

LAW AND WISDOM  
IN THE BIBLE

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*The Deed and the Doer in the Bible:*  
*David Daube's Gifford Lectures, Volume 1*

EDITED AND COMPILED BY  
Calum Carmichael

# LAW AND WISDOM IN THE BIBLE

*David Daube's Gifford Lectures, Volume 2*

David Daube 

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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, which appeared as a book from the Templeton Press in 2008; and those in the present volume, *Law and Wisdom in the Bible*, which Daube delivered 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 in 1955 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. 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 on 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.

Johannes Hempel introduced Daube to biblical criticism at the University

## PREFACE

of Göttingen, where he completed his doctorate on the biblical legal topic of blood vengeance (*Das Blutrecht im Alten Testament*). Commenting on his scholarly, secular approach to biblical texts, a teacher at Daube's Freiburg synagogue told him, "If you must do it, do it like a surgeon who has to operate on his father." The looming threat of National Socialism in Germany led Daube to move 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, the 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 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 study with him at All Souls College because of my interest in biblical law. There began our increasingly close association that lasted until his death in a California nursing home in 1999. When taking on a student, Daube 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.

In my view, the most striking feature about Daube was how he noted that all of us tend to be guided by some system of categorization, and only when some specific matter engages our attention do we exhibit a more idiosyncratic way of thinking. Daube found such individualistic outpourings more compelling because any system of thought is unnaturally abstract. It is one reason why, by and large, he was not overly interested in matters that engage the general run of scholars. They tend to speak of "a Roman patrician," "a nineteenth-century liberal," "the Apostles," and "the Rabbis." Such terms are used as if referring to real people in real life, but the terms in fact represent abstractions. Daube's inclination was to focus on a telling detail. He noted, for example, that throughout the whole of *Don Quixote*, the story about a knight-errant by Cervantes, who was a hero of the battle of Lepanto, not a

single human is mortally wounded. For Daube, an evaluation of this single feature—he reckoned on the influence of Cervantes' view of Christian teaching—would illumine the work as much as any literary theory as to why the book should be ranked as the greatest novel ever. The magnificently universalistic book of Jonah similarly exhibited, Daube observed, a concern with violence but in the end not one person is killed either. He noted in regard to Tolstoy's *Anna Karenina* that the book ends with Karenina committing suicide, which for Christians wipes out any merits of the person and spells damnation. However, should there be a last-minute repentance, the person receives forgiveness and salvation. Tolstoy, a devout Russian Orthodox, movingly heeds this teaching. As the train begins to roll over her, Karenina realizes her error and prays for forgiveness. Thereby Tolstoy saves her. Readers, Daube noted, scarcely take in this detail.

Daube's scholarly output in so many areas of knowledge is substantial by any standards, but he never published his Gifford Lectures. To be sure, preparation that went into them led to the inclusion of some of their contents in 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 of compiling this collection a far from simple one. My efforts have been made easier because of my familiarity with 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. Two more volumes are in progress. For the present volume, I have been able to use the existing typescripts, those lectures he wrote out himself, and parts he incorporated into published items.

I am indebted to the Templeton Foundation and to the William Arkell Jr. Charitable Trust for support in preparing the two Gifford Lecture volumes.

*Calum Carmichael*

CORNELL UNIVERSITY



# ABBREVIATIONS



- AASOR* *Annual of the American Schools of Oriental Research*
- AB Anchor Bible
- ArOr* *Archiv Orientalni*
- ATD Das Alte Testament Deutsch
- BJRULM* *Bulletin John Rylands University Library of Manchester*
- BLL* *Studies in Comparative Legal History: Collected Works of David Daube*,  
vol. 3, *Biblical Law and Literature*, ed. Calum Carmichael  
(Berkeley, 2003)
- CH Code of Hammurabi
- CLJ* *Cambridge Law Journal*
- HAT* *Handbuch zum Alten Testament*
- HUCA* *Hebrew Union College Annual*
- IB Interpreter's Bible
- ICC International Critical Commentary
- JAOS* *Journal of the American Oriental Society*
- JBL* *Journal of Biblical Literature*
- JJS* *Journal of Jewish Studies*
- JJSOC* *Jewish Journal of Sociology*
- JLA* *Jewish Law Annual*
- JQR* *Jewish Quarterly Review*

## ABBREVIATIONS

- JR* *Juridical Review*
- JSNT* *Journal for the Study of the New Testament*
- JTS* *Journal of Theological Studies*
- LE Laws of Eshnunna
- LXX The Septuagint
- MAL Middle Assyrian Laws
- Mekhilta* A second-century A.D. rabbinic commentary on the book of Exodus
- NTJ* *Studies in Comparative Legal History: Collected Works of David Daube*, vol. 2, *New Testament Judaism*, ed. Calum Carmichael (Berkeley, 2000)
- RJ* *Rechtshistorisches Journal*
- SP* *Studia Patristica*
- SVT* *Supplement to Vetus Testamentum*
- TDNT* *Theological Dictionary of the New Testament*, ed. G. Friedrich and G. Bromley (Grand Rapids, 1965)
- TL* *Studies in Comparative Legal History: Collected Works of David Daube*, vol. 1, *Talmudic Law*, ed. Calum Carmichael (Berkeley, 1992)
- TLR* *Tulane Law Review*
- VT* *Vetus Testamentum*
- WZKMUL* *Wissenschaftliche Zeitschrift der Karl-Marx Universität in Leipzig*
- ZAW* *Zeitschrift für die Alttestamentliche Wissenschaft*
- ZSS* *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*

LAW AND WISDOM  
IN THE BIBLE





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## THE FIFTH COMMANDMENT

### I

To those who share Bumble's view that "the law is an ass," the title of this series will seem ill-chosen. Even they must admit, however, that, ideally, it would not be a bad thing if law and wisdom did fraternize. In any case, it may be worthwhile to explore the position in the Bible.

To do so, a preliminary remark on that oscillating term "wisdom" is needed. Not as if "law" were unambiguous, but most readers will be more puzzled by the different guises that the former notion will assume in these chapters. Basically, "wisdom" means a more than ordinary understanding of the nature of things; it is partly a gift, partly the result of experience; and it confers on its possessor superiority in the mastery of life. Its various manifestations, however, can be confusing. There is "wisdom" in the sense of "shrewdness," "cunning," or even—descending further, if we look at it from the point of view of a higher morality—"ability to twist."<sup>1</sup> It is probably because of this lower variety that, in the Hebrew Old Testament, God is never styled "wise."<sup>2</sup>

There is "wisdom" in the sense of "excellence in craftsmanship."<sup>3</sup> Where this sense prevails, law—like medicine, cult, prophecy, history, architecture, strategy—is a branch of wisdom, and especially law as a system of detailed, meticulous rules and machinery. Jethro's advice to Moses in the book of Exodus furnishes an illustration of wisdom taking charge of, and reforming, law or legal procedure.<sup>4</sup> There is "wisdom" in the sense of "moderation,"