Books. (Eugene, OR: Wipf and Stock, 2011), 8, 254, 285–86.

19. There is yet another term פקודים (only plural in sense of "precepts") which is found only in Ps 119 and not in the Pentateuch.

20. *Torah* is associated with priestly matters in Jer 18:10 and Ezek 7:26—where דבר is mentioned and associated with prophets. See also Mic 3:11 for priest's instruction, prophet's divination, and chieftain's judgment. The term משפט is associated with various judgments given by king (1Kings 3:28), princes (2Kings 15:5), community leaders (Num35:24) high officials (Isa 1:23), and priests (Ezek 44:23–24). The other law terms are more difficult to assign. חק suggests a written statement in passages like Isa 30:8, Ezek 4:1, Job 19:23 and perhaps also Isa 10:1; thus the translation "statute." עדות has been connected with Neo-Assyrian *adê*, a term that describes "covenant" and obligations created by oaths; thus the translation "testimony."

inherent differences between the categories of civil and religious laws were recognized at certain times in ancient Israel. We see this in 1 Chron 26:32, where David is said to have put civilian control over both categories:

King David appointed him and his brothers, two thousand seven hundred men of ability, heads of families, to have the oversight of the Reubenites, the Gadites, and the half-tribe of the Manassites for everything pertaining to God [דבר האלהים] and for the affairs of the king [דבר המלך]. (NRSV)

This situation, however, changes in 2 Chron 19:11 where Jehoshaphat gives authority in religious matters to the chief priest:

See, Amariah the chief priest is over you in all matters of the LORD [דבר יהוה]; and Zebadiah son of Ishmael, the governor of the house of Judah, in all the king's matters [דבר המלך]; and the Levites will serve you as officers [שוטרים]. . . . (NRSV)

While the textual witness from Chronicles may be later than the events described, one can nevertheless see that there was a recognized difference between secular and sacred affairs and that the priesthood had perhaps not entered into secular matters in the days of the monarchy prior to the time of Jehoshaphat.

The distinction between categories is still visible in Ezra 7:25–26, where Artaxerxes commands:

And you, Ezra, according to the God-given wisdom you possess, appoint magistrates and judges who may judge all the people in the province Beyond the River who know the laws of your God; and you shall teach those who do not know them. All who will not obey the law of your God and the law of the king [דתא די אלהך ודתא די מלכה], let judgment be strictly executed on them, whether for death or for banishment or for confiscation of their goods or for imprisonment. (NRSV)

Although such statements testify to a separation between "religious and civil powers," editors (or authors) at some point sought to blur the customary lines between secular and religious authority. In the Pentateuch, priests are also represented as being given some level of authority over secular laws. which, according to 1 Chron 26:32 cited above, originally lay in the domain of the king or his magistrates. So, for example, in Deut 17:8–9 we have a "conglomerate of adjudications;" both secular and religious authorities are treated together as if operating on the same level:

כי יפלא ממך דבר למשפט בין דם לדם בין דין לדין ובין נגע לנגע דברי ריבת בשעריך וקמת ועלית אל המקום אשר יבחר יהוה אלהיך בו ובאת אל הכהנים הלויים ואל השפט אשר יהיה בימים ההם ודרשת והגידו לך את דבר המשפט.

If a matter requiring judgment is too difficult for you, (whether) between (one kind of) blood and another, between legal controversy or another, between one kind of affliction and another, matters of controversy within your gates, then you shall arise and go up to the place that the Lord your God will choose, and you shall come before the the levitical priests or the judge who will be in those days, and they shall tell you the statement of judgment. .

My translation here of "blood" follows the views of the medieval commentators Rashi, Hazzequni, Bekhor Shor, and Nahmanides, who understand "blood" to mean "menstrual blood and discharge."<sup>21</sup> My translation of נגע as "affliction" follows Targum Onkelos who translated "dispute and plague of leprosy" This is also the view taken in *Sifre* to Deuteronomy 17:8 and *b. Sanh* 87a.<sup>22</sup> The older rabbis recognized the "mixed context" of sacred and profane and assigned the former to the priests, who were the ones certainly involved in these determinations but only exceptionally in "legal controversy." On the other hand, many modern translations—I would argue, erroneously— have translated "assault and bloodshed" in an effort to "level out" the otherwise confusing language and to bring this passage in line with others cited below, suggesting greater priestly participation in the justice system. The term "blood" is admittedly equivocal; but the noun נגע apart from the above passages, does not usually describe harm coming from "assault."<sup>23</sup>

The expression "between blood and blood" is found again in 2Chron 19:8–10, which, despite the separation of categories that is stated in 2Chron 19:11, likewise blurs priestly and secular authority; Jehoshaphat is here described speaking to priests and Levites:

וגם בירושלם העמיד יהושפט מן הלויים והכהנים ומראשי האבות לישראל למשפט יהוה ולריב וישבו ירושלם.

וְכָל רִיב אֲשֶׁר יִבּוֹא עֲלֵיכֶם מֵאֲחֵיכֶם הַיֹּשְׁבִים בְּעִרְיָהֶם בֵּין דָּם לְדָם בֵּין תּוֹרָה לְמִצְוָה לַחֲקִים וּלְמִשְׁפָּטִים וְהִזְהַרְתֶּם אֹתָם וְלֹא יֵאָשְׁמוּ לִיהוָה וְהָיָה קֶצֶף עֲלֵיכֶם וְעַל אֲחֵיכֶם כִּי תַעֲשׂוּן וְלֹא תֵאָשְׁמוּ.

And moreover in Jerusalem Jeshoshaphat set up (officers) from the Levites and the Priests and from the leaders of the families of Israel for (presiding over) the Lord's judgment and dispute;

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21. I discussed the view of Joseph Bekhor Shor in connection with Deut 21:1–9 in Greengus, *Laws in the Bible*, 180.

22. This understanding is followed by Rashi, Rashbam, and Nahmanides.

23. The action in 2Sam 7:14 inflicts harm but not necessarily as a consequence of assault. An exception may be the action described by the verbal form in Gen 32:26, 33, which took place at the conclusion of Jacob's wrestling with the angel.



and they (these appointees) resided in Jerusaem<sup>24</sup> . . . and any dispute which comes before you from among your brethren who dwell in your (various) cities, whether between (one kind of) blood and another, between teaching or commandment, for statutes or judgments, then you shall admonish them that they not incur guilt before the Lord and there could be (an outbreak of divine) wrath upon you and your brethren; thus shall you do and you will not incur guilt.

Note that the secular authorities, i.e, the major clan leaders, are brought in to a context involving sacred judgments, although they are placed in second position after the Levites and Priests. The categories of cases are thus mixed together and further blurring comes by placing "teaching or commandment" alongside of "statutes or judgments."

In Ezek 44:23–24 we again see this advancement of priestly power and their apparent insertion into secular matters, where, in a long passage otherwise detailing rules of cultic purity, we read:

They [the priests] shall teach my people the difference between the holy and the common, and show them how to distinguish between the unclean and the clean. In a controversy [ריב] they shall act as judges, and they shall decide it according to my judgments [משפטי]. They shall keep my laws [תורות] and my statutes [חקותי] regarding all my appointed festivals, and they shall keep my sabbaths holy.(NRSV)<sup>25</sup>

We find similar blurring in Deut 21:5, in a case of a murder committed by an unknown assailant and a sworn statement of absolvment is required:

ונגשו הכהנים בני לוי כי בם בחר יהוה אלהיך לשרתו ולברך בשם יהוה ועל פיהם יהיה כל ריב וכל נגע.

. . . and the levitical priests shall come forward because the Lord has chosen them to minister unto him and to give blessing in the Lord's name; and through their utterance shall (be decided) every dispute and affliction. (NRSV)

This passage leaves the impression that the priests are in fact acting as judges; but the passage in Deut 21:6–8 follows with:

All the elders of that town nearest the body shall wash their hands over the heifer whose neck

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24. We read here "residing" with LXX rather than with MT "they returned (to Jerusalem).

25. Instead of merely translating ריב, LXX reads "they shall preside in a case of blood to decide it" (NETS 981). A more "expected" and typical description of priestly roles appears in Ezek 22:26: "Its priests have done violence to my teaching and have profaned my holy things; they have made no distinction between the holy and the common, neither have they taught the difference between the unclean and the clean, and they have disregarded my sabbaths, so that I am profaned among them." (NRSV)

was broken in the wadi, and they shall declare: "Our hands did not shed this blood, nor were we witnesses to it. Absolve, O LORD, your people Israel, whom you redeemed; do not let the guilt of innocent blood remain in the midst of your people Israel." Then they will be absolved of bloodguilt.

The elders, who are the main participants in this rite according to Deut 21:2–4, after slaying the heifer, make this declaration; the task of the priests is to administer the sacred oath.<sup>26</sup>

If we put all of these observations together, it seems that they provide us with a way to explain how the "heaping up" of legal terms came about; it was a deliberate blurring of secular and religious laws in order to "justify" bringing the two categories together in the biblical law collections. This bringing together of categories provided support to the idea of having the priesthood take an increased measure of participation and authority in normally secular matters. This development was clearly taking place in the late Judean monarchy during the time of Josiah, who is associated with the "discovery" of Deuteronomy. Priestly leadership certainly became increasingly important following the disappearance of monarchy under foreign rulers, during exilic and postexilic times. We can see this development reflected in Ezekiel, Chronicles, and Ezra. The "heaping up" of legal terms and the blurring of the separate origins of secular and religious domains was congenial to the interests of the priesthood, under whose direction, it is widely believed, the Pentateuch eventually achieved its final shaping.

(4) There still remains a need to explain the "anachronism" relating to Abraham having observed all of the laws. How could the biblical writer assert that Abraham had somehow managed to observe so many of God's laws, given the fact that, according to the Bible's own narrative, most of these laws were promulgated only centuries later in the wilderness, when the Israelites were preparing to enter the Promised Land? This question must be answered if we are to make sense of Gen 26:3b–5; and I have not found many attempts to explain the "anachronism" in the discussions of the modern scholars that I have consulted.<sup>27</sup>

The statement about Abraham's observance was in fact already viewed as a significant historical

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26. Rashi and Nahmanides suggest that the priests might perhaps also have recited the formula "Absolve . . ." in Deut 21:7–9. The term "judges" appears only in Deut 21:2; interestingly, it does not appear in the Samaritan recension of this passage. The legal background of Deut 21:1–9 is discussed in Greengus, *Laws in the Bible*, 179–83.

27. A notable exception is Detleff Dieckman, *Segen für Isaak: Eine Rezeptionsästhetische Auslegung von Gen 26 und Kotexten*. BZAW 329. (Berlin: Walter de Gruyter, 2003), 237–48. Dieckman agrees that Gen 26:5 is a later addition to the text; but he also takes time to consider rabbinic views such as I discuss below, along with references to modern Jewish commentators who follow them.

problem by medieval Jewish commentators.<sup>28</sup> I will use, as a good example, the exposition of Nahmanides,<sup>29</sup> who posed these questions in detail. He raises the question: if Abraham indeed observed all of the laws, then how then did it happen that the Abraham and his children came to "transgress" so many important commandments that later appear in the Pentateuch? Abraham married his half sister (Gen 20:11–12)<sup>30</sup>, his grandson Jacob erected a pillar (Gen 28:1) and married two sisters in their lifetime (Gen 29:16–30).<sup>31</sup> Moreover, Amram married his aunt (Exod 6:20) and Moses erected 12 pillars (at Sinai in Exod 24:4).<sup>32</sup> How could these things have happened when the Bible also tells us in Gen 19:19 how Abraham was praised by God for having instructed "his children and his household after him to keep the way of the LORD" ? (NRSV)

Nahmanides, following lines of thinking found as well in other medieval commentators, offers a number of possible solutions. One solution was to "fix the anachronism" by trying to attach the various terms for law in Gen 26:5 to specific events that are related in Abraham's life, as told in the Book of Genesis. One could look, for example, at Abraham's performance of "going forth" from his native land in response to God's command (Gen 12:1–4); his circumcision (Gen 17:9–14); and the binding of Isaac (Gen 22:22). But this "fix" remains a challenge because we have five terms for laws in Gen 26:5, i.e., more than the three events; and, even so, how do we relate these actions to the different law terms?<sup>33</sup> A second solution was simply to acknowledge the anachronism, but, at the same time, to claim that Abraham, through his extraordinary powers of reason or prophecy, somehow did know about the later commandments and he voluntarily chose to observe many if not all.<sup>34</sup>

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28. Awareness of the anachronism goes back even earlier, to the Talmud, *b. Yoma* 28b.

29. Rabbi Moses ben Nahman, who lived in Spain, 1194–1270 CE. The commentary to be cited was written on Gen 26:5.

30. This union is forbidden in Lev 18:9,11; 20:17; Deut 27:22 as well as in Ezek 22:11.

31. Erecting a pillar is forbidden in lev 26:1, Deut 16:22; and marriage with two sisters is forbidden in Lev 18:18.

32. The marriage of Moses is described in Exod 6:20 and Num 26:59; this union is forbidden in Lev 18:12–14.

33. There are attempts to link *משמרת* to the verb *שמר* in Gen 17:9–10; similarly, *מצות* with the verb *צוה* which occurs in Gen 21:4, 12; 22:2. But there are no ready links with the law terms *חקות*, *תורות*.

34. In addition to the statement by Nahmanides, cf. also Ibn Ezra and Bahya ben Asher. This "solution" builds on earlier rabbinic discussions on Abraham having come to the awareness of the one, true God through his native intelligence. Cf. *Ber. Rabba* (Vilna) 64:4, 95:2. In Gen 20:7,

However, Nahmanides, along with a number of other commentators, offer yet a third explanation that, in my judgment, is perhaps more congenial to historical sensibilities. This is the idea that Gen 26:5 might also be referring to generally accepted laws that were followed by ancient societies even prior to Sinai going back to the time of Noah. The Bible tells of a pre-Abrahamic covenant made with Noah after the flood in Gen 9:1–17. Some commandments and laws were given by God there: to be fruitful and multiply, not to eat a creature's "flesh with its life that is its blood," and to give the death penalty for homicide. Building upon this passage, the rabbis, going back to the time of the Talmud, constructed a concept of "Noahide laws" that existed for all mankind before Sinai. Some went even further back in "history" and suggested that the relationship between God and law came into existence with the commandment not to eat of the forbidden fruit given to Adam and Eve.<sup>35</sup> In rabbinic sources there were various attempts to establish the number of Noahide laws; these range from seven<sup>36</sup> up to thirty.<sup>37</sup> In his commentary on another passage, Gen 34:13, Nahmanides does not offer a number but includes among the pre-Mosaic "Noahide laws" non-Israelite laws on theft, fraud, over-reaching in business transactions, hire, deposit and safekeeping, rape, seduction, personal and property injuries, lending and sale.

These earlier laws were taken by Nahmanides and some other commentators as a way to "fill out" or supplement the specific actions of Abraham that are enumerated in the biblical narrative and thereby make better sense out of the four law terms in Gen 26:3–5. This is done in supplementary fashion to the earlier narratives, e.g., by Rashi, Rashbam and Hazzequni. However, Nahmanides, along with Hazzequni, Bahya ben Asher, and Sforno, was ready to understand the law terms in Gen 26:5 as referring solely to the "Noahide" commandments. Nahmanides, however, still attempted to posit some connection between each of the four law terms in Gen 26:3b-5 to categories of universally observed laws that would pre-date Moses and Sinai. Thus, e.g., he suggests that where Gen 26:5 says "my charge" it could refer to incest prohibitions that were part of the Noahide laws; "my commandments" refers to robbery and murder; "my laws" refers to (general civil) laws and prohibition against worshipping other gods—because these too, according to the rabbis, were part of the Noahide commandments; and

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God himself declares Abraham to be a "prophet." This same line of reasoning was articulated even earlier in Philo, *On Abraham*, 275.

35. This view is presented in *b. Sanh.* 56b and Midrash Tanhuma (Buber) *Yitro* 2 on Exod 18:1. It is based on a midrashic reading of Gen 2:16, "finding" multiple commandments in the words of that verse. The "exegesis" is also described by Nahmanides in his commentary on Gen 2:16.

36. Cf. *t. Avod. Zar.* (Zuckerman) 8:4; *b. Sanh.* 56b.

37. Cf. *b. Hul.* 92a; *j. Avod. Zar.* 40a.

Abraham was observing even the fine points and stringencies associated with these commandments.

The insights of these medieval commentators can help us explain the anachronism in Gen 26:3-5. To be sure, the concept of "Noahide laws" is not overly stated in the Pentateuch.<sup>38</sup> Nevertheless, I believe we may regard the covenant with Noah and the laws expressed in Gen 9:1-7 as belonging to an earlier stage in the development of this concept. Noah's covenant supports the claim that universally accepted moral laws are in fact part of a divine program instituted by YHWH, not just for Israel but for all mankind. Noah's covenant—and perhaps also the command given to Adam and Eve—served anciently to "explain" how such laws came to be present within non-Israelite justice systems, and brought them as well under the "mantle" of divine approval. This concept of a common legal tradition fits in very well with what we now know from archaeology, namely, which shows that there are in fact many biblical and even rabbinic laws that "go back" to earlier laws contained in ancient Near Eastern law collections. Archaeological evidence likewise suggests that such laws were part of a widely shared ancient tradition of customary laws. The ancient Israelites could not escape the realization that there were similarities between their own laws and laws practiced in neighboring lands. There was thus a need to "explain" this relationship already in biblical times, because, in the Bible, God is concerned about and connected with laws and law-giving.<sup>39</sup>

Genesis in fact contains additional references attesting to Abraham's awareness of divinely approved, general standards of justice. In addition to Gen 9:3b-5, there is Gen 18:19, where God states:

For I know him (well), that he will command his children and his household after him, and they will (indeed) keep the way of the Lord, to do righteousness and justice, that the Lord will (thereby) bring upon Abraham that which he has spoken about him.

In Gen 18:25, Abraham, in his appeal to God, reveals his own confident awareness of the divine

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38. For further concise discussion of "Noahide laws" in rabbinic tradition cf. the concise article by Julius H. Greenstone, "Laws, Noachian," *JE* 7:646-50. A discussion of eight specific laws that figure prominently in rabbinic and Jewish philosophical traditions is given in David Novak, *The Image of the Non-Jew in Judaism: An Historical and Constructive Study of the Noahide Laws* (Toronto Studies in Theology 14: Lewiston/Queenston Lampeter: The Edwin Mellen Press, 1983).

39. See Greengus, *Laws in the Bible . . . The Legal Legacy of the Ancient Near East*, passim and "Introduction" 1-9. Jewish rabbinic teaching adds divine approval to shared rabbinic laws not found in the Bible by claiming that these were part of an oral tradition of laws given by God to Moses at the same time as the written Torah.

system of universal justice as he declares:

Far be it from You to do such a thing, to bring death upon the innocent as well as the guilty, so that innocent and guilty fare alike. Far be it from You! Shall not the Judge of all the earth deal justly? (NJPS)

These passages, along with the description of the divine covenant with Noah and its commandments, help us understand how a statement like Gen:26:3b–5 could be made with respect to Abraham in a pre-Mosaic setting. Abraham is pictured as possessing an exemplary understanding of morality and justice. He observes God's laws, which are embedded in long-approved and established non-Israelite norms going back to the time of Noah. Abraham acts in conformity with established secular laws of his time: buying the Cave of Machpelah, agreeing to have Hagar set free but worrying about Ishmael, and separating the inheritance given to Keturah's sons from that of Isaac.<sup>40</sup> At the same time, in keeping with what we have already noted above on the "heaping up" of law terms and the blurred lines between sacred and secular laws, we see that Gen 26:3b–5 refers to religious as well as secular laws. In the narratives about Abraham's life, he is described as having "observed" religious as well as secular laws. We find "religious observances" in Abraham building an altar, giving a tithe, and performing circumcision.<sup>41</sup> These religious observances are thus "confirmed" for the pre-Sinai as well as the post-Sinai environment, where these observances are again addressed.<sup>42</sup>

I would argue, therefore, that the above ideas taken together —Noah's covenant and pre-existing secular laws, God as the source and patron of laws and justice, the "blending" of religious and secular laws in language and narrative— provide a way to explain Gen 26:3–5 and give "credibility" to what would otherwise be a blatant anachronism.

(5) I now briefly return to the question of dating, i.e, when an editor might have added Gen 26:3b–5 to Gen 26, and can offer a number of observations.

1) We have seen that the "heaping up" of law terms is linked with Deuteronomy and the

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40. Abraham buys the cave in Gen 23:1–20; his relationship with Hagar and Ishmael is described in Gen 16:1–6, 17:18, and 21:9–14, where God soothes Abraham's qualms; cf. the discussion in Greengus, *Laws in the Bible*, 77–79; his relationship with Keturah is presented in Gen 25:5–6, 1Chron 1:32.

41. Abraham builds altars in Gen 12:8, 13:18, 22:9; he gives a tithe in Gen 14:20; circumcision takes place in Gen 17:23–27, 21:4.

42. For altars, cf. Exod 20:24–26, 27:1; Deut 27:5–6. For tithes cf. Deut 14:22; and for circumcision cf. Exod 12:44–48; Lev 12:3.

Deuteronomistic writings. However, the use of the plural תורות is not found in this literature but does occur in Lev 26:46 and Neh 9:10.

2) I believe that we can associate the blurring of law terms with a movement by the Jerusalem priesthood to assume a greater role in secular as well as in religious matters. This movement is visible in the book of Deuteronomy and in the religious reforms carried out by king Josiah; it finds support in Ezekiel; and appears to be very much in place by the time of Ezra. The secular laws in the Pentateuch may have originated during the monarchy (or even earlier); but, over time, they entered into the domain of the priesthood and continued there even after the fall of the Judean kingdom.

3) The law terms used in Gen 25:3b–5 are perhaps more "weighted" towards religious categories; this is clearly the case for תורות, משמרת, מצות, חקות. The term משפטים, which clearly is originally secular, does not appear. But it does appear in Ezek 44:23 along with חקות, תורות, as it does also in Lev 26:46 (with חקים in place of חקות). God's covenant with Abraham is mentioned in Leviticus (26:42), Deuteronomy, as well as in Deuteronomistic writings.<sup>43</sup>

It is therefore possible to argue that the statement about Abraham's piety in Gen 26:3b–5 could conceivably have been inserted anytime from the reign of Josiah and thereafter. If the comment on Abraham, as we have suggested, is also to be linked with some early idea about "Noahide laws," then this association likewise may perhaps have been taking shape before the exile; but there is no way to be certain. Awareness of and interaction with non-Israelite laws would, however, have been an everyday occurrence in exilic and postexilic times. The comment about Abraham would also seem to presuppose that the Pentateuch as we know it had taken its present shape, at least with respect to including both secular and religious laws. Therefore, one cannot exclude the possibility of Gen 26:3b–5 being a pre-exilic addition; but the preponderance of what we are able to describe points to it being the work of editors living in exilic or postexilic times.

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43. Cf. e.g., Deut 6:10, 9:5, 29:13; 1Kings 18:36; 2Kings 13:23.