

THE DEED AND THE DOER
IN THE BIBLE

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David Daube's Gifford Lectures, Volume 1

David Daube 

EDITED AND COMPILED BY Calum Carmichael

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PREFACE



David Daube delivered two sets of Gifford Lectures at the University of Edinburgh: “The Deed and the Doer in the Bible” in September and October 1962, and “Law and Wisdom in the Bible” in April and May 1964. At the time he was the Regius Professor of Civil Law at the University of Oxford, a position that King Henry VIII had established, and which had been offered to Daube in a handwritten note from the then prime minister, Winston Churchill.

Daube traced his scholarly lineage back to the eleventh-century Italian jurist Irnerius, who at the University of Bologna revived the study of Roman law and taught it along lines long established in the teaching of scripture. The pedigree is an unbroken one of teacher and pupil and contains some of the most illustrious names in European legal history. Daube’s career spanned almost the entire twentieth century with roughly equal periods of time spent in Germany (where he was born February 8, 1909), Great Britain, and the United States (where he died February 24, 1999). A confluence of forces produced a scholar immediately recognizable as unique. He came out of a strictly Orthodox Jewish upbringing that from boyhood included instruction in Aramaic and Hebrew. He was immersed in the 1920s in the classical tradition of the German educational system. His rare abilities were recognized and cultivated by a number of outstanding scholars in Germany in the 1920s and in Cambridge (England) in the 1930s and 1940s. Although he gave up a commitment to an Orthodox Jewish life, its influence remained. His scholarly work grew out of his engagement with biblical, Greek, Roman, and talmudic texts, and his absorption in the intricacies of different legal traditions made him alert to elements of the law that find expression in the world of literature, be it Christian, Greek, Jewish, or Roman.

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Daube was introduced to biblical criticism at the University of Göttingen by Johannes Hempel and proceeded to complete his doctorate on the biblical legal topic of blood vengeance (*Das Blutrecht im Alten Testament*). A teacher at his Freiburg synagogue told him at the time, "If you must do biblical criticism, do it like a surgeon who has to operate on his father." The looming threat of National Socialism in Germany led to Daube's moving to Cambridge in 1933 where he completed a Roman Law doctorate on damage to property (*Formalism and Progress in the Roman Law of Delict*). At Cambridge, biblical scholars S. A. Cook, C. H. Dodd, and F. S. Marsh encouraged Daube to pursue his studies in both Old and New Testament literature.

I first met Daube when he gave his 1962 series of Gifford lectures. I had been on my way from Edinburgh to study with Roy Porter at Oriel College, Oxford, but Daube suggested that I come to him at All Souls College because of my interest in biblical law. There began an increasingly close association that lasted until his death in a Californian nursing home in 1999. When Daube took on a student, he gave of himself unstintingly. It was more a relationship of master with disciple than teacher with pupil. He trained five students in addition to myself in different areas of the law: Peter Stein, who became Regius Professor of Civil Law at the University of Cambridge; Reuven Yaron, who held the Chair of Roman Law at the Hebrew University, Jerusalem; Alan Watson, who has been the holder of chairs of law in British and American universities; Alan Rodger, who is currently one of the law lords in the House of Lords in London; and Bernard Jackson, who holds a chair in Jewish Studies at the University of Manchester, England.

Daube's scholarly output is substantial by any standards, but he never published his Gifford lectures. To be sure, the preparation that went into them led to the inclusion of some of their contents into published articles. A few of the lectures he did write out, but most of them existed in the form of typescripts transcribed by a secretary in Edinburgh from a tape recorder, which, alas, can no longer be located. His strong South German accent; his use of Latin, Greek, Hebrew, and German terms; and the deficiency of the then available technology made the task a far from simple one. My own efforts in compiling them have been easier because of my familiarity with

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Daube's work. To date, in a project at the School of Law, University of California, Berkeley—Daube taught there for thirty years after he left Oxford—I have supervised the publication of four volumes of his collected works.

In compiling the material of Daube's ten lectures plus a supplement that appear in this volume, and in ten currently in preparation (*Law and Wisdom in the Bible*), I have used the existing typescripts, those lectures he wrote out himself, and parts he incorporated into published items. There is some repetition which I chose not to excise, because when Daube looks at a matter again he invariably brings new insights to bear on it.

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ABBREVIATIONS



- AB Anchor Bible
- ArOr *Archiv Orientalni*
- AV Authorized Version
- BLL *Studies in Comparative Legal History: Collected Works of David Daube*, vol. 3, *Biblical Law and Literature*, ed. Calum Carmichael (Berkeley, 2003)
- CLJ *Cambridge Law Journal*
- CLR *California Law Review*
- CSRL *Collected Studies in Roman Law*, 2 vols., eds. David Cohen and Dieter Simon (Frankfurt am Main, 1991)
- EOW *Studies in Comparative Legal History: Collected Works of David Daube*, vol. 4, *Ethics and Other Writings*, ed. Calum Carmichael (Berkeley, 2008)
- HAT *Handbuch zum Alten Testament*
- HUCA *Hebrew Union College Annual*
- ICC International Critical Commentary
- ILR *Israel Law Review*
- JJS *Journal of Jewish Studies*
- JQR *Jewish Quarterly Review*
- JR *Juridical Review*
- LQR *Law Quarterly Review*

ABBREVIATIONS

- LRB* *London Review of Books*
- LXX* The Septuagint
- MAL* Middle Assyrian Laws
- Mekhilta* A second-century CE rabbinic commentary on the book of Exodus
- NLF* *Natural Law Forum*
- NT* *Novum Testamentum*
- NTJ* *Studies in Comparative Legal History: Collected Works of David Daube*, vol. 2, *New Testament Judaism*, ed. Calum Carmichael (Berkeley, 2000)
- RIDA* *Revue Internationale des Droits de l'Antiquité*
- RJ* *Rechtshistorisches Journal*
- TL* *Studies in Comparative Legal History: Collected Works of David Daube*, vol. 1, *Talmudic Law*, ed. Calum Carmichael (Berkeley, 1992)
- TLR* *Tulane Law Review*
- UCLALR* *University of California Los Angeles Law Review*
- VT* *Vetus Testamentum*
- ZAW* *Zeitschrift für die Alttestamentliche Wissenschaft*
- ZNTW* *Zeitschrift für die Neutestamentliche Wissenschaft*
- ZSS* *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*

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CAUSATION

“Whodunit” is the question asked when a crime has been committed and the identity of the criminal is unknown. But the question may arise where the identity is known and all other facts are clear. Suppose all the archives pertaining to the First and Second World Wars are open and we ask: who caused these wars? Or, I am run over and killed by a skidding car. Is it the driver who has caused my death, or the manufacturer of the tires that were defective, or the person who asked me to lunch, but for whom I should not have been there? Where does God or fate come in? If my aunt on hearing the news gets a temperature, is wrongly treated, and dies, who or what has caused her death? We confront the problem of causation.

The Role of God. He Instructs Man; Works Inside His Mind; Instigates Him; Puts a Stumbling Block in His Way; and Uses Him as His Instrument. In the Bible, apart from God as creator and hence the cause of everything (logically worked out in late sources: e.g., Sir 33:14, 15; Rom 1:19, 20; 8:19–23¹), he plays an enormous role, but the modalities vary. A few follow. Any event and any human undertaking depend on God admitting it—at least in advanced portions of the Bible. As with a school or an army, it is admission, not causation. The admission may be negative: there is no interference with free play except the recognition that it could be prevented or crossed at any moment. The noninterference is taken for granted; it is one way of viewing the direction of history. Some players are given free rein; others are cut off, frustrated: a prayer is not allowed to succeed, Moses is not to cross the Jordan (Deut 3:25), the prophecy that the attack on Jerusalem in the reign of Hezekiah by the Assy-