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The Book of Judges: The Hebrew Bible's Federalist Papers

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Abstract: This paper continues the analysis of political theory in the Hebrew Bible. This book of Judges evaluates the pros and cons of a confederacy of semi-sovereign tribes, constituted by legal obligations and embodied in three institutions: judges, military leaders, and a tribal assembly. Although the author portrays the leaders of the confederacy as heroes who rescue Israel from distress, his evaluation of the confederacy is negative. He argues that its institutions are not strong enough to reliably deliver the benefits of nationhood – justice, security, prosperity, domestic tranquility, and fidelity to God.

* * *

This article analyzes the accounts of the Israelite confederacy contained in the Bible's book of Judges. 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).¹ 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 describes the receipt of law in the form of a fundamental commitment, a rule of recognition, constitutional law, ordinary law, and administrative rules. The book of Joshua presents a theory of sovereignty: a nation's exclusive control over territory; it also presents a sophisticated account of distributive justice in the narratives of the distribution of the Promised Land at the conclusion of the war of conquest.

The book of Judges continues the history of Israel past the death of Joshua.² The general pattern is set out in Judg 2:10–19. The Israelites worship other gods; God responds by withdrawing his support; the Israelites are oppressed by foreign powers. God sends “judges” to deliver them—Ehud, who liberates Israel from Moab (Judg 3:12–30); Deborah and Barak, who defeat a Canaanite chariot force led by Sisera (Judg 4–5); Gideon, who leads the Israelites against Midian (Judg 6–8); Jephthah, who delivers Israel from the Ammonites (Judg 10:6–12:6); Samson, who fights against the Philistines (Judg

¹ 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.

² For background, see Soggin, *Judges*; Tamoo Ishida, “The Leaders of the Tribal League ‘Israel’ in the Premonarchic Period,” *RB* 80 (1973): 514–30; Rudolf Smend, *Yahweh War and Tribal Confederation: Reflections upon Israel's Earliest History* (Nashville: Abingdon Press, 1970).

13–16); and a host of minor leaders. The book also describes political events not involving judges: the abortive kingship of Abimelech at Shechem (Judg 9); the northern migration of the tribe of Dan (Judg 17–18); and the history of a civil war against Benjamin (Judg 19–21).

The Setup

This setup allows the author to continue the analysis of optimal governmental design. With the conquest of the Promised Land under Joshua, Israel is a nation. But what form should its government take? The essential elements of nationhood provide only a general framework which admits a variety of possible structures. In his usual systematic fashion, the author addresses this issue by identifying and analyzing four forms of national government: (a) military rule (explored in Josh); (b) confederacy (explored in Judg); (c) theocracy (explored in the beginning of 1 Sam), and (d) monarchy (explored in the remainder of Sam and in Kgs). The author supplies information about the degree to which each model delivers the advantages that a national government makes possible: justice, national security, prosperity, domestic tranquility, and fidelity to God.³ This article covers military rule and confederacy; treatment of theocracy and monarchy is reserved for later work.

Military Rule

During the war of conquest, Joshua is the military leader *par excellence*. He makes all the decisions about how Israel should fight the war, consulting at times with others but in most respects acting as the sole head of government. In that capacity he

³ Aside from the last criterion, these are roughly similar to the goals set forth in the preamble to the U.S. Constitution: to “establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty.”

makes no distinction among tribes except for the purpose of suppressing tribal authority. Property rights are also minimized: the Israelites have little personal wealth and, aside from the tribes located east of the Jordan, do not know what share they will receive in the promised land. Joshua can and does command his forces with the sole objective of achieving Israel's military objectives.

This structure of authority is typical of military rule—a system of government in which power is vested in the armed forces rather than in democratic or other institutions. In the classic case, a leader comes to prominence during a time of exigency and achieves preeminence by virtue of his success on the field. As the leader consolidates power, existing institutions are circumvented or swept aside. The ruler governs by personality and force of arms, providing only limited scope for political or property rights. These features are characteristic of Israel under Joshua's regime.

The author finds something of value in this system. The Israelites under Joshua are an efficient fighting force, united in the cause of conquering the promised land. They forego their own interests for the greater good, obey the leader's commands without cavil, and avoid falling into disputes with one another. Above all, they are joined in fidelity to God. They do not worship foreign gods; this pernicious practice resumes only after the end of major hostilities and the allocation of the promised land among the tribes.

Despite these advantages, the author argues that military rule cannot form the basis for long-term national governance. The advantages of military rule—unified action, centralized authority, lack of defined property rights, minimal political participation—are no longer so valuable once the emergency is past. Meanwhile the shortcomings of military rule become evident. People need to engage in economically productive

activities rather than rely on the spoils of battle for sustenance. They need to establish families, hold property, and control their destinies. Joshua, an ideal leader, recognizes this fact when he distributes the promised land to the tribes according to their inheritances. By establishing property rights along clan or tribal lines, Joshua relinquishes his most important powers. The message is that military rule, although sometimes necessary in war, is not a desirable means for governing the people when the land is at rest.

Having established this proposition, the author needs to clear the way for the analysis of other forms of national government. He does so by eliminating all vestiges of the former regime. Joshua's authority ends with the close of military operations and the distribution of the land. He sends the tribes home to their new territories and retires to his estate at Timnath-Serah (Josh 24:28–30). He designates no successor. And it is not only Joshua who leaves the scene. Joshua's entire administration disappears. His farewell address is clearly intended to mark the end of the era (Josh 23:1-2).

Confederacy

With the departure of Joshua and his war cabinet, practical sovereignty returns to the tribes. The setup allows the author to explore the next model of national government: an association of semiautonomous tribes sharing a common God, united by legal obligations of support and protection, and led by persons known as "judges." Organizations of this general type are often referred to as "confederacies." The word is appropriate provided that it does not imply that the association has much in the way of formal structure or that the obligations that constitute it function consistently or well.

Modern scholarship tends to romanticize the Israelite confederacy, viewing it in a favorable light as compared with the situation in later times when Israel was ruled by kings. This roseate view was originally based on the idea that Israel's relationship to God under the confederacy was more authentic than that which existed later when an official cult mixed politics and religion in a way that detracted from the purity of religious expression. More recently, others have idealized the period of the judges on political rather than theological grounds, viewing it as reflecting admirable values of equality, freedom, and liberation.⁴ Whatever their value as history, these approaches do not reflect the attitude of the biblical author. It is true that the stories in the book of Judges portray heroes who act well (better in fact than many kings of later times) and who liberate Israel from distress. Taken at face value, these stories might be thought to praise the era rather than to bury it. But the subtext is critical. Israel would never have needed to be rescued so often if its political system had functioned adequately in the first place. The book of Judges thus offers a sophisticated critique that paves the way toward the more positive assessment of monarchy found in the books of Samuel and Kings.

An analogy to the book of Judges in modern political theory is *The Federalist Papers*—essays written by the American founders John Jay, Alexander Hamilton, and James Madison in support of the proposal to replace a confederacy of states with a central government headed by a president. Part of their argument for the proposed constitution

⁴ A pioneering publication in this genre is George E. Mendenhall's "The Hebrew Conquest of Palestine," *BA* 25 (1962): 66–87, which argued that Israel had its origin in a "peasant revolt" against Canaanite overlords. See also Mendenhall, *The Tenth Generation*. A later theory with points of similarity to Mendenhall's is Gottwald's *The Tribes of Yahweh*, an attempt to reconstruct the history of premonarchic Israel on the basis of political and sociological theory. Like Mendenhall, Gottwald argues that the origins of Israel are to be found in a Canaanite peasant political movement. Gottwald sees this movement as characterized by political freedom, equitable distribution of wealth, and a communitarian spirit.

takes the form of a critique of the “inefficacy” of the confederate form of government.⁵ In something of the same fashion, the author of the book of Judges demonstrates the inefficacy of the Israelite confederacy, with the same goal of establishing the case for a strong national government.

Origins

The book of Judges begins by describing how the Israelites ask God for an oracle as to who should be the first to fight against the Canaanites (Judg 1:1). This narrative preserves the façade of national unity carried over from the book of Joshua: the Israelites are acting as a group in seeking guidance about the next phase of military operations. But it quickly becomes apparent that the image is illusory. Even the question the Israelites direct to the oracle is contrary to Joshua’s approach. The Israelites are not asking for guidance as to a military operation to be fought by all the people; they ask instead which *tribe* should go first. The assumption of the question is that military operations will henceforth be conducted on a tribal rather than an all-Israel basis. This is not a question Joshua would have asked. God’s answer—that the tribe of Judah should go up, because “I have given the region *into their hands*” (Judg 1:2)—confirms the assumption implicit in the question. The battle will be fought not for Israel but for Judah: the region has been given to them. The irony of the narrative thus becomes clear: in spite of appearances, this campaign has nothing to do with Israel. Each tribe will henceforth be responsible for driving out the remaining pockets of resistance in its own territory.

How then can any form of coordinated action be maintained among the tribes? The author explains the origin of the new form of Israelite political organization in the

⁵ *The Federalist No. 1* (Hamilton).

story that follows on the oracle. Having learned that it should be the first to attack the Canaanites, Judah does not go to battle by itself. Rather, the men of Judah ask Simeon for help, in terms that further emphasize the self-interest underlying the project: “come up *with us* into the territory *allotted to us*” (Judg 1:3). Why should Simeon provide any help, given that the spoils will go to Judah? The author suggests three answers. First, Judah tells Simeon that after the two of them have cooperated to fight the Canaanites in Judah, “then we will in turn go with you into [your territory]” (Judg 1:3). The incentive here is reciprocity: “if you scratch my back I’ll scratch yours.” A second reason why Simeon agrees to help lies in the fact that the territory of Simeon is located within Judah. It is in Simeon’s interest to help because its welfare is closely aligned with that of Judah: the Canaanites who threaten Judah also threaten Simeon. A third reason why Simeon agrees to help is simply power: it is surrounded by Judah and therefore has little ability to decline the invitation even if it wished to do so.

These three incentives—reciprocity, shared interest, and power—are the building blocks of Israel’s political structure after the death of Joshua. The tribes respond to these incentives according to calculations of self-interest: “everyone did as they saw fit” (Judg 21:25). The book of Judges suggests, although it does not spell out, something like the following. Initially, other tribes emulate Judah and Simeon by entering into bilateral agreements for common defense, based on the features noted above: the promise of reciprocity; the fact that neighboring tribes shared many of the same interests; and the potential that a tribe would retaliate if another tribe refused an invitation to join such a protective association. Over time, as these one-on-one relationships matured, it became

desirable to expand them to include other tribes. At some point these relationships extended to all of Israel. At this point the confederacy is born.

Legal Rights and Duties

Having provided a general account of how reciprocity, shared interest, and power can induce self-interested tribes to cooperate with one another within the framework of a confederacy, the author turns to the analysis of specific institutions. One of these is legal rights and duties.

The covenant at Shechem confirms a mutual obligation of all the tribes to “serve the Lord” (Josh 24:15). While the full scope of this commitment is unclear, the author suggests that it incorporates six specific duties that the tribes owe to one another.

1. The tribes *may not partition religious observances*. This was the basis for the near-civil war described in Josh 22:10–34, where the tribes east of the Jordan construct an altar, much to the distress of their neighbors across the river. Politically, this text constitutes a repudiation of Jeroboam’s decision, after the split of the united monarchy, to establish a sanctuary for the northern kingdom at Bethel, close to the border with Judah (see 1 Kgs 12:26–30). From the standpoint of political theory, the text disapproves of tribes making arrangements with one another that threaten the solidarity of the country as a whole.⁶

⁶ A similar rule is found in the U.S. Constitution’s compact clause, art. I, § 10, cl. 3, providing that “no State shall, without the Consent of Congress, ... enter into any Agreement or Compact with another State”

2. The tribes are required, if called, to *provide assistance* to one another in case of foreign aggression.⁷ The story of Deborah and Barak provides an example (Judg 4–5).⁸ The Israelite leader Deborah demands that several groups go to battle against a Canaanite force that is causing trouble in the plain of Jezreel (Judg 4 mentions Naphtali and Zebulun, while Judg 5 expands the call to Ephraim, Benjamin, Makir, Issachar, Reuben, Gilead, Asher, and Dan). The assumption is that the named tribes, once called, are obligated to provide help in time of need.

3. All reasonably contiguous tribes must be afforded the *opportunity to participate in battle* and share in the spoils of victory. The Ephraimites accuse Jephthah of violating this obligation: “Why did you go to fight the Ammonites without calling us to go with you? We’re going to burn down your house over your head” (Judg 12:1). In response, Jephthah does not deny that he had an obligation to give the Ephraimites an opportunity to participate; his defense is that he *did* call them, and they didn’t come (Judg 12:2).

4. The tribes are required to provide *safe conduct and decent treatment to travelers* from other tribes. Judges 19 tells how the men of Gibeah commit horrific crimes against a traveling Levite and his concubine, a woman of Bethlehem, who are spending the night in their town. The outrage the other tribes display in response is based

⁷ An American analogy is art. III of the Articles of Confederation, providing that the states “hereby severally enter into a firm league of friendship with each other, for their common defense, ... binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them”

⁸ For more on this topic, see Miller, “A Riposte Form in the Song of Deborah,” 113–27; Miller, “The Song of Deborah: A Legal-Economic Analysis,” *UPLR* 144 (1996): 2293-2318.

on the assumption that travelers are entitled to protection when passing through Israelite territories.⁹

5. The tribes are required to *respect the property rights* of other tribes and their members. The prooftext is Judg 18, where a traveling Levite and the entire tribe of Dan are criticized for misappropriating real and personal property.

6. The tribes are required to *extradite* members who are accused of serious crimes against other Israelites. The duty of extradition is referenced in Judg 20:12–13, where the Israelites demand that the tribe of Benjamin turn over the men of Gibeah to face punishment for their crimes against the Levite and his concubine.¹⁰

Institutions

The rights and obligations of the confederacy are enforced by three institutions of government: forensic judges, military leaders, and a general assembly. These institutions can be understood as evolving spontaneously in a setting where autonomous tribes act out of self-interest in response to the incentive effects of reciprocity, shared interest, and power.

1. A national *judicial power* exists in the system of the confederacy. This is the practical application of the idea of justice as a source of legitimate authority set forth in the story of the garden of Eden. The nature of this judicial authority is outlined in Judg 4. The author there describes how Deborah sits under the palm of Deborah and hears cases

⁹ Art. IV, cl. 1 of the U.S. Articles of Confederation provided similar protections for travelers by guaranteeing citizens of any state the rights to “all privileges and immunities of free citizens in the several States” and to “free ingress and regress to and from any other state” (slaves, paupers, vagabonds, and fugitives from justice were excepted).

¹⁰ The American analogy is art. IV, cl. 2 of the Articles of Confederation, providing that “if any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.”

that the people of Israel bring to her for judgment (Judg 4:5). This and other passages tell us a fair amount about the nature of the office:

(a) The position of forensic judge remains in existence throughout the entire period of the confederacy. This feature is coded in texts reporting that a judge is succeeded in office by another judge (Judg 3:31) or that a judge happens to be serving in office at a particular time (Judg 4:4). The author evidently considers it crucial to establish continuity for the office, as indicated by the fact that he supplies names of “minor” judges whose only role is to confirm that the position persists through time.

(b) Procedures for appointing judges are not spelled out. In at least one case, the official continues in a judicial capacity after having come to power as a military leader (Judg 12:7). Otherwise we know nothing about judicial selection, although we may infer that it was considered important to fill vacancies by distributing the office widely among the tribes.

(c) Judges sit or hold court when deciding matters brought before them (Judg 4:5). The idea implies that judges do not play an active role in events. The passivity of the judge’s role is also suggested by the detail that Deborah hears cases under a palm tree: the implication is that the forensic task does not require her to move about. Her forensic function, like that of judges today, is only to render judgment, not to execute policy.

(d) Judges exercise jurisdiction over Israelites (Judg 4:5). The judicial power applies to all Israel but does not extend to groups that are not part of Israel. Deborah, moreover, does not hear cases brought to her from other courts, as Moses does after instituting the reforms recommended by his father-in-law during the wilderness

wanderings (Exod 18:13–26). The narrative implies that there are no inferior or subordinate national tribunals at the time of the confederacy.

(e) It is also apparent that judges do not have the power of compulsory process. Deborah cannot, as judges do today, issue a writ mandating that a party appear in court. Her jurisdiction is limited to matters presented by mutual agreement of the parties: the Israelites “*went to her* to have their disputes decided” (Judg 4:5).

(f) The disputes judges adjudicate are likely to be controversies between clans or tribes or between parties from different clans or tribes, because disagreements arising within a group will be resolved by local authorities. This limitation on jurisdiction is consistent with the office of judge as serving a unifying national function: the matters they adjudicate are ones that otherwise could lead to rancor or violence between sub-national groups.¹¹

(g) Judges have limited enforcement powers. When parties submit their dispute to a judge, they presumably agree to abide by the decision even if it is against them. But agreeing to abide by a decision and actually *doing* so are different things. Deborah does not have the power to compel compliance with her judgments. Lacking police or an army, her only recourse is the force of public opinion. The Bible does not record any instances in which a litigant refuses to abide by a judge’s decree and the judge responds by shaming the recalcitrant party. But Judg 5 does record an astute use by Deborah of a shaming sanction against tribes that did not answer the call to battle. Presumably the

¹¹ In like fashion, the Supreme Court of the United States has original jurisdiction to resolve disputes between states. See U.S. Constitution, art. III, § 2 (defining the judicial power of the United States as extending to “controversies between two or more states”); *New York v. New Jersey*, 523 U.S. 767 (1998) (resolving a dispute between New York and New Jersey over title to parts of Ellis Island in New York Harbor).

same resort to public opinion could work to encourage compliance with judgments rendered in a forensic capacity.

* * *

Given these features of the office, it is easy to see how the position of forensic judge could arise in the social environment of the confederacy. Reciprocity is present because litigants agree to abide by the judge's decision, even if it is against them, in the expectation that their adversary will do the same. All the tribes share an interest in the peaceful resolution of disputes that otherwise might lead to retaliation, feuding, or violence. No tribe gives up excessive power to the judges because they are not required to submit to the judge's authority in the first place. The institution of forensic judge therefore fits plausibly in the author's description of the confederacy as an association of semiautonomous tribes responding to the incentive effects of reciprocity, shared interest, and power.

2. The second political institution of the confederacy is the office of *military leader*—a figure whose role is to defend the confederacy against external threat.¹² The author also refers to these figures as “judges,” even though their function is different from that of forensic judges (for this reason, among others, scholars distinguish the military leaders from other judges by referring to the former as “major” judges). The author's decision to use the same term for both offices is a clever way of reconciling competing narrative demands. On the one hand he wants to create a continuous bridge of executive authority between Moses and the kings of later times; on the other hand he

¹² See Abraham Malamet, “Charismatic Leadership in the Book of Judges,” in *Magnalia Dei: The Mighty Acts of God* (ed. F. M. Cross, W. E. Lemke, and P. D. Miller; Garden City, N.Y.: Doubleday, 1976), 152–68.

wants to portray the military leaders as arising only in episodic fashion. The compromise is to refer to both types of official as “judges,” thus associating the temporary office of military leader with the continuing office of forensic judge.

The following features characterize the military leader:

(a) First, the military leader’s authority is executive rather than judicial in nature.

The major judges are managers. They take charge of situations, give orders, and participate personally in events. The author codes the distinction between executive and judicial authority in Judg 4. Deborah is judging Israel when she orders Barak to fight the Canaanites (Judg 4:6–7). Barak refuses to go unless she accompanies him: “If you go with me, I will go; but if you don’t go with me, I won’t go” (Judg 4:8). By insisting that she go with him, Barak is demanding that Deborah switch roles—that she cease being the passive forensic judge and become the active executive leader. Deborah agrees—and then in her capacity as commander-in-chief sanctions Barak for insubordination by declaring that he will not get credit for the victory (Judg 4:9).

(b) Military leaders are not appointed. They do not achieve office through bureaucratic promotion, inheritance, or social position. They come forward as volunteers (although, as in the case of Jephthah, they may be drafted). Military leaders do not come from any particular tribe; in fact, the author arranges the presentation to emphasize their diverse geographic and tribal origins. They can be from the lower classes; Jephthah is the son of a prostitute (Judg 11:1). They can be women—Deborah being one of the greatest. Their main qualifications are charismatic gifts—the “spirit of the Lord” descends on them (Judg 3:10).

(c) The office of military leader is limited in duration to the exigency to which it responds. At the end of the emergency, it appears that military leaders relinquish their executive powers (although they may continue on as civilian judges; see Judg 12:7).

(d) Military leaders have no standing army, no officers, no chariots, and no armaments. There is no provision for paying the troops other than the power to divide the spoils of battle.

(e) The core of the military leader's fighting force comes from his or her group. Deborah tells Barak to muster ten thousand troops from his tribe of Naphtali and neighboring Zebulun (Judg 4:6); Gideon calls members of his clan of Abiezer to fight the Midianites (Judg 6:34).

(f) The military leader invokes the confederacy's guarantee of mutual assistance by calling on other groups to participate. The distinction between using your own group and drawing on national authority is coded in the Gideon story by the media of the call: Gideon blows a trumpet to summon his own clan (the suggestion is that they are close enough to hear it), but he sends messengers to contact the others (Judg 6:34–35).

(g) Finally, the military leader is obligated to allow all reasonably contiguous tribes the opportunity to participate and share in the spoils of battle (Judg 12:1–2).

* * *

Like the position of forensic judge, the office of military leader fits plausibly in the setting of an association of semiautonomous tribes responding to incentives of reciprocity, self-interest, and power. Because the military leader has significant authority, the tribes would not want to establish this as a permanent position—hence the temporary nature of the office. However, the tribes share an interest in fending off foreign

aggression. Even if the immediate victim is a different tribe, they are linked by a complex network of economic and family ties (when Canaanites capture the trade routes through the plain of Jezreel, all the tribes suffer economic harm, even those that are geographically remote from the action [Judg 4-5]). The tribes also have an incentive to cooperate because of reciprocity: if in the future they are oppressed by foreign powers, they can call on neighbors for support.

3. The third political institution of the confederacy is the *popular assembly*—a mass meeting held to address issues of fundamental importance to the nation. An example is Josh 22:10–34, a text describing how Reuben, Gad, and Manasseh build an altar near the Jordan. The result is a constitutional crisis sparked because the tribes on the other side of the river believe that the altar contravenes a commitment not to partition the worship of God. The aggrieved tribes do not go to a judge to resolve this matter, nor do they approach Joshua, who is still around although approaching retirement. Instead the “whole assembly of Israel” gathers against the offending tribes (Josh 22:12). The crisis is resolved when Reuben, Gad, and Manasseh, faced with the threat of war, disavow any intention to worship at the altar (Josh 22:24–29).

In Judg 19, a Levite convenes the assembly by sending pieces of his dead concubine around to each of the tribes, complaining that she has been raped and murdered by men of Gibeah. The assembled tribes vow action against the malefactors, but Benjamin refuses to turn them over for punishment (Judg 20:13). The result is a bloody civil war in which thousands are killed. At the conclusion of hostilities, the other tribes swear an oath not to give their daughters in marriage to the men of Benjamin (Judg 21:1). They repent of this oath because it cuts Benjamin out of the confederacy. But—as

is typical in biblical law—the oath cannot be rescinded. The assembly therefore meets again and devises ways to supply Israelite women to the Benjaminites without technically violating the law (Judg 21:5–23).

These texts give us information about the popular assembly:

(a) The institution is only convened in crises that threaten the integrity of the nation. In the first story, the tribes come to the brink of civil war but fall back; in the second, they actually fall into hostilities; in the third, they face the potential loss of one of their members. The lack of other instances in which an assembly is called suggests that it exists for this special purpose only—a reasonable inference given the costs of gathering people from all over the land.

(b) The author provides conflicting information about the guest list at the assembly. In Judg 20:1 it appears that everyone attends: “all the Israelites from Dan to Beersheba and from the land of Gilead came together as one.” In the next verse the author seems to limit attendance to the “leaders of all the people of the tribes of Israel” but then expands the roster to include “four hundred thousand soldiers armed with swords” (Judg 20:2). The ambiguity may reflect an attempt to accommodate conflicting narrative goals: the author wishes to include everyone in order to stress the importance as well as the exceptional nature of the event, but he also wants to restrict attendance in order not to endorse a political structure that gives too much power to the masses.

(c) Attendance appears to be mandatory for everyone who is called. The penalty for truancy can be harsh. Before the second assembly concerning the problem with Benjamin, the Israelites take an oath that anyone who does not come will be executed (Judg 21:5). When attendance is taken, it turns out that no one from Jabesh-Gilead has

shown up (Judg 21:8). The Israelites descend on the town, kill everyone other than virgin women, and give the latter as wives to the Benjaminites (Judg 21:10–11).

(d) It is not clear what sort of notice or opportunity to be heard is required. In the first story the eastern tribes are not invited. This would suggest that the accused group need not be given notice of the assembly. In the second story, Benjamin *is* invited (Judg 19:29) but boycotts (Judg 20:3). These differences serve narrative purposes: in the first story, the fact that the eastern tribes have not received notice allows them to pass off the whole *contretemps* as a huge misunderstanding, whereas in the second story, the fact that Benjamin has received notice and elected not to appear justifies the punitive action undertaken against it. From the standpoint of political theory, the suggestion is that the popular assembly is so unusual that there are no fixed rules as to notice.

(e) The author provides information about the rules of decision at the assembly. In the story of Gibeah, the decision is unanimous: when asked to give their verdict, “all the people rose as one man” (Judg 20:8). In the story of the eastern tribes, the decision rule is not stated, but the emissaries of Israel speak in the name of the “whole assembly” (Josh 22:16), thus suggesting that the decision is made by consensus. In neither case is there any indication that decisions can be made by majority vote.

(f) Even after the assembly meets and elects to take action, the offending party is given the opportunity to rectify the situation without bloodshed. In the story of the eastern tribes, a high-level delegation is sent to demand an explanation and, having received one, returns home satisfied (Josh 22:15–33). In the Gibeah narrative, the assembly sends emissaries throughout Benjamin with the promise that war can be avoided if the wrongdoers are extradited: “Surrender those wicked men of Gibeah so that

we may put them to death and purge the evil from Israel” (Judg 20:13). War breaks out only when the proposal receives no response.

(g) It appears that only the assembly has the authority to initiate military action against any of the tribes. We infer this from the fact that the major judges never attack other tribes for violations of tribal obligations (Jephthah’s war against Ephraim is based on a personal insult rather than a violation of national duty; see Judg 12:1–6). It also appears that the tribes are obligated to participate in actions decided on by the assembly.

* * *

As in the case of the other institutions of the confederacy, the popular assembly fits within a framework of semiautonomous tribes responding to the incentives of reciprocity, shared interest, and power. The assembly functions as a forum in which all the Israelites can debate what to do. Everyone has the opportunity to be heard. Because decisions must be made by consensus, the tribes are protected, at least to some extent, against being dragged into conflicts that they do not wish to join. And because all are present (except perhaps the accused parties), each tribe is assured that if it participates in the course of action decided by the assembly the others will do the same; this increases security and reduces the danger of free-rider effects.¹³

Evaluation

The author presents a mixed assessment of the confederacy as a form of government. The stories of charismatic military leaders could be viewed in a positive light. Israel is the underdog in these narratives—poorly organized, outgunned, unjustly

¹³ It is perhaps not an accident that an assembly with features somewhat similar to the Israelite assembly, the *loya jirga*, continues to function in the tribal culture of Afghanistan as a mechanism for making fundamental decisions. See William Maley, “Political Legitimation in Contemporary Afghanistan,” *Asian Survey* 27 (1987): 705–25, here 708.

treated, and possessed of few assets other than the courage of its people, the resourcefulness of its leaders, and the strength that comes from faith in God. And the stories of the judges, like underdog stories everywhere, always result in a satisfying ending: the oppressors are humiliated, the people are liberated, and the rightful order is restored. Other features of the confederacy are also appealing. The tribes are not subject to the oppressive power of leaders. They are not taxed or dragooned into forced labor. Their obligations are minor and are generally ones that they would agree to in any event. The political institutions of the confederacy also have virtues. It is clear that the author views the judicial power as necessary and desirable; the most plausible reason why he does not offer much detail about the forensic function is simply that it is not controversial. Similarly, the author sees benefits in the military leader and the popular assembly. Each of these institutions responds to significant problems while respecting the autonomy and integrity of tribal authority.

The subtext of the book of Judges, however, is not so positive. The author's deeper purpose is to *critique* the system that made it necessary for the judges to arise as saviors in the first place.¹⁴ He makes the following observations:

(a) The confederacy is not ordained, approved, or inspired by God. God's only involvement is through the low-quality medium of an oracle (Judg 1:1); and although the advice the oracle offers proves to be accurate, the answer, as with any oracle, is only as good as the question asked. The Israelites do not ask God for advice as to how they

¹⁴ The notion that Judg presents a picture of a deeply flawed society, in contrast with the more perfect structure established in the monarchy, is recognized by several writers. See, e.g., Stuart Lasine, "Guest and Host in Judges 19: Lot's Hospitality in an Inverted World," *JSOT* 29 (1984): 37–59 (arguing that premonarchic Israel is portrayed in Judg as an "inverted world where actions are often ludicrous, absurd, and self-defeating").

should carry out the campaign on an all-Israel basis. They have apparently already made the decision that the tribes should act on their own. More importantly, they do not ask God for advice about what sort of political system they should adopt, nor does God offer any. The confederacy is purely the creation of human beings and as such is vulnerable to the weakness and instability that comes when decisions are made by human beings alone without God's input or approval.

(b) The confederacy is grounded on self-interest rather than on a genuine commitment of mutual support and assistance. But reciprocity, shared interest, and power are inherently unstable. Reciprocity can break down when a group that has received assistance fails to repay in kind. Power waxes and wanes and interests shift, and as these changes occur the willingness of the tribes to support one another will shift along with them. The author suggests that there is nothing constant or reliable about the confederacy as a form of government.

(c) The judicial authority, although crucial, is too weak to deliver the benefits of a national government. Because the judges lack the power of compulsory process, they can be bypassed by parties who are unwilling to have their controversies resolved in this forum. The problem becomes severe when one of the parties knows it is in the wrong. The Levite in Judg 19–21 does not even try to invoke the judicial power against the men of Gibeah, probably because he knows that the wrongdoers will never agree to have the case judged. Even if a judge had adjudicated the matter, moreover, he or she would have had grave difficulty enforcing the judgment, since the wrongdoers could take sanctuary with their kinsmen and refuse to submit.

(d) An even more serious limitation of the judicial power is its passivity. Deborah serves as a judge in Israel, hearing and deciding cases, but she has no power either to prevent her countrymen from worshipping foreign gods or to stop enemies such as Sisera from reducing Israel to penury. Like jurists in the United States, she has “neither force nor will, but merely judgment.”¹⁵ It is only when she switches roles and rebrands herself as a military leader that she is able to deal with the threat. The judicial power of the tribal confederacy is thus an essential component of national government, one that may help establish justice in the land, but not nearly sufficient to guarantee the blessings of justice, national security, prosperity, domestic tranquility, and fidelity to God .

(e) The institution of military leader is also subject to shortcomings. Most importantly, such leaders have difficulty inducing cooperation from other tribes. In the time of Joshua, Israel’s military is capable of managing people’s tendency to shirk their duty. But by the time of the judges the problem of free riding is in full flower. The story of Deborah is a proof-text. The *casus belli* for Deborah’s intervention is the fact that the Canaanites have seized control of the trade route through the plain of Jezreel. This is a problem for all Israel. The groups most immediately concerned, however, are those most proximate to the problem: the northern tribes of Asher, Naphtali, Zebulun, Issachar, and Ephraim. Not coincidentally, the main Israelite actors are also from these tribes: Deborah comes from Ephraim and Barak is from Naphtali (Judg 4:5–6). In tacit recognition of the fact that other tribes may not want to participate, Deborah initially asks Barak to bring troops only from Zebulun and Naphtali (Judg 4:6). Later, she calls on other tribes to participate, but not all: Levi, Simeon, and Judah are not mentioned, apparently because

¹⁵ *The Federalist No. 78* (Hamilton). For insightful discussion, see Alexander M. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (New York: Bobbs-Merrill, 1962).

they are so far away or so scattered that their participation is not even demanded.¹⁶ Of the groups that do receive the call, only some respond. Deborah credits Ephraim, Zebulun, Benjamin, Issachar, Makir, and Naphtali for answering the call in whole or in part (Judg 5:14–15, 18). These groups are close to the problem. She criticizes others for staying away—Reuben, Gilead, Asher, and Dan (Judg 5:15–17). Each of these groups is geographically or economically removed from the problem.¹⁷ The author thus uses this text to critique the tribal confederacy for its inability to overcome free-rider problems and induce cooperation in military operations.

(f) The only means the military ruler has to conquer the free-rider problem is the use of social sanctions of praise or blame. To be effective, such sanctions must be publicized, must be remembered, and must actually influence reputations. The Song of Deborah (Judg 5) addresses all three of these problems.

Deborah is a genius at publicizing her critique. In the absence of television or Twitter, she disseminates her message through the only broadcast medium available: travelers (Judg 5:10). She also employs the public forums of the ancient Near East, namely, city gates and communal wells: “consider the voice of the singers at the watering places. They recite the victories of the Lord, the victories of his villagers in Israel. Then the people of the Lord went down to the city gates” (Judg 5:10–11).

It is not enough that the message be received; it must also be remembered. The problem of memory is a pervasive difficulty in oral cultures, since recollections may fade

¹⁶ On the response to Deborah’s call, see Lawrence E. Stager, “The Song of Deborah: Why Some Tribes Answered the Call and Others Did Not,” *BAR* 15, no. 1 (1989): 63–64.

¹⁷ Gilead “stayed beyond the Jordan” (Judg 5:17)—its position as a trans-Jordanian tribe reduced its interest in the controversy. The coastal tribes are economically linked to the sea and therefore less concerned with inland trade routes: “Dan, why did he linger by the ships? Asher remained on the coast and stayed in his coves” (Judg 5:17). As for Reuben, Deborah acknowledges that some wanted to participate but others did not; in the end, Reuben dithered and failed to appear (Judg 5:15–16).

or become corrupted by self-interest. Deborah's account of the battle deals with the problem of memory through the media in which it is recorded. It takes the form of a poem; and poetry, in addition to its aesthetic virtues, had value in ancient times because of its mnemonic qualities. Features such as meter, parallelism, and wordplay are not only attractive to the ear; they are also excellent devices for embedding information in a form that can easily be recalled. This text is also a song (Judg 5:1). Songs offer additional mnemonic advantages if they are associated with a distinctive tune (much religious liturgy is sung or chanted for this reason).¹⁸

Even if a report is disseminated and remembered, it must be effective at influencing reputations. Presumably the prestige of the Song of Deborah has some efficacy in this respect. A member of the tribe of Dan, in future years, might not find it particularly appealing to be reminded of his ancestors' failure to participate in the great battle, while a member of the tribe of Zebulun would take pride in the report of his family's meritorious conduct.

The reputational sanction utilized in the Song of Deborah thus has some efficacy at inducing cooperation. But its effectiveness is limited. Deborah does not have the power to compel obedience to her commands; she must bargain, threaten, and cajole to get her way. And the Song of Deborah presents the best possible case for the use of stigmatization as a sanction. Few leaders would be as adept as Deborah at publicizing their criticisms. Where the sanction is administered less efficiently, tribes have even less of an incentive to comply.

¹⁸ The durability of the Song of Deborah is attested by the fact that it survived to be incorporated in the national epic of the Israelite people, even though it appears to be of very ancient origin. See Soggin, *Judges*, 92.

Further, the fear of loss of reputation, even if effectively administered, might not be enough of an inducement to participate in a battle that could cost a person his life. The tribal confederacy therefore needed something more than a shaming sanction if calls to arms were to be effective. The author's problem here is to provide a narrative demonstrating the use of a stronger sanction without actually administering it, since his protagonists are tribes that cannot be permanently subordinated. His solution is to concoct an imaginary group, Meroz, and to subject that group to the more extreme sanction of shunning: "'Curse Meroz,' said the angel of the Lord. 'Curse its people bitterly, because they did not come to help the Lord, to help the Lord against the mighty'" (Judg 5:23). The threat of exclusion from the confederacy is effective only if believed, however. Given that even defection as serious as that displayed by Benjamin in the episode of the men of Gibeah did not result in that tribe being permanently banned from the confederacy (see Judg 21), the detail of the curse against Meroz may not have been particularly efficacious at inducing cooperation.

(g) The popular assembly is also of limited value in delivering the benefits of nationhood. It is an unusual event, probably one that only occurs once during a person's lifetime, if that. The author highlights the extraordinary nature of the assembly when he describes the people's reaction to the outrage at Gibeah: "Everyone ... was saying, 'Such a thing has never been seen or done, not since the day the Israelites came up out of Egypt. Just imagine! We must do something!'" (Judg 19:30). Given the gravity of the provocation that is needed to convene it, the assembly is an inadequate institution for ordinary governance. The decision rules of the assembly also limit its effectiveness. The assembly is unlikely to act in the face of substantial opposition. The author hints that

many tribal assemblies do end inconclusively. When the people say, “None of us will go home. No, not one of us will return to his house” (Judg 20:8), they are recognizing that tribal assemblies often wind up with the people simply going home with no action taken.

* * *

Given these weaknesses of its institutions, it is not surprising that confederacy does not deliver the full benefits of nationhood. The stories of the book of Judges, in fact, read as a compendium of failure:

(a) The confederacy does not prevent apostasy. The problem is not that the people are unusually prone to worship foreign gods under this form of government. As illustrated in the episode of the golden calf, the people are always subject to this temptation. But if impulses are incorrigible, government can at least discourage people from acting them out. It can police against sacrilegious practices, chase away pagan priests, demolish offending altars, and destroy idols. But the confederacy is unable to do these things with any consistency. Neither forensic judges nor the popular assembly is able to deal with the chronic problem of disloyalty to God. Nor are military leaders well-equipped to cope with this problem. Military leaders only arise in times of crisis; they cannot be continuously on the prowl against evil practices. Moreover, these leaders govern by consensus; and on the issue of worshipping foreign gods, consensus may be lacking (Gideon does tear down an offending altar and its asherah, but these items belong to his family, so he can claim a property right to dispose of them as he wishes; even so, the people demand his execution [Judg 6:25–30]).

(b) The confederacy does not protect trade. The author makes this argument through the story of Deborah and Barak (Judg 4–5). The Canaanites use their control over

the plain of Jezreel to extract oppressive tolls. In an attempt to avoid these costs, merchants seek alternative but less efficient routes: “the highways were abandoned; travelers took to winding paths” (Judg 5:6). The result is to impoverish the highland towns. By defeating Sisera, Deborah and Barak liberate the trade route (or at least bring it under Israelite control). In this respect one could imagine that the confederacy is good at protecting trade. But the better view is that the text *criticizes* the confederacy in this respect. Deborah’s heroics do not prevent Israel from being oppressed for twenty years (Judg 4:3). And there is no assurance that the victory will last. The implication is that the confederacy does not do a particularly good job of ensuring that village life will continue in Israel.¹⁹

(c) The confederacy does not protect productive activities. The author makes this point through the story of Gideon. The enemy here is not an organized army that can be confronted in a conventional battle (although Gideon does finally corner the troublemakers; see Judg 8:4–12). The Midianites come as a wandering people along with their cattle, camels, and families (Judg 6:5). They spread out across the land in no particular order. Their power lies not in chariots or battalions but rather in numbers and anonymity: the author describes them as descending like a plague of locusts. They camp in fields, ruin the crops, consume forage, and kill livestock (Judg 6:4–5). They also seem to have been thieves: the Israelites prepare hiding places for the purpose of protecting valuables against pilfering (Judg 6:2:3), and Gideon threshes the harvest in the wine press in order “to remove it from the Midianites” (Judg 6:11). Even though the Midianites are

¹⁹ This same general argument is advanced in *The Federalist Papers*, which criticize the Articles of Confederation for failing to protect American trade against foreign depredations. See, e.g., *The Federalist No. 11* (Hamilton).

not a military threat, their economic impact is severe: they “so impoverished the Israelites that they cried out to the Lord for help” (Judg 6:6).

It is true that a charismatic leader releases Israel from this menace. Thus, as in the case of Deborah and Barak, the Gideon narrative could be read to glorify Israel and its hero. But, also as in the previous narrative, the subtext is different. The Midianites trample and steal with impunity. Whoever is judging Israel at the time—we are not told—is incapable of responding. And although Gideon eventually defeats the intruders, Midian is not eradicated. Israel will continue to produce crops and animals and nomadic groups will continue to trespass and pilfer. Gideon has only suppressed but not eliminated the danger. What would suffice to thwart an enemy like Midian? The author suggests that the key is deterrence. Nomadic groups must be frightened to the point that they will not tempt fate by entering the land in the first place. The author codes this point in the details of Gideon’s nighttime assault on the Midianite camp (Judg 7:16–22). The Israelites blow horns, light torches, and let out bloodcurdling cries—a display fearsome enough to induce the Midianites to flee (Judg 7:21–22). The message is that the Midianites can be scared off without the need for stronger action. But because itinerant people can always come across the border, deterring them requires constant vigilance and readiness—something the confederacy is unable to provide.

(d) The confederacy does not guarantee national security.²⁰ Israel is oppressed by nearly all of its neighbors: Arameans (Judg 3:7–11); Moabites (Judg 3:12–30); Canaanites (Judg 4–5); Midianites (Judg 6–8); Amalekites (Judg 6–8); Ammonites (Judg 10:6–12:6); and Philistines (Judg 13–16). The diversity of enemies reported in these texts

²⁰ On the role of the confederacy in military operations, see Smend, *Yahweh War and Tribal Confederation*.

is not accidental; the author is arguing that under the confederacy, Israel is threatened on all sides. The subtext is the same as in the narratives having to do with trade and commerce. It is true that in each case the Israelites are delivered by a heroic judge—a good thing. But the rescues would not have been needed if the Israelites had not been oppressed in the first place. And these victories come at a cost—as illustrated in the story of Jephthah, who loses his only child as the price for winning a battle (Judg 11:29–40). Between the lines, the author is saying that the confederacy is inadequate as a means for delivering security.²¹

(e) The confederacy does not protect property rights. Micah, a resident of Ephraim, hires an ambitious Levite from Bethlehem to serve as priest in his household, paying him a nice salary (ten shekels a year) plus benefits (food and a change of clothes; Judg 17:7–13). But Micah does not get references. The employee proves unscrupulous when offered a better job elsewhere, running away and helping his new employers to steal valuables from his former master (Judg 18:14–20). Micah catches the thieves, but they insolently rebuff and threaten him: “Don’t argue with us, or some of the men may get angry and attack you, and you and your family will lose your lives” (Judg 18:25). The message is that the confederacy does not protect Israelite households against violence or thefts committed by travelers.

Later, the Danites attack the town of Laish, kill the inhabitants, rename the place after themselves, and settle down. This text is in part a polemic against Jereboam’s construction of a sanctuary in Dan to compete with the temple in Jerusalem. But it also

²¹ In this respect, too, Judg finds a modern parallel in *The Federalist Papers*, which also criticizes the confederate form of government for inviting invasion and meddling by foreign powers. See e.g., *The Federalist No. 3* (Jay).

has a more general message. The territory of Laish is not part of Dan's tribal allocation, nor is its seizure sanctioned by God. The author is clear that the Danites are wrong to displace the people from their lands.²² The message is that the confederacy is unable to protect real property against expropriation by groups with the power, organization, and mobility to dispossess the former inhabitants.

(f) The confederacy does not protect travelers. The outrage at Gibeah is a prooftext: the people of that town commit heinous crimes against inoffensive wayfarers who have stopped for the night. The crime is eventually punished, but this will not bring the victim back or provide much assurance for the future.

(g) The confederacy does not ensure extradition. Judges 20 reports that Benjamin did not comply with its obligation to turn over the criminals in its midst even when ordered to do so by the assembly. Although Benjamin is eventually called to account for its misconduct, the subtext is that confederacy lacks effective means for dealing with the tendency to give sanctuary to members of one's own group. More generally, the message is that relationships of tribes to one another are likely to be imperiled due to the lack of an effective nationwide system of criminal justice.

(h) Finally, and worst of all, the confederacy does not prevent civil war.²³ The conflict between Benjamin and the rest of Israel results in twenty-five thousand casualties for Benjamin alone (Judg 20:46). Even the spat between Jephthah and Ephraim generates

²² The author is unclear as to the identity of the Laishites, the people dispossessed by the Danites. He tells us only who they are not: they live "according to the customs of the Sidonians" but are not members of that group, and they have no dealings with Aram (Judg 18:9). But perhaps they are Israelites or affiliated with Israel; if so, the Danite assault is particularly reprehensible. Even if they are foreigners, the author is sympathetic, referring to them as a "quiet and trusting people" (Judg 19:27)—an inoffensive group who have long lived securely in a broad and fertile land.

²³ The possibility of strife among the states under confederate government was also a theme of *The Federalist Papers*. See *The Federalist No. 5* (Jay).

horrific losses: forty-two thousand Ephraimites are slaughtered for having the temerity to suggest that Gilead was not a full-fledged tribe.

* * *

The foregoing considerations offer a powerful critique of confederacy as a form of government. In the narratives just described, however, confederacy bends but does not break. Israel is always rescued from distress, if sometimes only barely. To fully reject confederacy as a form of government, the author needs a narrative describing the complete breakdown of the system. This he provides in the story of Eli, discussed in a forthcoming article.