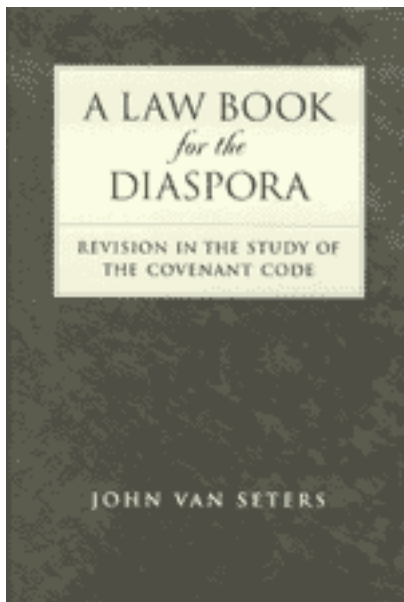


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Van Seters, John

A Law Book for the Diaspora: Revision in the Study of the Covenant Code

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In this book John Van Seters has collected essays that were previously published between 1996 and 1999 and that provoked, as the author now claims, a “revolution” in the study of the Covenant Code. Van Seters tries to prove (1) that the Covenant Code (CC) in Exod 20:23–23:33 was written by a single author without any incorporation of literary sources; (2) that this author was the exilic “Yahwist” (J); and (3) that Deuteronomy (D) and the Holiness Code (HC) were paradigms that J copied in the CC. Indeed, if only one of these assumptions could be proved, this would mean a revolution not only in the study of the CC but of the legal history in the Hebrew Bible.

Julius Wellhausen built his theory of sources in the Pentateuch on Wilhelm Martin Leberecht De Wette’s insight that an early D (*Urdeuteronomium*) was written in the seventh century B.C.E., so that the non-Priestly sources that did not presuppose cult centralization were older and the Priestly source younger than D. Van Seters intends to turn the logic of more than a hundred years of Pentateuch study upside down, proving that J is younger than the Deuteronomistic History (DtrH), including D. The cost for this hypothesis, that J should be a post-Deuteronomistic exilic author, is Van Seters’s dismantling of effective exegetical methods such as form-criticism, tradition- and redaction history, and the most decisive criteria of literary criticism, so that one wonders about Van Seters’s dedication of this monograph to Gerhard von Rad, who achieved his

brilliant exegetical results with exactly these methods that Van Seters dismisses. The outcome is that J should be an author of Hebrew historiography, who was dependent on DtrH but did not incorporate any written source in Exodus to Numbers. For more than one hundred years Hebrew Bible scholars have been convinced that the CC was originally such a written source of a law book independent from its literary context in the Sinai pericope. Van Seters had the alternative either to give up the hypothesis that J was only an author and not a redactor who used literary sources or to prove that J was the author also of the CC and that for J D was the paradigm for writing the CC as a revision of D. Van Seters chose this second option.

In opposition to Wellhausen and years of scholarship using the literary analysis of the Pentateuch with the law books as a framework for the literary history of the narratives, Van Seters started with the analysis of the narratives and then turned to the legal sections of the Pentateuch, with the result that the legal history of the Hebrew Bible had to be adjusted to his literary-historical hypotheses of the narratives. It is an obvious misunderstanding, if Van Seters assumes, that Wellhausen dated the CC pre-D because he dated the “Elohists” early. The logic of Wellhausen’s argument was precisely the other way around, as a glance at his “Prolegomena” shows. In an idiosyncratic history of research Van Seters intends to show that most scholars of the past, such as Julius Wellhausen, Albrecht Alt, Martin Noth, and the reviewer (who takes it as an honor to be mentioned together with these famous German predecessors), were misled by their misunderstanding of the literary history of the CC.

It is not surprising that this kind of “revolution” can be launched only by circular arguments. Van Seters presupposes the literary shape of a late post-Deuteronomistic J—a very hypothetical assumption—and the CC as part of this J as the starting point for his analysis of the literary relation between D and CC, with the result that the CC was post-Deuteronomistic and written by J. He simply passes over and omits important studies such as those by Norbert Lohfink (“Fortschreibung? Zur Technik von Rechtsrevisionen im deuteronomischen Bereich, erörtert an Deuteronomium 12, Ex 21,2–11 und Dtn 15,12–18,” in *Das Deuteronomium und seine Querbeziehungen* [ed Timo Veijola; Göttingen: Vandenhoeck & Ruprecht, 1996], 133–81), which do exactly what Van Seters demands, to analyze the literary relationship between D and CC, but achieve exactly the opposite result. Van Seters also refuses to take any notion of redaction-historical studies of the Pentateuch that assume post-D and post-P redactions in the Sinai pericope (e.g., Wolfgang Oswald, *Israel am Gottesberg: Eine Untersuchung zur Literaturgeschichte der vorderen Sinaiperikope Ex 19–24 und deren historischen Hintergrund* [Göttingen: Vandenhoeck & Ruprecht, 1998]), a post-Deuteronomistic integration of the CC into the Sinai pericope, post-Deuteronomistic sections within the frame of D (e.g., Deut. 4) and within the legal corpus of D (e.g., Deut. 23:2–9; see Eckart Otto, *Das Deuteronomium im*

Pentateuch und Hexateuch: Studien zur Literaturgeschichte von Pentateuch und Hexateuch im Lichte des Deuteronomiumrahmens [Tübingen: Mohr Siebeck, 2000]). Van Seters excludes all these approaches that posit a more sophisticated and complex solution for the direct juxtaposition of early pre-Deuteronomistic and post-Deuteronomistic sections within the CC and of Deuteronomistic, Deuteronomistic, and post-Deuteronomistic sections within D instead of Van Seters's simple question whether the CC was pre- or post-D.

If J was the only author of the CC, Van Seters has to prove that J was also the author of the *mishpatim* within the CC, although there were no such laws in D. The first of Van Seters's test cases is the slave law in Exod. 21:2–6, 7–11, which should depend on Deut 15:12–18 and Lev 25:44–46. Exodus 21:2–6, according to Van Seters, did not deal with the purchase of a free Hebrew man as debt-slave by a Hebrew but with the purchase of a Hebrew slave by a foreigner. Van Seters's argument is as simple as it is wrong: “‘Whenever you purchase a Hebrew slave. . .’ The most obvious and direct meaning of this statement is that the person is already a slave of whatever reason and has been purchased from another owner. The terms of the law, however, are such that the seller could not belong to the Israelite community, because that would be contradictory and make void the law” (87). However, this would mean that the CC also addresses foreigners, which is a rather impossible assumption for an exilic author J. Van Seters asserts that “in most instances, it is not the purchase that makes a person as slave,” but one may ask, what else should transform a free person into a debt-slave? Especially Exod 21:3 diametrically contradicts Van Seters's interpretation of Exod 21:2–6, although he asserts that it “is in no way contradicted by the discussion about ‘entering’ single or married, because slaves could be bought as individuals or as family units.” But the differentiation between entering single or married only makes sense if the purchased Hebrew could have already married his wife as a free man so that she remained a free person, like their children. The invention of a foreigner as purchaser and addressee of the CC does not solve the problems Van Seters's interpretation creates. Exodus 21:2a α includes a performative speech-act expressing that by the purchase a free person became a debt-slave; as we say, “the president was elected,” which does not mean that he was already president before he was elected. Like Exod 21:7, Exod 21:2 also deals with a free person who went into debt-slavery, so that it is not plausible to separate Exod 21:7–11 from 21:2–6, because also Exod 21:7–11, as Van Seters admits, deals with a free Hebrew woman who was sold into debt-slavery. Van Seters's main argument for his hypothesis that Exod 21:2–6 was a post-Deuteronomistic revision of Deut 15:12–18 and not, as for example, Norbert Lohfink (see above) and other scholars have shown, vice versa, is the fact that Exod 21:3–4 has no counterpart in Deut 15. However, there is a proper explanation, if one takes the theological intentions of D into account. The regulation of

matrimonial law in Exod 21:4 was not integrated into Deut 15:12–18 because it diametrically contradicted the brotherly and sisterly ethos of D. Deuteronomy 15:12–18 was not, as Van Seters asserts, “a law as a general principle dealing with male and female debt-slaves” but a revision of Exod 21:2–11 in a social perspective of Deuteronomic ethos: Exod 21:4 meant the loss of the protection of the sisterly status of the woman without her consent and is oriented toward the master’s rights, whereas Deut 15 focuses on the slaves’ rights (see Eckart Otto, *Das Deuteronomium: Politische Theologie und Rechtsreform in Juda und Assyrien* [Berlin: de Gruyter, 1999], 303–11).

Finally, Van Seters asserts that the CC was also dependent on the slavery law of the HC in Lev 25:44–46. This hypothesis presupposes that there ever existed a law book of the HC independently from its Priestly literary context in the Sinai pericope. However, since Karl Elliger’s commentary on Leviticus (HAT I/4, Tübingen: Mohr Siebeck, 1966), which Van Seters does not cite, Hebrew Bible scholarship takes into account the probability that the HC never was a law book independent from its literary context but a Priestly or post-Priestly redactional supplement mediating between CC, D, and P (see Eckart Otto, “Innerbiblische Exegese im Heiligkeitsgesetz Levitikus 17–26,” in *Levitikus als Buch* [ed. Heinz-Josef Fabry and Hans-Winfried Jüngling; Berlin: Philo, 1999], 125–96). As Van Seters’s analysis of the Sinai pericope does not provide a coherent P and ignores the post-P literary history of the Sinai pericope, he cannot find a literary context for the HC and thus turns the state of discussion of the HC upside down. Whereas most scholars have very good reasons for assuming that the early CC was an originally independent law book and the late HC part of its literary context, Van Seters denies the existence of the CC as an independent law book but asserts that the HC was such an independent pre-P legal corpus. Concerned only with the CC, Van Seters simply omits and passes over the discussion of the HC as part of its literary context (cf. Andreas Ruwe, “*Heiligkeitsgesetz*” und “*Priesterschrift*”: *Literaturgeschichtliche und rechtssystematische Untersuchungen zu Levitikus 17,1–26,2* [Tübingen: Mohr Siebeck, 1999]) or as a very late postexilic law book (cf. Klaus Grünwaldt, *Das Heiligkeitsgesetz Levitikus 17–26: Ursprüngliche Gestalt, Funktion und Theologie* [Berlin: de Gruyter, 1999]). But how, one may ask, could the *yobel*-motif in Lev 25 be pre-Priestly? Van Seters has to admit that this motif was a later literary addition, which means that he concedes for the HC what he refuses for the CC, that it was an independent law book with a deeper literary history. Van Seters needs the HC as a pre-P source for the CC in order to explain the participial prohibition in Exod 21:12–17, 22; 22:17–19 and the *lex talionis* in Exod 21:22–25 as late and post-D but as pre-P by deriving these laws from a pre-P HC without realizing that Lev 24:17–20, which should be the source for the *lex talionis*, was one of the latest postexilic sections in the Pentateuch.

Even less convincing is the second test case of Exod 23:4–5 as an “imitation” of Deut 22:1–4. The idea of solidarity with the enemy in the CC should be, so Van Seters, an enhancement of solidarity with the Hebrew brother. Van Seters’s assumption, that the enemy in Exod 23:4–5 could not be the opponent at law in the local community, has already been falsified by the monograph of Gianni Barbiero (*L’asina del nemico: Renuncia alla vendetta e amore del nemico nella legislazione dell’Antico Testamento [Es 23,4–5; Dt 22,1–4; Lv 19,17–18]* [Rome: Editrice Ponteficio Istituto Biblico, 1991]), which Van Seters, like many others, has passed over. The decisive point defining the direction of reception between Exod 23:4–5 and Deut 22:1–4 Van Seters does not take into account, namely, the fact that Deut 22:1–4 was related not only to Exod 23:1–4 but also to Exod 22:6–19. The integration of different parts of the CC in D is a definite argument that the CC was the giving and D the taking text.

If D should be the paradigm for a CC, there remains the question as to from where J got the *mishpatim* that have no counterpart in D. Van Seters offers the solution that J directly copied the laws of Hammurabi, an idea he asserts to be a “revolution” because “in practice all of the scholars completely isolate the comparison of the Covenant Code with Near Eastern law from any inner-biblical comparison” (43). The reviewer is astonished, because he as others tried in several monographs exactly what Van Seters demands, to interpret the biblical legal history as part of that of the ancient Near East. Van Seters passes over all these studies with the argument that the analyses of cuneiform law only served to support the literary studies of biblical law books. A better knowledge of cuneiform legal material could have shown Van Seters that the hypothesis of direct reception of the Codex Hammurabi (CH) by J is a far too simple solution for the complex legal transfers between cuneiform and biblical law. The closest parallel to Exod 21:35–36 is not CH §§250–252 but §53 of Codex Eshnunna (CE). That an exilic J could get in contact with the CE, which was written in the first half of the second millennium B.C.E. and had no tradition-history after the fall of the kingdom of Eshnunna, is, as the reviewer (Eckart Otto, *Körperverletzungen in den Keilschriftrechten und im Alten Testament* [Neukirchen-Vluyn: Neukirchener Verlag, 1991], 147–64) and others have tried to show, rather improbable. Finally, Van Seters admits that there was also an Assyrian influence on the CC in Exod 22:15–16. But how could Assyrian law influence biblical law in the Neo-Babylonian period? The scholarly discussion of the Assyrian influences on the CC (Eckart Otto, “Körperverletzung oder Verletzung von Besitzrechten? Zur Redaktion von Ex 22,15f. im Bundesbuch und §§55; 56 im Mittelassyrischen Kodex der Tafel A,” *ZAW* 105 [1993]: 153–65) was again like all the other studies overlooked by Van Seters. In the same way superficial is his treatment of Raymond Westbrook’s studies.

With this monograph Van Seters tries to support the highly contested results of his studies in the J narratives of the Pentateuch. The price he is ready to pay is the claim of a

“revolution” in the study of the CC dissolving a basic consensus of more than one hundred years of scholarship, that the CC was as a preexilic law book the paradigm for D and HC. A hypothesis of the literary history of pentateuchal narratives should never be the starting point for the reconstruction of biblical legal history, but one should proceed just the other way round: a firm establishment of the relations between the legal corpora of the Pentateuch should be, as Wellhausen already knew, the starting point for the reconstruction of the literary history of the Pentateuch. To become a “revolutionary” in the field of biblical and cuneiform legal history needs a life-long commitment and not just some articles published within five years in some journals and now collected in a monograph. The result is not a “revolution” but, this political term being allowed, compared to Wellhausen, Alt, Noth, and many others, an unmethodological “counterrevolution.”