

*S*OME CONSIDERATIONS ON
THE SOCIO-POLITICAL ASPECTS OF THE
LAW-CODIFICATION IN THE PROVINCE
OF YEHUD IN THE PERSIAN PERIOD.
A VIEW THROUGH A ROMAN LENS¹

Abstract:

The article juxtaposes the process of law codification that took place in Rome in the mid-5th century BCE under the so-called Law of the Twelve Tables and the codification of law that took place around the same time in Palestine, known as Deuteronomy. According to the reconstruction of events in Rome, the codification of laws involved an attempt to limit the judicial omnipotence of the elite, due to pressure from a new elite that sought to diminish the power of the old elite. The text asks whether analogous political mechanisms could have led to the codification of law in the form of Deuteronomy, and if so, how to define the group whose judicial omnipotence would be curtailed.

Keywords:

Law of the Twelve Tablets, Deuteronomy, Law Codification, Elites, Rome, Yehud, Bible, Persian period.

Rome in mid-5th century BCE witnessed strong political tension, extensively described by Livy. The very core of the events was connected with the pression of the new high-middle class group, willing to participate in the politics and have their share in power. Well-known events related to the Aventine secession, turmoil in the city of Rome, establishment of the *Decemviri* commission,

¹ This article was written as part of the project financed by the National Science Centre, Poland (UMO-2016/23/B/HS3/01880).

and promulgation of the law of Twelve Tablets, mark one of the most important period in the history of young Roman Republic. Adam Ziółkowski has convincingly demonstrated how these events, known as struggle between the Patricians and the Plebeians resulted out of the political ambition of the later group.

Political struggle between the Patricians and the Plebeians in the mid-5th century BCE was accompanied by the law codification, and the promulgation of the set of legal norms, known under the name of the Law of the Twelve Tablets (*Leges Duodecim Tabularum*). Among the laws included in the Twelve Tablets there were norms considering tribunal and court procedures, executions, land rights, law of injury etc. Undoubtedly this codification played relevant role in the setting up of the legislation procedures in Rome, as well as the Romans' everyday life. For some scholars, the link between the content of the Law of the Twelve Tablets and the political struggle in Rome in mid-5th century was not apparent. This relation may be clearer if one underlines the social aspects of the process of the codification of the laws, especially writing down the transgressions along the relevant punishments. The codification of the laws – i.e. putting to the general knowledge the rules which the judges have to follow – establish an important step in the social control. In the realities of the early republican Rome, it is not merely about the control of the subjects, effectuated in the way of determine the punishments for each delinquency. It is primarily about putting limits on the judges. The social control of the law codification results in controlling of the tribunal authority. The judges are not fully free in choosing the punishment, because they are limited by the laws – known to everyone. The willfulness of the judges offered them an important tool in their way of building political positions. Putting limits to this freedom of judgement made the political position of the judge much weaker. The very existence of the codex of the laws, made the total freedom in forming a judgement impossible. In this way, the political situation of the judges becomes weaker, and all the subjects may witness relative liberalization of judgment, while it was not open to total arbitrariness. In this light, the codification of the laws, and establishment of the Laws of the Twelve Tablets, appears as the concession on the part of the Patricians, who accepted the limits put on their role as judges. In doing so, they agreed to limit the ways to build, and keep their political position. It was, however, not an exorbitant price for keep the monopoly of power for the next two generation.²

More or less in the same time, when the Romans set their legal norms in the Law of the Twelve Tablets, over 1400 miles away, there was a place where similar law codification took place. It was the most plausible period, when the elites of Jerusalem wrote down the set of laws, known as Deuteronomy. The laws included

² Ziółkowski 2004: 111–116.

in Deuteronomy cover wide variety of human activity, from cult, religious rituals, social and political life, as well as prosaic economic, agriculture and everyday-life norms.

In previous scholarship, the majority of opinions pointed to the late 7th century as the possible period of this Deuteronomic law-codification, which was linked to the actions undertaken by king Josiah, supposedly effectuated a religious reform ca. 622 BCE. Some scholars, however, point to the period of Babylonian Exile, i.e. period between 597 or 586 and 539 BCE, as the possible time of law codification. This later date for the law codification can hardly be accorded with the geographical and economic realities, which fit in the local realities of Palestine and do not reflect any of the Mesopotamian characteristics. So, it would be difficult to imagine scribes in Mesopotamia to collect law referred to the Palestinian realities. On the other hand, the suggestion to date the law-codification in the time of king Josiah – so openly depending on the narrative of 2 Kings 22–23 – cannot be accepted in the light of the regulation considering the rule of the kings, in Duet. 17:14–20. This passage ban king from having multiple horses, gold and silver – symbols of wealth – as well as multiple wives, illustrating vital power of the monarch. According to this Biblical law, king shall – for the most of his time – study the Torah:

When he has taken the throne of his kingdom, he shall have a copy of this law written for him in the presence of the levitical priests. It shall remain with him and he shall read in it all the days of his life, so that he may learn to fear the Lord his God, diligently observing all the words of this law and these statutes, neither exalting himself above other members of the community nor turning aside from the commandment, either to the right or to the left, so that he and his descendants may reign long over his kingdom in Israel. (Deut. 17:18–20)

There was no king, regardless his religious piousness, who would allow the redaction of such antimonarchic laws, not to mention to apply them. For this reason, the redaction of the Deuteronomic Laws, the regulation for the king included, fits the period without a king. This leads to the early Persian Period as the earliest, and the most plausible period of the text composition.

Probably accidental coincidence of the two codifications of law in Rome and Jerusalem makes it possible to ask the question about possible common features of the two processes. However, it is not a question of looking for a common inspiration for both processes. Although the thread of inspiration of the Athenian laws promulgated by Solon and recorded in Livy³ (Liv. 3.31.8) could open the way for

³ *cum de legibus conveniret, de latore tantum discreparet, missi legati Athenas Sp. Postumius Albus, A. Manlius, P. Sulpicius Camerinus iussique inclitas leges Solonis describere et aliarum Graeciae civitatum instituta, mores iuraque noscere.*

this kind of speculation. It is rather a question of the possibility of seeing in the codification of biblical laws the same functional expediency that characterized the codification of the Laws of the Twelfth Tablets. In the case of Rome, as has been mentioned, the codification of the law limited the power of the elite exercising judicial authority. Can we therefore also see possible socio-political aspects of the codification of the laws in Deuteronomy in the process of codification taking place at the same time?

In the case of Rome, the codification of laws was made possible by a kind of compromise between the moderate representatives of the Patricians and the Plebeians, consisting in maintaining the monopoly of power by the former, while at the same time depriving them of their monopoly on jurisdiction.⁴ In the case of the codification of the laws recorded in Deuteronomy, are we able to identify the parties to the political dispute that led to their promulgation? Can we say whether the codification of the law in the province of Yehud was also intended as a political and social act, the effect of which was to break the monopoly of jurisdiction? Can we also identify the actors in the political dispute of the time, which was to culminate in the codification of the laws?

The answer to this question is provided by an analysis of the text of Deuteronomy itself. As usual, the question of *cui bono* is the most telling. The legal system codified in Deuteronomy clearly valorize the priests as a group that gains prominence in all areas of public activity. For this law places in the hands of the temple elite the collection of taxes, the administration of justice, and even the coordination of hygiene and public health. The omnipotence of the priests enshrined in Deuteronomy raises doubts among historians as to whether they were used in the Persian era. Even the provision for the collection of taxes by priests contradicts our knowledge of the Persian provincial fiscal model, which included taxes collected in Yehud by a governor residing in Ramat Rahel. It is possible, therefore, that Deuteronomy is not a code of laws that was enacted from the moment it was written down. It could have been codified and waited for a time when an authority, such as the Persians, would allow the implementation of these laws into administrative and judicial practice. Nevertheless, someone wrote down these provisions and, it must be assumed, knew what social effects their implementation would have.

If, therefore, Deuteronomy contains demands expressing the political aspirations of the priests, it is necessary to ask whose earlier powers they wanted to take over. There are two possible ways of answering this question. Either we are dealing here with a demand to transfer some of the competences to the priests by depleting the prerogatives of the governor's authority, e.g. complete discretion in passing

⁴ Ziolkowski 2004: 113–114.

judgment, or it is an attempt to take away or limit the authority of some other group. If it were a matter of tension and rivalry between the priests and the governor, who represented Persian authority, we would have a situation similar to the alleged establishment of the Deuteronomy laws in the royal era. In other words, it is difficult to imagine that the governor, residing in Ramat Rahel, surrounded by a garden likened to a Persian *paradeisos*, behind which stood the power of the satrap and further of the great king of kings, could tolerate the publication of laws that took away any competence from him. The governor had competences - on behalf of the Persian power - with regard to the judiciary, minting, taxation, army recruitment, etc. He was the highest local representative of the Persian power, and therefore to question his authority or competence would be to strike at the authority of the Persian kings. Recall here, however, the analogy from Rome – Patricians were only willing to accept a degree of self-limitation of their previously unlimited power under the strong pressure represented by the Aventine Secession, which was in fact the breakdown of the political structures of the state. In the reality of the province of Yehud of the Persian period, it is difficult to identify reasons putting the Persian administration in an analogous situation. These arguments lead to the reasonable conclusion that Deuteronomy was indeed intended to strengthen the power of the priests, but this was not to be at the expense of Persian power. If so, whose authority was the Deuteronomy code meant to limit?

In order to answer this question, it is necessary to refer to a reconstruction of the social and political landscape of the province of Yehud beyond the group of protagonists known as the primary actors of the Bible. It is in the judicial context that a group referred to as the elders of the city appears in Deuteronomy (cf. Deut. 21:18-21; 22:13-21; 25:7-9). Some scholars did not see the elders of the city as professional judges, but merely an audience necessary to perform the ritual part of certain court procedures.⁵ Others believed that '[T]he elders of the town play a remarkable role in traditional family law in Deuteronomy'.⁶ However, if interpretations which recognize the institutions of the elders as a legitimate entity for the exercise of judicial powers are upheld, then their presence – admittedly marginal – in the Deuteronomy legislation would allow the hypothesis to be advanced that it was their traditional judicial powers which were to be limited by the corset of the written law. If this were the case, then it would have to be considered that it was the local elites (not necessarily only provincial, but also elites of Jerusalem) who, in accordance with the traditional judicial system, were in charge of the administration of justice that became the object of competition from the priests. The writing down of the laws was therefore intended to limit the omnipotence of

⁵ Tigay 2011: 89–96.

⁶ Bultmann 2001: 149. Cf. de Vaux 1961: 152–153.

the local elites – the elders of the cities (*zīq'ney ha'ir*) – who, through these powers, built up their clientele structures, expanding their political position. The priests sought to limit the omnipotence of the local elites in order to build up their own political position by limiting their power.

The socio-political aspects of the law codification process in Yehud, however, were not similar to those associated with the establishment of the Law of the Twelve Tables in Rome. In the case of Rome, the elite was forced to accept concessions under the pressure of the disintegration of the civic community and the loss of military power foreshadowed by the Aventine secession. Similarly, when Solon introduced legislation related to the abolition of debts, he was able to use the argument of protecting the number of citizens, i.e. the hoplites, in his communication with the elite who were losing as a result of his reform. In the case of the codification of the law in the province of Yehud, it is probably impossible to identify a reason why the elders should have agreed to a self-limitation of their judicial powers, that is, a *de facto* loss of some political influence. In this situation, the comparison between Rome and Jerusalem suggests more differences than analogies.

The reconstruction presented here allows us to see the political and social realities of the mid-fifth century in the province of Yehud in a new light. One previously unseen lines of contention may have been the rivalry between priests and local elites, one stage of which was to codify the law according to the demands of the priests, thereby reducing the unchecked judicial omnipotence of the traditional elites. This lines of dispute – which took place completely outside the provincial Persian authority – puts not only the political life of the time, but also the texts produced at the time, in a new light.⁷ To return to the analogy with the reality of Rome in the early republic cited at the beginning, one could say that the priests were *nouveaux riches* demanding a share in the political cake like the Plebeians. Of their opponents – the Patricians of the province of Yehud – we know unexpectedly little. But not only this Roman-Judaic analogy, but also the study of the social structures of Palestine, allow us to believe that this was a group which, relying on its authority, dictated the tone in the political life of Yehud for a long time. Even if the authors of the Bible try to silence and marginalize them almost completely.

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