

**NELCO**  
**NELCO Legal Scholarship Repository**

---

New York University Public Law and Legal Theory  
Working Papers

New York University School of Law

---

8-1-2010

# Sovereignty and Conquest in the Hebrew Bible

Geoffrey P. Miller

*New York University*, [geoffrey.miller@nyu.edu](mailto:geoffrey.miller@nyu.edu)

Follow this and additional works at: [http://lsr.nellco.org/nyu\\_plltwp](http://lsr.nellco.org/nyu_plltwp)

 Part of the [Arts and Entertainment Commons](#), [Constitutional Law Commons](#), [Jurisprudence Commons](#), [Legal History, Theory and Process Commons](#), and the [Religion Law Commons](#)

---

## Recommended Citation

Miller, Geoffrey P., "Sovereignty and Conquest in the Hebrew Bible" (2010). *New York University Public Law and Legal Theory Working Papers*. Paper 223.

[http://lsr.nellco.org/nyu\\_plltwp/223](http://lsr.nellco.org/nyu_plltwp/223)

This Article is brought to you for free and open access by the New York University School of Law at NELLCO Legal Scholarship Repository. It has been accepted for inclusion in New York University Public Law and Legal Theory Working Papers by an authorized administrator of NELLCO Legal Scholarship Repository. For more information, please contact [tracy.thompson@nellco.org](mailto:tracy.thompson@nellco.org).

# Sovereignty and Conquest in the Hebrew Bible

Geoffrey P. Miller  
New York University (NYU) - School of Law

Abstract: This article examines the Hebrew Bible's theory of sovereignty with special reference to the book of Joshua. The author conceives of sovereignty as the exclusive and absolute control over territory. The sovereign is "all Israel" – the biblical analogue to "we the people." The territory is the land promised to the Patriarchs and partially conquered by Joshua in the war of conquest. Israel's title to this territory is established vis-à-vis foreign nations by boundary agreement (Aram), partition (Ammon and Moab), abandonment (Edom), and renunciation (Egypt); its right to dispossess the prior inhabitants is based on theories of conquest, capacity, appropriation, grant, promise, purchase and contract. Israel's control over territory is explored in narratives describing the allocation of the Promised Land. The author's approach is pragmatic rather than programmatic, stressing the value of fair procedures and recognizing arguments for distributive justice based on merit, equality, productivity, expectations and need. The author argues that a property distribution, even if fair ex ante, must also be accepted as reasonable ex post.

\* \* \*

This article analyzes the Bible's accounts of Israel's conquest of the Promised Land and the subsequent division of the territory among the Hebrew tribes. I argue that these narratives form part of an extended analysis of political ideas – a political philosophy – which rivals in sophistication, and probably predates, the theories developed by Plato and Aristotle in the Greek world.

As outlined in prior work, the Garden of Eden story serves as a prolegomenon to the Bible's political theory and also offers an impressive analysis of the question of political obligation – why people are required to obey their political rulers. The stories of the Dark Age after the expulsion of Adam and Eve address the question of anarchy: whether it is possible for human beings to lead a good and decent life in the absence of government and law (the author's answer is no).<sup>1</sup> The history of the patriarchs and matriarchs from the book of Genesis address the nature, source and legitimacy of power in families. In the first fourteen chapters of the book of Exodus, the author demonstrates that political organization is the only feasible means for governing groups of substantial size; argues that nationhood is preferable to nomadism, dependency, and slavery as a form of political organization; and identifies self-governance, law, and control over territory as the essential attributes of nationhood. The Israelites achieve self-governance in the struggle with Pharaoh and the escape at the Sea of Reeds. The narrative of Mount Sinai provides the author with a frame within which to examine the second fundamental attribute of nationhood, namely the establishment of legal institutions.

The book of Joshua tells the story of the Israelites' conquest and settlement in the promised land. After the death of Moses, God tells Joshua to prepare the Israelites to

---

<sup>1</sup> I use the term "author" as a conventional way of denoting the creator of the biblical narratives without implying anything in particular about the identity of this source.

cross the river and promises them a great territory (Josh 1:1–5). Joshua leads the Israelites in a miraculous crossing of the Jordan (Josh 3–4). The Israelites conquer Jericho (Josh 5:13–15; 6), Ai (Josh 8:1–29), and other towns and territories (Josh 10–12). Not all the land is subdued, however. The Israelites spare the Gibeonites by treaty (Josh 9) and other territories remain outside of their control (Josh 13:1–6). At the conclusion of the war the lands are divided among the tribes and clans (Josh 13:8–21:43). Joshua gives a farewell address and convenes a covenant-renewal ceremony. He dies and is buried in the town allotted to him (Josh 24:29–30).

This setup allows the author to extend the analysis of optimal governmental design. Recall that the book of Exodus argues that only political organization—control by people not related by close family ties—can govern a population of any significant size. The author considers nomadism, dependency, slavery, and nationhood as forms of political organization and argues that nationhood is preferable to the others. He identifies self-governance, law, and control over territory as the essential attributes of nationhood. The Israelites achieve self-governance in the contest with Pharaoh and the escape at the Sea of Reeds. They receive their law at Mount Sinai. The book of Joshua records the events in which the Israelites get control over territory and thereby achieve the final attribute of nationhood.<sup>2</sup>

The concepts presented in the book of Joshua expand on a notion of authority set forth in the Eden narrative, where God’s ownership of the garden is one reason why his command imposes a valid obligation on Adam and Eve. The Eden story identifies three elements of authority based on ownership: an owner (God), territory (the garden), and a

---

<sup>2</sup> On sovereignty in ancient Israel and neighboring lands and its connection with territory, see Grosby, *Biblical Ideas of Nationality*, 120–49.

relationship between them (God owns the garden). These elements constitute a rudimentary theory of *sovereignty*. Although the concepts of sovereignty are better developed in the book of Joshua than in the Eden story, the essential elements are the same: a sovereign, a territory, and a relationship of ownership between them.

### The Sovereign

The book of Joshua portrays the Israelites conquering the land in perfect solidarity. The people are never portrayed as separate tribes but rather are identified as “Israelites” (e.g., Josh 5:1), “all these people” (1:2), or the “whole nation” (4:1). Joshua is leader of the “whole army” (8:1; 11:7) and the “entire force” (8:11). His subordinates are “officers of the people” (1:10) and the “leaders of Israel” (8:10). His fighters are “fighting men” (8:3), “soldiers” (8:13), “Israelites” (8:24; 9:7), and “all Israel” (8:21; 10:15, 29–38, 43). When Joshua performs a covenant-renewal ceremony, he does so with the participation of “the whole assembly of Israel” (8:35). When he conducts a circumcision, it is for all the men born during the desert wanderings, regardless of tribal affiliation (Josh 5). When he makes a treaty with the Gibeonites, the “leaders of the assembly” ratify it as representatives of the “whole assembly.” (9:15, 18, 27). When he lays siege to Jericho, the walls fall down when all the people shout (6:20). None of these references has any connection with tribal divisions.

When Joshua does deal on tribal lines, it is always for the purpose of reinforcing the solidarity of all Israel and diminishing the effect of tribal divisions. He singles out Gad, Reuben, and Manasseh, but only for the purpose of ensuring that their allotment of lands east of the Jordan will not undermine their participation in the war of conquest on behalf of all Israel (Josh 1:12–15). He gives special tasks to the Levites, but only in their

capacity as priests in the service of the whole nation (e.g., Josh 3). He selects twelve men, one from each tribe, to carry stones across the river, but only for the purpose of erecting the stones at the crossing point as a symbol of national unity (Josh 4). He punishes a member of the tribe of Judah for stealing war plunder but does so for the purpose of showing that even members of the future ruling tribe are subject to the same rules as everyone else (Josh 7). He divides the people into groups by tribes, but only for the purpose of pronouncing blessings and curses applicable to all the people (Deut 27:12–13; Josh 8:33). In every case the identifications are mentioned in order to *negate* the significance of tribal divisions.

Similar ideas of organic unity apply to the land itself. Title to the conquered lands is held by Israel as a whole, much as the moveable spoils of battle are classified as “devoted things” and kept in God’s treasury (Josh 6:18–19). Even after the lands are distributed, the nation retains more fundamental title. The owner of property may convey or lose ownership of his individual land, but the property remains part of the land of Israel. If a person forfeits his lands because of conviction for crime, his property escheats to the state (see 1 Kgs 21:15). Any attack on property within the borders of the nation is an attack on the nation itself.

In these and other narrative elements the author identifies the sovereign as “all Israel”: the people as a whole in solidarity with one another and with God.<sup>3</sup> The author’s concept of sovereignty has points of similarity with the views of political philosophers such as Hobbes, Locke, and Rousseau, as well as the theory that animated the framers of the United States Constitution. These sources differ in many respects as to the identity

---

<sup>3</sup> For discussion of this concept, see Grosby, *Biblical Ideas of Nationality*, 15–17.

and powers of the sovereign, but they agree that the political leader's authority, whatever it is, derives from a more basic sovereignty vested in the people. In this respect the idea of "all Israel" can be seen as a biblical analogue to the "we the people" referenced in the preamble to the U.S. Constitution. But despite these similarities, it would be a mistake to equate the author's concept of sovereignty with that of later political philosophy. The biblical author is less democratic than later thinkers: his concept of "all Israel" suggests a mass of people acting nearly as an organic body, whereas later thinkers give greater recognition to individual autonomy.

### The Territory

The author of the book of Joshua asserts that sovereignty is intrinsically linked to *territory*. Without territory there may be political power: Moses has power over the Israelites even before they begin to conquer territory. But without territory the Israelites do not enjoy sovereignty. The territory involved in the book of Joshua is the promised land—the land promised to the patriarchs and partially conquered during Joshua's war of conquest.

### Title

The relationship between the sovereign—"all Israel"—and the territory—the promised land—is one of ownership. The author argues that "all Israel" has free, clear, and absolute title to the promised land. In typically systematic fashion, he considers (a) competing claims of title by nations outside the promised land (discussed in Gen and the first part of Exod); (b) competing claims of non-Israelite groups or entities within the promised land (discussed in the first part of Josh); and (c) claims of Israelite groups to

title subordinate to the title possessed by the sovereign (discussed in the second part of Josh).

### External Claims

Several narratives in the book of Genesis and the first part of the book of Exodus define the legal quality of the borders between Israel and its neighbors. The common function of these narratives is signaled by their structure: in each case, the plot develops through three phases: (a) conflict between peoples; (b) separation of the peoples; and (c) resolution of the conflict through territorial division.

### Aram

After the *contretemps* with Esau over the blessing of Isaac, Jacob flees to the house of his uncle Laban (Gen 27:41–45), marries two of Laban’s daughters, and sojourns there for twenty years. When relations sour, Jacob and his family set out for the land of Canaan, taking along Laban’s household gods. Laban catches them in Gilead, east of the Jordan River. The parties resolve things peacefully, although not amicably, and memorialize their agreement with a standing stone erected either by Jacob (Gen 31:45) or Laban (Gen 31:51) and also with a cairn erected by Jacob’s relatives (Gen 31:46). Each of the three plot elements noted above is present here: Jacob and Laban have a conflict over the terms of their relationship; the parties separate; and the dispute is resolved by a territorial division.

This narrative records the establishment of an agreed boundary between conflicting groups. Jacob is explicit on this point. He explains: “This heap is a witness, and this pillar is a witness, that I will not go past this heap to your side to harm you and that you will not go past this heap and pillar to my side to harm me” (Gen 31:52). The

readers would have understood the story as a reference to geopolitical issues of later times. Jacob is the representative of Israel. Laban's territory is indistinctly specified: he is associated with Aram-Naharaim (Gen 24:10), Paddan-Aram (Gen 28:2), and Haran (Gen 27:43; 29:4). None of these places can be located with confidence, although they could not have been too far away from Canaan given the ease of travel back and forth. What is clear is that Laban is an Aramean. He is repeatedly referred to in these terms (Gen 25:20; 28:5; 31:20) and two of the places associated with him have the term "Aram" in the title. The author's readers would have identified Laban with Aram-Damascus, an important nation in biblical times.<sup>4</sup> The text asserts that Aram and Israel have established a border between them by mutual agreement.

1. The author takes pains to stress the *legally binding* quality of this deal:

(a) That it actually occurred is signaled by a number of narrative elements: the author's elaborate description of the behavior of the parties; the assertion that they erected a standing stone and a mound of rocks between them—monuments that could, in theory, be verified by anyone who wanted to travel to Gilead; and etymologies that associate familiar names in biblical times with events described in the story. Any argument that the parties engaged only in preliminary negotiations, without arriving at a final agreement, is rebutted by their efforts in erecting the cairn and pillar—activities with no purpose other than to confirm and memorialize an agreement.

(b) The binding quality of the deal is also indicated by the fact that it is sealed—not once but four times—through (i) a shared meal by the mound of stones, (ii) a shared meal after Jacob's performance of a sacrifice, (iii) Laban's kissing and blessing his

---

<sup>4</sup> See Wayne T. Pitard, "Aram," *ABD* 1:338–41.

daughters and grandchildren, and (iv) oaths sworn by both parties in the names of their family gods (Gen 31:53).

(c) The transaction in question is also witnessed and endorsed by the families of both principals: relatives of both Jacob and Laban participate in the confirmatory meals. The presence of relatives at a land transaction is recorded in order to cut off potential reversionary rights in children or collateral relatives.

2. In addition to stressing its legally binding quality, the author takes pains to claim that the agreement was *fair to both parties*:

(a) Jacob and Laban each have resources at their disposal. Laban has superior force: he arrives with relatives and tells Jacob that “I have the power to harm you” (Gen 31:29). In this he appears to be correct: Jacob seems to be the only grown man in his contingent, making him vulnerable if Laban resorts to violence. Laban, on the other hand, is hamstrung by the fact that he had received word from God not to say anything to Jacob, either good or bad (Gen 31:24)—an injunction that suggests that Jacob and Laban are no longer to debate issues of mutual governance. And the principal reason for his pursuit—the recovery of his daughters—is frustrated by the fact that Rachel and Leah side with their husband (Gen 31:14–16). Laban realizes that his superior force will not avail him much: “What can I do today about these daughters of mine, or about the children they have borne?” (Gen 31:43). By presenting the parties as each having bargaining leverage, the author emphasizes the fairness of the deal for all concerned.

(b) The dialogue between Jacob and Laban also emphasizes the fairness of the deal. Each party has a full and fair opportunity to present his views. Laban complains that Jacob has stolen away like a thief in the night without even allowing Laban to say

goodbye or kiss his daughters and grandchildren (Gen 31:26–28). He implies that he would willingly have let the fugitives depart, if only he had been asked (although the history of prior dealings between them suggests otherwise). Laban also complains that Jacob has stolen his household gods. And he asserts ownership of everything Jacob has taken. Jacob responds with equal vigor, denying that he owes Laban anything and claiming that he has suffered unfair treatment for twenty years while in Laban’s service. The arguments take the form of a lawsuit in which each party gets to state his claims. Even though there is no judge in the case, the ability of both parties to fully and freely vent their grievances endorses the fairness of the deal ultimately reached.

(c) The assignment of initiative in the bargaining process underscores the fairness of the deal. Laban takes the lead in suggesting a compromise: “Let’s make a covenant, you and I, and let it serve as a witness between us” (Gen 31:44). Laban’s taking the initiative here validates the integrity of the deal from the Israelite perspective. Having suggested that the parties make a treaty, Laban would be on weak footing if he thereafter denied its existence or validity. Jacob, on the other hand, takes the initiative in constructing the stone pile, instructing his relatives to do the work (Gen 31:46). The narrative is inconsistent as to who erects the standing stone: Gen 31:45 assigns the action to Jacob and Gen 31:51 places it in the figure of Laban. The inconsistency probably reflects competing narrative demands: placing the action in Jacob’s family gives priority to the Israelites in subsequent disputes as to location, while allowing Laban to erect a marker ties him to the deal and emphasizes its bilateral quality.

3. In addition to being legally binding and fair, the deal is *definite as to its terms*. The standing stone and cairn constitute surveyor’s marks establishing an agreed boundary

between the parties. These items are hard to move and, accordingly, provide a reliable and durable indicator of the agreed-on property lines. Aside from establishing the property line, the agreement also creates mutual easements: it allows each party to pass over the boundary into the other's territory provided that his intentions are peaceful (Gen 31:52). If the intentions are not peaceful, however, the incursion would represent a breach of the agreement entitling the other party to resist.

4. The narrative asserts that the deal was *durable*—one intended to bind not only the parties but also all of their descendants. As elsewhere in the Bible, the author signals that an arrangement will last through the generations by providing a witness that will endure past the deaths of the parties. In the Jacob-Laban story, the witness is the monuments erected by the parties—stones that do not erode or wash away and that are heavy and difficult to move.

5. The contract addresses issues of *enforceability*. Laban acknowledges that he cannot personally monitor Jacob's compliance but enlists God as a witness to ensure performance (Gen 31:49–50). Because God is part of the deal, Jacob is unlikely to renege. Divine assistance is also invoked to deal with disputes over interpretation. The parties agree to submit disputes to “the God of Abraham and the God of Nahor, the God of their father” (Gen 31:53). The “God of their father,” in this context, appears to mean the god of their closest common ancestor—Terah, the father of Jacob's grandfather Abraham and Laban's grandfather Nahor. Since Terah is the great-grandfather of both parties, the god of Terah is the closest impartial deity and therefore the appropriate selection as a resolver of disputes.

\* \* \*

From the standpoint of political theory, this narrative explores and illustrates one way nations can resolve territorial issues: *agreement on boundaries*. The narrative asserts that Israel and Aram have settled their borders by peaceful means that should govern the terms of later interactions between the two nations.<sup>5</sup>

#### Moab and Ammon

Abraham and Lot travel to Canaan (Gen 11:31; 12:4–5). A dispute breaks out between their herdsmen because the land cannot support them both (Gen 13:5–7). Abraham says to Lot, “Let’s not have any quarreling between you and me, or between your herders and mine, for we are close relatives. Is not the whole land before you? Let’s part company. If you go to the left, I’ll go to the right; if you go to the right, I’ll go to the left” (Gen 13:8–9). Lot sees that the plain of the Jordan River is well watered—so rich as to resemble the garden of Eden (Gen 13:10). So the two men separate: “Abram lived in the land of Canaan, while Lot lived among the cities of the plain” (Gen 13:11–12).

This narrative presents the same pattern of conflict, separation, and resolution as observed in the previous narrative. Unlike Jacob and Laban, Abraham and Lot do not become personally contentious, but an inchoate dispute is indicated by the controversy between the herdsmen. Abraham realizes that resource constraints make conflict between himself and his nephew inevitable if they stay together. He therefore proposes a separation. Lot moves to the plains of the Jordan while Abraham remains in Canaan. The separation resolves the territorial issue between the parties.

---

<sup>5</sup> This form of international dispute resolution is common in modern times. Boundary lines between the United States and Canada, for example, were clarified in a treaty of 1846 concerning the Rocky Mountains and a 1903 agreement establishing the border between Canada and Alaska. Argentina and Chile settled a conflict over the Beagle Channel in 1984, and in 2009 the prime ministers of Croatia and Slovenia signed an agreement to arbitrate a dispute over territorial rights in the Adriatic Sea. Many other examples could be mentioned.

Like the Jacob-Laban narrative, this story is careful to assert the fairness and transparency of the deal. Abraham and Lot are related by ties of blood and have traveled together for a long time. Their relationship has been harmonious and beneficial: both have acquired herdsmen and flocks that are collectively so large that the land cannot support them both. Abraham displays the utmost fairness in his dealings with his nephew. He gives Lot the choice of which land to select—thus implementing the principle of fairness that is today captured in the idea that one person cuts the cake and the other selects the piece.<sup>6</sup> The transparency of the deal is symbolized by line-of-sight symbolism: the two parties are on a height overlooking the plains, so Lot can look out over the land and accurately assess the quality of the territories he is choosing. Lot and Abraham are nomadic herdsmen, so neither has made long-term investments in property that would be lost if they moved. Lot moves to the new territories and lives there without complaining; evidently he is satisfied with his decision.<sup>7</sup>

The key to the political message of this text is the fact that the figure of Lot stands for the nations of Moab and Ammon, Israel's neighbors to the east. Lot's descendants (the result of incestuous relations between Lot and his daughters) are the eponymous ancestors of the Moabites and the Ammonites of the author's day (Gen 19:37–38). The text thus establishes political relationships between Israel and these two neighbors. It asserts that Israel received the land of Canaan as the result of a fair deal involving all affected parties and that the Moabites and the Ammonites voluntarily left for lands that

---

<sup>6</sup> For exposition, see Steven Brams, *Biblical Games: Game Theory and the Hebrew Bible* (2nd ed.; Cambridge: Massachusetts Institute of Technology Press, 2003); David Daube, "Maior dividat minor eligat," *Iura* 14 (1963): 176–77.

<sup>7</sup> Later, Abraham gives further evidence of his kindness toward his nephew when he rescues him from a hostage situation (Gen 14) and convinces God not to include Lot's family in the destruction of Sodom (Gen 19:29).

they judged to be more desirable. Claims based on prior occupation were extinguished when Lot, in conditions that guarantee fairness, selected the Jordan River plain as his homeland and ceded the remaining territory to Abraham.<sup>8</sup>

From the standpoint of political theory, this narrative explores and illustrates another way nations can resolve territorial issues: *partition*. When people of different ethnic backgrounds are mixed together, they can voluntarily separate and establish a mutually accepted boundary between them. The Bible asserts that such an agreement defined the relationship between Israel, on the one hand, and its neighbors Ammon and Moab, on the other.<sup>9</sup>

#### Edom

Recall that Gen 27 reports how Jacob and his mother conspire to trick his father Isaac into blessing him instead of his brother Esau. Years later Jacob contacts Esau, who has moved to the land of Edom, and offers generous gifts as a gesture of reconciliation. Esau accepts the gifts and attempts to induce Jacob to return to Esau's home, but Jacob escapes and heads back to Canaan (Gen 33).

This text follows the same pattern as the two just described: conflict, separation, and resolution. The conflict is the dispute between Jacob and Esau over patriarchal and territorial rights. The separation occurs when Jacob leaves to live with his uncle and Esau leaves the land of Canaan for his new home. The resolution is accomplished by Esau's acceptance of Jacob's gifts and the return of both parties to their homes.

---

<sup>8</sup> The story of the destruction of Sodom and Gomorrah explains Lot's later decision to abandon the plains west of the Jordan.

<sup>9</sup> Partition is in use today, although its practical implementation is rarely as felicitous as that displayed in the story of Abraham and Lot. The partition of India in 1947 displaced more than ten million people and resulted in hundreds of thousands of deaths. Partition has also been proposed, but not implemented, as a solution to conflicts in Bosnia, Sri Lanka, Indonesia, and Iraq.

As in the other texts just discussed, this narrative takes pains to underscore the fairness of the transaction. Esau may have left Canaan because of Isaac's fraudulently induced blessing—an action that, according to the Bible, was legally binding but not necessarily fair. However, Esau has now settled down and done well for himself. Esau does not complain about his living conditions, nor should he: he is a chieftain who commands four hundred men. As for the purloined blessing, Jacob has arrived with cattle and donkeys, sheep and goats, menservants and maidservants (Gen 32:5). Esau takes Jacob's gifts with full knowledge of their meaning; and when Jacob fails to accept Esau's invitation to visit him, Esau does not pursue. The implication is that Esau accepts the terms of the separation. Readers of the author's day would have understood that Jacob and Esau were symbols of Israel and Edom.<sup>10</sup> The purpose of the text is to define the geopolitical relationship between these two countries and to assert that the territorial division between them is fair, equitable, and reasonable.

From the standpoint of political theory, this text identifies and explores another method for resolving territorial controversies between nations: *abandonment*. This is a case in which one of two incompatible groups picks up and leaves and thereby relinquishes claims to their former homeland. Abandonment is similar to partition; the difference is that in partition the groups divide up territory whereas in abandonment one group departs.<sup>11</sup> Esau, who might have claimed the land of Canaan by contesting the

---

<sup>10</sup> See, e.g., Frank Crüsemann, "Dominion, Guilt, and Reconciliation: The Contribution of the Jacob Narrative in Genesis to Political Ethics," *Semeia* 66 (1995): 67–77; John R. Bartlett, *Edom and the Edomites* (JSOTSup 77; Sheffield: Sheffield Academic Press, 1989).

<sup>11</sup> Abandonment is not common today and probably never was, but there are cases in which groups have left the places where they were living, either voluntarily or under threat or compulsion, and in the process have relinquished territorial claims to their former lands. In the usual case, however, the departure is not accomplished with the degree of civility displayed by Jacob and Esau. Millions of Germans were

legality of Jacob's inheritance, abandons that claim when he leaves permanently for another land; he confirms that abandonment when he accepts Jacob's propitiation gifts.

### Egypt

We have already discussed the exodus from Egypt and need not repeat the narrative here. Although there are many intricacies to this story, for present purposes the details are straightforward. This story has the same basic elements as the three just described. There is conflict between two peoples: the Egyptians want the Israelites to remain in Egypt under state slavery and the Israelites want to leave. The conflict is resolved by a separation: the Israelites flee the land of Goshen and separate finally from the Egyptians at the Sea of Reeds. The separation resolves the territorial dispute: the Egyptians turn back and the Israelites push forward into the wilderness.

We may infer, therefore, that like the other three just discussed, this text carries a political message regarding the establishment of international boundaries. The message, however, is somewhat more difficult to tease out of the text. The narrative appears to describe how the Israelites abandoned their homes in Egypt—but this interpretation makes no sense from the standpoint of political theory because the Israelites are not asserting claims over Egyptian lands. Further, the author would have little interest in promoting a story whose effect was to limit Israel's rights.

The following conjecture serves to align this text with the others just discussed. One purpose of this narrative may be to limit Egypt's imperial claims to the Levant,

---

repatriated from other European countries after the Second World War, for example; the process left hundreds of thousands dead from famine, disease, or retaliation.

including Israel.<sup>12</sup> The story relates that an Egyptian force set out in pursuit of fleeing Asiatics but abandoned the pursuit before it entered Syria-Palestine. The detail of the destruction of the Egyptian chariot force at the Sea of Reeds thus asserts that Egypt relinquished any claims to an empire in Asia—a message that would have served Israelite interests by asserting a legal obstacle to future expansionist tendencies by the Egyptian state. If this conjecture is correct, the story of the miracle at the Sea of Reeds identifies the *renunciation of claims* as another means that nations may use to resolve territorial disputes.<sup>13</sup>

### Internal Claims

After having addressed Israel's territorial rights vis-à-vis other nations, the author considers claims by groups within the promised land that are not part of "all Israel." The author argues that Israel has free, absolute, and unclouded title to all of the promised land, notwithstanding the fact that various peoples were there at the time of Israel's arrival. In the process of securing Israel's title vis-à-vis these other groups, the author

---

<sup>12</sup> The author must have been aware that Egypt from time to time had nurtured imperial ambitions over the Levant. Pharaohs had conducted raids with chariot forces in Canaan from the early days of the Egyptian state. Egypt's cultural history nurtured the image of the king who "sets his boundary wherever he pleases ... and [who] subdues other countries on their home territory." Donald B. Redford, *Egypt, Canaan, and Israel in Ancient Times* (Princeton: Princeton University Press, 1992), 180. During the Eighteenth and Nineteenth Dynasties, Egypt controlled much of the Levant—an empire that survived from about 1550 B.C.E. until around 1120 B.C.E., a period of more than four hundred years (*ibid.*, 140, 193–213). Although the Bible seems unaware of the long history of the Egyptian presence in Canaan; it is unlikely that circumstances this profound would not have left some trace in the historical memory (*ibid.*, 257). In any event, even after the end of its empire in Canaan, Egypt itself must have preserved these memories, and Egypt's politics probably contained a strain that militated in favor of recouping past glories by reestablishing the empire in Asia. In the seventh c. B.C.E., pharaohs of the Twenty-Sixth Dynasty did in fact rekindle Egyptian territorial ambitions in the Levant. Egypt meddled in Phoenicia and Philistia and, under Necho II, invaded Canaan in support of the Assyrians against Babylon—events that impressed themselves on the Israelites owing to the fact that the last great king of Judah, Josiah, died in battle after ambushing the Egyptians at Megiddo (2 Kgs 23:29–30).

<sup>13</sup> Countries rarely renounce territorial claims unless they are compelled to do so: Germany's designs on Alsace and the Sudetenland were quelled only by the defeat of the Nazis in 1945. But sometimes claims are relinquished without compulsion when a country no longer finds it useful to keep them up. Great Britain granted independence to many former colonies without warfare; more recently, Russia peacefully withdrew from its empire in Europe and Asia with the collapse of the Soviet Union in 1991.

identifies and examines several mechanisms by which a nation not originally resident in a territory can acquire a title that extinguishes the claims of the previous occupants.

### Conquest

The first part of the book of Joshua records a war of conquest conducted by all Israel under Joshua's command. In the course of this war the Israelites conquer and exterminate much of the preexisting population. The author argues that this history establishes Israel's title to the lands by right of conquest.

The author previously developed the essential idea of right of conquest in the Eden narrative when he considered the argument for authority based on power. The point there was that God's law binds Adam and Eve simply because God has the capacity to impose unacceptable consequences for disobedience. The analogy, in the case of the right of conquest, is that because the conquering power occupies the land, the inhabitants and everyone else should recognize the invader's title. To the victor go the spoils. The principle of might-makes-right accepts reality and counsels all parties to make the best of it. As Grotius phrases the idea, "not only the person, who makes war upon just grounds; but any one whatever, engaged in regular and formal war, becomes absolute proprietor of everything which he takes from the enemy; so that all nations respect his title, and the title of all, who derive through him their claim to such possessions."<sup>14</sup>

---

<sup>14</sup> Hugo Grotius, *De Jure Belli ac Pacis* (trans. Francis W. Kelsey; Oxford: Clarendon Press, 1925), book 3, ch. 6, § 2. Grotius did not have many followers in his view that even unjust wars can confer valid title on the victor so long as the conflict is a "regular and formal" war. The Swiss jurist Emmerich De Vattel accepted the principle of right of conquest, but subject to the limitation that the victor's justification for the war must not be merely a pretext. Emmerich de Vattel, *The Law of Nations, or Principles of the Law of Nature Applied to the Conduct of the Affairs of Nations and Sovereigns* (Philadelphia: T&JW Johnson, 1883), § 196, p. 167. Locke rejected the whole idea, even in the case of just wars. Locke, *Second Treatise of Government*, §§ 175–96.

The right of conquest has advantages as a means for justifying Israel's title to the promised land. The author asserts that Israel did in fact conquer large portions of the territory. Where it occurred, moreover, the conquest was complete. The Israelites kill everyone in Jericho—"men and women, young and old, cattle, sheep and donkeys"—sparing only a prostitute and her family who helped the Israelite forces (Josh 6). Ai faces a similar fate. After luring the men out by trick, the Israelites kill them all, then return to the city and kill all the women and children—twelve thousand people in all (Josh 8:1–29). Joshua also destroys Makkedah, Libnah, Lachish, Eglon, Hebron, and Debir (Josh 10). In each case, the author insists that Joshua kills everyone: "He left no survivors. He totally destroyed all who breathed ..." (Josh 10:40). Joshua then turns his attention to the north and wreaks the same destruction there, killing the people and their kings and leaving no survivors: "All the people they put to the sword until they completely destroyed them, not sparing anyone that breathed" (Josh 11:14). The point of these stories is not that the conquered people were actually exterminated. Archeology has demonstrated that many of these battles could not have taken place as described.<sup>15</sup> The author is providing not a genuine history but rather a fictional account designed to claim that Israel definitively established its title to these areas by right of conquest.

Despite its attraction as a device for securing Israel's title, the argument from conquest faces several difficulties. First, the author himself acknowledges that the conquest was not complete. Many cities, towns, and territories remained unconquered at the conclusion of Joshua's war of conquest (Josh 13:2–5). Because title by conquest only

---

<sup>15</sup> See, e.g., J. Maxwell Miller and John Hayes, *A History of Ancient Israel and Judah* (Louisville: John Knox Press, 1986), 72–83; Gösta W. Ahlström, *Who Were the Israelites?* (Winona Lake, Ind.: Eisenbrauns, 1986), 2.

vests if conquest has actually occurred, the conquest theory cannot fully support Israel's claim to the promised land.

Moreover, the theory of right of conquest is problematic on a theoretical level. As the author demonstrated in the Eden story, the principle of might-makes-right is not stable because it provides no moral inducement for citizens to comply with the law and also affirmatively encourages usurpation of power. Similar misgivings apply when the principle of might-makes-right is translated to the realm of international law through a doctrine of right of conquest. Most countries fear being invaded more than they like the idea of invading some other country. Other than imperial powers who wish to justify their acquisitions, a pure right of conquest would not be very popular. Even imperial powers would not find much to like about such a theory once they had completed their period of expansion, because the principle could be used by hostile forces as a justification for taking their empires away.

Reflecting these concerns, the book of Joshua's treatment of right of conquest is qualified by the putative limitation, also recognized in some later theories, that conquest only confers good title when the victor is fighting a *justified war*. An unjust war—a pure war of aggression without divine sanction—does not confer good title. The book of Joshua asserts that Israel's war of conquest is a just war because it is sanctioned by God.<sup>16</sup> God, being divine, cannot wage an unjust war.<sup>17</sup> The problem with this argument

---

<sup>16</sup> In this respect the Bible follows conventional ancient Near Eastern propaganda, which routinely credits the national god for victories in battle. See Lori L. Rowlett, *Joshua and the Rhetoric of Violence* (JSOTSup 226; Sheffield: Sheffield Academic Press, 1996), 71–120.

<sup>17</sup> Kings of the ancient world in fact made this argument: Tukulti-Ninurta I of Assyria (1244–1208 B.C.E.), for example, claimed title to lands by right of conquest, specifying the conquered territories by metes and bounds and asserting that “those regions the great gods allotted to me.” Niehaus, *God at Sinai*, 175. Christian nations used this theory to justify the conquest of infidels: no *casus belli* was required in such a case because the campaign was considered to be a holy war fought on behalf of God. See Sharon Korman,

is that it makes all conquests just, because the conquering power can always claim that the victory was due to the influence of the national god. Other things being equal, therefore, it would be desirable for the author to offer additional support for the justice of Israel's war of conquest than the fact that God endorsed it.

### Capacity

Let us return to the narrative of Ham and Noah (Gen 9:22–27). We previously saw that this text is fundamental to the author's theory of patriarchy and that it provides a summary outline of nationhood, slavery, and dependency as forms of political organization. This story also has a bearing on the question of sovereignty. The author deals here with the issue of capacity.

The text asserts that Shem has full and complete capacity to hold title to real property: he is entitled to have and maintain tents. Japheth has more limited capacity, at least when he is in Shem's territory: he is welcome in the tents of Shem but cannot hold title there on his own. The narrative, however, makes no mention of Canaan's capacity either to have tents of his own or to live in the tents of another. The suggestion is that Canaan has no rights to hold real property at all. The Canaanites of Joshua's day are the descendants of the Canaan of Noah's time and therefore inherit his curse—implying that they also have no rights to own property. The argument is that the Israelites have good title to the promised land, vis-à-vis the Canaanites, because the Canaanites have no legal capacity to own the land.

---

*The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Oxford: Clarendon Press, 1996), 49–51. The same argument persuaded De Vattel that since all nations claim that their wars are just, the victor in a regular war should enjoy a right of conquest unless the claimed justification was “destitute of any plausible pretext.” De Vattel, *The Law of Nations, or Principles of the Law of Nature Applied to the Conduct of the Affairs of Nations and Sovereigns* (Philadelphia: T&JW Johnson, 1883), § 196, p. 167.

The argument for lack of capacity is bolstered by the author's repeated characterizations of Canaan as a "slave." If Canaan is a slave, then the Canaanites, as descendants of Canaan, are also slaves to the Israelite descendants of Shem. The Canaanites have the legal status of slaves even if they are living to all appearances as free and independent people. Given their conspicuous lack of other rights, it is probable that slaves of non-Israelite background could not own property. If a slave could not own property, the detail of Canaan being a slave would support an argument against the legitimacy of the Canaanites' title to the promised land. Because as slaves they did not have the capacity to hold real property, they could not acquire title even by long occupancy and usage. The author argues that the Israelites, as descendants of Shem, hold title superior to the claims of the Canaanites.

This argument from capacity has some force but is also subject to objections. It would not have worked for residents of the promised land who were not Canaanites, since they are not subject to the same legal disability. Even for the Canaanites, the idea of a group subsisting in slavery for dozens of generations would have struck readers as a bit of a stretch. People did not remain in slavery forever in ancient Israel; they could be manumitted or otherwise earn their freedom. The argument also appears legalistic, given that the Canaanites of the promised land were hardly living as slaves. Jabin, a Canaanite king mentioned in the book of Judges, bore little resemblance to a slave; to the contrary, it was the Israelites who were "sold into" his hands (Judg 4:1-3).

## Appropriation

Genesis 13:5 describes Abraham and Lot “moving about” with their herds in the land of Canaan. Even though the author has previously informed us that the Canaanites were in the land (Gen 12:6), this narrative portrays Canaan as open and unsettled territory. Aside from a few settlements, the lands appear vacant. Because the land cannot sustain them both, however, Abraham and Lot separate and Lot moves east to the plains of the Jordan. Immediately thereafter God tells Abraham, “Look around from where you are, to the north and south, to the east and west. All the land that you see I will give to you and your offspring forever. ... Go, *walk through the length and breadth of the land*, for I am giving it to you” (Gen 13:14–17). The purpose of this setup is to suggest a different root of Israelite title. The allusion is to a theory of acquisition of title by initial appropriation of vacant lands. Abraham’s setting foot on the land, the author suggests, is sufficient to claim title to it. The gesture is analogous to explorers who raise a flag on newly discovered territory in order to claim it for the nations that sponsored their expeditions.

The author’s theory of aboriginal title has advantages as well as disadvantages as a means for establishing Israel’s right to the land of Canaan. On the plus side, the theory is not subject to the problems of conquest theory: Israel’s failure to conquer all the promised land is no objection to a theory of prior appropriation. There is also no question of the use of the theory by a recent conqueror for opportunistic purposes, since this narrative is projected far back into the past.

The argument from appropriation is subject to weaknesses, however. Although Abraham travels widely in Canaan, he certainly does not set foot everywhere. The argument that his travels establish title to the whole land requires a broad interpretation of the scope of the title that is acquired when one sets foot on territory. In general, moreover, claims of appropriation of vacant property require some investment or gesture of commitment.<sup>18</sup> The mere act of setting foot on land is not a strong basis for a claim of title.

Further, an argument for title based on appropriation of vacant land does not establish a right to lands that were then occupied; and as the author recognizes, Canaanites and others were in the land. Thus even if Abraham's travels around Canaan were sufficient to stake a claim to the *vacant* lands, they would not establish title to the whole territory. An argument based on appropriation would also need to confront the problem of abandonment or prescription. Even if Abraham did establish title to the land of Canaan by walking through it, he never established a permanent abode there, nor did Isaac and Jacob. Other peoples moved into the land; in Abraham's absence, they could claim that any aboriginal title held by Abraham was forfeited by subsequent events.

#### Grant

Genesis 15 reports that God appears to Abraham in a vision somewhere in the land of Canaan. God tells Abraham, "I am the Lord, who brought you out of Ur of the Chaldeans to give you this land to take possession of it" (Gen 15:7). When Abraham asks

---

<sup>18</sup> Locke, for example, acknowledges that someone could acquire title to unowned property without first obtaining the consent of others, but only if he invested labor in the land—he was entitled only to the portion that he had "carved to himself." Locke, *Second Treatise of Government*, § 51. Rousseau likewise argues that possession must be taken "not by an empty ceremony, but by labor and cultivation." Rousseau, *The Social Contract*, book 1, § 9.

for assurances that he will actually get the property, God tells him to fetch some animals, which he cuts in half. Abraham falls into a deep sleep, and in the darkness a smoking firepot with a blazing torch appears and passes between the pieces of the animals. God says, “To your descendants I give this land, from the Wadi of Egypt to the great river, the Euphrates—the land of the Kenites, Kenizzites, Kadmonites, Hittites, Perizzites, Rephaites, Amorites, Canaanites, Girgashites and Jebusites” (Gen 15:18–21).

This text is a formal legal document—a grant of property—that displays the essential elements of any conveyance of real property throughout history.<sup>19</sup> God, the grantor, has good title to the property conveyed; we know this because God created the world and thus owns everything in it. God uses formal words of conveyance: “I give this land.” He provides a legal description of the recipients: “your descendants.”<sup>20</sup> He sets out the borders by metes and bounds: “from the Wadi of Egypt to the great river, the Euphrates.” He identifies the holders of lands whose titles are being extinguished: the Kenites, Kenizzites, Kadmonites, Hittites, Perizzites, Rephaites, Amorites, Canaanites, Girgashites, and Jebusites.

This narrative avoids some of the problems associated with the theory of aboriginal title. The presence of Canaanites and other groups in the land does not defeat the conveyance because God holds superior title that can pre-empt rights of human occupants at any time. There is no need for Abraham to walk the length and breadth of the land in order to claim his rights. There is also no problem with Abraham not having

---

<sup>19</sup> On this text as a land grant parallel to grants from a king to a subject, see Weinfeld, “The Covenant of Grant in the Old Testament,” 184; Niehaus, *God at Sinai*, 174–75. On the entire tribal allocation in Josh as a land grant with parallels in ancient Near Eastern practice, see Richard H. Hess, “The Book of Joshua as a Land Grant,” *Bib* 83 (2002): 493–506.

<sup>20</sup> English common law used a similar form of words in the conveyance of land to the “heirs of A.” See A. W. B. Simpson, *A History of the Land Law* (2nd ed.; London: Oxford University Press, 1986), 78–102.

improved the property since the grant is not contingent on his doing so. Because the conveyance is of a future interest only—Abraham himself is not a recipient—the continuing presence of the peoples of the land can be explained away: they were not dispossessed of title at the time of the grant.

On the other hand, the grant theory has difficulties of its own. In the absence of a present recipient, the problem of delivery becomes paramount. To whom can God deliver the property, given that Abraham is not a beneficiary and his descendants are not yet in existence? The author attempts to deal with this problem with the ritual of the severed animals and the smoking firepot: these acts may function as a substitute for delivery, just as Esau's swearing of an oath provides a substitute for the delivery of intangible personal property in the story of the birthright.<sup>21</sup> But the author's focus on the details of this ritual appears a bit defensive, as if he were implicitly acknowledging a weakness of the grant theory.

Even more problematic is the concern about abandonment and prescription. The grant theory avoids the argument that Abraham abandoned his title when he failed to occupy or develop the property. Because Abraham had no title, there was no title for him to abandon. On the other hand, his descendants—the beneficiaries of the grant—*did* abandon the land, and for a very long time, living for more than four hundred years in Egypt. Even though they maintained some hope of return, as symbolized by their commitment to return the bones of Joseph to Canaan, they took no real steps to reclaim their inheritance until the invasion under Joshua. Meanwhile Canaanites and other peoples, having no notice of the grant to Abraham's descendants, developed the land,

---

<sup>21</sup> See Miller, "Contracts of Genesis," 15–45, here 23–24.

thus obtaining a claim of title by prescription. The grant theory can overcome the problem of abandonment and prescriptive rights if the grant is understood to convey the property to Abraham's descendants only at the time they actually take possession—that is, in the time of Joshua. But the grant of a property interest that becomes effective only four hundred years in the future is a bit of a stretch.

### Promise

A different set of texts records promises of the land that God makes to the patriarchs or to Moses. These promises have provided grist for theologians as well as critics such as Martin Noth, who see them collectively as traditions that combined to structure the received text of the Bible.<sup>22</sup> Here, we examine these texts from the standpoint of political theory.

1. Soon after Abraham arrives in Canaan, God appears near the great tree of Moreh at Shechem and announces, “To your offspring I will give this land.” Abraham builds an altar, apparently to commemorate the event (Gen 12:6–7).

2. When Abraham is ninety-nine years old, God appears again and announces that “the whole land of Canaan, where you now reside as a foreigner, I will give as an everlasting possession to you and your descendants after you; and I will be their God” (Gen 17:8).

3. God appears to Isaac and announces, “Stay in this land for a while, and I will be with you and will bless you. For to you and your descendants I will give all these lands and will confirm the oath I swore to your father Abraham” (Gen 26:3).

---

<sup>22</sup> See generally Noth, *A History of Pentateuchal Traditions*.

4. God appears to Jacob in Bethel and announces, “The land I gave to Abraham and Isaac I also give to you, and I will give this land to your descendants after you” (Gen 35:12).

5. God appears to Moses and says, “I have come down to rescue [the Israelites] from the hand of the Egyptians and to bring them up out of that land into a good and spacious land, a land flowing with milk and honey—the home of the Canaanites, Hittites, Amorites, Perizzites, Hivites and Jebusites” (Exod 3:8).

6. God tells Moses to tell the Israelites, “I will bring you to the land I swore with uplifted hand to give to Abraham, to Isaac and to Jacob. I will give it to you as a possession” (Exod 6:8).

7. God says, “My angel will go ahead of you and bring you into the land of the Amorites, Hittites, Perizzites, Canaanites, Hivites and Jebusites, and I will wipe them out. ... I will send the hornet ahead of you to drive the Hivites, Canaanites and Hittites out of your way. ... I will establish your borders from the [Reed] Sea to the Mediterranean Sea, and from the desert to the Euphrates River. I will give into your hands the people who live in the land and you will drive them out before you” (Exod 23:23, 28, 31).

8. After the episode of the golden calf, God tells Moses that he is going to delegate to a subordinate the job of leading the Israelites to the promised land: “I will send an angel before you and drive out the Canaanites, Amorites, Hittites, Perizzites, Hivites and Jebusites. Go up to the land flowing with milk and honey. But I will not go with you, because you are a stiff-necked people and I might destroy you on the way” (Exod 33:2–3).

9. God changes his mind and agrees to go with the Israelites. He tells Moses, “Obey what I command you today. I will drive out before you the Amorites, Canaanites, Hittites, Perizzites, Hivites and Jebusites” (Exod 34:11).

\* \* \*

These texts do not transfer title. They are instead *promises* to convey title—contracts that are executory on both sides in the sense that they have yet to be performed: God’s promises are completed only with the conquest of the promised land, and the commitments of his human counterparties are performed during the life of the contract by their continued obedience to God’s will.

The promise theory avoids some of the problems associated with theories based on conquest, appropriation, and grant. Unlike the conquest theory, which cannot confer title over lands that have not been conquered, the promise theory extinguishes the title of all prior inhabitants once God’s side of the deal is fulfilled. Further, the promise theory responds to a leading objection to the right of conquest, namely that it justifies aggressive war because the conqueror can always claim the endorsement of the national god. Because God consistently and repeatedly promises the land to Israel over a long period of time, Israel’s claim of title based on promise cannot easily be characterized as the opportunistic use of divine sanction.

Promise theory also addresses the problems of acquisition and grant. The promise to Abraham does not require him to carve out title to vacant territories by walking the land. God can define the territories being promised without Abraham having to undertake any affirmative action at all. Because a mere promise does not convey title, moreover, the beneficiaries of the promise do not abandon their claims when they leave the land, nor do

the inhabitants of the land acquire title by prescription. Title remains vested in God; and because God's title is absolute, he neither abandons title nor forfeits it by prescription. When the time comes for performance, God has good title to convey; and "all Israel" who receives the title vigorously asserts its territorial rights, thereby precluding claims of abandonment or prescription at that time.

On the other hand, the promise theory is far from perfect. Bilateral executory contracts create difficulties for enforcement because of the risk that either party will forget or misremember the obligations. American legal practice deals with this problem through the Statute of Frauds, which requires that contracts not to be performed within one year (and all contracts for the sale of real property) must be memorialized in writing. Biblical times also recognized the requirement of a written or other physical marker of executory contracts: it is for this reason that God places the rainbow in the sky after his covenant with Noah, as a sign of his promise not to destroy the world (Gen 9:13), and why Joshua erects a stone to act as a "witness" to the covenant at Shechem (Josh 24:27). God's promises of the land, however, are not generally supported by this kind of a memorial, although in several instances the equivalent might be inferred from the fact that the human counterparty erects an altar on the spot where the promise occurred.

Another difficulty with promise theory is that, while it responds to the problems of abandonment and prescription, it does not completely answer these objections. Even if God can maintain a promise for four hundred years, this is a very long time. The inhabitants of the land could surely object that they had no notice of the promise when they settled or improved the territory. The Israelites also appear to show a surprising lack

of interest in the promise: although God keeps on repeating it, they do little to claim their rights. Legal obligations can lapse through disuse even if they are valid when made.

The author displays a degree of defensiveness on this score. He offers two reasons why the Israelites did not promptly redeem God's promise of the land. Genesis 15:16 excuses the Israelites' absence by blaming it on the Amorites: "the sin of the Amorites has not yet reached its full measure." The implication seems to be that God is going to wait until the behavior of the prior inhabitants becomes so offensive as to cancel their right to inhabit the land. The same text excuses the Israelites' absence by minimizing its duration, asserting that they will return after four generations—a conventional legal term for a long but not unlimited time (e.g., Exod 20:5). The argument is that God's promise did not lapse because it was to be performed within the legally recognized period (even though in fact the Israelites took considerably longer to return).

The biggest problem with the promise theory, however, is that, as the author repeatedly acknowledges, the Israelites never fully possess the promised land. Even after Joshua's war of conquest, many cities and territories remain in the hands of the Canaanites and other peoples. This circumstance leads to the unacceptable inference that God did not fully keep his promises. The author implicitly recognizes the force of this argument by providing six reasons why God is not at fault for Israel's failure to take over all the promised territory.

1. The author simply asserts that God in fact did keep his promises—not just some of them, but all of them, and not just partially, but fully and completely. The text is drafted as a formal release of contractual obligation, written in classic legalese, with elaborate and obvious efforts to close all loopholes and to leave no room for later

arguments that God failed to live up to his word: “so the Lord gave Israel *all the land* he had sworn to give their forefathers, and they took possession of it and settled there. The Lord gave them rest on every side, *just as he had sworn* to their forefathers. *Not one* of their enemies withstood them; the Lord handed *all their enemies* over to them. *Not one of all the Lord’s good promises to the house of Israel failed; every one was fulfilled*” (Josh 21:43–45). This argument by *ipse dixit* is not entirely persuasive, however, for the obvious reason that Israel did *not* defeat all the peoples of the land, nor did the Israelites in fact take possession of all the land.

2. As a fallback, the author acknowledges that the Israelites did not entirely drive out the peoples of the land but insists that Israel nevertheless obtained supremacy over them. This strategy excuses the failure to destroy the Gibeonites (see below), who are not eradicated but are socially subordinated and required to perform menial tasks (Josh 9:20–23). Other groups that Israel fails to conquer are also subjected to forced labor after Israel has “become strong” (Judg 1). The reference here is to a later time, under the monarchy, when kings will impress non-Israelite residents into forced labor on state building projects (1 Kgs 9:15-23; but cf. 1 Kgs 5:13; 11:28). The legal fiction is that subjugating a people and forcing them into labor is the equivalent of driving them out of the land. Because, according to the author, the Israelites do eventually succeed in subjecting many of the indigenous peoples to forced labor, God has kept his promise regarding these groups. The weaknesses of this argument are, first, that it *is* a fiction—subjecting people to forced labor is different from driving them from the land—and, second, that it only works for groups that the author can assert were subjected to forced labor; it does not

explain the failure to subjugate the Philistines or other groups who maintain independence from Israelite control.

3. The author suggests at several points that God's performance is simply delayed, not denied. Thus, Joshua tells the Israelites in his farewell speech that "the Lord your God himself will drive [the peoples of the land] out for your sake. He will drive them out before you, and you will take possession of their land, as the Lord your God promised you" (Josh 23:5). The author refers forward to the kingships of David and Solomon, when the Bible reports that Israel did achieve control over most of the promised land. The legal argument is that the covenant between God and Israel did not specify *when* God would drive out the indigenous peoples, only *that* he would do so; God was given discretion as to the timing of performance. Because God eventually did deliver the promised land, he did not renege on his promise. A weakness of the argument is that some of the promised land—the territories of the Philistines—never came into Israelite possession. Even if God's failure to deliver the promised land to the Israelites at the time of Joshua can be justified on the theory that he was exercising his right to determine the time of performance, the theory cannot explain the failure to deliver the Philistines.

4. The author asserts the God allows some of the peoples of the land to remain in place as a way of assuring the Israelites' continued loyalty: "they were left to test the Israelites to see whether they would obey the Lord's commands, which he had given their ancestors through Moses" (Judg 3:4). The justification here is that God's promise of the land is contingent on the Israelites' remaining steadfast and not turning to worship other gods. An implicit condition of the promise is that God retains the right to monitor Israel's continuing performance of its side of the deal. God is not violating his promise when he

allows some indigenous people to remain in their lands, because these people provide a means for continually reassuring God that the Israelites are remaining faithful. This argument also has weaknesses, however. First, it is close to entrapment: God is testing the Israelites in order to punish them if they fall prey to the inducements. Second, it appears a bit self-defeating, since all too often the Israelites actually fall prey to the evils that God is placing in their path.

5. The author asserts that God leaves some of the inhabitants in place “to teach warfare to the descendants of the Israelites who had not had previous battle experience” (Judg 3:2). In this theory, God has done a favor to the Israelites by providing them with convenient targets that they can use to keep their forces in readiness. Because the Israelites benefit from having some indigenous peoples remaining in the land, God does not violate his covenant when he fails to drive out all the non-Israelites. The weakness of this argument is that the Israelites do not in fact keep their combat readiness. They are frequently oppressed by foreign powers during the time of the judges. Meanwhile, the peoples of the land turn out to be much more than training fodder for the Israelite forces; they are a significant threat to Israelite autonomy and, at times, manage to subjugate Israel itself (e.g., Judg 4–5).

6. The author asserts that if the Israelites did not drive out the peoples of the land, it was their own fault because they committed a prior breach of their promises to God. In his farewell address, Joshua warns the Israelites on exactly this point, assuring them that God will drive out the remaining peoples of the land if they remain steadfast in loyalty to him, but that “if you turn away and ally yourselves with the survivors of these nations that remain among you and if you intermarry with them and associate with them, then

you may be sure that the Lord your God will no longer drive out these nations before you. Instead, they will become snares and traps for you, whips on your backs and thorns in your eyes, until you perish from this good land, which the Lord your God has given you” (Josh 23:12-13). When the Israelites do violate their promise, God responds by withholding any further performance of his own: “the Lord was very angry with Israel and said, ‘Because this nation has violated the covenant that I ordained for your ancestors and has not listened to me, I will no longer drive out before them any of the nations Joshua left when he died’” (Judg 2:20). God even provides the Israelites with formal notice that he is withholding performance because of their breach—doing so, appropriately, through his attorney rather than favoring them with a personal appearance: “the angel of the Lord went up from Gilgal to Bokim and said, ‘I brought you up out of Egypt and led you into the land that I swore to give to your ancestors. I said, “I will never break my covenant with you, and you shall not make a covenant with the people of this land, but you shall break down their altars.” Yet you have disobeyed me. Why have you done this? And I have also said, “I will not drive them out before you; they will become traps for you and their gods will become snares for you”’” (Judg 2:1–3).

#### Purchase

Another theory justifying Israel’s title vis-à-vis the peoples of the land is that Israel purchased property in a free and voluntary transaction. Two texts are pertinent. The first tells of Abraham’s acquisition of a burial place for his wife. The Hittites offer one of their tombs, but Abraham asks to purchase the cave at Machpelah for “full price” (Gen 23:7–9). In the presence of all the Hittites at the city gate, Ephron, the seller, offers to give Abraham the property for nothing—not only the cave but also the field in which it is

located (Gen 23:10–11). Abraham demurs and says he will pay for the parcel (Gen 23:12). Ephron says, again in the hearing of the Hittites, “The land is worth four hundred shekels of silver, but what is that between me and you?” (Gen 23:14–15). Abraham agrees to the price and weighs out the amount in merchant’s weights (Gen 23:16). So, the author concludes, “Ephron’s field in Machpelah near Mamre—both the field and the cave in it, and all the trees within the borders of the field—was deeded to Abraham as his property in the presence of all the Hittites who had come to the gate of the city” (Gen 23:17–18).

The second narrative concerns a piece of property near Shechem. After separating from Esau, Jacob arrives at Shechem and camps within sight of the city. He then engages in a property deal: “for a hundred pieces of silver, he bought from the sons of Hamor, the father of Shechem, the plot of ground where he pitched his tent. There he set up an altar and called it El Elohe Israel” (Gen 33:18–20).

The author takes pains to highlight the fairness and legitimacy of these deals.<sup>23</sup> Both narratives name the purchase price, a detail suggesting that the buyer paid full value. In the case of the cave at Machpelah, the author provides additional documentation. Abraham has a corpse on his hands and therefore has scant bargaining leverage. The seller, Ephron, quotes a price that Abraham accepts on the spot rather than trying for a better deal—indicating that he probably overpaid. Abraham weighs out the price with “merchant’s weights”—a procedure calculated to negate the possibility of fraud because a merchant, being on both sides of transactions, has no incentive to doctor the scales. The Machpelah narrative also emphasizes that Ephron conveyed good title.

---

<sup>23</sup> For further discussion, see Miller, “Contracts of Genesis,” 15–45, here 43–44.

Ephron's ownership of the cave is a matter of common knowledge; otherwise Abraham would not be so certain that the property in question belongs to him (Gen 23:9). The author's repeated insistence that "all the Hittites" witness this transaction also substantiates the validity of the title being conveyed by cutting off rights of redemption in members of Ephron's family (cf. Jer 32:7).

A notable fact about these narratives is that both cases involve an Israelite shrine located near a non-Israelite city. Because they were important sites, the author deemed it crucial to provide Israel with an absolute claim of title—one that would survive even if other arguments failed. The problem with the purchase theory is that these sites were not used by Israel during the centuries in which the Israelites lived in Egypt. During that period, the Canaanites or others could have considered the properties to be abandoned or could have used the sites in ways that impaired their utility (for example, by performing sacrifices to foreign gods). The narratives of purchase deal with these problems by claiming that the properties had been freely transferred for a fair price prior to the Israelite sojourn in Egypt—suggesting that the inhabitants of the cities respected the Israelites' property by not desecrating or misusing the holy places during their absence.

#### Submission

After Joshua's victories at Jericho and Ai, word spreads of the fierceness of the Israelite army. Trying to ward off a similar fate, the men of Gibeon resort to a ruse. They dress as if they have been traveling for a long time and approach the Israelites with a proposal for a treaty, saying that they have come from far away (Josh 9:3–6). Fooled by the ruse, Joshua makes a treaty to "let them live," an agreement that is ratified by the elders of Israel (Josh 9:15). Later, the Israelites discover that the Gibeonites are actually

from nearby in Canaan, but Joshua and the elders refuse to break the deal (Josh 9:16–20). As punishment, however, the Gibeonites are required to serve as woodcutters and water carriers for the Israelites (Josh 9:20–23).

This narrative offers a final item in the author’s inventory of arguments for Israelite title to the promised land. The argument is that the Gibeonites voluntarily submitted to Israelite control and thereby forfeited whatever title they may have previously held in their lands. This argument has the virtue that it records a contemporaneous agreement made with all the requirements of a valid and binding contract. Although the Gibeonites entered into this agreement under considerable pressure—they feared that they would suffer the fate of Jericho and Ai—the law of the time did not recognize duress as a defense to a contract valid in other respects.<sup>24</sup> The Gibeonites, moreover, were not on good equitable footing: if they had objected to the contract on grounds of duress, the Israelites could have responded that the Gibeonites obtained Israel’s consent to the contract by fraud. The theory of title based on submission, however, is subject to a significant limitation. Like the argument from purchase, the argument is specific, being limited to the particular territory involved. The argument provides no basis for Israelite title vis-à-vis other groups.

\* \* \*

These various theories—conquest, capacity, appropriation, grant, promise, purchase, and submission—provide a compendium of legal arguments for Israel’s title to the promised land vis-à-vis non-Israelite indigenous groups. As the author’s occasional defensiveness illustrates, the case is far from ironclad. This is not surprising: after all, the

---

<sup>24</sup> See Miller, “Contracts of Genesis,” 15–45.

basic story is that the Israelites engaged in an aggressive war against people who had done nothing to provoke them and who had been living undisturbed in the land for many generations. Securing Israelite title in such circumstances is a challenge. Despite the weaknesses inherent in any one theory, the author suggests that the arguments taken as a whole establish Israel's title to the promised land as against claims of all the prior inhabitants.

### Claims of Israelite Groups

One attribute of sovereignty is the ability to define the nature of ownership and possessory rights within the boundaries of the sovereign's territory. This task is accomplished in the second part of the book of Joshua, which reports the distribution of the promised land to the Israelite tribes and clans.

This issue presents a classic question of *distributive justice*: how to allocate valuable resources to competing claimants.<sup>25</sup> Philosophers and religious leaders have offered various principles for resolving such questions.<sup>26</sup> The author of the book of Joshua, however, does not provide any overarching rule to govern the question of distribution. His approach is pragmatic rather than programmatic, recognizing a number

---

<sup>25</sup> The problem facing Joshua is similar to cases that have arisen in modern times in which assets have to be distributed with no clear prior rule controlling the allocation. Such a problem was presented, for example, by the September 11th Victim Compensation Fund, a pool of money created by the U.S. Congress to compensate the victims of the terror attacks of September 11, 2001. See Brian H. Bornstein and Susan Poser, "Perceptions of Procedural and Distributive Justice in the September 11th Victim Compensation Fund," *CLJPP* 17 (2007): 75–99.

<sup>26</sup> Rawls recommended that the distribution should offer the greatest benefit to the least-advantaged members of society. See Rawls, *A Theory of Justice*, 75–83. For Marx, the maxim was "from each according to his ability to each according to his needs." Karl Marx, *Critique of the Gotha Program* (Rockville, Md.: Wildside Press, 2008), 27. Broad principles of distributive justice may have been in circulation even in ancient times. Jesus' aphorism that "whoever has will be given more; whoever does not have, even what he has will be taken from him" (Mark 4:25) appears to be a spiritualized reversal of a principle of distributive justice, now lost, requiring some form of transfer payments from the rich to the poor (Jesus doesn't disagree with the principle as a matter of secular justice but argues that in the spiritual realm those who have faith will receive even greater rewards in heaven, while those who do not have faith will get nothing).

of different claims of right to share in the distribution. In this respect the author's account tracks the views of modern political thinkers who suggest that no single principle captures the diverse intuitions and considerations involved in distributive justice.<sup>27</sup>

The author describes a two-stage process for allocating the lands: (a) initial distributions of territory to specific tribes or groups; and (b) a lottery of the remaining lands. Both stages of the process, as well as the particular decisions that are made at each stage, reflect a mixture of procedural and substantive considerations that together constitute the author's concept of distributive justice.

#### Initial Distributions

1. Prior to the crossing of the Jordan, Reuben and Gad strike a deal with Moses under which they will receive lands east of the river if they participate fully in the war of conquest to the west (Num 32; see also Deut 3:12–20). The legitimacy of the allocation is guaranteed by (a) the vigorous and arm's-length process of negotiations (Num 32:1–24); (b) the terms of the deal, which ensure that other Israelite tribes are protected (Num 32:28–30); (c) the fact that Moses instructs the authorized representatives of all Israel—Eleazar the priest and the heads of the tribes—to convey the territory if Reuben and Gad perform their part of the deal (Num 32:28–30); and (d) the fact that Reuben, Gad, and Manasseh do in fact perform their obligations (Josh 4:12; 22:3).

2. Caleb reminds Joshua that prior to the war of conquest he had spied out the land at Kadesh-Barnea along with others and that he had recommended that the Israelites attack (Josh 14:6-9; see Num 13). As a reward, God promised him an inheritance in

---

<sup>27</sup> See, e.g., David Miller, *Principles of Social Justice* (2nd ed.; Cambridge: Harvard University Press, 2001); Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983); Philip A. Michelbach et al., "Doing Rawls Justice: An Experimental Study of Income Distribution Norms," *American Journal of Political Science* 47 (2003): 523–39.

Canaan (Num 14:24; 32:12; Deut 1:36). During a parlay at Gilgal, Joshua agrees to Caleb's request that he receive some of the hill country of Judah, including the town of Hebron, in return for his prior services (Josh 14:6–14). Several elements stress the legitimacy of this grant:

(a) The text portrays Caleb as fully in command of his faculties and as distinctly remembering the events in question, even though they occurred a long time ago. The acuity of Caleb's memory tends to substantiate the validity of his claim—one that Joshua can confirm because Joshua himself was there.

(b) The fact that the people of Judah were present at the negotiations between Joshua and Caleb is also significant (Josh 14:6). Joshua's decision to allow Caleb a special inheritance cuts the tribe of Judah out of some of their allotment.<sup>28</sup> Because they are present for the decision, they have the opportunity to object but do not do so.

(c) The venue of the discussion between Joshua and Caleb—Gilgal—is also probative of the fairness of the deal. Gilgal is where the tribes first crossed the Jordan and where Joshua erected the twelve stones. By placing the decision at a location symbolizing national unity, the author argues that Joshua's decision is made in the service of all Israel and not as a response to special pleading by Caleb.

(d) The author also suggests that Caleb's claim is meritorious because of the services he has performed. Of all the spies that Moses sent out, Caleb and Joshua were the only ones who did not quail at what they saw; and while the others were filling the people's hearts with fear, Caleb spoke to stiffen their resolve. Caleb's bravery is one

---

<sup>28</sup> Caleb is sometimes described as belonging to the tribe of Judah (Num 13:6), but he is also referred to as a Kenizzite (Josh 14:6), which seems to connote a distinctive ethnicity.

reason that the Israelites were able to conquer the promised land at all. Awarding him a special share is therefore just and reasonable.

(e) In addition, Caleb had been informed long ago that he would receive his special reward; he had been counting on it for many years. By granting Caleb the land, Joshua protects settled expectations.

(f) Finally, Caleb notes that the Anakites were occupying part of the territory he had requested but vows to drive them out (Josh 14:12). In awarding Caleb the unconquered lands, Joshua demonstrates his confidence that Caleb will make productive use of the resource by opening it up to settlement.

3. The “people of Joseph”—meaning the tribes of Ephraim and Manasseh—approach Joshua to complain that they have only received one allotment between them even though they have grown greatly in population (Josh 17:14). Joshua agrees that they should receive more than one allotment and gives them extra land in the forested hill country (Josh 17:17–18). The author offers two justifications for the award.

(a) He suggests that the concern about population is legitimate: these groups have grown extensively in population and therefore need more lands than what would otherwise be allocated to them.

(b) He observes that Joshua gives the Joseph tribes territory not on the plains but rather in forested hill country. It’s up to them to clear the forest, construct terraces, and do whatever else is necessary to develop the lands. Joshua tells the Joseph tribes that he is confident they are up to the job: “Clear it, and its farthest limits will be yours” (Josh 17:18). Again, the legitimacy of the grant is justified, in part, by the argument that the recipients will make productive of the lands so conveyed.

4. Joshua himself receives a special grant from the territory of Ephraim (Josh 19:49–50). The justifications are that Joshua himself is from Ephraim, so that his grant does not reduce the territory that any tribe would otherwise receive, and that Joshua deserves to be rewarded for his meritorious service to the nation.

5. The Levites receive no territories at all. The author justifies this denial on a variety of grounds.

(a) The Levites were promised a different inheritance, namely “the Lord” (Josh 18:7)—meaning the exclusive privilege of overseeing the sacrificial cult (Num 18:23–24). The denial of ancestral territories is fair because the Levites receive something just as valuable in the form of a lucrative monopoly.

(b) Although they are not given a large piece of contiguous territory, the Levites do receive towns and associated pasturage scattered throughout Israel. Thus they are not completely deprived of other means of livelihood.

(c) The Levites receive special protection for the real estate that they do own: a right of redemption that ensures that the properties will not pass out of their control (Lev 25:32–33).

(d) The allocation to the Levites is made by all the leaders of Israel, including the heads of the great families. The fact that everyone is involved is a marker of the fairness of the distribution.

(e) The lands are allocated to the Levites by the fair procedure of a lottery and taken from other tribes according to an equitable principle of distribution (Josh 21:1-41).

(f) Finally, the author suggests that the Levites have lost their inheritance because it was necessary to make room for the tribes of Ephraim and Manasseh (Josh 14:1-5).

This idea is based on the concept of need—the Joseph tribes have a need for land that is more compelling than that of the Levites, who are not expanding as rapidly in population.

### Lottery

Once the initial allocations are made, the second stage is to distribute the remaining lands by a lottery, which is itself conducted in two stages. The first step is to scope out the territory and to divide it into parcels. Here the concern is that there will be mistake or fraud in the initial division. Joshua deals with the problem by ensuring that the surveying team includes representatives from each of the tribes.

The second step is that Joshua casts lots to distribute the territories. This procedure is intended to ensure fairness through the use of a random decision process.<sup>29</sup> The use of a lottery at the second stage also counteracts any fraud in the initial division, since the tribes, not knowing what parcels they will receive in the lottery, get no benefit by making one parcel larger than another. Equally important, the lottery eliminates the risk of unfairness in the allocation after the lots have been determined, since again each participating tribe has an equal chance at each territory.

The lottery, however, only works if it is fair. The author addresses this issue as well. Joshua, who runs the lottery, will receive property outside the process. He has no interest in skewing the results because he has a prior claim on land that will be satisfied regardless of how the lottery turns out. The lottery also has a fair witness. Just as lottery drawings in the United States are sometimes supervised by independent auditing firms, so

---

<sup>29</sup> See, e.g., Neil Duxbury, *Random Justice: On Lotteries and Legal Decision-Making* (Oxford: Clarendon Press, 1999); Barbara Goodwin, *Justice by Lottery* (Hemel Hempstead, Engl.: Harvester Wheatsheaf, 1992); David Lewis, “The Punishment That Leaves Something to Chance,” *PPA* 18 (1989): 53–67.

the drawing in Joshua is overseen by God, who has no interest other than that of ensuring a fair outcome.

In general, the lottery works well. The only problem reported concerns the allocation to the tribe of Simeon (Josh 19:1–7). The issue is that the allocation for Simeon falls within the territory already assigned to Judah. The allocation is explained on the basis that “Judah’s portion was more than they needed” (Josh 19:9). Here, the argument is based on need, but it is the opposite of the issue facing the Joseph tribes. Instead of receiving additional lands because an allotment is too small—the case of the Joseph tribes—the tribe of Judah is deprived of some of its lands because its allotment is too large. Judah’s lack of need results in loss of some of its territory to the tribe of Simeon.

\* \* \*

The author’s treatment of distributive justice is, in summary, one that recognizes the importance of factors such as preserving procedural fairness, rewarding merit, protecting settled expectations, allocating resources to productive users, and distributing assets in proportion to need. The author’s approach suggests that no single principle of distributive justice dominates in any and all circumstances and that a variety of equitable factors needs to be considered when a social surplus is allocated among competing claimants.

#### Problems Caused by the Land Allocation

Joshua 24 describes how, shortly before his death, Joshua assembles the tribes at Shechem and delivers a peroration about the mighty acts of God. Joshua then gets to the heart of the matter: “If serving the Lord seems undesirable to you, then choose for yourselves this day whom you will serve, whether the gods your ancestors served beyond

the Euphrates, or the gods of the Amorites, in whose land you are living” (Josh 24:15). As for himself and his family, Joshua says, “we will serve the Lord” (24:15). The people all answer, “Far be it from us to forsake the Lord to serve other gods! ... We too will serve the Lord, because he is our God” (24:16–18). Joshua warns, “If you forsake the Lord and serve foreign gods, he will turn and bring disaster on you and make an end of you, after he has been good to you” (24:20). The people respond, “No! We will serve the Lord” (24:21). Joshua warns again that the people will be “witnesses against yourselves.” The people again vow to jettison other gods and serve the Lord (24:22–24). Joshua then makes “a covenant for the people” and records the decrees and laws in a book (Josh 25). He erects a stone under an oak tree near the shrine. The stone, he says, “will be a witness against you if you are untrue to your God.”

This setup allows the author to address two problems that are created by the allocation of the promised land:

1. The first problem is that the tribes lose much of their incentive to cooperate with one another once the war of conquest is over and the lands have been distributed.

- (a) Wartime tends to induce selfless actions because people live in solidarity with their comrades and because defeat in battle would be disastrous for everyone. For these reasons the Israelites do not encounter problems of defection during the war of conquest. All this changes, however, when the war ends and the lands are allocated. The solidarity and shared purpose that characterizes soldiers in battle evaporates when peace breaks out. Cooperation among the tribes is thereby imperiled.

(b) During the war of conquest, moreover, the Israelites are fighting for lands that they might eventually own.<sup>30</sup> The hope of getting some of this territory gives them an incentive to cooperate. Once the lands are allocated, however, they have no expectation of acquiring more. If the territory of Manasseh is invaded by a foreign enemy, other tribes have no expectation of receiving a share of that territory if they come to Manasseh's defense (although they may hope for spoils of battle). Their incentive to cooperate is diluted because doing so is unlikely to win them any more lands.

(c) Before the allocation, all the Israelites have reason to fear that defection would be punished during the subsequent distribution of land. Three tribes—Reuben, Simeon, and Levi—are in fact denied a full share in the promised land as punishment for bad behavior during the Patriarchal Age. After the allocation, however, this incentive for good behavior dissipates. The boundaries are unlikely to change even if a tribe misbehaves. The prooftext is found in the book of Judges: even though the tribe of Benjamin egregiously violates norms of intertribal cooperation and is (temporarily) excluded from full membership in the polity, no thought is given to depriving it of territory (see Judg 20–21). Because even bad behavior will not result in loss of territory, the tribes lose some of their incentive to cooperate with one another once the allocation is completed.

(d) Conversely, before the allocation, the tribes have reason to hope for a reward for good behavior in the form of an enhanced share of territory. Caleb receives a special grant because of his exemplary conduct when serving as an Israelite spy, and Joshua receives an estate in recognition of his service to the people. Once the allocation of

---

<sup>30</sup> Other than the Levites (who receive no tribal territory) and the tribes who were already promised lands east of the Jordan.

territory is complete, Joshua and other leaders can no longer promise a larger inheritance as a reward for good behavior.

2. The second problem created by the allocation of the promised land is the possibility that tribes will experience disappointment or resentment about the extent of their allocation—sentiments that may erode a tribe’s willingness to cooperate with other tribes in the future. The system adopted for the allocation of the promised land, as we have seen, is scrupulously fair to everyone. But what people would agree to as fair *ex ante* and what they accept *ex post* are two different things. If people feel resentment about the allocation they receive, they will be less inclined to engage in socially cooperative behavior going forward. This problem is present in every system for distributing a social surplus but is particularly acute when land is in issue. Unlike gold or cash, land cannot be indefinitely subdivided. The inevitable differences in distribution are a natural source for gossip and hostility. Each tribe could look to its neighbor and conclude that others had gotten a better deal.

#### The Covenant at Shechem

The narrative of the covenant at Shechem addresses both these problems. It asks whether, *given the allocation of the territories*, the Israelites will adhere to their prior promises of mutual support and cooperation. The author codes this question in the matter placed before the people at Shechem: whether to fear the Lord and reject other gods. Politically, this amounts to a vow on the part of the people to remain in solidarity with one another and with God in light of the distribution they have received in the promised land.

From the standpoint of theory, the question is whether arrangements accepted as fair *ex ante* will continue to be viewed as legitimate *ex post* once people's endowments are known. No one complains when things turn out to their advantage—when, as the psalmist puts it, “the boundary lines have fallen for me in pleasant places; surely I have a delightful inheritance” (Ps 16:6). But people often lose enthusiasm for the game when their cards are poor. Even if the deal is fair, it is not much fun playing a beer hand. The same principle applies in political theory. As Rawls puts it, “however attractive a conception of justice might be on other grounds, it is seriously defective if the principles of moral psychology are such that it fails to engender in human beings the requisite desire to act upon it.”<sup>31</sup>

The features of the Shechem covenant frame the issue and argue that the political arrangements previously agreed upon remain legitimate even after the allocation of the lands is completed:

1. The Israelites clearly and unequivocally manifest consent to this covenant.

They do so not once but three separate times (Josh 24:16–18, 21, 24).

2. The the people's consent to the covenant at Shechem is voluntary and not coerced:

- (a) The people display enthusiasm in their agreement to serve the Lord and seem almost insulted that Joshua would even ask for their consent to this matter: “Far be it from us to forsake the Lord to serve other gods!” (Josh 24:16). Joshua feigns an effort to discourage them from giving consent, arguing that “you are not able to serve the Lord” (Josh 24:19). He thereby forces the people to disagree with him when they make their

---

<sup>31</sup> Rawls, *A Theory of Justice*, 455.

vow. This they do with alacrity: “No! We will serve the Lord!” (Josh 24:21). The people’s willingness to take issue with their leader on this point evidences the intensity of their conviction.

(b) The author makes it clear that God is not present at this covenant, even as a witness. If he were, the narrative would surely record it. Instead, the author negates the idea that God is a witness by explicitly noting the presence of other witnesses who can testify to the oaths made there: the standing stone and the people’s own words (Josh 24:22, 27). The author also signals God’s absence by the form of Joshua’s address. Although Joshua starts off in the conventional way, channeling the words of God, when he comes to the moment of choice he abruptly switches to the first person: “As for me and my household, we will serve the Lord” (Josh 24:15). Joshua would not speak in these terms if God were present. God’s absence from the meeting removes a potentially intimidating factor that might otherwise raise questions about the voluntariness of their consent.

(c) Joshua also takes pains to avoid intimidating the people by his own presence. He speaks to the people in a confiding and conversational tone, almost like a foreman talking with the workers about their satisfaction with the boss. Even though he expresses his personal decision to serve God, he also indicates that the question has been a matter of discussion for him and his family—implying that it is reasonable to ask whether to serve God or not. He recognizes that the people’s ancestors had once worshipped other gods—subtly suggesting that they may still feel the call of traditional loyalties (Josh 24:14). He admits that the people might be attracted to the gods of Canaan (Josh 24:15) and acknowledges that some were already serving other gods (Josh 24:23). It is as if he

were saying, “I know that what I am asking is difficult, and if you can’t do it I will understand.” Again, Joshua almost appears to be giving the people permission to refuse to make their vow if they harbor any doubts on the matter. The fact that they unanimously vow to serve the Lord after being given such permission is further evidence that the consent is freely and voluntarily given.

(d) The people are already in possession of their lands at the time of the covenant at Shechem and therefore are in a much stronger bargaining position than in other covenants. At Sinai, if they had refused to consent to the covenant on offer, they might have been cast out to wander by themselves in the desert without even manna or water to sustain them. Here, if they refuse consent they can return to their allotted territories. Because they are in a stronger bargaining position, their consent is more likely to be voluntary and not coerced.

3. The people’s consent is fully informed. The knowledge conditions of the covenant at Shechem are different from the conditions that characterized other biblical covenants. In earlier covenants, the participants are shielded behind a veil of ignorance as to their endowments and, in particular, do not know the location and quality of the territories that they will eventually inhabit. In the case of the covenant at Shechem, the participants *do* know their endowments. In fact this covenant occurs at a point when the allocation of territory has maximum salience. Because they have just acquired their lands, their residence in those territories has not yet become second nature. Like anyone who has just acquired a new piece of property, they are acutely aware of its qualities and also cognizant of the fact that some other piece of territory might be better. The author dispenses with the veil of ignorance in order to address the basic question of whether the

matters agreed to in the earlier compacts will continue to command the assent of the parties once their endowments are known.

4. It is clear that the quality of the people's decision is not impaired by agenda manipulation, in the sense that that they are required to decide among less desirable alternatives. Joshua, in fact, is giving the people an option which they did not previously have: the chance to back out of covenants previously made. The covenant at Shechem expands rather than constricts the choices available to the participants.

5. The narrative also addresses the issue of dissent. This issue is important for all biblical covenants, but especially important in the case of the covenant at Shechem. The reason is that some of the tribes received more than others in the allotment. Because they are differently situated the chance of disagreement is greater. The author's answer to this issue is that the people's consent was unanimous:

(a) The author records as a historical fact that the people all agree to this covenant—not once but three times.

(b) The author provides reasons why it should be so. He argues that the people are getting a good deal in this covenant. Joshua begins his speech by reminding the Israelites of how much they have benefited from the mighty acts of God (Josh 24:2–12). The implication is that since God has done so much for them, they should not carp over the details of how much one tribe received as compared with another. Without God's help they would have received nothing at all. Similarly, Joshua concludes his introductory remarks by observing that the lands the people have acquired had already been improved by the prior inhabitants: "I gave you a land on which you did not toil and cities you did not build; and you live in them and eat from vineyards and olive groves

that you did not plant” (Josh 24:13). The suggestion is that the Israelites should be grateful because the land they acquired was a rich and fertile territory already developed by the prior inhabitants. Therefore they should not feel resentment about the share of the promised land they received in the allotment.

6. The narrative of the covenant at Shechem also addresses the issue of non-participants.

(a) As to the Israelites then living, the author claims that all were present, either in person or by duly designated representatives, so the issue of binding people who did not consent does not arise (Joshua 1:1).

(b) The author establishes that this compact is binding over time, not only on the participants but also on their heirs and descendants. Joshua repeatedly warns the people that their vow, once made, cannot be rescinded: “If you forsake the Lord and serve foreign gods, he will turn and bring disaster on you and make an end of you, after he has been good to you” (Josh 24:20). The covenant, moreover, is witnessed by a standing stone that Joshua sets up near the sanctuary: “This stone will be a witness against us. It has heard all the words the Lord has said to us. It will be a witness against you if you are untrue to your God” (Josh 24:27). Because the stone does not die, the covenant lasts as long as it does. The covenant is also witnessed by the people themselves: “You are witnesses against yourselves that you have chosen to serve the Lord” (Josh 24:22–23). While the people present at the ceremony will die, the implication is that the story of the covenant will be passed down among the tribes and retained as a lived tradition in the culture. Finally, the covenant at Shechem is made binding on future generations through the covenant renewal ceremonies.

7. The author makes it clear that this covenant is not conditional. The Israelites agree to their obligations with full knowledge of their allotments in the promised land; they cannot claim unfair surprise at how things turned out. They have, moreover, been given and have refused an opportunity to back out of covenants previously made. Having enjoyed this favor, it is clearly right and just that they be held to their obligations going forward, regardless of events transpire in the future history of the Israelite people.

\* \* \*

The Shechem event is the last of the great biblical covenants. Given this fact, it may be useful to summarize the political elements of these covenants in tabular form:

<i>Setting</i>	<i>Party</i>	<i>Counterparty</i>	<i>Knowledge condition</i>	<i>Result</i>
Ararat	Noah/air-breathing life	God	Veil of ignorance	Government and law
Canaan	Abraham	God	Veil of ignorance	Israelite ethnic identity
Sinai	Israelites/elders/Moses	God	Veil of ignorance	Israelite legal institutions
Shechem	Israelites	Israelites	Knowledge	Reaffirmation of prior covenants

The distinctive feature of the covenant at Shechem is that it constitutes a solemn promise that even after the allocation of the land, the people will remain true to the political solidarity that they agreed to at Sinai—a promise coded in their vow to serve and

obey God and not to turn to other gods. Having made this commitment, the people implicitly promise to come to the aid of their fellow Israelites in the event of danger or threat—a commitment that will be drawn on and sorely tested in the years to come.